

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 VI of IX

Upper Marlboro, Maryland

Tuesday, February 19, 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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P R O C E E D I N G S

(Jury not present upon reconvening.)

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

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

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

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

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

THE COURT: Good morning. Are we ready to bring the jury back?

MR. MOOMAU: Your Honor, Mr. Wright is in another courtroom for a brief period of time. He had something with Judge McKee that he had to take care of. I guess he didn't realize the trial was going to take this long. Is the jury all here?

THE BAILIFF: They're all here.

MR. COHEN: We have no problem waiting for Mr. Wright, Your Honor.

MR. MOOMAU: Can you give us ten minutes?

THE COURT: Okay.

(A brief recess was taken.)

1 THE COURT: Are we ready to bring the jury back in
2 now?

3 MR. WRIGHT: Just two minutes, Your Honor.

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

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

6 THE COURT: Good morning, ladies and gentlemen. As
7 I have on earlier occasions, I need to ask you that, over
8 this past three-day holiday, whether any of you found
9 yourselves in a position to either hear, see or read any
10 accounts of the facts or circumstances portrayed in this case
11 by the news media? The Court sees no affirmative response.
12 Thank you.

13 MR. COHEN: Thank you, Your Honor. The defense
14 calls Ms. Deborah Martin.

15 **DEBORAH MARTIN,**

16 a witness produced on call of the Defendant, having first
17 been duly sworn, was examined and testified as follows:

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

20 THE WITNESS: My name is Deborah C. Martin,
21 D-e-b-o-r-a-h, middle initial C, M-a-r-t-i-n.

22 **DIRECT EXAMINATION**

23 BY MR. COHEN:

24 Q. Good morning, Ms. Martin.

25 A. Good morning.

1 Q. How are you doing this morning?

2 A. Fine, thank you.

3 Q. Where are you currently employed, Ms. Martin?

4 A. I currently work for myself as a private
5 investigator.

6 Q. And how long have you owned your own private
7 investigative service?

8 A. Approximately two years.

9 Q. Are you licensed to do private investigative work
10 in the State of Maryland?

11 A. Yes, I am.

12 Q. What other states are you licensed in?

13 A. I'm also licensed in Virginia and the District of
14 Columbia.

15 Q. Prior to getting your license as a private
16 investigator, where were you employed?

17 A. I was a special agent with the FBI for just under
18 25 years.

19 Q. Ms. Martin, did you have the opportunity to go to
20 Keith Washington's home?

21 A. Yes, I did.

22 Q. What address is that?

23 A. It's at 1513 Shellford Lane in Accokeek, Maryland.

24 Q. When did you go to his home?

25 A. I went on February 11, 2008.

1 Q. Were you able to walk through and observe the first
2 level and second level of his home?

3 A. Yes, I was.

4 Q. Were you able to see the layout of the area and
5 where different rooms were located on the different floors?

6 A. Yes.

7 MR. COHEN: Court's indulgence.

8 THE DEPUTY CLERK: Defense Exhibits 12 and 13
9 marked for identification.

10 (Defense Exhibit Nos. 12 and 13
11 were marked for identification.)

12 BY MR. COHEN:

13 Q. I'm going to show you what's been marked as Defense
14 Exhibit 12. Have you seen this before?

15 A. Yes, I have.

16 Q. What is it an exhibit of?

17 A. On the top part, it's a diagram of the residence,
18 and the bottom part is pictures of the residence.

19 Q. Does it truly and accurately depict the floor plan
20 and the rooms that you saw on the day you went to
21 Mr. Washington's home?

22 A. Yes, it does.

23 MR. COHEN: At this point, Your Honor, the defense
24 asks that Defense Exhibit 12 be moved into evidence.

25 MR. MOOMAU: No objection.

1 THE COURT: Twelve admitted, defense, without
2 objection.

3 (Defense Exhibit No. 12, previously
4 marked for identification, was
5 received in evidence.)

6 BY MR. COHEN:

7 Q. Ms. Martin, on the day you went to Mr. Washington's
8 home, why did you go to his home that day?

9 A. I went to his home to make several measurements as
10 requested by Mr. Cohen.

11 Q. That would be me, correct?

12 A. Yes, it would be.

13 Q. Can you let the ladies and gentlemen of the jury
14 know, one by one, which measurements you actually made in
15 Mr. Washington's home that day.

16 A. Sure. Would you like me to point to the diagram or
17 just describe it?

18 Q. If you would describe it, that would be great.

19 A. Okay. The first measurement I took was from the
20 center of this double master bedroom door at approximately
21 waist high, down to the top of the second step down. That
22 was 101.5 inches, or eight feet five-and-a-half inches, just
23 under eight and a half feet.

24 The second measurement I took, this is a little
25 alcove. And so the wall goes across here, up to about waist

1 high. So I took the measurement from this point to the
2 balcony, which was right here, and that was 44 and 3/16
3 inches, or three feet eight and 3/16th inches.

4 Then the third measurement I took was from bedroom
5 number 2, right here, I took in the center of this to the
6 center of where this threshold is of the double door, and
7 that was exactly five feet.

8 Q. You can remain standing, Ms. Martin. And what do
9 you know bedroom number 2 as?

10 A. Mr. Washington's daughter's bedroom.

11 Q. Taking your attention to the bottom portion of
12 Defense Exhibit 12, the alcove that you just described at the
13 top of the document, do you see that alcove --

14 A. Yes. This is the alcove I was talking about, and
15 that is this part right there. You see where the wall comes
16 all the way across, right here. So I measured from this
17 point to the balcony railing. It's actually the balcony
18 post, this post.

19 Q. Ms. Martin, you can resume your seat. I'm showing
20 you what's been marked as Defense Exhibit 13. Can you take a
21 look at Defense Exhibit 13.

22 A. Yes.

23 Q. Have you seen that before?

24 A. It's just a smaller version of that. Yes.

25 MR. COHEN: Your Honor, at this point we'd ask that

1 Defence Exhibit 13 be moved into evidence.

2 MR. WRIGHT: No objection.

3 THE COURT: Thirteen admitted, defense, without
4 objection.

5 (Defense Exhibit No. 13, previously
6 marked for identification, was
7 received in evidence.)

8 BY MR. COHEN:

9 Q. Now, Ms. Martin, could I have you, please, on
10 Defense Exhibit 13 -- and I'll find you a ruler in one
11 moment. Could you please draw the measurements that you made
12 that day in Mr. Washington's house, and initial, by each
13 measurement that you do, with your initials, please.

14 A. Okay. I drew the lines. Do you want the
15 measurements in feet?

16 Q. If you could include the measurements in feet for
17 each one of those measurements.

18 A. (Witness complies.) And then initial each line?

19 Q. If you could, please, each measurement.

20 A. (Witness complies.) Do you need arrows at the end
21 of the measurement?

22 Q. Yes.

23 A. (Witness complies.)

24 Q. Thank you. One moment, please.

25 MR. COHEN: Thank you, Ms. Martin. No further

1 questions.

2 MR. WRIGHT: Court's indulgence. No questions,
3 Your Honor.

4 THE COURT: Ms. Martin, thank you very much.

5 THE WITNESS: You're welcome.

6 MR. COHEN: May I excuse the witness, Your Honor?

7 THE COURT: Yes, please.

8 MR. COHEN: Your Honor, the defense calls Clyde
9 Washington.

10 **CLYDE WASHINGTON,**

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

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

15 THE WITNESS: Clyde Washington, C-l-y-d-e,
16 W-a-s-h-i-n-g-t-o-n.

17 MR. COHEN: Court's indulgence, Your Honor. I need
18 to get an exhibit.

19 THE COURT: Sure.

20 **DIRECT EXAMINATION**

21 BY MR. COHEN:

22 Q. Good morning, Mr. Washington.

23 A. Good morning, sir.

24 Q. You are of no relation to Mr. Keith Washington,
25 correct?

1 A. No, sir.

2 Q. Where are you currently employed?

3 A. Modern Door and Equipment.

4 Q. Do you volunteer, Mr. Washington?

5 A. Yes, sir.

6 Q. What do you volunteer as?

7 A. I'm an EMS captain with the Bryansville Fire
8 Department.

9 Q. There's a lot of feedback back here. If you could
10 just keep your voice up a little bit, please.

11 A. Okay.

12 Q. How long have you been an EMS employee or
13 volunteer?

14 A. Thirty-one years and eight months.

15 Q. And where were you employed, with respect to your
16 volunteer work, on January 24, 2007?

17 A. As far as being at the fire house is what you're
18 saying?

19 Q. Yes, which firehouse were you employed with?

20 A. Bryansville.

21 Q. What are your job duties as an EMS volunteer?

22 A. I'm assistant director of the EMS division.

23 Q. What kind of things do you do as assistant
24 director?

25 A. I basically check reports, inventories and training

1 coordinators.

2 Q. And taking your attention to January 24, 2007, what
3 was your position then?

4 A. I was the EMS deputy chief.

5 Q. As EMS deputy chief, what did your job duties
6 entail?

7 A. I was in charge of the EMS division instead of
8 director of the EMS division.

9 Q. In your career as an EMS volunteer, how many
10 emergency runs would you say you've made?

11 A. EMS, I would say a minimum of between 7 and 800.

12 Q. And just so I'm clear -- and, again, there's
13 feedback back here. You said around 800?

14 A. Between 7 and 800 would be a fair assessment.

15 Q. And what type of runs are the 7 to 800?

16 A. We classify them as medical and trauma.

17 Q. And can you describe the different kinds of runs
18 you make for the ladies and gentlemen of the jury?

19 A. I've been on shootings; medical, as for as general
20 sickness to, I guess, pneumonia cases and stuff like that.

21 Q. Let me take your attention to Defense Exhibit 10.
22 Could you take a look at that, Mr. Washington, and look up
23 once you're done reading.

24 A. Okay.

25 Q. Did you have a chance to look that over?

1 A. I've looked that over.

2 Q. What is Defense Exhibit 10?

3 A. This is the emergency management ambulance incident
4 system, which controls the report, which looks over, after I
5 do the runs, to do the feedback to make sure that everything
6 is -- it's like quality control, is what it is.

7 Q. And taking your attention to page 3 of Defense
8 Exhibit 10. Is that your signature on page 3?

9 A. Yes, it is, sir.

10 Q. Did you draft that report?

11 A. Yes, I did, sir.

12 Q. Did you perform the assessment that is referenced
13 in the report?

14 A. Yes, I did, sir.

15 Q. So you have personal knowledge about the
16 information in the report?

17 A. Yes, sir.

18 Q. Did you draft this report shortly after completing
19 the assessment described in your report?

20 A. Actually, I drafted it -- this report was drafted
21 on January 24th -- actually --

22 Q. Take your time.

23 A. 1-24 at 2110, which is 9:10.

24 Q. So you drafted that report on January 24, 2007, at
25 9:10 p.m., correct?

1 A. That's correct.

2 MR. COHEN: At this time, Your Honor, we would
3 request that Exhibit Number 10 be admitted as a business
4 record exception.

5 MR. MOOMAU: Objection.

6 THE COURT: Grounds?

7 MR. MOOMAU: Can we approach?

8 THE COURT: Sure.

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

11 MR. MOOMAU: I don't think it should be admitted
12 unless he says he doesn't have knowledge of the contents of
13 it.

14 THE COURT: Well, assuming it's a business record,
15 what is your -- he has what?

16 MR. MOOMAU: Unless he says he doesn't remember
17 specifically, and then it needs to come in then to refresh
18 his recollection. I don't see the need for it coming in.
19 That's my objection.

20 THE COURT: Overruled.

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

23 BY MR. COHEN:

24 Q. Again, Your Honor, at this time the defense would
25 request that Defense Exhibit 10 be admitted as a business

1 record.

2 THE COURT: Admitted, 10, defense.

3 (Defense Exhibit No. 10, previously
4 marked for identification, was
5 received in evidence.)

6 BY MR. COHEN:

7 Q. Now, Mr. Washington, did you have the occasion to
8 arrive at 1513 Shellford Lane in Accokeek, Maryland, on
9 January 24, 2007, in your duty as an EMS personnel?

10 A. Yes, sir.

11 Q. Did you receive a radio run to that location?

12 A. Yes, sir.

13 Q. What was that radio run for?

14 A. It was dispatched as an injured subject.

15 Q. Was there anything else -- any other information
16 you got from the radio run?

17 A. Dispatch says injured subject. That was pretty
18 much it.

19 Q. Do you remember what time you arrived at 1513
20 Shellford Lane?

21 A. I arrived at 2115.

22 Q. For the nonmilitary folks, can you tell --

23 A. Excuse me; 9:15.

24 Q. And when you arrived, did you see Mr. Keith
25 Washington?

1 A. Not at first, sir.

2 Q. And at some point after you arrived, did you see
3 Mr. Keith Washington?

4 A. Yes, sir.

5 Q. What did Mr. Keith Washington tell you happened to
6 him?

7 A. He told me that he was in -- let me read it off
8 here. I don't want to give you wrong -- I believe it was
9 fair to say some kind of altercation.

10 Q. Why don't you take your time, Mr. Washington, and
11 just review your report.

12 A. Okay. Actually, it was a fight/brawl was what we
13 classify it, is what he told me, a fight/brawl.

14 Q. And with respect to -- do you do a narrative
15 section in this report?

16 A. Yes, I do, sir.

17 Q. What type of information do you put in the
18 narrative section?

19 A. I'm going to read it so everybody can get details
20 of it, because I can't just start in the middle of it --

21 THE COURT: Sir, you're not allowed to explain
22 anything. You just respond to defense counsel's question,
23 please.

24 THE WITNESS: Yes, sir.

25 BY MR. COHEN:

1 Q. Let me try and situate you. Mr. Washington, in the
2 narrative section, what did you state that Mr. Washington
3 told you happened?

4 A. Okay. He was assaulted during an altercation.

5 Q. And when you arrived on the scene, what was
6 Mr. Washington's chief complaint?

7 A. Actually, pain in the face and neck and back pain.

8 Q. And did Mr. Washington give you a pain rating on
9 how bad that he was hurt?

10 A. I have it on here.

11 MR. COHEN: I may be able to move it along, Your
12 Honor.

13 THE WITNESS: Distress, which means mild but not
14 pain pain. We use a trauma scale which is 1 to 10.

15 Q. And he was a six, correct?

16 A. Yes, his pain rating was a six.

17 Q. Did you do an assessment of Mr. Washington at the
18 scene?

19 A. Yes. I do what's called a primary assessment,
20 which I assess the patient for pain, just touching.

21 Q. And after that assessment, do you state what the
22 specific injuries are?

23 A. I can only say what I see, because I can't look
24 inside his body. I only treat him -- in other words, I treat
25 him for neck and -- if you tell me your neck and back is

1 injured, I have to ask you -- I have to offer you the
2 backboard and collar because I don't really know what is
3 wrong with you at that point, so I have to treat you for neck
4 and back injuries.

5 Q. But after you did the assessment, did you write
6 down the specific injuries on your report?

7 A. Let's see. Yes, I did.

8 Q. What were those specific injuries?

9 A. It was a point of checking PMS, which is
10 progressive movement and stuff.

11 Q. To move it along, do you see the bottom of page 1?

12 A. Okay, page 1. Alright. Patient had pain, face;
13 pain neck.

14 Q. Do you see the area that says specific injury at
15 the bottom of page 1?

16 A. I see it right here. I says -- this is what I'm
17 reading. "Specific injury, pain, head; pain, face; pain,
18 neck; and pain, back; and pain pelvis and hip. That just
19 comes from the assessment, okay?

20 Q. What injuries did you see on Mr. Washington --

21 MR. MOOMAU: Objection.

22 THE COURT: There was no question pending. You'll
23 get to cross.

24 BY MR. COHEN:

25 Q. What injuries did you see on Mr. Washington --

1 A. When I assessed --

2 Q. I'm sorry. Just let me finish the question. What
3 injuries did you see on Mr. Washington when you arrived?

4 A. The only injuries I seen was just a little swelling
5 in his face. That was pretty much -- that was it.

6 Q. So you did see swelling?

7 A. Just a little bit.

8 Q. What medical assistance did Mr. Washington have
9 prior to your arrival?

10 A. What assistance did he have prior to my arrival?

11 Q. Yes.

12 A. He had -- the only thing that he walked out with
13 was, that I seen, was a rag on his face.

14 Q. Was it an ice pack or was it a rag?

15 MR. MOOMAU: Objection.

16 THE COURT: Sustained.

17 BY MR. COHEN:

18 Q. Did you give Mr. Washington a spinal
19 immobilization?

20 A. Yes.

21 Q. According to your report, why did you give him a
22 spinal immobilization?

23 A. Because of back and neck pain that he said he had.

24 Q. And taking your attention to page 2 of your report.

25 A. Okay.

1 Q. Do you see the section that says "reason for spinal
2 immobilization" at the top, left corner?

3 A. I don't have my glasses, so.

4 MR. COHEN: If I may, Your Honor.

5 THE WITNESS: I got spinal mobilization, right
6 here.

7 BY MR. COHEN:

8 Q. What is the reasons that you put for immobilizing
9 Mr. Washington's spine?

10 A. Cervical tenderness and generalized back pain.

11 Q. Mr. Washington, did you give a statement to a
12 Lieutenant Walls shortly after this event?

13 A. I gave him a statement after that event. I can't
14 recall what day it was that I gave it to him. I did give him
15 a statement.

16 Q. Would seeing the statement refresh your
17 recollection?

18 A. I'd have to look at it.

19 MR. COHEN: Court's indulgence. May I have this
20 marked?

21 THE DEPUTY CLERK: Defense Exhibit 14 marked for
22 identification.

23 (Defense Exhibit No. 14 was
24 marked for identification.)

25 BY MR. COHEN:

1 Q. Mr. Washington, I'm going to show you what has been
2 marked as Defense Exhibit 14 for identification purposes
3 only. Can you take a look at that. What is Defense Exhibit
4 14?

5 A. This is a statement that I gave Lieutenant Walls.

6 Q. And on the first page, is there a date on that?

7 A. On this? February 15, 2007.

8 Q. And after reviewing Defense Exhibit 14, is your
9 memory now refreshed as to what date you initially gave your
10 statement to Lieutenant Walls?

11 A. No, because I just said I can't recall what day
12 that I gave it to him. Even though it's on there, I just
13 can't recall what day I gave it to him.

14 Q. Okay, no problem. But the date on this document is
15 February 15, 2007, correct?

16 A. Right.

17 MR. COHEN: Thank you, Mr. Washington. Nothing
18 further.

19 **CROSS-EXAMINATION**

20 BY MR. MOOMAU:

21 Q. Good morning, sir. Now, Mr. Washington, you had
22 testified that you prepared this report on January 24th at
23 9:10?

24 A. Uh-huh.

25 Q. That was actually about the time you left to go

1 there; wasn't it?

2 A. Hold on a second. I might -- hold on a second.

3 Yeah, you're right. That's right. That's true.

4 Q. So do you know when the actual report was prepared?

5 A. Actually, this is the time that I -- I used 9:10
6 from the time that I was dispatched.

7 Q. Okay. That was the time you were dispatched.

8 A. Yes, that was the time I was dispatched and I --

9 Q. Okay. Can you tell from the report what time you
10 arrived at the scene?

11 A. Yes, sir.

12 Q. What time was that, sir?

13 A. Time of arrival at the scene was 9:12 p.m.

14 Q. And what time did you leave the scene?

15 A. I left the scene at -- let me correct myself. The
16 time of arrival at the scene was 9:15. I left the scene at
17 9:47 p.m.

18 Q. So you were on the scene 32 minutes?

19 A. Yes, sir.

20 Q. And during that 32 minutes, where was
21 Mr. Washington?

22 A. He was in the house. I waited outside, I want to
23 say -- I want to say 20 minutes of that 32 minutes.

24 Q. So he wasn't in any real hurry to get out of there.

25 MR. COHEN: Objection, Your Honor.

1 THE COURT: Sustained.

2 BY MR. MOOMAU:

3 Q. And when he came outside, was he alone?

4 A. No, sir.

5 Q. And who was with him?

6 A. The guy identified himself as an FOP officer.

7 Q. That's Fraternal Order of Police?

8 A. Yes, sir.

9 Q. How many Fraternal Order of Police officers?

10 A. When he came to me, there was one that was with
11 him.

12 Q. Sir, and you transported him to the hospital?

13 A. Yes, sir.

14 Q. Now, had you been on the scene earlier?

15 A. Yes, sir.

16 Q. Who were you on the scene with earlier?

17 A. I was dispatched on the scene to assist Station 24,
18 which is Accokeek Volunteer Fire Department, only to assist
19 in the overall rescue.

20 Q. And you were there with -- was David Hamrick there
21 with you?

22 A. Yes, sir.

23 Q. So you were there with him on scene, correct?

24 A. Yes, sir.

25 Q. And at some point you left and went back to the

1 station, correct?

2 A. Yes, sir.

3 Q. And then I guess you get a call at 9:10, maybe an
4 hour and a half later, to come back to the scene, correct?

5 A. We got a call to come back to the scene at 9:10,
6 correct.

7 Q. Do you know how long you stayed on the scene the
8 first time?

9 A. No, sir, I really have no idea, sir.

10 Q. But you had responded there to assist Accokeek with
11 the shooting victims.

12 A. Yes, sir.

13 Q. And after they were transported, at some point you
14 left.

15 A. Yes, sir.

16 Q. Now, when you transported Mr. Keith Washington to
17 the hospital, were you in the back of the ambulance?

18 A. Yes, sir.

19 Q. Was anyone else back there with him?

20 A. There was this officer from the FOP, which is
21 Fraternal Order of Police.

22 Q. Still the same gentleman?

23 A. Yes, sir.

24 Q. And you transported Mr. Washington, I guess, into
25 the hospital?

1 A. Yes, sir.

2 Q. Now, do you normally allow police officers in the
3 back of the ambulance?

4 A. Yes, sir.

5 MR. COHEN: Objection, Your Honor.

6 THE COURT: Sustained.

7 BY MR. MOOMAU:

8 Q. And you took Mr. Washington to the hospital so he
9 could be examined, correct?

10 A. That's correct, sir.

11 Q. And you took him to the hospital because those are
12 the people you trust to examine and treat the patients for
13 whatever ailments they might have, correct?

14 MR. COHEN: Objection, Your Honor.

15 THE COURT: Overruled.

16 THE WITNESS: Correct, sir.

17 BY MR. MOOMAU:

18 Q. And the assessment that you filled out, that you
19 completed, that was based on what Mr. Washington told you,
20 correct?

21 A. Yes, sir.

22 MR. MOOMAU: That' all the questions I have.

23 **REDIRECT EXAMINATION**

24 BY MR. COHEN:

25 Q. Mr. Washington, did you do a physical assessment of

1 Mr. Keith Washington on the scene at all?

2 A. Sir, I stated to you, I guess approximately five,
3 ten minutes ago, that I do what you call an initial
4 assessment, which I do the touching of him and, you know,
5 that's how I basically do it, the initial assessment.

6 MR. COHEN: Okay, great. Thank you. Nothing
7 further.

8 MR. MOOMAU: No recross, Your Honor.

9 THE COURT: Thank you, sir.

10 MR. COHEN: Your Honor, the defense calls
11 Lieutenant Daren Livingston.

12 **DAREN LIVINGSTON,**

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

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

17 THE WITNESS: Daren D. Livingston. Livingston is
18 spelled L-i-v-i-n-g-s-t-o-n. Daren is D-a-r-e-n.

19 **DIRECT EXAMINATION**

20 BY MR. COHEN:

21 Q. Good morning.

22 A. Good morning, sir.

23 Q. Detective Livingston, where are you currently
24 employed at?

25 A. I'm not a detective, sir. I'm a lieutenant, sir.

1 I'm currently employed with Prince George's County Police
2 Department.

3 Q. Where were you employed on January 24, 2007?

4 A. Oxon Hill district, patrol division.

5 Q. Were you working that evening?

6 A. Yes, sir.

7 Q. In your official capacity, did you have the
8 opportunity to go to 1513 Shellford Lane that evening?

9 A. Yes, sir. I was the shift commander, sir.

10 Q. As the shift commander, what are your
11 responsibilities when you arrived at 1513 Shellford Lane?

12 A. My responsibility is to make sure the scene is
13 secure, as far as all evidence is secure, and make sure they
14 establish outer and inner perimeter to keep away people
15 coming to the scene.

16 Q. And did you do that that evening?

17 A. Yes, sir.

18 Q. Did you have the occasion to see Mr. Washington at
19 1513 Shellford Lane, Mr. Keith Washington?

20 A. Yes, sir, I did.

21 Q. What, if any, injuries did you see on
22 Mr. Washington that evening?

23 A. He had an ice pack up to the side of his face and
24 it appeared that his face was swollen.

25 Q. Do you know a Sergeant Ajani (phonetic)?

1 A. Yes, sir.

2 Q. Did you speak to Sergeant Ajani in the
3 investigation of this case?

4 A. Yes, sir, I did.

5 Q. Did you tell Sergeant Ajani the same thing you're
6 telling the ladies and gentlemen of the jury?

7 MR. MOOMAU: Objection.

8 THE COURT: Sustained.

9 BY MR. COHEN:

10 Q. When did you speak to Sergeant Ajani?

11 A. I believe it was February the 9th in my office.
12 She came by to interview me.

13 Q. Did you describe the injuries you saw on Mr. Keith
14 Washington to Sergeant Ajani?

15 MR. MOOMAU: Objection.

16 THE COURT: You can answer that yes or no.

17 THE WITNESS: Yes, I did.

18 MR. COHEN: Nothing further, Your Honor.

19 MR. MOOMAU: Court's indulgence. No questions.

20 Thank you.

21 THE COURT: Thank you, sir.

22 MR. COHEN: Your Honor, may we approach briefly?

23 THE COURT: Certainly.

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

1 MR. COHEN: Your Honor, the defense intends to call
2 Mr. Keith Washington next, and we didn't know if you do some
3 kind of inquiry about him testifying, and I wanted to alert
4 the Court. I don't know your practice.

5 THE COURT: The only thing I can go is on question
6 to question. I mean, I'm assuming you're going to take him
7 through the process of what took place.

8 MR. COHEN: Yes, sir.

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

11 MR. MOOMAU: Court's indulgence first, Your Honor.

12 THE COURT: Certainly.

13 MR. MOOMAU: Can we approach, Your Honor, one more
14 time?

15 THE COURT: Okay.

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

18 MR. MOOMAU: Your Honor, Mr. Wright did have
19 another court hearing. He's going to be handling the cross
20 of Mr. Washington. All he needs to do is to go back into his
21 office and get his notes.

22 MR. COHEN: We're opposed.

23 MR. MOOMAU: All he needs to do is just step out of
24 the room and walk to his office and get his notes.

25 MR. COHEN: Oh, I'm sorry. I misunderstood. I

1 thought he was going to another courtroom. Sorry.

2 THE COURT: Okay.

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

5 THE DEPUTY CLERK: Defense Exhibit 15 and 16 marked
6 for identification.

7 (Defense Exhibit Nos. 15 and 16 were
8 marked for identification.)

9 MR STARR: Your Honor, may we approach while we
10 wait?

11 THE COURT: Certainly.

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

14 MR. STARR: We've kind of been doing this as we go
15 along, but I do want to put on the record, since
16 Mr. Washington is about to begin his testimony, that
17 Mr. Kevin King is in the audience to observe Mr. Washington's
18 testimony.

19 THE COURT: Okay. Thank you.

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

22 THE COURT: It will be just one moment, please.

23 MR. COHEN: Your Honor, the defense calls Mr. Keith
24 Washington.

25 **KEITH WASHINGTON,**

1 a witness produced on call of the Defense, 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: Keith Washington, K-e-i-t-h,
6 W-a-s-h-i-n-g-t-o-n.

7 **DIRECT EXAMINATION**

8 BY MR. COHEN:

9 Q. Good morning, Mr. Washington.

10 A. Good morning.

11 Q. Mr. Washington, where did you grow up?

12 A. I grew up in and around Texas, around the Houston
13 area, outskirts.

14 Q. If you could repeat that. There's feedback.

15 A. The Houston area.

16 Q. Who did you grow up with?

17 A. My mother, my sisters and, sometimes, my father.

18 Q. Did you finish high school in Houston, Texas?

19 A. Yes.

20 Q. What did you do after high school?

21 A. After high school, about a month after high school,
22 I joined the Army.

23 Q. Did you ever go to college?

24 A. Yes.

25 Q. How did you get to college?

1 A. I used my GI bill later on, part of the BEAT
2 program to go to college, try to go to college.

3 Q. What college did you attend?

4 A. Northwestern State University.

5 Q. Where is that located?

6 A. That's in Natchitoches, Louisiana. It's a small
7 town.

8 Q. Did you graduate?

9 A. Yes.

10 Q. What did you graduate in? What was your degree?

11 A. My bachelors degree was in social work.

12 Q. What year did you get your degree?

13 A. 1987.

14 Q. When you finished college, were you commissioned as
15 an officer?

16 A. Yes. I had a military commitment because the Army
17 helped pay for my college.

18 THE COURT: I'm sorry?

19 MR. COHEN: I heard an objection. I'm just
20 waiting.

21 MR. WRIGHT: Objection. We've gone over this
22 question once before.

23 MR. COHEN: Your Honor, I'd ask that --

24 THE COURT: I can't hear a word you're saying. If
25 it's an objection, state it. If it's not --

1 MR. WRIGHT: I'll withdraw.

2 THE COURT: Okay. Thank you.

3 BY MR. COHEN:

4 Q. I think you were explaining about your military
5 obligation. Did you have a military obligation after you
6 finished college?

7 A. Yes.

8 Q. Were you commissioned?

9 A. Yes, sir.

10 Q. What were you commissioned as?

11 A. I was commissioned as a second lieutenant after I
12 graduated from college.

13 Q. And where were you stationed while you were in the
14 Army?

15 A. I was stationed at Fort Benning, Georgia; Fort
16 Bragg, North Carolina; Fort Pope, Korea I was stationed -- I
17 mean Fort Pope, Louisiana. I was stationed in Korea and also
18 in Bosnia.

19 Q. What was the highest rank you achieved in the
20 military?

21 A. Lieutenant colonel.

22 Q. Did you have an opportunity to come back to Prince
23 George's County area?

24 A. Yes.

25 Q. When did you do that?

1 A. In April of 1990.

2 Q. Why did you come back to this area?

3 A. I was hired by the police department in 1990.

4 Q. And the police department you're referring to is
5 the Prince George's County Police Department?

6 A. Yes, the Prince George's County Police Department.

7 Q. Did there come a time when you were appointed a
8 county-wide position?

9 A. Yes.

10 Q. What position was that?

11 A. In 2005, the deputy director of homeland security.

12 Q. What did your job duties entail as a deputy
13 director of homeland security?

14 A. To try to secure grants for Prince George's County
15 through state grants, federal grants, for the training and
16 funding for all the public safety agencies, the fire
17 department, police department, sheriff's department, 911
18 center, office of emergency management.

19 Q. What was the training for? You were trying to get
20 funds for what type of training?

21 A. Training so that they could be able to respond to
22 emergency situations within Prince George's County.

23 Q. Who did you report to as the deputy director of
24 homeland security?

25 A. I reported to the director of public safety, which

1 is Vernon Laron.

2 Q. Are you married, Mr. Washington?

3 A. Yes.

4 Q. Who are you married to?

5 A. My wife's name is Stacey.

6 Q. Do you have any children?

7 A. Yes.

8 Q. Can you let the ladies and gentlemen of the jury
9 know how many children you have, what their names are and
10 what their ages are?

11 A. I have two daughters, Hali and Kayla. Hali is 19
12 and Kayla is 7.

13 Q. Where is Ms. Hali now?

14 A. She's in college in San Antonio.

15 Q. And Miss Kayla, where does Miss Kayla live?

16 A. She lives with us.

17 Q. When you say us, who are you referring to?

18 A. Myself and my wife.

19 Q. Where is home?

20 A. We live on Shellford Lane in Accokeek.

21 Q. How long have you lived at that residence?

22 A. About eight years.

23 Q. So it's fair to assume that you lived there in
24 December of '06 and January of '07, correct?

25 A. Yes.

1 Q. Taking your attention to December, 2006, did you
2 have the opportunity to purchase a bed from Marlo Furniture?

3 A. Yes.

4 Q. Approximately when did you purchase the bed?

5 A. I bought that bed in December of '06.

6 Q. Was that bed delivered to you?

7 A. Yes.

8 Q. Was there a problem with the bed when it was
9 delivered?

10 A. The rails were crushed and they took them back.

11 Q. Other than the broken bed rails, did that delivery
12 go without incident?

13 A. Yes, without any incident.

14 Q. What did Marlo suggest to rectify the situation
15 with the broken bed rails?

16 A. They said at a future date they would call us and
17 bring out the rails.

18 Q. Did they later call to set up the redelivery?

19 A. Yes. They called about a month later, four weeks
20 later to bring those rails out.

21 Q. And what day and time did they say that they would
22 redeliver the red rails?

23 A. They said they would bring them out on January 24th
24 between 2:30 and 5.

25 Q. Did you and your wife make arrangements for someone

1 to be home during that time to receive the delivery?

2 A. Yes.

3 Q. What were those arrangements?

4 A. That I would take off work and be home when they
5 brought them.

6 Q. Did you do that?

7 A. Yes.

8 Q. Taking your attention to the morning of January 24,
9 2007. What did you do in the morning after you woke up?

10 A. I took my daughter to school and I went to work.

11 Q. Did anything out of the ordinary happen at work
12 that day?

13 A. No.

14 Q. Did you have the opportunity to get off work and
15 come home?

16 A. Yes.

17 Q. At what time did you come home?

18 A. I came home around 2:30.

19 Q. Why did you come home at that time?

20 A. Because they said they would be delivering those
21 rails around 2:30.

22 Q. While you were at home waiting for the bed rails,
23 did you have the opportunity to speak with your wife?

24 A. Yes.

25 Q. When did you speak with your wife?

1 A. I spoke with her around 5:30, 6:00 that evening.

2 Q. What did she say to you?

3 A. She asked had the rails arrived from Marlo, and I
4 told her no, they hadn't come yet.

5 Q. After you spoke to her, did she arrive home?

6 A. Yes.

7 Q. And who was she with?

8 A. She had picked my daughter up from school and they
9 came home.

10 Q. After your wife arrived home, did you have the
11 opportunity to speak with Marlo Furniture during that
12 evening?

13 A. Yes.

14 Q. What did you say to them?

15 A. I called and asked if they were coming with the
16 rails and --

17 Q. What did they say in response?

18 A. At some later time, Mr. -- I believe his name was
19 Gorham, called back, and he said that they were coming about
20 7:30. He said he had called them and checked, and they said
21 they would come about 7:30.

22 Q. So after you spoke to Mr. Gorham that night, you
23 assumed that the delivery would come that evening, correct?

24 A. Yes. He was a pretty nice guy. He said they was
25 coming around 7:30.

1 Q. Did the deliverymen arrive at your home that
2 evening?

3 A. Yes.

4 Q. Do you remember around what time?

5 A. At 7:30, thereabouts, right around 7:30.

6 Q. What were you doing when the deliverymen came to
7 your home?

8 A. Myself and my daughter and my wife, we were sitting
9 down, eating dinner.

10 MR. COHEN: Court's indulgence. I'm just trying to
11 locate an exhibit, Your Honor.

12 THE COURT: That's fine.

13 BY MR. COHEN:

14 Q. Mr. Washington, I'm going to show you what's been
15 marked as State's Exhibits 20, 22 and 23. Can you take a
16 look at those exhibits.

17 A. (Witness complies.)

18 Q. Can you tell the ladies and gentlemen of the jury
19 what State's 20, 22 and 23 are?

20 A. Yes. Those are pictures of the kitchen table,
21 where we were eating when all this happened, and those are
22 the dinner -- paper plates that we were eating off of.

23 Q. Do you see the paper plates there as well?

24 A. Yes.

25 Q. Do you see food on them?

1 A. Yes.

2 Q. It looks like Miss Kayla didn't finish her
3 vegetables.

4 A. No, she didn't.

5 Q. Where is the kitchen in relation to where the front
6 door is?

7 A. It's down a hall and around a corner.

8 Q. How did you know when the deliverymen arrived?

9 A. Because the doorbell rung and I answered it.

10 Q. Who was on the other side of the door?

11 A. Mr. Clark.

12 Q. Did you know who it was at the time?

13 A. No, I didn't know him.

14 Q. Did you later learn that the gentleman's name was
15 Mr. Clark?

16 A. Yes.

17 Q. What did you say when you opened the door?

18 A. I told him he could just drop the rails right
19 there, I got them, and that was it.

20 Q. What did he -- how did he respond when you said
21 that?

22 A. He said he didn't have them, and he went back out
23 to the truck.

24 Q. Did he come back?

25 A. Yeah, he came back some minutes later.

1 Q. What did he have with him?

2 A. He had the rails with him.

3 Q. Was he alone?

4 A. No. He had Mr. White with him.

5 Q. Did the two men enter your home?

6 A. Yes.

7 Q. Where did you go in your home?

8 A. They followed me upstairs.

9 Q. Now, when you say they followed you, if you could
10 let the ladies and gentlemen of the jury know, were you in
11 the front?

12 A. Yes.

13 Q. Who was immediately behind you?

14 A. Mr. Clark was behind me, carrying the rails, and
15 Mr. White was behind him.

16 Q. And where did you lead them in your home?

17 A. Up to our bedroom.

18 Q. And did Mr. Clark enter your bedroom?

19 A. Yes.

20 Q. Did Mr. White enter your bedroom?

21 A. No, I didn't see him.

22 Q. When you didn't see Mr. White, what did you say?

23 A. I asked Mr. Clark where is his guy, where is his
24 man.

25 Q. And what, if anything, did Mr. Clark say in

1 response?

2 A. He told me that "I got him, Shorty; I got him."

3 MR. COHEN: Your Honor, can the record reflect that
4 the witness is using his arms and doing a back-hand motion.

5 BY MR. COHEN:

6 Q. Did he make contact with you, Mr. Washington?

7 A. Yes.

8 Q. Where did he make contact with you?

9 A. In my chest area.

10 Q. After Mr. Clark back slapped you in the chest --

11 MR. MOOMAU: Objection.

12 THE COURT: Sustained.

13 BY MR. COHEN:

14 Q. After Mr. Clark did what he did, what did you do?

15 A. I told him don't do that, you know.

16 Q. After you told him don't do that, what happened
17 next?

18 A. Then I saw Mr. White coming out of my daughter's
19 bedroom.

20 Q. What did you say to Mr. White, if anything?

21 A. I said, "Hey, man, what are you doing? Come in
22 here and come out of there."

23 Q. When you told Mr. White to come out of your
24 daughter's bedroom, what did he say?

25 A. He didn't say anything.

1 Q. What did Mr. Clark say or do?

2 A. Mr. Clark said, "I told you, Shorty, I got him."

3 Q. And, again, you're making that movement. Did he do
4 that again; did he make contact with you again?

5 A. Yes.

6 Q. So after you asked Mr. White to come out of your
7 daughter's bedroom and after Mr. Clark makes contact with
8 your chest --

9 MR. MOOMAU: Objection.

10 THE COURT: Sustained.

11 BY MR. COHEN:

12 Q. What were you thinking at the time when you asked
13 Mr. White to come out of your daughter's bedroom?

14 MR. MOOMAU: Objection.

15 THE COURT: I'm sorry; what was that question
16 again?

17 MR. COHEN: What were you thinking at the time when
18 you asked Mr. White to come out of your daughter's bedroom?

19 THE COURT: Sustained.

20 BY MR. COHEN:

21 Q. After you asked Mr. White to come out of your
22 daughter's bedroom, what happened then?

23 A. You know, I told him I felt uneasy about the
24 delivery. I said, "Look, you guys, you all can just leave,
25 leave my house."

1 Q. Did they leave when you told them to leave?

2 A. No.

3 Q. What did Mr. Clark or Mr. White say after you told
4 them to leave?

5 A. Initially, they didn't say anything. I told them
6 to leave again.

7 Q. After you told them to leave a second time, did
8 they leave?

9 A. No.

10 Q. And after you told them to leave the second time,
11 what happened?

12 A. I told them a third time. I said, "Look, man, just
13 get out of my house."

14 Q. And the third time you told them to leave, what
15 happened after that?

16 A. And Mr. Clark said I need to watch how I talk to
17 people.

18 Q. What, if anything, did you say in response to
19 Mr. Clark's statement?

20 A. I said, "Hey, man, just leave my house."

21 Q. And you're making a movement with your left hand.
22 Is there something that you did with your left hand?

23 A. I was pointing towards the steps. I said, "Hey,
24 just leave my house. Leave my house."

25 Q. After you told them the final time to leave your

1 house, what happened?

2 A. Mr. White punched me on the side of the face.

3 Q. What did Mr. Clark do?

4 A. When he punched me, Mr. Clark punched me in the
5 back of the head.

6 Q. What did you do after Mr. White punched you and
7 Mr. Clark punched you in the back of the head?

8 A. When he punched me, I swung around with my hand,
9 and I just covered up because I couldn't stop them. They
10 were on me.

11 Q. What position was your body in when you said you
12 tried to cover up?

13 A. I was like this, covering up my head and my face
14 and I was --

15 MR. COHEN: At this time, Your Honor, I'd ask
16 Mr. Washington to step down.

17 THE COURT: Okay.

18 (Witness steps down from witness stand.)

19 BY MR. COHEN:

20 Q. You can stand in front of the jury. Now,
21 Mr. Washington, you said you attempted to cover up, and you
22 described the position of your body. Can you let the ladies
23 and the gentlemen of the jury know, after Mr. Clark and
24 Mr. White hit you, what you did physically?

25 A. Yeah. I swung around, with my hand like that, and

1 they were on me and they was -- I was covering up, like this,
2 trying to protect my head and my face.

3 Q. And at that point, where is Mr. Clark and
4 Mr. White?

5 A. Mr. Clark is right here to my left, and Mr. White
6 is right here to my right.

7 Q. And what are they doing at that point?

8 A. They were hitting me and kicking me.

9 Q. You can return to the stand.

10 A. (Witness complies.)

11 Q. Going back to the beginning of the assault, were
12 you expecting Robert White to hit you?

13 A. No.

14 Q. Were you expecting Brandon Clark to hit you?

15 A. No.

16 Q. While you were in the crouching position, what was
17 going through your mind?

18 MR. MOOMAU: Objection.

19 THE COURT: Overruled.

20 THE WITNESS: That they would, you know, beat me to
21 death or knock me unconscious, and there's nothing I can do
22 to stop them.

23 BY MR. COHEN:

24 Q. Where was your weapon at this point?

25 A. It was on my back, under my shirt. It was hid from

1 view.

2 Q. What, if any, concerns did you have regarding the
3 weapon?

4 A. Well, if they knocked me out, they could take my
5 gun, and they would be in the house with me either beat down
6 and my wife and child still in the house.

7 Q. At that time where did you believe your wife and
8 daughter were?

9 A. They were at the kitchen table where I left them.

10 Q. Now, the punches and the kick that you described to
11 the ladies and gentlemen of the jury, did they connect to
12 your body?

13 A. Yes.

14 Q. And where were they connected?

15 A. Back of my head, my neck, my back. You know, I was
16 just covering up, and they were punching down on me.

17 Q. As you were in the crouched position, as you
18 described to the ladies and gentlemen of the jury, and
19 Mr. Clark and Mr. White were kicking and hitting you, what
20 did you do then?

21 A. I was trying to get them off me and, eventually, I
22 had to pull my gun and shoot.

23 Q. Could you step down again, Mr. Washington, and face
24 the jury.

25 A. (Witness complies.)

1 Q. Could you resume the position that you said you
2 were in prior.

3 A. I was like this.

4 Q. And, again, where is Mr. White and Mr. Clark.

5 A. Mr. Clark is right here to my left, and Mr. White
6 is right here to my right.

7 Q. And what did you do then?

8 A. They was beating me and kicking me, and I pulled my
9 gun and I just shot like that and --

10 Q. Please resume the stand.

11 A. (Witness complies.)

12 Q. What were Mr. White and Mr. Clark doing while you
13 were firing your shots?

14 A. They were still punching and kicking and they were
15 moving. You know, we was moving, and they were still
16 punching and kicking.

17 Q. What happened after you finished firing?

18 A. I tried to regain my composure, because I couldn't
19 believe what just happened, and I went to look for the
20 cordless phone to call 911.

21 Q. At the time you fired your weapon, what was going
22 through your mind?

23 A. That they was going to beat me to death. That I
24 couldn't stop them. They were much bigger and stronger than
25 I was and there was nothing I could do.

1 Q. Did you have any indication that they were going to
2 stop beating and kicking you?

3 A. No, because I was already in a submissive position.
4 I was covering up and, you know, so they wasn't stopping.

5 Q. Now, to your knowledge, where was your wife and
6 your daughter when you fired your firearm?

7 A. Downstairs in the kitchen.

8 MR. WRIGHT: Objection.

9 THE COURT: Excuse me?

10 MR. WRIGHT: Objection.

11 THE COURT: Overruled.

12 BY MR. COHEN:

13 Q. What, if anything, did you think about, regarding
14 you wife and daughter being downstairs, at the time you were
15 being assaulted?

16 A. Well, whether they beat me to death or knock me
17 unconscious. They could be in my house with my wife and
18 daughter. They could have that gun or whatever. It just was
19 a, you know -- they could do anything in my house to my wife
20 and my daughter.

21 Q. You said you went to get the cordless phone after
22 firing your firearm, correct?

23 A. Yes.

24 Q. Who did you call?

25 A. I called 911.

1 Q. Why did you call 911?

2 A. Because I had two people shot in my house, and I
3 was assaulted and injured, and I wanted to get some help down
4 there. I wanted to get the police down there. I wanted to
5 get the ambulance down there. I wanted to get as many people
6 down there as I could because it was just an out-of-body
7 experience.

8 Q. What did you say to the 911 dispatcher?

9 A. I told her two people shot in my house; that my
10 name was Keith Washington; that I was I.D. 1790; that it was
11 a departmental shooting; that they needed ambulances, the two
12 people that were shot needed ambulances, and I told her to
13 send one for me.

14 Q. Now, when you asked for the ambulance for yourself,
15 did the ambulance ever arrive?

16 A. They arrived much later.

17 Q. And did you sustain any injuries as a result of the
18 assault from Mr. Clark and Mr. White?

19 A. I had swelling to my face, and I had neck and
20 shoulder and back pain, and the top of my head, I had pain.

21 Q. What, if any, medical attention did you receive?

22 A. They gave me an ice pack -- the first paramedics
23 that came in there gave me an ice pack.

24 Q. Why did they give you an ice pack?

25 A. For the swelling. And the second paramedic

1 eventually came back, and he gave me a neck brace and a
2 collar board, and they put me on the board about an hour
3 later and took me off to the hospital.

4 Q. And the second EMS employee that you're referring
5 to, was that Mr. Clyde Washington, who just testified?

6 A. Yes.

7 Q. Stacey Washington. When was the next time, after
8 the shooting, that you saw your wife?

9 A. I didn't see my wife until they got ready to take
10 me to the hospital and she was across the street. They had
11 four or five -- there were a lot of police officers on the
12 scene and media and everything else, and I think the
13 detectives and police had her across the street.

14 Q. Where was she across the street?

15 A. She was at a neighbor's house.

16 Q. Do you know that neighbor?

17 A. The Hamptons.

18 Q. Who was your wife with over at the Hamptons?

19 A. With Mr. Hampton's wife. She was with the
20 detectives who were interviewing her.

21 Q. Where was your daughter?

22 A. She was with her.

23 Q. When did you actually see your wife and your
24 daughter for the first time after the shooting?

25 A. Right when I got -- when they got ready to take me

1 to the hospital.

2 Q. Who was with you when you saw your wife?

3 A. A paramedic and a police officer from FOP and three
4 or four other police officers.

5 Q. Who was with your wife when you saw her?

6 A. There was five or six police officers and
7 detectives with her.

8 Q. What did you say to her at that point?

9 A. I asked her if she was okay, if my daughter was
10 okay, and I told her they going to take me to the hospital,
11 and I want you to go to your mother's house because I don't
12 want you here tonight in this house by yourself, because I
13 didn't know how long I would be gone.

14 MR. COHEN: Court's indulgence.

15 BY MR. COHEN:

16 Q. I'm going to show you what's been marked as State's
17 Exhibit 72. Can you take a look at State's Exhibit 72.

18 A. Yes.

19 Q. What is State's Exhibit 72?

20 A. That's a picture of me, that they took of me about
21 three o'clock in the morning or so.

22 Q. Were the clothes that you had on on January 24,
23 2007, depicted in this picture?

24 A. Yes.

25 Q. I'm going to show you what's been marked as Defense

1 Exhibit 16. Can you take a look at that.

2 A. Yes.

3 Q. What is Defense Exhibit 16?

4 A. That's my wristwatch that I was wearing that night,
5 that they beat off me. It's broken, and they took a picture
6 of it in the hallway, where the -- when they was jumping on
7 me.

8 MR. COHEN: Your Honor, at this point we'd ask that
9 Defense Exhibit 16 be admitted.

10 MR. MOOMAU: No objection, Your Honor.

11 THE COURT: Sixteen admitted, defense, without
12 objection.

13 (Defense Exhibit No. 16, previously
14 marked for identification, was
15 received in evidence.)

16 BY MR. COHEN:

17 Q. In Defense Exhibit 16, where is that watch located?

18 A. That watch is right by the door of our bedroom, on
19 the floor.

20 Q. Mr. Washington, why did you shoot Mr. White and
21 Mr. Clark?

22 A. I shot them because I couldn't stop them, and I
23 wasn't expecting them to jump on me. I couldn't stop them.

24 Q. Did you intend to kill Mr. Clark?

25 A. No.

1 MR. COHEN: Nothing further, Your Honor.

2 MR. MOOMAU: Your Honor, could I retrieve some
3 documents for Mr. Wright?

4 THE COURT: Sure.

5 **CROSS-EXAMINATION**

6 BY MR. WRIGHT:

7 Q. You said you were appointed to deputy homeland
8 security director?

9 A. Yes, sir.

10 Q. Who appointed you to that position?

11 A. The county executive makes all the appointments.

12 Q. And so who appointed you to that position?

13 A. He did.

14 Q. When was that appointment made?

15 A. I think it was around July, '05.

16 Q. When you say he, who is he?

17 A. County Executive, Mr. Jack Johnson.

18 Q. Now, when did he appoint you to this position?

19 A. I believe it was around July of '05.

20 Q. And since July, '05, you stopped being,
21 essentially, an officer that makes arrests; is that correct?

22 A. My duties had changed, yes.

23 Q. And so you stopped making arrests, correct?

24 A. Yes.

25 Q. You also stopped doing investigations at that

1 point, correct, in terms of police work?

2 A. Yes.

3 Q. You stopped going to the station on a regular
4 basis, in terms of daily operations; is that correct?

5 A. Yes.

6 Q. So you were no longer functioning as a police
7 officer, but you were functioning as a deputy director, an
8 administrative position; is that correct?

9 A. Yes.

10 Q. However, you still feel it's necessary for you to
11 wear your gun every single day, 24 hours a day though; isn't
12 that correct?

13 MR. COHEN: Objection, Your Honor.

14 THE COURT: Grounds?

15 MR. COHEN: Assuming facts not in evidence.

16 THE COURT: Sustained.

17 BY MR. WRIGHT:

18 Q. Have you testified before about you wearing your
19 gun?

20 MR. COHEN: Objection, Your Honor.

21 THE COURT: Approach the bench.

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

24 MR. COHEN: It's improper impeachment. He's trying
25 to impeach him a grand jury statement that he thinks is

1 inconsistent, and Mr. Washington hasn't said anything about
2 it yet.

3 MR. WRIGHT: At this point I'm asking him about
4 whether he wears a gun every day; does he wear a gun every
5 day.

6 MR. COHEN: No, his question was, Your Honor -- for
7 the record, his question was did you give a grand jury
8 statement, and he was going to try and impeach him.

9 THE COURT: I don't believe he used the term grand
10 jury statement. I think what he used was do you recall
11 testifying --

12 MR. COHEN: I apologize.

13 THE COURT: That's fine. In another proceeding. I
14 don't think any foundation has been laid about anything.
15 Sustained.

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

18 BY MR. WRIGHT:

19 Q. Sir, do you wear your gun every day?

20 A. Yes.

21 Q. Twenty-four hours a day?

22 A. When I'm working.

23 Q. When you're working as deputy homeland security
24 director, you wear your gun 24 hours a day?

25 A. We're authorized to carry weapons at homeland

1 security.

2 Q. So you wear your gun 24 hours a day; that's what
3 I'm asking?

4 A. I'm not up 24 hours a day.

5 Q. But when you're awake, your gun is on you; is that
6 correct, sir?

7 A. Yes.

8 Q. And this is even though you make no type of police
9 arrests, correct?

10 A. Yes.

11 Q. And this is even though you are in an
12 administrative position, correct?

13 A. Yes.

14 Q. And even when you're sitting there, eating dinner
15 with your child and your wife, you have your gun on you at
16 that time, correct?

17 A. Yes.

18 Q. And your gun was stuffed down in your front of your
19 pants at that point?

20 A. On the side.

21 Q. In the side of your pants. No holster was used
22 though, right?

23 A. My belt holster.

24 Q. Your belt holster was used?

25 A. My belt holster is in.

1 Q. So not a holster, but you used your belt.

2 A. Yes.

3 Q. So you're not telling me you had a holster that
4 day; are you, sir?

5 A. No, I'm not.

6 Q. You used your own, personal belt, correct?

7 A. Yes.

8 Q. And this gun was -- you had all the safeties off,
9 all three safeties off, ready to fire, in your belt?

10 A. That's the duty position.

11 Q. Okay. So you're eating dinner with your daughter
12 and your wife, and you have all the safeties off and the gun
13 is stuck in your belt; is that correct?

14 A. That's how it was when I went to work that morning,
15 sir.

16 Q. So now you're saying you went to work that morning,
17 right?

18 A. Yes.

19 Q. Do you remember going to work that morning?

20 A. Yes.

21 MR. WRIGHT: If I may approach, Your Honor?

22 THE COURT: Certainly.

23 THE DEPUTY CLERK: State's Exhibit 110 marked for
24 identification.

25 (State's Exhibit No. 110 was

1 marked for identification.)

2 BY MR. WRIGHT:

3 Q. I'm showing you what has been previously marked as
4 State's Exhibit number 110. Do you recognize this?

5 A. Yes.

6 Q. What is it?

7 A. It's the transcript from the grand jury testimony.

8 Q. Whose transcript is it?

9 A. It's my transcript of the questions you asked me, I
10 believe, in the grand jury.

11 Q. Do you see line 17, where I asked you do you
12 remember what you did earlier that day, the day of the
13 shooting?

14 A. Yes.

15 Q. What was your answer? Do you remember your answer?

16 A. I'm looking at it right now.

17 Q. Do you remember your answer?

18 A. You asked me that six months ago. I'm looking at
19 what was typed.

20 Q. Okay. So six months ago I asked you what you were
21 doing on the day of the shooting, correct?

22 A. Yes, you did.

23 Q. What did you tell me six months ago?

24 MR. COHEN: Objection, Your Honor.

25 THE COURT: Grounds?

1 MR. COHEN: Improper impeachment.

2 THE COURT: Sustained. Rephrase, please.

3 BY MR. WRIGHT:

4 Q. Didn't you tell me that you were probably either
5 out and about, maybe at work, one or the other?

6 MR. COHEN: Objection, Your Honor.

7 THE COURT: Could you read exactly what it is,
8 please.

9 BY MR. WRIGHT:

10 Q. Didn't you tell me, quote, probably was either out
11 and about or at work, one or the other?

12 A. Yes, I did tell you that.

13 Q. And didn't I ask you a follow-up question that says
14 "so you have no real recollection of where you were that day
15 before 2:30"?

16 A. That's your question.

17 Q. Yes. Is that what I asked you then, six months
18 ago?

19 A. That's what you asked me, yes.

20 Q. And six months ago, you see the highlighted
21 portion --

22 MR. WRIGHT: That's line 25 for you, counsel.

23 BY MR. WRIGHT:

24 Q. You said, "I don't remember if I took off that
25 day" --

1 A. That's not what I said.

2 Q. -- "or if I came home early and waited on the
3 delivery." Do you see this here on State's Exhibit Number
4 110?

5 A. If you allow me to read, I'll read what I said.

6 MR. COHEN: Your Honor -- I'll withdraw, Your
7 Honor.

8 BY MR. WRIGHT:

9 Q. Page 7, State's Exhibit number 110. You want to
10 take a look at line 25 and 26?

11 A. Yes, I see it.

12 Q. Now, you've had a chance to read it?

13 A. My answer to your questions, yes, sir.

14 Q. Six months ago, did you have any idea of what you
15 did that day?

16 A. No, I didn't remember six months ago if I went to
17 work at all that day.

18 Q. So now, all of sudden, you come in here telling the
19 jury that you remember exactly that you went to work that
20 day, correct?

21 A. And I can tell you how.

22 Q. Six months ago, the day of the shooting, you
23 couldn't remember what you did.

24 THE COURT: Is that a question?

25 MR. COHEN: Objection, Your Honor.

1 BY MR. WRIGHT:

2 Q. Is that correct?

3 THE COURT: He's answered that question.

4 Sustained.

5 BY MR. WRIGHT:

6 Q. Do you remember talking to Marlo that day around

7 1:30?

8 A. Do I remember -- I don't remember. I probably did
9 or if I didn't, that's what I told you.

10 Q. You don't remember talking to Marlo about 1:30 that
11 day?

12 A. I probably did. That's what I said.

13 Q. You probably talked to them or you definitely
14 talked to them?

15 A. Well, the phone records show that I did talk to
16 them.

17 Q. Okay. So you agree with what's on record.

18 A. Yes.

19 Q. Okay. And when you talked to them, you asked them
20 about your delivery at 1:30, correct?

21 A. Yes.

22 Q. And you asked them who was going to compensate you
23 for the money you lost that day, right?

24 MR. COHEN: Objection, Your Honor.

25 THE COURT: If he recalls.

1 THE WITNESS: No, sir.

2 BY MR. WRIGHT:

3 Q. You never mentioned to them about \$400?

4 A. I didn't talk to anyone at 1:30 about \$400.

5 Q. What did you talk to anyone about at 1:30 that day?

6 A. If they were bringing the delivery.

7 Q. So you remember this conversation then.

8 A. Well, if I talked to them at 1:30, it had to be
9 about when the delivery would come.

10 Q. Do you remember what you were doing while you
11 waited for the delivery?

12 A. I was at home.

13 Q. You remember that now; you were at home, right?

14 A. At 2:30 I was home.

15 Q. And do you remember what you did between 2:30 and
16 6:30?

17 A. Between 2:30 and 6:30 I was probably home watching
18 TV.

19 Q. Do you actually remember what you did --

20 A. No, sir --

21 Q. From 2:30 -- let me ask the question, sir.

22 THE COURT: One moment. Take your time. Ask the
23 question. Allow him time to respond.

24 BY MR. WRIGHT:

25 Q. Do you actually remember what you did, sir, from

1 2:30 to seven?

2 A. When my wife got home at six, I remember what we
3 did.

4 Q. Do you remember what you did between 2:30 and six?

5 A. No. I know I talked to her before, right around
6 that time.

7 Q. So you have no idea what you did between 2:30 and
8 six.

9 A. I was sitting at home, waiting.

10 Q. Do you remember talking to Mr. Gorham?

11 A. Mr. Gorham, yes. He said I talked to him.

12 Q. Do you remember talking about \$400 with him?

13 A. No.

14 Q. No?

15 A. No.

16 Q. Do you remember telling him that you need to be
17 compensated for the time you lost?

18 A. No.

19 Q. Do you remember telling him you were sitting at
20 home and someone needs to compensate me?

21 A. No. I paid them. No.

22 Q. And do you remember him saying, "Well, let me call
23 you back; I have to talk to my manager"? You don't remember
24 that?

25 A. I told you before that I didn't call his managers

1 or anything. So I don't --

2 Q. What did you say?

3 A. I said I didn't call his managers or anything, so I
4 don't know how you got that.

5 Q. But didn't he tell you he would check into it?

6 A. I told you no, he didn't.

7 Q. And didn't he call you back, after he checked into
8 it, and told you when your delivery was coming?

9 A. He called me back to tell us what time they were
10 coming. That's why I called him. That's what he said.

11 Q. But he said you told him about \$400.

12 A. I just told you I didn't ask for \$400. You said
13 it.

14 Q. You didn't know Mr. Clark or Mr. White from
15 anywhere; did you?

16 A. No, sir, I never met them a day in my life.

17 Q. You saw them coming to your door, in fact; didn't
18 you?

19 A. I let them in eventually, yes.

20 Q. Did you see Mr. Clark knock on your door?

21 A. Did I see him knock on the door?

22 Q. Um-hmm.

23 A. No. He rang the door bell. You talking the first
24 time or the second time?

25 Q. Which time? You tell me. Did you ever see him

1 come to your door?

2 A. The second time he came to the door, I was there
3 waiting on him.

4 Q. So the first time they ring the doorbell.

5 A. Only Mr. Clark was there the first time. He rang
6 it by himself.

7 Q. Okay. And after he rang the doorbell, you went to
8 answer the door, correct?

9 A. Yes.

10 Q. You went outside and you talked to him?

11 A. No. I opened the door and I said, hey, just drop
12 the rails right here.

13 Q. Didn't you go outside and talk to them though?

14 A. I didn't go outside and talk to them. I opened the
15 door, and I said drop the riles right here.

16 Q. But they didn't come in your house at that point.

17 A. It was only Mr. Clark. He stepped inside, and he
18 said he didn't have them, and then he went back out to get
19 them.

20 Q. Oh, he said he didn't have the rails. Now, at that
21 point didn't he ask you for your exchange, the damaged rails?

22 A. We didn't have any damaged rails. We didn't have
23 them. I don't remember him asking me for any rails. I asked
24 for my rails. He said he didn't have them.

25 Q. He did, in fact, have rails for you; didn't he,

1 sir?

2 A. Yes, he did.

3 Q. Because he brought them in your house, up to the
4 bedroom, correct?

5 A. Eventually, he did.

6 Q. Now, when he got there, didn't he ask you for your
7 damaged rails he thought he was picking up?

8 A. I don't know what he thought. He didn't ask me.

9 Q. He never asked you for a set of rails to exchange?

10 A. He didn't ask me for any rails.

11 Q. Because he didn't come in your house immediately.
12 He rang the doorbell, right?

13 A. Yes.

14 Q. You came to the door. He then goes back outside to
15 his truck; is that correct?

16 A. Yes.

17 Q. He was outside for a little bit, correct?

18 A. Yes.

19 Q. Now, when he came back into the house, you saw him
20 coming up the steps, correct?

21 A. Yes. I was standing at the door, watching him.

22 Q. Standing at the door, watching him.

23 A. Yes. We have a glass door. I'm standing at the
24 door, watching him.

25 Q. Mr. White was with him.

1 A. Yes.

2 Q. They're carrying in a large box of bed rails,
3 correct?

4 A. Only Mr. Clark is carrying the rails.

5 Q. Okay. And you take them upstairs to the bedroom,
6 to show them where to put the rails.

7 A. Eventually, yes.

8 Q. Once they get upstairs, Mr. Clark decides to start
9 putting on the rails; isn't that correct?

10 A. No; he just laid them down.

11 Q. And after he laid them down, he kneels down by the
12 bed to start putting the rails on the bed.

13 A. No, he never kneeled down.

14 Q. And when he was putting the rails on the bed, you
15 started to touch him, correct?

16 A. No, sir. He never kneeled down. He just laid
17 those rails down on the floor; that's it.

18 Q. You said your wife was in the kitchen, correct?

19 A. Yes.

20 Q. And when she was in the kitchen, she couldn't see
21 what was going on upstairs.

22 A. Correct. Not in the bedroom, no.

23 Q. There was no conversation between you and Mr. Clark
24 or Mr. White, correct?

25 A. I asked him where was his man.

1 Q. There were no loud conversations or any yelling or
2 any arguing between yourself, Mr. Clark or Mr. White,
3 correct?

4 A. There was no arguing until I -- you said loud
5 conversations. If you mean did I eventually raise my voice
6 when I was saying get out or leave, that's about as loud as I
7 got.

8 Q. When you told the jury earlier that you said leave
9 my house, you pretty much said it -- how did you say it,
10 "leave my house," the first time?

11 A. The first time?

12 Q. Um-hmm.

13 A. I said, "Hey, man, don't worry about it." When I
14 saw that guy coming out of -- I said don't worry about it --

15 Q. Let me ask you a question --

16 MR. COHEN: Objection, Your Honor. He's trying to
17 answer the question.

18 THE COURT: Let him answer the question --

19 MR. WRIGHT: Objection, Your Honor. He's being
20 nonresponsive.

21 THE COURT: Pardon me?

22 MR. WRIGHT: Nonresponsive.

23 THE COURT: Sustained. Let him answer the
24 question.

25 BY MR. WRIGHT:

1 Q. Answer this question. When -- please describe for
2 the jury your volume when you told them the first time to get
3 out of my house.

4 A. I said, "Hey, man, don't worry about it. You guys
5 just go ahead and leave."

6 Q. And that's how loud you said it the first time.

7 A. That's the first time.

8 Q. The second time you said it, tell the jury how loud
9 you said it.

10 A. You want me to repeat it?

11 Q. Sure, repeat it.

12 A. I said, "Hey, look, don't worry about it. Just go
13 ahead and get out of my house; just leave."

14 Q. The third time you said it, did you use any cursing
15 or anything?

16 A. The third time? No.

17 Q. No? How loud did you say it the third time?

18 A. The third time -- at some point he told me I need
19 to watch how I talk to people. I said, "Hey, man, just get
20 out of my house and leave."

21 Q. And were you just this calm right now as you were
22 when you said that?

23 A. I was pointing at the door.

24 Q. You were pointing at the door. So explain to the
25 jury, show the jury everything you were doing when you said

1 it the third time, please. You can stand up and show them,
2 if you wish.

3 A. I was pointing at the door and I said, "Hey, get
4 out of my house."

5 Q. Is that how loud you said it, sir?

6 A. No, that's not how loud. You want me to say it as
7 loud as I --

8 Q. Say it exactly. Tell me how loud you said it to
9 them.

10 A. The third time I said, hey -- when he told me I
11 need to watch how I talk to people, I said, "Hey, man, just
12 get out of my house and leave."

13 Q. Is that loud enough for your wife to hear you all
14 the way in the kitchen, or were you louder than that?

15 MR. COHEN: Objection, Your Honor.

16 THE COURT: Sustained.

17 BY MR. WRIGHT:

18 Q. Did you say it louder than that?

19 A. Sure. The last time.

20 Q. How loud did you say it? Please tell the jury and
21 show them how loud you said it.

22 A. I was walking toward the steps, pointing towards
23 the steps, and I said, "Hey, get out of my house now and
24 leave."

25 Q. And is that how you approached them when you said

1 it?

2 A. No. He was -- you're standing there. I'm trying
3 to walk this way, like I was walking towards the steps. If
4 you allow me -- you know, I can walk around you, if you want.

5 Q. Sure.

6 A. And I was telling them, "Hey, man, get out of my
7 house and leave."

8 Q. And so you're saying you went by the steps.

9 A. I was headed toward the steps.

10 Q. Headed toward the steps. How many steps is there
11 to the steps, about?

12 A. Maybe five or six. From my bedroom, from where we
13 were to the steps.

14 Q. So they're in your bedroom, you're walking them out
15 towards the steps, saying get out of my house.

16 A. Mr. White is, like, right near the entrance of my
17 bedroom, a couple of feet inside the door. Mr. Clark is a
18 couple of feet back with me, and I'm looking at Mr. Clark,
19 and Mr. White is right there, and when I get close enough to
20 Mr. White, that's when all that happened.

21 Q. What's all that, please?

22 A. That's when he punched me. And I wasn't looking at
23 him when he punched me. I was looking at Mr. Clark because
24 he was doing all the talking.

25 MR. WRIGHT: Objection, Your Honor, if I may.

1 THE COURT: Overruled.

2 BY MR. WRIGHT:

3 Q. You said you were kicked in the face?

4 A. I was hit and I was covering up.

5 Q. Let me ask you a question, sir. Did you say you
6 were kicked in the face?

7 A. They were kicking me at my face, my chest, all
8 over.

9 Q. You were kicked in the face? Is that a yes?

10 MR. COHEN: Objection, Your Honor.
11 Mischaracterizes his testimony.

12 THE COURT: He answered that question.

13 BY MR. WRIGHT:

14 Q. Were you beat in the face?

15 A. I was hit on the side of the face, right here. And
16 I covered up.

17 Q. Um-hmm.

18 A. And I was hit on the back of the head.

19 Q. You stated that you covered up.

20 A. Yes.

21 Q. You get down in your crouching -- and I'll call it
22 crouching. I don't want to use a word that you didn't use.
23 I think you said crouching position, like this?

24 A. A little lower.

25 Q. A little lower. Fine. At some point you decided

1 to pull your gun out of your belt, correct?

2 A. Yes, sir.

3 Q. And this gun is already -- all the safeties are off
4 and ready to fire, correct?

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

7 THE COURT: Overruled.

8 THE WITNESS: That's how it's carried.

9 BY MR. WRIGHT:

10 Q. That's how you carry it; isn't that correct?

11 A. Yes.

12 Q. And at that point you say you just shoot to get
13 them off, correct?

14 A. To get them off of me, right.

15 Q. You shot in one direction?

16 A. I shot where they were on both -- they were on both
17 sides of me.

18 Q. So not in one direction; you shot in two different
19 directions.

20 A. I'm assuming they're two different directions. One
21 was to my left and one was to my right.

22 Q. I need you to tell the jury what direction did you
23 shoot in?

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

1 THE COURT: Overruled.

2 BY MR. WRIGHT:

3 Q. Tell the jury which direction you shot in.

4 A. I shot to me -- when this guy was right here, I
5 shot right here and I shot right there.

6 Q. The first shot was to who?

7 A. I think, from the reports, it said it hit him in
8 the knee.

9 Q. The first shot was to who?

10 A. Mr. Clark.

11 Q. And that was to get him off of you?

12 A. Yes.

13 Q. The second shot was to who?

14 A. I'm assuming it was Mr. --

15 Q. Don't assume, sir. Answer the question, if you
16 can. The second shot was to who?

17 A. I think it was to Mr. White.

18 Q. That was to get him off you, correct?

19 A. Yes.

20 Q. The third shot was to who?

21 A. I wasn't counting. I was just shooting like this.

22 Q. If you can answer the question though. The third
23 shot was to who?

24 MR. COHEN: Objection, Your Honor.

25 THE COURT: Mr. Wright, approach the bench, please,

1 for a moment.

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

4 THE COURT: You're being a little animated, overly
5 so, I would suggest. I don't want you that close to the
6 witness on the stand. Step back a little bit. Ask questions
7 properly.

8 MR. WRIGHT: Will do. Thank you, sir.

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

11 BY MR. WRIGHT:

12 Q. Do you remember my question, sir? Do you remember
13 my question, sir?

14 A. I think you said who was the third shot to.

15 Q. Who was the third shot to?

16 A. I can only assume it probably was Mr. Clark or
17 Mr. White.

18 Q. Was that shot also to get them off of you?

19 A. Yes.

20 Q. Who was the fourth shot to?

21 A. Mr. Clark or Mr. White.

22 Q. Who was the fifth shot to?

23 A. Mr. Clark or Mr. White.

24 Q. The sixth shot, did the gun jam at that point?

25 A. I don't know.

1 Q. Would you have kept shooting if the gun didn't jam
2 at that point?

3 MR. COHEN: Objection, Your Honor.

4 THE COURT: If he knows.

5 THE WITNESS: I don't know. I was trying to get
6 them off of me.

7 BY MR. WRIGHT:

8 Q. So you may have kept shooting if the gun didn't
9 jam.

10 MR. COHEN: Objection, Your Honor.

11 THE COURT: Sustained.

12 THE DEPUTY CLERK: State's Exhibit 111 marked for
13 identification.

14 (State's Exhibit No. 111 was
15 marked for identification.)

16 MR. COHEN: Actually, before we start, Your Honor,
17 may we approach?

18 THE COURT: Okay.

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

21 MR. COHEN: I can only assume that Mr. Wright is
22 going to use the grand jury transcript. I'm sorry; my
23 apologies. The 911 transcript.

24 We tried to do the exact same thing, and it was
25 objected to and sustained when we tried to impeach with the

1 911 transcript. And I would object to it as well because the
2 tape is the best evidence, that the actual playing of the 911
3 is the best evidence.

4 MR. MOOMAU: Your Honor, what they tried to do is
5 just have the witness read the whole thing, read paragraphs
6 of it. That's why we objected to that. Now he's actually
7 impeaching him as to something he said different on the 911
8 as to when he testified.

9 MR. COHEN: He hasn't laid that foundation then.

10 THE COURT: Sustained.

11 MR. WRIGHT: Well, I guess we haven't done anything
12 yet at this point, Your Honor.

13 THE COURT: Yes, that's correct.

14 MR. WRIGHT: Thank you.

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

17 THE DEPUTY CLERK: State's Exhibit 112 marked for
18 identification.

19 (State's Exhibit No. 112 was
20 marked for identification.)

21 BY MR. WRIGHT:

22 Q. You stated earlier the fact that they broke your
23 watch off of your arm during the fight?

24 A. I said they beat it off me.

25 Q. They beat it off of you.

1 A. When I was covering up and they were hitting me,
2 that's how the watch got knocked off.

3 Q. I'm showing you State's Exhibit number 112 that has
4 been shown to defense counsel. Do you recognize it?

5 A. This is my old watch.

6 Q. That's your watch?

7 A. Yes, sir.

8 Q. It's not broken off any -- take a look at it. Take
9 a careful look at State's Exhibit Number 112. Would you like
10 for me to open it for you?

11 A. If you wish.

12 Q. Would that help you examine it?

13 A. I know what it is.

14 Q. Is it broken or snapped off or anything in any kind
15 of manner?

16 MR. COHEN: Objection, Your Honor.

17 Mischaracterizes his testimony. He said it was beat off of
18 him.

19 THE COURT: Overruled.

20 BY MR. WRIGHT:

21 Q. Did you hear the question, sir?

22 A. Yes.

23 Q. Can you answer the question then?

24 A. Yes.

25 Q. Is that watch broken or snapped or broken of any

1 sort?

2 A. It's not broken. The timer still works.

3 Q. But the bands are attached to the steel watch part?

4 A. Yeah. The toggle switch there is loose. You see
5 that.

6 Q. So everything is fine.

7 MR. COHEN: Objection, Your Honor.

8 THE COURT: Sustained.

9 BY MR. WRIGHT:

10 Q. When you shot Mr. Clark and Mr. White, you did not
11 have on any type of police uniform, correct?

12 A. No, I didn't.

13 Q. You had on regular, civilian, i.e., street clothes,
14 correct?

15 A. Yes. We were having dinner in my home.

16 Q. If you can answer the question only.

17 MR. COHEN: Objection, Your Honor.

18 THE COURT: Sustained. Mr. Wright, just direct the
19 questions. He'll respond.

20 BY MR. WRIGHT:

21 Q. You did not have on a police badge at dinner,
22 correct?

23 A. No.

24 Q. You did not have on a police badge when you
25 answered the door, correct?

1 A. No.

2 Q. You did not have on a police badge when you fired
3 the shots, correct?

4 A. Correct.

5 Q. At some point though, after, you put a badge on
6 later that evening, correct?

7 A. Yes.

8 Q. Do you remember the 911 call?

9 A. Yes, I think so.

10 Q. You were asked some questions on the 911 call; do
11 you agree with that?

12 A. Yes.

13 Q. Do you remember the operator asking you did they
14 break in?

15 A. Yes.

16 Q. You didn't answer that question; did you?

17 A. I think I said I let them in.

18 Q. Let's see if this helps refresh your memory. Do
19 you remember what you answered --

20 MR. COHEN: Objection, Your Honor.

21 THE COURT: Approach the bench, please.

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

24 MR. COHEN: Your Honor, I don't know if this is a
25 stylistic thing or what, but he just said he was going to try

1 and refresh Mr. Washington's recollection with the 911
2 transcript. He didn't say he couldn't remember anything.

3 THE COURT: He said that he said that he let them
4 in.

5 MR. COHEN: He said he let them in. He answered
6 the question.

7 MR. WRIGHT: He said I think I said I let them in.

8 THE COURT: Sustained.

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

11 BY MR. WRIGHT:

12 Q. The first time when 911 asked you did they break
13 in, what did you say?

14 A. I don't remember verbatim what I said, but I didn't
15 say they broke in.

16 Q. Well, would your memory be assisted if I showed you
17 State's Exhibit Number 111?

18 MR. COHEN: Objection, Your Honor.

19 THE COURT: Grounds?

20 MR. COHEN: He said he remembered. He answered the
21 question.

22 THE COURT: No. Overruled.

23 MR. WRIGHT: Thank you.

24 BY MR. WRIGHT:

25 Q. Line 24, did they break in. Take a look at your

1 answer. Read it to yourself and see if you remember what you
2 said.

3 A. Yes, I'm looking at it.

4 Q. Tell me when your memory has been refreshed as to
5 that.

6 A. I'm looking right at it.

7 Q. Is it refreshed? If it isn't, I'll let you hold on
8 to it.

9 A. Yes, I'm fine.

10 Q. Now, when the 911 operator asked you did they break
11 in, do you now remember what your response was?

12 A. To that time she asked me, yes.

13 Q. What was your response to that question?

14 A. That my wife and daughter are here.

15 Q. Did you answer that question she asked you? Did
16 you answer the question of did they break in?

17 A. Did they break in? No.

18 Q. Do you remember when she asked you a second time
19 how did they get in, sir?

20 A. I think, eventually, I told her I let them in.

21 Q. You said eventually. What do you mean by
22 eventually?

23 A. She probably asked me numerous questions, and I was
24 trying to watch them and talk, and I couldn't do both at the
25 same time, but I told her I let them in.

1 Q. Do you remember when she asked you, "you let them
2 in to do what"? Do you remember when she asked you that
3 question?

4 A. I think she asked me that question.

5 Q. And do you remember if you responded to that
6 question?

7 MR. COHEN: Your Honor, can I get a page number or
8 a line or something?

9 MR. WRIGHT: Page 7, line 3.

10 BY MR. WRIGHT:

11 Q. Do you remember whether you answered that question?

12 A. What's the question?

13 Q. When she asked you, "you let them in to do what,"
14 do you remember your answer to that question?

15 A. I think my wife was on the phone and said they were
16 furniture men or I said it or something like that.

17 Q. Let me ask you one more time.

18 MR. WRIGHT: If I may, Your Honor.

19 THE WITNESS: I don't remember exactly what I said
20 to her at that point, no, I don't.

21 BY MR. WRIGHT:

22 Q. If I may approach and show you State's Exhibit 111
23 and see if this helps refresh your memory.

24 A. Sure. Yes, I'm looking at it.

25 Q. Your memory is refreshed now?

1 A. Yes.

2 Q. When she asked you, "you let them in to do what,"
3 what was your response, sir?

4 A. My wife said they're furniture men, and I said
5 wait, wait, wait or something like that, and the next line
6 says that -- let me tell you what the next line says.

7 Q. Start from there. What did you say?

8 A. She says, "How did they get in; you let them in to
9 do what?" My wife says, "They're furniture" -- and then I
10 said, "Wait, wait, wait. Get some units down here, please."

11 Q. So did you cut your wife off from answering the
12 question?

13 A. Well, I was telling her to get some units down
14 here, please.

15 Q. No, let me ask you again. Were you cutting your
16 wife off when --

17 A. I was talking over her; she was talking over me;
18 the 911 operator was talking, so everybody was talking at the
19 same time.

20 Q. The 911 operator asked you "you let them in to do
21 what," correct?

22 A. Yes.

23 Q. Your wife started to answer the question, correct?

24 A. Yes.

25 Q. You cut her off, correct?

1 A. If that's your interpretation, sir.

2 Q. I'm showing you again State's Exhibit Number 11.
3 She says -- how many words does she get out to answer the
4 question of "you let them in to do what"?

5 A. She says the furniture and then --

6 Q. How many words did she get out? Answer the
7 question.

8 MR. COHEN: Objection, Your Honor.

9 THE COURT: Sustained.

10 BY MR. WRIGHT:

11 Q. When she said the furniture, you started talking,
12 right?

13 A. Yes. I said get some units down here, please.

14 Q. What did you actually say?

15 A. I said --

16 MR. COHEN: Objection, Your Honor. Asked and
17 answered.

18 THE COURT: Sustained.

19 BY MR. WRIGHT:

20 Q. You didn't actually say get some units down here;
21 did you?

22 A. It says I said "wait, wait, wait; just get some
23 units down here, please."

24 Q. It says -- your wife said the furniture, and then
25 you said --

1 A. And I said, "wait, wait, wait; get some units down
2 here, please."

3 Q. How many "waits" did you say?

4 MR. COHEN: Objection, Your Honor.

5 THE COURT: Mr. Wright, do you want him to recount
6 how many "waits" he may recall?

7 MR. WRIGHT: Yes, Your Honor.

8 THE WITNESS: I don't remember how many waits. I
9 said three or four.

10 BY MR. WRIGHT:

11 Q. How many does State's Exhibit Number 11 have you
12 saying?

13 A. One, two, three, four, five, six, seven, eight.

14 Q. You said "wait" eight times.

15 A. "Wait, wait, wait, wait, wait, wait, wait, wait.
16 Get some units down here please."

17 Q. The 911 operator asked you later on, page 8, line
18 19. You said that two of them, they were moving furniture
19 in. Do you remember that question?

20 A. She asked me how did they get in. I told her there
21 were two of them. They were supposed to be bringing some
22 furniture or something like that.

23 Q. Do you remember what you told her in response to
24 that question?

25 A. I don't remember exactly. You got a transcript.

1 MR. WRIGHT: If I may approach, Your Honor.

2 BY MR. WRIGHT:

3 Q. Page 8, line 19. You said that two of them, they
4 were moving furniture in.

5 A. Yes.

6 Q. What was your answer to that question?

7 A. She said -- the 911 operator says, "You said there
8 were two of them. They were moving furniture in." My
9 response to her -- do you want me to read my response?

10 Q. Yes, please.

11 A. "Well, they wasn't moving. They were assaulting
12 me." That's my response.

13 Q. Do you remember when she asked you later on, on
14 page 9, "When they knocked on your door, what happened?" Do
15 you remember when she asked you that?

16 A. I don't remember verbatim.

17 Q. If I showed you State's Exhibit Number 11, would
18 that help refresh your memory as to what you said in
19 response?

20 A. Sure.

21 Q. When she asked you, "When they knocked on your
22 door, what happened?" On page 9, line 4, what did you say to
23 that?

24 A. I said, "Right." She said, "When they knocked on
25 your door, what happened?" I said, "Right. Let's just

1 get -- I'll tell." She said, "I know you're upset right now.
2 I got help coming." And I said, "I'm sorry. I can't talk to
3 you while I'm watching them. Can you get some units down
4 here, please."

5 Q. Later on she asked you, "And they started beating
6 you for no reason?" Do you remember when she asked you that
7 question?

8 A. She probably asked me 30 or 40 questions. So if
9 it's on there, she asked me.

10 Q. Do you remember her asking you that?

11 A. No, I don't, but it's probably on there.

12 Q. Do you remember your answer that you gave to that?

13 MR. COHEN: Objection, Your Honor. He said he
14 doesn't remember the question.

15 THE COURT: Could you rephrase or ask him a
16 question, please.

17 BY MR. WRIGHT:

18 Q. Do you remember what your response was to the
19 question "and they started beating you for no reason"?

20 A. I don't remember what the response was that's on
21 the paper.

22 MR. WRIGHT: If I may approach, Your Honor.

23 BY MR. WRIGHT:

24 Q. Page 11, line 10, "And they just started beating
25 you for no reason?" Take a look at that, and let me know if

1 it refreshes your memory as to your response to that
2 question.

3 A. She said, "They just started beating you for no
4 reason?" And I said, "No, let me -- let me look. I'm trying
5 to watch this," and it's inaudible.

6 Q. Did you answer her question?

7 A. Answer her question as --

8 Q. Did you answer her question?

9 A. Yes, I answered her question. Whatever she was
10 saying, I was trying to answer it and watch them. They were
11 moaning and I was trying to look at them.

12 Q. Do you have a belt on now, sir?

13 A. Yes.

14 Q. Can you show the jury how the gun --

15 MR. COHEN: I'm going to object, Your Honor. May
16 we approach?

17 THE COURT: Okay.

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

20 MR. COHEN: I assume Mr. Wright is going to ask him
21 to put the gun in his belt. He had on different clothes.
22 And in the grand jury -- and Mr. Wright knows this -- he
23 specifically said when I wear jeans, I put the gun in my
24 belt. When I have my suit on, I wear a holster. That's
25 specifically what he said in the grand jury. So this is an

1 improper line of questioning. He knows this.

2 MR. WRIGHT: I'm not discounting what Mr. Cohen
3 says; however, if he can show the jury how he holds the gun
4 in his belt. He said he just uses it in his belt. He's at
5 dinner. He's sitting at a table.

6 MR. COHEN: Your Honor, the State knows --

7 THE COURT: You can inquire of him about the
8 process of what he did, but if the events include or are
9 similar in question today, I don't think it's proper for you
10 to ask him unless he feels comfortable with it.

11 MR. WRIGHT: Can we ask him whether he can just
12 demonstrate for jury? Would that be fine?

13 MR. COHEN: No. They are aware, Your Honor -- they
14 asked the same thing --

15 THE COURT: It all depends on your foundation
16 question.

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

19 MR. WRIGHT: Court's brief indulgence.

20 BY MR. WRIGHT:

21 Q. At 1:30, when you talked to Marlo, were you upset
22 at that point?

23 A. No.

24 Q. Were you bothered at 1:30?

25 A. No.

1 Q. What time did you think the delivery was going to
2 be there?

3 A. Between 2:30 and five. That's what they left a
4 message on our machine, between 2:30 and five.

5 Q. And at two o'clock were you bothered that they
6 weren't there?

7 A. No; I wasn't even home yet.

8 Q. Five o'clock. Were you bothered at five o'clock?

9 A. No.

10 Q. Six o'clock?

11 A. No. We were having family time then.

12 Q. It didn't bother you at all the fact that they
13 weren't there yet?

14 MR. COHEN: Objection, Your Honor. Asked and
15 answered.

16 BY MR. WRIGHT:

17 Q. Seven o'clock?

18 A. Seven o'clock, I think they called us. Mr. Gorham
19 called us and said they'd be there at 7:30.

20 Q. And you weren't bothered at all by 7 or 7:30?

21 A. We were having dinner. There was no issue.

22 Q. So it didn't bother you in the least bit that they
23 were already two hours late.

24 A. They had already called and said what time they
25 were coming, at 7:30.

1 Q. But they were late, right?

2 A. I guess you could say that. I'm sure that happens
3 all the time.

4 Q. You used the term "out-of-body experience" or
5 "out-of-mind experience." Do you remember using that term
6 earlier today?

7 A. Out of body or out of mind?

8 Q. Whatever term you used. What term was that you
9 used earlier?

10 A. I don't know. You said it.

11 Q. I think you used a term when your lawyer was asking
12 you questions. You said it was like an out-of-mind
13 experience.

14 MR. COHEN: Objection, Your Honor.

15 THE COURT: Grounds?

16 MR. COHEN: Mischaracterizes his testimony.

17 THE COURT: Go ahead; ask your question,
18 Mr. Wright.

19 MR. WRIGHT: Thank you, Your Honor.

20 BY MR. WRIGHT:

21 Q. Do you remember saying that?

22 A. Out-of-body experience? I think it was a traumatic
23 event. I think that would -- you might utter that phrase if
24 you have a traumatic event. People often do that when
25 something as serious as that happens to them.

1 Q. Did you utter the phrase "out-of-mind experience"?

2 A. I don't think I said out-of-mind experience.

3 Q. Did you use the phrase out-of-body experience?

4 A. I may have, yes.

5 Q. Were you having the out-of-body experience as you
6 fired the shots?

7 A. No. I'm characterizing it as a traumatic event.

8 MR. WRIGHT: Thank you, sir. No further questions.

9 MR. COHEN: Court's indulgence, Your Honor.

10 **REDIRECT EXAMINATION**

11 BY MR. COHEN:

12 Q. Mr. Washington, do you remember the group or litany
13 of questions by Mr. Wright about your police duties while you
14 were the deputy director of homeland security?

15 A. Yes.

16 Q. While you were the deputy director of homeland
17 security, were you still permitted to carry your firearm?

18 A. Yes.

19 Q. Do you remember the litany of questions by
20 Mr. Wright about having your gun on when you were home that
21 evening?

22 A. Yes.

23 Q. When you sleep, where is your gun?

24 A. I lock it up. I have a small child in the house.

25 MR. WRIGHT: Objection as to relevance and scope,

1 in terms of, when he sleeps, where the gun is located, Your
2 Honor.

3 THE COURT: Overruled.

4 BY MR. COHEN:

5 Q. I think you were telling the ladies and gentlemen
6 of the jury, before you were interrupted, where you lock your
7 gun up when you're asleep.

8 A. I lock it in the closet, in the top shelf, because
9 we have a small child in the house, and you don't want to
10 leave a gun laying around with a small child in the house.

11 Q. Now, when do you put your gun up for the evening?

12 A. When we go to bed at night. I have my -- I think
13 it was on since eight o'clock that morning, when I went to
14 work and came home.

15 Q. Now let me ask you, Mr. Washington, are you
16 familiar with the Prince George's County Police Department's
17 general orders manual?

18 A. Yes.

19 MR. WRIGHT: Objection, Your Honor.

20 THE COURT: Grounds?

21 MR. WRIGHT: Can we approach?

22 THE COURT: Certainly.

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

25 MR. WRIGHT: The State objects on two bases. One,

1 whether the testimony of whether he locks his gun up at night
2 and does he use a lock box or combination box and things of
3 that sort as irrelevant to this case. Because this case
4 deals with the fact, when he was awake, where the gun was on
5 him at all times --

6 THE COURT: Your question to him, does he wear his
7 gun 24 hours a day, several times.

8 MR. WRIGHT: That's fine. Number two, in terms of
9 the police general orders, he is not a representative of the
10 police. As he already said through his own testimony, he was
11 working in an administrative position only as deputy
12 director. He has not been a functional police officer since
13 2005.

14 The State believes he doesn't have the foundation,
15 as to police general orders, nor does he even have any
16 grounds to ask him to look at the police general orders
17 themselves. So we feel as though he has no foundation to
18 even make any general order statements.

19 The defense can call Lieutenant Walls or Lieutenant
20 Livingston or those type of officers, who are current
21 officers, administrative officers of rank within the force to
22 answer general questions about the general policies of the
23 police department, but Mr. Washington, the State feels as
24 though he does not have the foundation necessary to do so.

25 THE COURT: Number one, he hasn't asked any

1 foundation questions yet, other than the fact of was he
2 familiar with the manual and his answer was yes.

3 MR. WRIGHT: I agree with that.

4 THE COURT: And we'll have to go from there. If
5 there is an issue of whether or not -- you're both going to
6 be entitled to explore it, whether or not he was a police
7 officer --

8 MR. COHEN: Whether or not -- I'm sorry?

9 THE COURT: He was a police officer at the time.
10 If there is an issue, then we'll do with it then.

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

13 BY MR. COHEN:

14 Q. Mr. Washington, at the time you were the deputy
15 director of homeland security, were you still a Prince
16 George's County police officer?

17 A. Yes.

18 Q. Do you remember the litany of questions Mr. Wright
19 asked you about the safety on your gun being on and off? Do
20 you remember that set of questions?

21 A. Vaguely, yes.

22 Q. When you were a Prince George's County police
23 officer, were you aware of the Prince George's County Police
24 Department general orders manual?

25 A. Yes.

1 Q. What does that manual say regarding whether the
2 safeties should be on your firearm or off?

3 MR. WRIGHT: Objection.

4 THE COURT: Grounds?

5 MR. WRIGHT: The grounds stated at the bench.

6 THE COURT: Overruled.

7 BY MR. COHEN:

8 Q. Let me re-ask the question. What do the Prince
9 George's County Police Department general orders manual say
10 regarding whether or not your safety should be on or off
11 regarding your firearm?

12 A. The manual says that to carry the weapon, duty
13 loaded position, that the safety will be off. That's what it
14 says.

15 Q. Was your safety off that evening?

16 A. Yes, and that's how we're trained and certified,
17 all police officers for Prince George's County.

18 Q. Do you remember the questions by Mr. Wright about
19 how you remembered whether you were working that day or not?
20 Do you remember that set of questions?

21 A. Yes.

22 Q. Mr. Washington, how do you know, today, that you
23 were working on January 24, 2007?

24 A. I know today because we went down to the county
25 payroll to pull the timesheets for that day.

1 MR. WRIGHT: Objection, Your Honor. May we
2 approach?

3 THE COURT: Okay.

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

6 MR. MOOMAU: Want me to say the grounds?

7 THE COURT: Sure.

8 MR. WRIGHT: Hearsay. In his testimony earlier,
9 which I crossed him on, was based on hearsay.

10 THE COURT: I'm sorry?

11 MR. WRIGHT: It's hearsay information. He has no
12 real recollection as to whether he worked or not worked that
13 day. He said he does remember now the fact that he worked
14 that day. Now, on redirect, they're saying, well, I went
15 down to personnel and checked the files, and then yes, I did
16 work.

17 It's still hearsay information because, number one,
18 I don't know whether he did that or not. Number two, I don't
19 see these files that he looked at. Number three, there's no
20 indices of reliability. Because six months ago he testified
21 to the fact that he didn't remember. Now he's saying he did
22 because he looked at some unknown records.

23 MR. COHEN: It's not offered for the truth, Your
24 Honor. It's offered for state of mind.

25 MR. WRIGHT: It is being offered for the truth,

1 Your Honor; that is, the truth that he was at work that day.
2 We've been down this road. I would ask that the jury be
3 instructed to disregard that statement if you do rule that it
4 is based on hearsay information.

5 MR. COHEN: Just for the record, Your Honor, the
6 actual cross was how do you remember that you were working
7 that day when you didn't know it in the grand jury. That was
8 the actual cross. So that's what we're responding to with
9 the redirect.

10 THE COURT: Overruled.

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

13 BY MR. COHEN:

14 Q. Again, Mr. Washington, how are you sure, today,
15 that you worked on January 24, 2007?

16 A. Because, during the investigation, they sent -- a
17 representative and myself went down to the county payroll,
18 and they provided us with the payroll timesheets for that day
19 that shows I was working.

20 Q. Do you remember a series of questions by Mr. Wright
21 about some phone calls made to Marlo?

22 A. Yes.

23 Q. And he referenced a phone call around 1:30 to
24 Marlo. Do you remember that call?

25 A. Yes.

1 Q. And he also referenced a phone call at around seven
2 o'clock to Marlo. Do you remember that call?

3 A. Yes.

4 Q. Mr. Washington, in the seven o'clock,
5 approximately, phone call, do you remember asking for a
6 discount from Mr. Gorham?

7 A. We talked about a discount. If I --

8 MR. WRIGHT: Objection.

9 THE COURT: Wait for a question, sir.

10 BY MR. COHEN:

11 Q. Mr. Washington, do you remember a series of
12 questions about the 911 call from Mr. Wright?

13 A. Yes.

14 Q. Page 6, lines 12 through 15. Do you remember him
15 asking you what your response was of how did they get in,
16 which is the 911 operator asking you that question? Do you
17 remember those questions?

18 MR. WRIGHT: I'm sorry, counsel. Can you repeat
19 that for me, please?

20 MR. COHEN: Yes. Page 6, lines 12 through 15.

21 MR. WRIGHT: If I may have the question.

22 THE WITNESS: Yes. She asked me how did they get
23 in --

24 MR. WRIGHT: Objection. Excuse me, Your Honor. I
25 need that question.

1 THE COURT: You need the question directed by
2 counsel?

3 MR. WRIGHT: Yes.

4 BY MR. COHEN:

5 Q. Do you remember that series of questions about the
6 911 call?

7 A. Yes.

8 Q. Do you remember the question specifically about
9 your response in response to the 911 dispatcher asking you
10 how did they get in, sir?

11 A. Yes.

12 Q. What was your response?

13 A. My response was, well, I let them in.

14 MR. WRIGHT: Objection.

15 THE COURT: Grounds?

16 THE WITNESS: They were supposed to deliver --

17 THE COURT: Mr. Washington, one moment. Pardon me?

18 MR. WRIGHT: He hasn't said that he needs his
19 memory refreshed.

20 BY MR. COHEN:

21 Q. Do you remember specifically, verbatim, what you
22 said to the 911 dispatcher?

23 A. Not specifically verbatim.

24 Q. Can you then now look at page 6, lines 12 through
25 15.

1 A. Yes.

2 Q. What was the question that the 911 operator asked
3 you, and what was your response?

4 A. The 911 operator asked me, "How did they get in,
5 sir," and my response was, "Well, I let them in. They were
6 supposed to deliver -- uh, well, just get some units down
7 here."

8 Q. So did you answer the question of how they got into
9 your home when the dispatcher asked you that?

10 A. Yes, I did.

11 MR. COHEN: Court's indulgence. Nothing further,
12 Mr. Washington. Thank you.

13 **RECROSS-EXAMINATION**

14 BY MR. WRIGHT:

15 Q. Do the police --

16 MR. COHEN: Your Honor, may we approach?

17 THE COURT: Okay.

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

20 MR. COHEN: Your Honor, the defense stayed within
21 the scope of his cross during their redirect. Unless we've
22 gone outside the scope, we would argue that the State should
23 not be permitted to do recross.

24 THE COURT: Overruled.

25 (Counsel returned to trial tables and the following

1 ensued.)

2 BY MR. WRIGHT:

3 Q. I think I asked you earlier if you remember where
4 you were asking for \$400. Do you remember that conversation
5 now?

6 A. Yes. No, you asked me for \$400. I said I didn't
7 ask for \$400.

8 Q. I think you said you didn't have any conversation
9 about money.

10 MR. COHEN: Objection, Your Honor.

11 THE COURT: Overruled. Is that a question?

12 BY MR. WRIGHT:

13 Q. When I asked you earlier about this conversation
14 with Mr. Gorham, what did you tell me when I asked you that
15 question?

16 A. That we didn't have any conversation about \$400.
17 We had a conversation about a discount.

18 Q. I think I asked you, also, did you have any kind of
19 conversation about being compensated for your time and your
20 money. Didn't I ask you that?

21 MR. COHEN: Objection, Your Honor.

22 THE COURT: If he remembers.

23 THE WITNESS: I don't remember that.

24 BY MR. WRIGHT:

25 Q. But now, when your lawyer asked you about a

1 conversation you had about a discount, you remember that
2 clearly, correct?

3 A. We talked about that.

4 Q. Now, tell the jury, please, about this conversation
5 about a discount.

6 A. Future purchase, 10 percent off whatever. You
7 know, that's a discount.

8 Q. And who did you say this to?

9 A. Mr. Gorham. He gave me the number to his boss to
10 get the future purchase discount.

11 Q. So when I asked you about whether you were asking
12 for compensation, you didn't feel that was compensation?

13 A. You was talking about \$400.

14 MR. COHEN: Objection, Your Honor.

15 THE COURT: Overruled.

16 BY MR. WRIGHT:

17 Q. Police general orders, you should have your gun --
18 say that again for me, please -- in duty-ready position?

19 A. I think the general order says duty loaded or
20 duty -- duty loaded.

21 Q. Safety is off, ready to fire?

22 A. That's how you're certified. That's how you're
23 required to carry it.

24 Q. But doesn't that mean that you're on duty?

25 A. No. It's on or off.

1 Q. Thank you, sir. One last question. When you're at
2 home, playing with your daughter, you should have your gun in
3 duty ready, safety's off position; that's your testimony?

4 MR. COHEN: Objection, Your Honor. That's not his
5 testimony.

6 MR. WRIGHT: Withdrawn, Your Honor. No further
7 questions.

8 THE COURT: Sustained.

9 MR. COHEN: I have nothing else, Your Honor.

10 THE COURT: Alright, sir.

11 MR. COHEN: Your Honor, Court's indulgence for one
12 moment.

13 THE COURT: Certainly.

14 MR. COHEN: Your Honor, the defense calls
15 Ms. Leonora Conti.

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

17 THE COURT: Okay.

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

20 MR. MOOMAU: This witness is going to testify about
21 fiber transfer testing she did on the defendant's clothing
22 items, as well as Brandon Clark and Robert White. I don't
23 mind her testifying. I agreed to stipulate to chain of
24 custody from the time of collection clear up, but I'm going
25 to object to her testifying until the person that collected

1 the clothes, a week later, from the defendant's house
2 testifies. And I have him here for the defense.

3 MR. COHEN: Your Honor, he stipulated to chain of
4 custody.

5 MR. MOOMAU: From the time of collection up, but
6 I'm not going to let her testify and then that be kind of a
7 misrepresentation that clothes weren't collected until a week
8 later from Washington's house. The witness is right outside.

9 MR. COHEN: I can proffer to the Court what she's
10 going to testify to.

11 MR. MOOMAU: I know what she's going to testify to.
12 I've talked to her.

13 THE COURT: Hold on a minute. I'm just walking
14 through this for a minute in my mind. You stipulated to the
15 chain of custody and authenticity of what documents?

16 MR. MOOMAU: I'm not going the make them --

17 THE COURT: No, I understand that.

18 MR. MOOMAU: After these items were collected from
19 his house a week later, they went through different hands. I
20 don't care about that. We've had a gentleman's agreement on
21 all of that for all these tests.

22 MR. COHEN: I thought we did.

23 MR. MOOMAU: No, but I cannot let them put on this
24 transfer when the police found the clothes piled with other
25 clothing in laundry baskets and stuff like that, a week

1 later. I can't let it on with that.

2 MR. COHEN: Your Honor, for the record, this is --
3 the State requested that this analysis be done, and the State
4 requested and took the actual clothing, that they're
5 representing now that it has a chain of custody issue, and
6 she actually did the tests for the State and found what she
7 found. All we're going to have her do is testify to what
8 analysis she did and what her report says.

9 THE COURT: In her testimony or any of the
10 documents, is that going to include any information about
11 when the clothing was actually seized and examined, as
12 opposed to --

13 MR. COHEN: Your Honor, we actually spoke to her
14 this morning, and I don't think that she's going to be able
15 to testify to that. But that's something that they -- I'm
16 not going to tell them what witnesses to call, but my point
17 is, Your Honor, this is their evidence that they requested be
18 done, and now they're trying to hinder us from bringing it
19 forward to the jury.

20 MR. MOOMAU: The reason I didn't feel comfortable
21 using it is because the clothing wasn't obtained from
22 Mr. Washington's residence until a week later. He was
23 wearing the pants. He had them on. A shirt was in a basket
24 full of other laundry items. The vest was laying on the
25 floor in another room, where clothes were piled up all over

1 the place right beside it. That affected my decision to use
2 this evidence. Plus the unreliability of it anyway; it's not
3 specific at all.

4 THE COURT: Well, I believe you can certainly
5 cross-examine her about all of those issues, and you
6 certainly can bring back any witnesses or matters on rebuttal
7 that would relate to the time frame of that clothing. I
8 mean, if you stipulated to the chain of custody and
9 authenticity, there really isn't a ground for an objection on
10 that.

11 MR. MOOMAU: I'll call him in rebuttal then.

12 THE COURT: I think that would be a proper line of
13 rebuttal.

14 MR. MOOMAU: Okay.

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

17 **LEANORA BRUN-CONTI,**

18 a witness produced on call of the Defense, 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: Leanora Brun-Conti, L-e-a-n-o-r-a,
23 Brun-Conti, B-r-u-n-dash-C-o-n-t-i.

24 THE DEPUTY CLERK: Your Honor, for the record,
25 Defendant's Exhibit Numbers 17, 18 and 19 are marked for

1 identification.

2 (Defendant's Exhibit Nos. 17 through
3 19 were marked for identification.)

4 MR. COHEN: Court's indulgence, Your Honor.

5 **DIRECT EXAMINATION**

6 BY MR. COHEN:

7 Q. Good morning, Ms. Conti.

8 A. Good morning.

9 Q. You're a little ways from the ladies and gentlemen
10 of the jury, so if you could keep your voice up, I think it
11 would help everybody. Thank you.

12 Ms. Conti, where are you currently employed?

13 A. I work for the Bureau of Alcohol, Tobacco,
14 Firearms, and Explosives.

15 Q. What is your position there at ATF?

16 A. I'm a forensic chemist.

17 Q. How long have you been employed as a forensic
18 chemist?

19 A. I started with the Michigan State Police, in the
20 forensic lab, in 1988, and then I came to the ATF in 2001.

21 Q. Can you describe your job duties to the ladies and
22 gentlemen of the jury as a forensic chemist?

23 A. I receive evidence, and I analyze paint, glass,
24 fiber evidence, tape, and unknown substances.

25 Q. Can you describe your education to the ladies and

1 gentlemen of the jury?

2 A. I have a bachelor of science degree in
3 criminalistics from Michigan State University and on-the-job
4 training.

5 Q. When you say on-the-job training, you need to get
6 into more detail. What type of training do you have with
7 respect to forensic chemistry and training in trace evidence
8 analysis?

9 A. I've taken a number of workshops on the different
10 types of analyses that I described. And in this case I
11 analyzed fibers, so I've had workshops regarding the use of
12 the polarized light microscopy. I've had a course on the
13 infrared microscopy of fibers, color analysis of fibers,
14 advance fiber analysis, and textile fundamentals.

15 Q. Are you a member of any professional organization?

16 A. Yes.

17 Q. What are those?

18 A. I'm a member of the Midwestern Association of
19 Forensic Scientists and the Scientific Working Group for
20 Materials Examination.

21 Q. Did you receive any international training
22 regarding this subject matter?

23 A. I've given international training. It was in
24 Kurdistan, training on crime scene investigation.

25 Q. And do you have any certificates, Ms. Conti?

1 A. I am certified by the American Board of
2 Criminalists.

3 Q. Have you chemically analyzed items for trace
4 evidence in the past?

5 A. Yes.

6 Q. About how many times, would you say?

7 A. How many cases have I done?

8 Q. Yes, ma'am.

9 A. Oh, my. Two, three hundred.

10 Q. And have you previously testified in court as an
11 expert in forensic chemistry and trace evidence analysis?

12 A. Yes.

13 Q. What courts are those?

14 A. State courts and federal court in Michigan, the
15 State of Minnesota, Kansas, West Virginia, Virginia. That's
16 all I can remember.

17 MR. COHEN: Your Honor, at this time we would ask
18 that Ms. Conti be qualified as an expert in the field of
19 forensic chemistry and trace evidence analysis.

20 MR. MOOMAU: No objection, Your Honor.

21 THE COURT: She is so accepted.

22 BY MR. COHEN:

23 Q. Ms. Conti, can you explain to the ladies and
24 gentlemen of the jury what trace evidence is?

25 A. Trace evidence is usually small pieces of evidence,

1 like fibers or paint that are easily transferred from one --
2 from either suspect to victim, victim to suspect or the
3 environment to the suspect.

4 Q. And why are trace evidence exams performed?

5 A. To see if there was contact or if a certain person
6 was in a certain environment.

7 Q. Were you requested to do any trace evidence
8 analysis by a Lieutenant Walls?

9 A. Yes.

10 Q. And what trace evidence, just generally speaking,
11 were you asked to perform by Lieutenant Walls?

12 A. I was asked to look for fiber transfer between
13 victim and suspect clothing.

14 MR. COHEN: The Court's indulgence, Your Honor.

15 BY MR. COHEN:

16 Q. Ms. Conti, I'm going to show you what's been marked
17 as Defense Exhibit 19. Can you take a look at that and look
18 up when you're done.

19 A. Yes.

20 Q. What is Defense Exhibit 19?

21 A. This is a copy of my laboratory report.

22 Q. And taking your attention to page 2 of that report,
23 does your signature appear on that page?

24 A. Yes, sir.

25 Q. Did you draft that report?

1 A. Yes.

2 Q. Did you perform the tests and review the items that
3 are listed in that report?

4 A. Yes.

5 Q. So you have personal knowledge about the
6 information in that report, correct?

7 A. Yes.

8 Q. Did you draft the report shortly after completing
9 the testing described in the report?

10 A. Yes.

11 Q. Is the report kept in the normal course of
12 business?

13 A. Yes.

14 Q. And does the report, at the bottom of page 1, say
15 "for official use only"?

16 A. Yes.

17 MR. COHEN: At this time, Your Honor, we would
18 request that Defense Exhibit 19 be admitted as a business
19 record.

20 MR. MOOMAU: Your Honor, I do have -- can we
21 approach just briefly on this?

22 THE COURT: Certainly.

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

25 MR. MOOMAU: Your Honor, I don't object to the

1 report, according to the tests she's going to be testifying
2 to. There are other matters on there that she's not going to
3 be testifying to. Hair transfer testing, correct?

4 MR. COHEN: Yes.

5 MR. MOOMAU: And whatever else. But anything she
6 testifies to about this fiber transfer, I don't have
7 objection to the report coming in there.

8 MR. COHEN: And Mr. Moomau and I did speak. We
9 won't have a problem redacting the other information.

10 THE COURT: Fine. Thank you.

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

13 THE COURT: Defendant's 19 admitted, as mentioned
14 at the bench.

15 (Defendant's Exhibit No. 19,
16 previously marked for
17 identification, was received in
18 evidence.)

19 BY MR. COHEN:

20 Q. And, actually, Ms. Conti, taking your attention
21 back to Defense Exhibit 19, your report.

22 A. Yes.

23 Q. Page two, was that report sent by courtesy copy to
24 Lieutenant Walls of the Prince George's County Police
25 Department?

1 A. Yes, sir.

2 Q. Can you let the ladies and gentlemen of the jury
3 know what items you tested upon Lieutenant Walls' request?

4 A. Yes. There was the clothing, labeled "clothing
5 from Washington," one Old Navy brand vest -- do you want me
6 to read the whole list?

7 Q. Yes, please. If you could, there's some letters
8 and numbers next to that. If you could read those as well.

9 A. Yes. JW3, one Old Navy brand vest; JW5, one
10 long-sleeve camouflage shirt, Winchester brand; JW6, one pair
11 Levi brand denim jeans.

12 Q. Are those all clothing items from Mr. Keith
13 Washington?

14 A. Yes. CN4 --

15 Q. I'm sorry. I'm just going to ask you a quick
16 question before we go on.

17 A. Sure.

18 Q. I'm going to show you what's been marked as Defense
19 Exhibit 7. Can you take a look at that.

20 A. Yes.

21 Q. Can you tell the ladies and gentlemen of the jury
22 what Defense Exhibit 7 is?

23 A. It's labeled JW3 and it's a vest.

24 Q. Is that the vest that you reviewed, and is that the
25 vest consistent with the vest that is labeled in your report?

1 A. I don't see my label on it. But if that's what was
2 submitted as JW3, then that's the one that I examined. I'd
3 need to see the item to see my label.

4 Q. I understand. Let's do it this way, actually. I'm
5 going to show you what's been marked as Defense Exhibit 8.
6 Can you take a look at Defense Exhibit 8.

7 A. Yes.

8 Q. What is Defense Exhibit 8?

9 A. It's a Winchester brand camouflage shirt.

10 Q. Do you see the yellow evidence tickets to the left
11 of the Winchester shirt?

12 A. Yes.

13 Q. And can you see what is written on the evidence
14 ticket?

15 A. That says JW5.

16 Q. Okay. And hand you back Defense Exhibit 17. Do
17 you see the evidence ticket in that picture?

18 A. Yes, I do.

19 Q. What does it say?

20 A. JW3.

21 MR. COHEN: At this point, Your Honor --

22 THE COURT: Is that 17 or 7?

23 MR. COHEN: I'm sorry, Your Honor. Seventeen.

24 THE COURT: Thank you.

25 MR. COHEN: Your Honor, at this point the defense

1 would ask that -- and strike that, Your Honor. This is
2 Defendant's Exhibit 18. I've been calling it 8.

3 THE COURT: Okay. Thank you.

4 MR. COHEN: The one is just disappearing. So at
5 this point, Your Honor, the defense would ask to move in
6 Defense Exhibit 17 and Defense Exhibit 18.

7 MR. MOOMAU: No objection.

8 THE COURT: Seventeen, 18 admitted, defense,
9 without objection.

10 (Defense Exhibit Nos. 17 and 18,
11 previously marked for
12 identification, were received in
13 evidence.)

14 BY MR. COHEN:

15 Q. Ms. Conti, with respect to Mr. Brandon Clark's
16 clothing, what did you review?

17 A. Item CN4G, one long-sleeved black T-shirt, Icon
18 Sports brand; CN4H, one sleeveless tank top, Adidas brand;
19 CN4I, one pair of black sweatpants; CN4J, one pair of blue
20 pants, Cintas brand.

21 Q. And with respect to Robert White's clothing, which
22 items did you analyze?

23 A. CN8A, one dark blue sweater, Arrow brand; CN8B, one
24 black T-shirt, Galaxy brand; CN8C, one white T-shirt, Fruit
25 of the Loom brand; B/C, one pair of denim jeans with belt.

1 Q. Ms. Conti, did you receive a request from
2 Lieutenant Walls to compare item CN4J, which you've testified
3 are Brandon Clark's pants, to items JW3, which you testified
4 is Keith Washington's vest, and compare that to JW5, which
5 you've testified is Keith Washington's camouflage,
6 long-sleeved sport shirt? Were you asked to compare those
7 items?

8 A. Yes.

9 Q. Can you explain to the ladies and gentlemen of the
10 jury what tests you performed on those items in particular?

11 A. I taped these items. I taped all of the outer
12 clothing, actually, to see if there was any transfer between
13 the victim's clothing and the suspect's clothing.

14 And when I say taping them, it's literally like
15 taking a lint roller, and you just take off the fibers, the
16 loose fibers on the clothing.

17 So I wanted to see if there was any fibers from
18 Mr. Washington's on Clark's or White's clothes or any fibers
19 from White's or Clark's clothes on Mr. Washington's clothes.

20 And so before I examine the tape lifts, I examine
21 the articles of clothing to find out what kind of fibers the
22 clothing was made from, and then I looked for -- I looked to
23 see if there was any similar fibers on the tape lift.

24 Q. What, if anything, was unique about the fibers on
25 Mr. Brandon Clark's pants, which are items CN4J?

1 A. They just had an -- they were blue polyester.
2 Well, the pants were made of blue polyester and blue cotton.
3 But the polyester fibers were very unusual looking. They
4 were shorter, kind of deformed. Fibers that looked like that
5 were easier to see on the tape lifts that had lots of fibers.

6 Q. So after you did a trace evidence analysis on
7 Brandon Clark's pants to Keith Washington's, let's start with
8 the long-sleeved shirt, what was your finding from that
9 analysis?

10 A. I recovered three polyester -- I'm sorry. I
11 recovered a few fibers from the -- I'm sorry; you wanted to
12 start with the shirt?

13 Q. Yes, let's start with the long-sleeved shirt first.

14 A. I recovered a few polyester fibers from
15 Mr. Washington's shirt that were consistent with the
16 polyester fibers from Mr. Clark's pants.

17 Q. Now, with respect to the long-sleeve shirt only, in
18 your expert opinion, could the trace evidence that you found
19 from Brandon Clark's pants on Keith Washington's long-sleeve
20 shirt been transferred by direct physical contact?

21 MR. MOOMAU: Objection.

22 THE COURT: Sustained.

23 BY MR. COHEN:

24 Q. How can Brandon Clark's fibers from his pants be
25 transferred to Mr. Keith Washington's long-sleeve shirt, in

1 your expert opinion?

2 A. Physical contact with a fabric made from the same
3 type of fabric as the pants is the most direct way.

4 Q. Now, with respect to Brandon Clark's pants with
5 item JW3, which is Keith Washington's vest, what were the
6 results of your trace evidence analysis with respect to those
7 items?

8 A. Again, I found a few fibers -- a few polyester
9 fibers on JW3, Mr. Washington's vest, that were consistent
10 with the polyester fibers from Mr. Clark's pants.

11 Q. And, again, what is the most -- consistent, I
12 believe, is the word you used -- consistent way that
13 transfers from Brandon Clark's pants to Keith Washington's
14 vest could have happened?

15 A. The most direct way would be contact between the
16 two items.

17 Q. After you completed this test, Ms. Conti, did you
18 send the results to Lieutenant Walls?

19 A. I don't directly mail them, but I did "cc" him on
20 the report. I assume he got a copy.

21 Q. What was the date on that report?

22 A. It is June 11, 2007.

23 Q. Thank you, Ms. Conti.

24 MR. COHEN: Nothing further.

25 MR. MOOMAU: Your Honor, I need to get an exhibit

1 before I begin.

2 THE COURT: Certainly.

3 THE DEPUTY CLERK: State's Exhibits 113 and 114
4 marked for identification.

5 (State's Exhibit Nos. 113 and 114
6 were marked for identification.)

7 **CROSS-EXAMINATION**

8 BY MR. MOOMAU:

9 Q. Good morning, ma'am.

10 A. Good morning.

11 Q. I'm William Moomau. We spoke on the phone,
12 correct?

13 A. Yes.

14 Q. Now, Ms. Conti, as an examiner of trace evidence,
15 you would agree that it is important to collect items of
16 evidence immediately after or immediately at the time of the
17 incident under investigation, correct?

18 A. That's optimal.

19 Q. That is optimal. Because if you wait after that,
20 particularly in clothing fiber transfers, there is a
21 likelihood that other fibers can get on clothing, correct?

22 A. Correct.

23 Q. Now, ma'am, I want to show you what has been
24 admitted as State's Exhibit Number 72. Do you recognize
25 that, just the clothing items on it?

1 A. They appear to be similar to the clothing I
2 received.

3 Q. So in looking at State's Exhibit Number 22 --
4 MR. MOOMAU: Can I publish that real fast, Your
5 Honor?

6 BY MR. MOOMAU:

7 Q. Ma'am, State's Exhibit 72, does that appear to be
8 the clothing items, the vest and the camouflage shirt that
9 you analyzed?

10 A. Yes --

11 Q. Similar to.

12 A. Yes.

13 Q. If you discovered that these clothing items were
14 not seized until a week later or not taken into possession
15 until a week later, that they were in a clothes hamper, that
16 they were lying amongst other clothes, that could affect the
17 reliability of your examination; couldn't it?

18 A. If they were with other clothing that was made from
19 the same fabric with the same fibers as the Cintas pants.

20 Q. I'd like to show you two other photographs marked
21 as State's Exhibit 114 and State's Exhibit 113. Do you
22 recognize any items in these pictures that looks familiar?

23 MR. COHEN: I just want to take a look at those
24 photos.

25 THE COURT: Certainly.

1 BY MR. MOOMAU:

2 Q. Do you recognize any items in those photographs
3 that look familiar?

4 A. In number 113, the vest appears to be similar to
5 the vest that I examined. And then in 114, there's a
6 camouflage shirt in the hamper.

7 Q. And you have no idea when the vest from Washington,
8 as well as the camouflage shirt, I guess, was recovered; do
9 you?

10 A. No.

11 Q. Now, Ms. Conti, fibers can be transferred from one
12 clothing item to another by those clothing items coming into
13 contact, correct?

14 A. Correct.

15 Q. And clothing items can come into contact with each
16 other in many ways; can't they?

17 A. Yes.

18 Q. They can come into contact through rubbing up
19 against somebody, like that, correct?

20 A. Correct.

21 Q. They can come into contact if you do them with
22 other clothes in a dryer, correct?

23 A. Correct.

24 Q. And when you examine a piece of clothing, you have
25 no way of knowing how fibers get from one to the other; do

1 you?

2 A. No.

3 Q. And another way would be, I guess, clothes could
4 hang in a closet and rub up against other clothes, correct?

5 A. Correct.

6 Q. Clothes laying in a pile with other clothes,
7 correct?

8 A. Correct.

9 Q. And you could even have fiber transfers, say, if
10 Mr. Wright's coat had fibers from another garment that it
11 came up against, and I rubbed up against that, fibers from
12 some third garment could get on my coat, correct?

13 A. There's a possibility there, yes.

14 Q. And with the passage of time, there's a likelihood
15 that fibers from various other garments, other than what I'm
16 wearing, could get on my clothes, right?

17 A. Correct.

18 Q. Now, you had said that you used like a lint roll or
19 something of that nature, something like this that I'm
20 holding up?

21 A. It's actually transparent. It's book tape, but it
22 acts in the same way as a lint roller.

23 Q. And just for record, I'm holding up a standard lint
24 roller. And, of course, you start with a --

25 MR. COHEN: Your Honor, I'm going to object to this

1 demonstration. Can we approach?

2 THE COURT: Okay.

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

5 THE COURT: Before we do that, I'm going to have to
6 give this jury a break or they're going to -- because they're
7 acting very uncomfortable. But go ahead.

8 MR. COHEN: My objection, Your Honor, is that he's
9 demonstrating with a lint brush that is not consistent with
10 the lint brush that she used for the examination, and she
11 said that on a number of occasions. So it's misleading to
12 the jury.

13 MR. MOOMAU: I can use it for her to demonstrate or
14 to do a demonstration to the jury about the examination of
15 how she does it. She testified to it --

16 THE COURT: The foundation has to be laid that it
17 was done in substantially similar manner as the events that
18 she's talking about and, at this point in time, it hasn't
19 been relayed.

20 MR. COHEN: Your Honor, I'm sorry.

21 THE COURT: Yes. Do you want to give them a quick
22 break or -- I don't know how long you're going to --

23 MR. MOOMAU: I'm not going to be much longer. I
24 thought we could finish and just break for lunch.

25 MR. COHEN: I only have two or three direct

1 questions. Very short.

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

4 BY MR. MOOMAU:

5 Q. Now, Ms. Conti, the brush that you're talking
6 about -- or I don't know if it's a brush or if it's a roll,
7 but you said it was transparent?

8 A. Yes.

9 Q. And you roll the item -- is it a roll?

10 A. It's book tape, which is a very wide transparent
11 tape. So I just take the tape and roll it back onto itself
12 and then roll it along the garment.

13 Q. And for the clothing items -- I'll just call it
14 Mr. Washington's, the vest and the shirt. What portions of
15 those items did you roll for fibers?

16 A. The outside, the whole thing, front and back.

17 Q. So front and back. All over the front and the back
18 and the arms?

19 A. Yes.

20 Q. And you didn't differentiate with, I guess, the
21 tape afterwards which part was rolled with any particular
22 piece of tape, correct?

23 A. No, I didn't.

24 Q. So you even rolled parts that would have been
25 covered up -- if he was wearing the vest and the shirt, you

1 even rolled parts that had been covered up by the vest,
2 correct, if that was the case?

3 A. Correct.

4 Q. And did you use a separate roll for the shirt and
5 the vest?

6 A. Not a separate roll but separate pieces of tape.

7 Q. That's what I mean. I apologize.

8 A. I rolled them separately, yes.

9 Q. And you found a few blue, I guess, cotton -- well,
10 you found a few blue polyester fibers on the Old Navy vest
11 and the camouflage shirt, correct?

12 A. Correct, that were consistent with the Cintas
13 pants.

14 Q. Now, you do not know how prevalent in the
15 marketplace clothes with that type of blue polyester fiber
16 are; do you?

17 A. No, I do not.

18 Q. So they could have come from any item of clothing
19 that had blue polyester, correct?

20 A. It would have to be blue polyester of the same type
21 of polyester and with the same dye.

22 Q. And in addition to the blue polyester fibers, you
23 found fibers of other types on Mr. Washington's shirt, as
24 well as his vest, correct?

25 A. Yes.

1 Q. And those were fibers that were from other clothing
2 items, besides those particular items, right?

3 A. Some of the more common fibers, like the white
4 cotton and the blue cotton, I couldn't differentiate from --
5 whether they may have come from Mr. Clark's or Mr. White's
6 clothing. However, I was only looking for specific fibers.
7 So I don't know where they could have come from.

8 Q. Now, Ms. Conti, you can't tell this jury that those
9 blue polyester fibers on Brandon Clark's pants were -- or
10 excuse me. You can't say that the blue polyester fibers on
11 Washington's vest and shirt came from Brandon Clark's pants;
12 can you?

13 A. To the exception of no other, no, I can't say that.

14 Q. All you can say is they could have, right?

15 A. Right.

16 Q. And they might not have, also, correct?

17 A. Correct.

18 MR. MOOMAU: Court's indulgence. That's all I
19 have, Your Honor.

20 THE COURT: Ladies and gentlemen, hang in there.
21 It's just going to be a couple more questions, and then we're
22 going to recess for lunch.

23 MR. COHEN: I will be brief, Your Honor.

24 **REDIRECT EXAMINATION**

25 BY MR. COHEN:

1 Q. Ms. Conti, you don't have any evidence that
2 Mr. Brandon Clark's pants were in the hamper, mixed around
3 with Mr. Washington's vest and his shirt or anything of that
4 nature; are you?

5 A. I don't think -- I was given the impression that
6 they weren't.

7 Q. Doesn't it stand to reason that the longer you wait
8 to test clothing items for trace evidence, the greater the
9 chance of the trace evidence being lost?

10 A. Yes.

11 Q. And just so I'm correct, the most direct -- the
12 most direct way of trace evidence being transferred, such as
13 in this case, is through direct contact, correct?

14 MR. MOOMAU: Objection.

15 THE COURT: Sustained.

16 BY MR. COHEN:

17 Q. What is the most direct way that trace evidence
18 could be transferred from Brandon Clark's pants to
19 Mr. Washington's vest and shirt?

20 MR. MOOMAU: Objection.

21 THE COURT: Overruled.

22 THE WITNESS: Direct contact would be the most
23 efficient way to transfer fibers from one article of clothing
24 to another.

25 BY MR. COHEN:

1 Q. With respect to Mr. Clark's pants and the fibers on
2 his pants, you had said that they had a unique type and dye.
3 Did I hear you correctly?

4 A. They had a unique shape. They had unusual shape.
5 And I did examine the dye. It's a blue dye, and it may have
6 been used for other things, but it's not the same blue dye as
7 every blue dye, navy blue dye out there.

8 Q. I believe the language you used was "unusual"?

9 A. It wasn't unusual, I don't think, but it was -- the
10 dyes were consistent, that's what I can say.

11 MR. COHEN: Thank you, Ms. Conti. Nothing further.

12 **RECROSS-EXAMINATION**

13 BY MR. MOOMAU:

14 Q. Ms. Conti, the fibers that you were looking at, the
15 blue polyester, they were unique as to what you were looking
16 at from Washington's clothes, from the roll, correct?

17 A. I'm not sure --

18 Q. I mean the shape of them was unique from the other
19 fibers that were on those clothing items.

20 A. Correct. They had an unusual shape, so they were
21 easier for me to spot on the rolls.

22 Q. But, again, in the marketplace or even in clothes
23 that were in Keith Washington's house, you have no idea how
24 many other clothes have blue polyester fibers of that shape;
25 do you?

1 MR. COHEN: Objection, Your Honor.

2 THE COURT: Grounds?

3 MR. COHEN: Asked and answered.

4 THE COURT: Overruled.

5 BY MR. MOOMAU:

6 Q. You have no idea what clothes -- you have no idea
7 in the marketplace or in Keith Washington's house, I guess,
8 whether or not there are clothes, the amount of them or
9 likelihood of finding clothes with those same fibers; do you?

10 A. I don't know. I didn't receive the clothes that
11 were in the hamper, so I don't know if there was any other
12 clothing.

13 Q. And in the marketplace, you don't know how many
14 clothes have blue fibers of that kind, correct?

15 A. Correct.

16 MR. MOOMAU: Thank you.

17 MR. COHEN: Your Honor, very briefly, one question.

18 **FURTHER REDIRECT EXAMINATION**

19 BY MR. COHEN:

20 Q. All you tested, Ms. Conti, was the evidence that
21 you were given by the State, correct?

22 A. Correct.

23 MR. COHEN: Nothing further.

24 MR. MOOMAU: Nothing else.

25 THE COURT: Ladies and gentlemen, we're going to

1 recess for lunch. I'm going to ask you to return to the main
2 juror's lounge at 1:30, and Sheila will bring you back down
3 in here.

4 Again, please don't put yourselves in a position to
5 either hear, see or read any accounts of what may be
6 portrayed in the news media about this case. You are not
7 entitled to speak to anybody about what you have heard about
8 this case during the course of this trial. You're not even
9 able to speak amongst yourselves about it. And if you notice
10 any of witnesses, parties or lawyers involved in this case,
11 please remove yourself from their presence so that you may
12 not overhear anything they may be discussing.

13 With that, I apologize that you didn't get a break
14 this morning. Things moved a little bit rapidly, and I
15 apologize for that. Thank you.

16 (The jury was excused from the courtroom at
17 12:05 p.m.)

18 THE COURT: Before you leave, would you touch base
19 with Madam Clerk so she can keep track of the exhibits.

20 MR. COHEN: Can we approach on another issue?

21 THE COURT: Yes.

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

24 MR. COHEN: Your Honor, the defense intends to call
25 Dr. Jonathan Arden, which is no secret. We made the Judge

1 aware. He is not available this afternoon. We have other
2 witnesses, but I can anticipate us finishing slightly earlier
3 today in not having him available. So I made Mr. Moomau
4 aware. I'm asking for leave to call him in the morning,
5 first thing.

6 THE COURT: We'll work around any witness problem
7 that anyone has. Do you have any difficulty with that?

8 MR. MOOMAU: No. I mean, he's got to be here
9 today.

10 MR. WRIGHT: We object strenuously.

11 THE COURT: We'll work with everyone on any of
12 these issues.

13 MR STARR: I'm sorry, but I've kind of just
14 assigned this role to myself. Mr. King is still here and
15 watched all of Mr. Washington's testimony and all of the
16 witnesses.

17 MR. MOOMAU: So do you know how many witnesses
18 you're calling this afternoon?

19 MR. COHEN: I need to look at my notes now, but I
20 think probably two to three.

21 MR. WRIGHT: Are we excused, Your Honor?

22 THE COURT: Yes.

23 (At 12:10 p.m. a luncheon recess was taken.)

24 -oOo-

25 **AFTERNOON SESSION**

1 1:35 p.m.

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

3 THE COURT: Okay. May as well call the case.

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

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

8 MR. WRIGHT: Joseph Wright for the State.

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

11 MR. COHEN: Vincent H. Cohen, Jr., on behalf of
12 Mr. Washington.

13 MR. STARR: And Michael Starr, also on behalf of
14 Mr. Washington, who is present.

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

16 THE COURT: Certainly.

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

19 MR. MOOMAU: Your Honor, Mr. Cohen has indicated to
20 me that, in their direct examination of Mrs. Washington, they
21 intend to introduce, as an exhibit, a picture of the
22 six-year-old daughter.

23 The State would object to that on relevance. We
24 believe it has no relevance at all. A picture of her. They
25 can certainly describe they had a six-year-old daughter, but

1 a picture going back to the jury, we just don't see the
2 relevance in the case as far as that.

3 THE COURT: What is the relevance?

4 MR. COHEN: It's directly relevant to fact that
5 Mr. Washington, in terms of his mind, who he thought that he
6 was protecting at the time, his wife and his daughter. His
7 wife will be testifying, as Mr. Moomau said; his daughter
8 will not be.

9 THE COURT: I understand the description and the
10 age, by I mean specifically for that picture.

11 MR. COHEN: I'm sorry, Your Honor?

12 THE COURT: The relevance as to the picture, not
13 any testimony.

14 MR. COHEN: It describes -- it's a live photo,
15 similar to the live photo of Brandon Clark that the Court has
16 moved in. I believe the case law states that it should be
17 appropriate to be --

18 THE COURT: Let me see what you have.

19 MR. COHEN: It says that it should be appropriate
20 to actually identify the actual person that they're
21 testifying about.

22 THE COURT: Well, I think the cases are a little
23 bit on opposite because, on the one hand, they're talking
24 about a live photo of the deceased, of how that person was.

25 And in this instance, this is a photograph of a

1 smiling girl who is, as far as we know, available to testify
2 and has been -- it has been testified to that she had been in
3 the home at the time.

4 So I see no relevance for that photograph. She can
5 certainly be described.

6 MR. COHEN: Your Honor, for the record, she's
7 seven-years old. In terms of her age, in terms of
8 testifying.

9 THE COURT: Okay. But what -- well, I'm viewing a
10 picture of a very pretty, young child, and it's a posed
11 photograph that appears to be professionally done, with a
12 professional background.

13 I believe that that photograph, in and of itself,
14 without more, is not relevant to these proceedings. It can
15 be that she can be described by her mother or father at age
16 given, but I don't believe that that particular photograph
17 serves any purpose or relevance for this trial.

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

20 MR. MOOMAU: Your Honor, we need a few minutes for
21 a computer issue.

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

23 MR. COHEN: Yes, Your Honor, the defense is ready.

24 MR. MOOMAU: The State is ready, Your Honor.

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

1 MR. COHEN: Your Honor, the defense calls
2 Ms. Stacey Washington.

3 THE DEPUTY CLERK: Your Honor, Defense Exhibits 20,
4 21 and 22 marked for identification. And Defense Exhibits 23
5 and 24 were marked for identification.

6 (Defense Exhibit Nos. 20 through 24
7 were marked for identification.)

8 **STACEY WASHINGTON,**

9 a witness produced on call of the Defense, having first been
10 duly sworn, was examined and testified as follows:

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

13 THE WITNESS: Stacey Washington, S-t-a-c-e-y,
14 W-a-s-h-i-n-g-t-o-n.

15 **DIRECT EXAMINATION**

16 BY MR. COHEN:

17 Q. Good afternoon, Ms. Washington. Ms. Washington,
18 where did you grow up?

19 A. In Fredricksburg, Virginia.

20 Q. Did you go to high school in Fredricksburg,
21 Virginia?

22 A. Yes.

23 Q. Did you go to college?

24 A. Yes.

25 Q. What college did you attend?

1 A. Virginia Union University in Richmond, Virginia.

2 Q. If you could, the projector is on and there's some
3 feedback from that. If you could raise your voice just
4 slightly.

5 A. Okay.

6 Q. When did you graduate from Virginia Union?

7 A. 1981.

8 Q. And what was your degree in?

9 A. Accounting.

10 Q. Did you do any graduate studies?

11 A. Yes, a masters in business administration.

12 Q. Where was that from?

13 A. Troy State University.

14 Q. What year did you receive your masters?

15 A. 1998.

16 Q. Are you married?

17 A. Yes.

18 Q. Who are you married to?

19 A. Keith Washington.

20 Q. Do you have children?

21 A. Yes, we have two daughters. One together, Kayla,
22 and I have a stepdaughter. Her name is Hali.

23 Q. How old is Miss Kayla?

24 A. Kayla is seven.

25 Q. And your stepdaughter Hali?

1 A. She is 19.

2 Q. Where do you currently reside, Ms. Washington?

3 A. In Accokeek, Maryland.

4 Q. Who do you live there with?

5 A. My husband Keith, myself and Kayla.

6 Q. What's the address?

7 A. 1513 Shellford Lane, Accokeek, Maryland.

8 Q. Fair to say that you lived there in January of
9 2007?

10 A. Yes.

11 Q. Ms. Washington, what was your first job after you
12 received your masters?

13 A. After my masters or my bachelors?

14 Q. I'm sorry. After your bachelors.

15 A. My first job was with the Internal Revenue Service,
16 the IRS.

17 Q. What were you for the IRS?

18 A. I was a revenue agent.

19 Q. Short lived, right? What did you do after that?

20 A. Shortly after that I went to work for the
21 Department of Defense.

22 Q. Where are you currently employed?

23 A. The Department of Defense.

24 Q. In what capacity? What do you do for the
25 Department of Defense?

1 A. I am a budget analyst for the United States Marine
2 Corps.

3 Q. Do you have any sort of clearance or security
4 clearance of any type?

5 A. I have a secret clearance, yes.

6 Q. In order to get a secret clearance, what happens?

7 MR. WRIGHT: Objection.

8 THE COURT: Sustained.

9 BY MR. COHEN:

10 Q. Ms. Washington, taking your attention to December,
11 2006, did you have the opportunity to purchase furniture from
12 Marlo Furniture?

13 A. Yes.

14 Q. What did you purchase from them?

15 A. A bed that consisted of a headboard and footboard
16 and the bed rails.

17 Q. Was it delivered?

18 A. Yes.

19 Q. Was there a problem with the delivery?

20 A. Yes. The rails were broken when it was delivered.

21 Q. And when it was delivered, who was home at the
22 time?

23 A. My husband, myself and our daughter Kayla.

24 Q. How was the problem, with respect to the broken
25 rails, resolved?

1 A. The delivery guys took the broken rails back and
2 said that someone would call us when the new rails came in
3 and they would have them redelivered.

4 Q. Were you ever made aware that Marlo was to
5 redeliver the rails to you?

6 A. Yes.

7 Q. How did you come to that information?

8 A. They left a message on our answering machine that
9 they were coming to make the delivery.

10 Q. And do you remember what day or what time that
11 Marlo said that they would redeliver the bed rails?

12 A. Between two and five in the afternoon.

13 Q. On what day; do you remember?

14 A. Well, I don't remember just off the top of my head
15 now. I know it was, I think, the 24th that they came.

16 Q. Of January?

17 A. Of January, yes.

18 Q. Did you and Mr. Washington, your husband, make
19 arrangements to receive the delivery?

20 A. Yes.

21 Q. What were those arrangements?

22 A. He was going to be at home for the delivery.

23 Q. Do you remember what you did on the morning when
24 you woke up on January 24, 2007?

25 A. Got up and went to work as usual.

1 Q. Did anything out of the ordinary happen at work
2 that day?

3 A. No, not that I recall.

4 Q. And when you got off of work that evening, what did
5 you do when you got off work?

6 A. When I got off, I went to pick up Kayla from
7 aftercare.

8 Q. And after you picked up Kayla, did you have the
9 opportunity to speak to your husband Keith Washington?

10 A. Yes. I called. After I picked her up, I called
11 him at home.

12 Q. What time do you remember calling Mr. Washington?

13 A. It was probably right around six.

14 Q. And what was the conversation? What did you say to
15 him?

16 A. I just asked if the delivery had been made, if they
17 had brought the new bed rails and just told him we were on
18 our way home.

19 Q. Do you remember what time you arrived home that
20 evening, approximately?

21 A. Probably around 6:30. I don't know exactly, but
22 around 6:30.

23 Q. And when you arrived home, did you have Miss Kayla
24 with you?

25 A. Yes.

1 Q. What did you do when you got home?

2 A. Just normal routine. He was already there and we
3 just went in. And, of course, she's like daddy, daddy, can
4 you play with me and talking about her school day. You know,
5 we talked a little bit, and then I started thinking about,
6 okay, I need to get dinner and just regular stuff.

7 Q. When you say "daddy, daddy, will you play with me,"
8 you're responding to what Miss Kayla said?

9 A. Yes.

10 Q. And what did Miss Kayla and Mr. Washington do that
11 evening?

12 A. They played while -- just played. I mean she had
13 gotten this, like, play keyboard thing, and she wanted to
14 play something on that for him and had set up kind of a drum
15 thing that she had made up. And she was beating on the drums
16 and they were singing and playing. Just regular stuff,
17 talking about the day.

18 Q. Where were they when they were playing, what part
19 of the house?

20 A. Right in the family room.

21 Q. After you came home with Miss Kayla, did you have
22 the opportunity to speak with or converse with Marlo
23 Furniture?

24 A. Yes. After we got home and, you know, we got in
25 the house and everything, they hadn't come. So I called

1 back. I called Marlo to ask if they were still coming.

2 Q. What was their response, if you remember?

3 A. I spoke to a young lady, and she said that she
4 didn't know. And I asked if maybe she could find out, if
5 there was somebody there that she could check with, maybe
6 page somebody and find out if they were still coming or not.

7 Q. And did she respond? Did she call you back?

8 A. Well, she said that nobody was there but that she
9 would find out and call us back. But she didn't actually.
10 After a little while I called her back.

11 Q. What was that conversation that you had the second
12 time?

13 A. When I called her back she said that, you know, she
14 hadn't been able to get anybody; that maybe we should talk to
15 the salesman who sold it to us.

16 Q. And at some point after those conversations that
17 you had with Marlo, did you come to find out whether or not
18 the bed rails were to be delivered that evening?

19 A. Yes. I think it was the salesman that my husband
20 talked to and said that, yes, they were still coming that
21 evening.

22 Q. And did the deliverymen arrive at your house that
23 evening?

24 A. Yes, they did.

25 Q. Do you remember about what time?

1 A. About 7:30 or so. I'm not exactly sure of the
2 time.

3 Q. And at the time that the deliverymen arrived, what
4 were you doing?

5 A. We were eating dinner at that point.

6 Q. Ms. Washington, I'm going to show you what's been
7 marked and admitted, actually, as State's Exhibit Number 23.
8 Can you take a look at State's Exhibit 23. Can you tell the
9 ladies and gentlemen of the jury what is depicted in State's
10 Exhibit Number 23.

11 A. It's the countertop where we were sitting, Keith
12 and then Kayla and myself, and the plates that we were eating
13 out of.

14 Q. This is what the table looked like the evening of
15 January 24, 2007, when the Marlo deliverymen came to your
16 home?

17 A. Yes.

18 Q. Now, where is the kitchen in relation to the front
19 door of your home?

20 A. If you walk into the front door and you kind of
21 continue around, kind of straight and sort of to the left,
22 you'll come to the kitchen. It's kind of on the right-hand
23 side, behind a wall, I guess, is where the kitchen is.

24 Q. Ms. Washington, if your husband had his firearm on
25 during dinner, would it have concerned you?

1 A. No.

2 Q. And why not?

3 A. Because he had it all the time. He usually had it
4 on until -- pretty much until we went upstairs for the night
5 and he locked it away.

6 Q. And you say he locked it away. Where would he lock
7 it?

8 A. A lock box in the closet, on the top shelf of the
9 closet in our room.

10 Q. I'm going to need a minute, Ms. Washington. I need
11 to get set up for these next set of questions. Let me show
12 you what's already been admitted as Defense Exhibit 12.
13 Actually, before I put it up, can you come down from the
14 stand, please. You can stand right there. I'll try not to
15 hit you with this.

16 Ms. Washington, can you let the ladies and
17 gentlemen of the jury know where, in Defense Exhibit 12, it's
18 identified where you were eating that evening when the
19 deliverymen arrived.

20 A. Right here. This is the kitchen area. We were
21 sitting at the table, at the counter.

22 Q. Can you show them where the front door is with
23 respect to where the kitchen is?

24 A. Right here.

25 Q. How do you go from the kitchen to get to the front

1 door?

2 A. From here, through the hallway to the front door.

3 (The court reporter instructs the witness to keep
4 voice up.)

5 BY MR. COHEN:

6 Q. Do you see the family room in that diagram?

7 A. This is the family room.

8 Q. And was that where Mr. Washington and Miss Kayla
9 were playing?

10 A. Yes.

11 Q. And the pictures at the bottom of the exhibit, do
12 you see those pictures?

13 A. Yes.

14 Q. Do you see a picture that's identified by the
15 letter "D"?

16 A. Yes.

17 Q. And can you describe to the ladies and gentlemen of
18 the jury what that is a picture of?

19 A. The upstairs to our house, the top of the stairs.
20 This is the hallway upstairs. This is the doors going into
21 our bedroom, and this is the child gate that's across the top
22 of the stairs.

23 Q. And the child gate, how long has the child gate
24 been up?

25 A. Pretty much since we -- a few months after we moved

1 in about -- close to eight years now.

2 Q. Why did you put the child gate up about eight years
3 ago?

4 A. When Kayla was small, to keep her from coming down
5 the stairs. She was crawling around. To keep her from
6 falling down the stairs.

7 Q. Where is her room in respect to where the child
8 gate is?

9 A. Her room is right here.

10 Q. Now, can you let the ladies and gentlemen of the
11 jury know how that gate works? How do you get in and out of
12 the gate?

13 A. When you go up the stairs, you just push it open to
14 open it. When you come down the stairs, you have to pull it
15 to you and walk around it to get out, to be able to come
16 downstairs.

17 Q. And if you're coming up the stairs and you push it,
18 does it automatically shut?

19 A. It pretty much automatically shuts. It swings
20 back, yes.

21 Q. Was that kiddie gate in place on the night of
22 January 24, 2007?

23 A. Yes.

24 Q. Can you resume the stand, please.

25 A. (Witness complies.)

1 Q. Can you see me, Ms. Washington?

2 A. Yes.

3 Q. When the deliverymen arrived, did they ring the
4 doorbell?

5 A. Yes.

6 Q. And what happened after they rang the doorbell?
7 What did you do?

8 A. My husband Keith, Mr. Washington, went to the door.
9 I just sat there. We were still eating, Kayla and I, so I
10 sat there. We were still at the countertop.

11 Q. And after Mr. Washington went to the door, what, if
12 anything, did you hear?

13 A. I heard the door open and didn't hear anything for
14 a while, and then, after a little while, I don't know exactly
15 how long, but after a little while, I heard people coming in
16 and footsteps going upstairs.

17 Q. You said people. Could you tell how many footsteps
18 it was?

19 A. No. I could tell it was more than one person, but
20 I really couldn't tell how many.

21 Q. Could you tell the direction of where the footsteps
22 were going?

23 A. Upstairs. I could tell they were going upstairs.

24 Q. Now, after you heard the footsteps of the people
25 walking upstairs, what was the next thing, if you remember,

1 that you heard?

2 A. I didn't hear anything for a little while, and then
3 I heard my husband say, "Get out of my house; leave my house;
4 get out now," and that's the next thing I heard.

5 Q. And once you heard your husband say those words,
6 what did you do?

7 A. I got up. I told Kayla -- I told Kayla to stay
8 put, to don't move, and that's when I got up. And I got up
9 to go see what was wrong, because I could tell something was
10 wrong. So I got up to go and see what was wrong.

11 Q. And how could you tell that something was wrong?

12 A. By his voice. He said, "Get out of my house."
13 First of all, I figured that that was something, and then his
14 voice was, I guess, anxious, and so I went to look to see
15 what was wrong.

16 Q. And after you told Miss Kayla to stay there, where
17 did you go in the house to go look?

18 A. I got up, and I walked to the foyer from where we
19 were in the kitchen.

20 Q. And as you're walking from the kitchen to the
21 foyer, what are you doing at that point?

22 A. When I got up, I told her to stay put, and I got up
23 and I walked to the foyer and, as I'm walking to the foyer, I
24 could hear like a scuffling kind of noise. You can hear
25 people kind of moving around.

1 Q. Okay, Ms. Washington. You stated that you were
2 walking from the kitchen as you were peering up the stairs.
3 What did you see when you looked upstairs?

4 A. That's when I saw Keith bent over, and these two
5 men were on either side of him and they were beating him.

6 Q. And when you looked up and saw that, what did you
7 do? And you can take your time, Mrs. Washington.

8 A. I was walking into the hallway and, as I was coming
9 around through the hallway, I looked up and then I could see
10 them, him in the middle, and he was kind of bent over, and
11 then there was one man on either side of him, and they were
12 beating him. And I thought oh, my god; oh, my god; they're
13 just going to beat him to death, because he was just kind of
14 bent over and he couldn't do anything. And I thought, okay,
15 I need to help him; I need to help him. And so I was going
16 to start up the steps. And as I was getting ready to start
17 up the steps, I was thinking what if something happens to me,
18 what is Kayla going to do? I didn't want her to come in
19 here -- (crying).

20 MR. COHEN: May we take a break, please?

21 THE COURT: Take a break. Ladies and gentlemen,
22 we're going to take a ten-minute break, please.

23 (The jury was excused from the courtroom at
24 2:10 p.m.)

25 MR. COHEN: Your Honor, I think we're ready.

1 THE COURT: Ms. Washington, are you ready to
2 proceed, ma'am?

3 THE WITNESS: I am.

4 THE COURT: We can take more time if you like.

5 THE WITNESS: I'm fine.

6 (The jury returned to the courtroom at 2:20 p.m.)

7 BY MR. COHEN:

8 Q. Ms. Washington, I think where we were, you were
9 about to describe -- I'll just ask you the question.

10 As you looked upstairs, as you're leaving the
11 kitchen, where were the deliverymen positioned with respect
12 to where your husband, Keith Washington, was?

13 A. He was bent over, and there was one man on either
14 side of him.

15 Q. I believe you said that you were at the bottom of
16 the stairs. At that point, when you looked upstairs and you
17 were at the bottom of the stairs, what did you say or do?

18 A. The first thing I thought was, my god; oh, my god,
19 I need to help him.

20 MR. MOOMAU: Objection.

21 THE COURT: Overruled.

22 BY MR. COHEN:

23 Q. Keep going, Mrs. Washington.

24 A. As I started to go up the steps, that's when I knew
25 I couldn't help him. And then I was going to call 911.

1 (Crying.)

2 MR. COHEN: Can we take a break for a minute?

3 THE COURT: Yes.

4 MR. MOOMAU: May we approach, Your Honor?

5 MR. COHEN: Hold one second.

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

8 MR. MOOMAU: Your Honor, this can't go on. This
9 type of testimony, the crying completely through the
10 testimony, either she's going to testify or she can't.

11 THE COURT: Well, what would you have us do?

12 MR. MOOMAU: Well, she needs to regain her
13 composure.

14 THE COURT: Well, I understand that. Do you want
15 me to take a longer recess?

16 MR. MOOMAU: I think she ought to be asked by the
17 Court if she can go on.

18 THE COURT: I asked her that the first time. Do
19 you want he me to ask her again in front of the jury?

20 MR. MOOMAU: No. Hopefully, this will do it.

21 THE COURT: I asked her that question before I
22 brought the jury back on the last occasion. I said she could
23 have more time if she wanted it.

24 MR. MOOMAU: We just think it's very prejudicial
25 for her to be crying throughout her testimony.

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

3 BY MR. COHEN:

4 Q. Ms. Washington, I think before we approached, you
5 were at the point where you stated something about a 911
6 call. Can you let the ladies and gentlemen of the jury know
7 what you were saying with respect to the 911.

8 A. When I saw them beating him down, I knew that I --
9 I knew that he needed help, and I was going to go up and help
10 him, but I knew I couldn't.

11 And then there was Kayla. I didn't want her to
12 come into the room, and I knew she wouldn't stay in that
13 kitchen for long. She's only six. And I knew that at any
14 second she was coming in to see what was going on, to see
15 where we were.

16 So I thought, okay, I can't help him; I need to
17 call 911 because they're going to kill him. And so I --
18 (crying).

19 Q. And then -- Ms. Washington, we can take a break. I
20 want the record to be clear about what you're saying.

21 A. And so I stepped back off the step. I was going to
22 go upstairs, and then I stepped back off the step. And then,
23 when I stepped back, that's when I heard the gunshots. And
24 then I ran in the other room and got her and got the phone
25 and ran out the back, out the door.

1 Q. When you ran out the back door, where did you end
2 up?

3 A. I went into the garage.

4 Q. Why did you go to the garage?

5 A. Because I didn't know where else to go. Because I
6 couldn't leave Keith. I put Kayla in the car and then I -- I
7 don't know when I -- but that's when I called 911 and told
8 the operator that we needed some help.

9 Q. Ms. Washington, I want to ask you some questions
10 about the 911 call that you referenced, okay? Do you
11 remember what you told the 911 dispatcher when she asked you,
12 you know, what your phone number was and that sort of thing?

13 A. I don't know. I don't remember exactly what I said
14 to her, no.

15 Q. Would hearing the tape refresh your recollection as
16 to how you responded?

17 A. Yes, I guess so.

18 MR. COHEN: Court's indulgence. We're ready.

19 BY MR. COHEN:

20 (Audiotape plays.)

21 Q. Stop. At the time you made that statement,
22 Ms. Washington, was Mr. Keith Washington on the phone?

23 A. No; not when I first called, no.

24 Q. Do you remember what you said, in response to a
25 question for the 911 dispatcher, regarding whether or not you

1 were jumped in your house?

2 A. I don't know what I said to her.

3 Q. Would hearing the 911 call refresh your
4 recollection?

5 A. Yes.

6 MR. COHEN: Court's indulgence.

7 BY MR. COHEN:

8 (Audiotape plays.)

9 Q. Now, do you remember what you said in response to
10 the question about whether or not you were jumped in your
11 house?

12 A. I said I saw them beating him.

13 Q. Ms. Washington, do you remember how you responded
14 when the 911 dispatcher asked you exactly what happened; when
15 she asked you to tell her exactly what happened?

16 A. I don't know what I said to her, no.

17 Q. Would the tape refresh your recollection?

18 A. Yes.

19 MR. COHEN: Court's indulgence.

20 BY MR. COHEN:

21 (Audiotape plays.)

22 Q. Is your memory refreshed as to how you responded to
23 the question from the 911 dispatcher as to exactly what
24 happened?

25 A. That I was downstairs and went to the foyer and

1 that's when I saw them beating him.

2 Q. Did anyone respond to the 911 call, Ms. Washington?

3 A. Yes, an officer came.

4 Q. And when the officer arrived, where were you?

5 A. Outside.

6 Q. And what did you and the officer do?

7 A. I showed him to the front door and showed him
8 inside, where they were upstairs.

9 Q. After you showed the officer where they were, what
10 did you do then?

11 A. Kayla and I went across the street to a neighbor's
12 house.

13 Q. Who was at the neighbor's house when you first
14 arrived?

15 A. The person -- the lady who lives there and her son
16 were at home.

17 Q. Had you seen your husband prior to going to the
18 neighbor's house?

19 A. No.

20 Q. When was the next time, after you heard the
21 shooting, that you saw your husband?

22 A. I was quite a while after. I had been there for a
23 while, and he came over to the neighbor's house.

24 Q. And when he came over -- you said he. Just for the
25 record, you're talking about your husband?

1 A. My husband, yes.

2 Q. When he came over, who was he accompanied with?

3 A. There were some police officers, other police
4 officers with him when he came over.

5 Q. While you were there when he came over, meaning the
6 neighbor's house, who were you with?

7 A. A lot of other police officers as well.

8 Q. At the time you saw Mr. Washington, your husband,
9 at your neighbor's home, had you already given a statement to
10 the police?

11 A. Yes. Before I saw him?

12 Q. Yes.

13 A. Yes.

14 Q. Ms. Washington, I'm going to show you what has been
15 marked as Defense Exhibit 22 for identification purposes
16 only. Can you take a look at that.

17 A. Yes, that's the statement I gave that night.

18 Q. You had not spoken to your husband before giving
19 this statement, correct?

20 A. Correct.

21 Q. Ms. Washington, I'm going to set this thing back up
22 as quickly as I can. Indulge me for a moment. If you could
23 step down, please.

24 Now, Ms. Washington, if you could, for the ladies
25 and gentlemen of the jury, show them the path that you took

1 from the kitchen to the foyer, when you looked upstairs and
2 saw Keith being beaten.

3 A. We were sitting here and I walked this way. Once
4 you get to a certain point, you can look up and see the
5 stairs, and I just came around from here to the bottom of the
6 steps.

7 Q. And after you heard the gunshots, show the ladies
8 and gentlemen of the jury what path you took to leave the
9 house.

10 A. I'm standing right here, and then I ran back in
11 here and grabbed Kayla and went straight out the door, this
12 door.

13 Q. And that gray area in-between where it says the two
14 car garage.

15 A. Right here?

16 Q. Yes. What is that?

17 A. It's like a laundry room, a mud room.

18 Q. And you actually made the call from the garage; is
19 that fair to say?

20 A. Right. There's a door right here, and there's a
21 door into the garage.

22 Q. One more moment, please. Do you see on the bigger
23 part of the diagram, to the right side of the diagram,
24 bedroom two?

25 A. Yes.

1 Q. Whose bedroom is bedroom two?

2 A. That's Kayla's room.

3 Q. Let me show you what's been marked as Defense
4 Exhibits 23 and 24. Take a look at those.

5 A. That's her room.

6 Q. Is it a true and accurate depiction of what her
7 room looked like on January 24, 2007, at seven in the
8 evening?

9 A. Yes.

10 MR. COHEN: At this time, Your Honor, I would ask
11 that Defense Exhibits 23 and 24 be moved into evidence.

12 MR. MOOMAU: No objection.

13 THE COURT: Twenty-three, 24 admitted, defendant,
14 no objection by the State.

15 (Defense Exhibit Nos. 23 and 24,
16 previously marked for
17 identification, were received in
18 evidence.)

19 BY MR. COHEN:

20 Q. You can resume the stand.

21 MR. COHEN: Court's indulgence.

22 BY MR. COHEN:

23 Q. One more, Ms. Washington. I'm gong to show you
24 what's been marked as Defense Exhibit Number 20. Can you
25 take a look at Defendant's Exhibit 20. Is that a smaller

1 version of Defense Exhibit 12?

2 A. Yes.

3 MR. COHEN: At this point, Your Honor, I'd ask that
4 Defendant's Exhibit 20 be moved into evidence.

5 MR. MOOMAU: Your Honor, objection. We already
6 have one. Two, actually.

7 MR. COHEN: My next request was going to be to
8 publish them to the jury, and I didn't want them passing the
9 big 12 around and hitting each other.

10 THE COURT: Twenty is admitted.

11 (Defense Exhibit No. 20, previously
12 marked for identification, was
13 received in evidence.)

14 MR. COHEN: Your Honor, may I publish Defense
15 Exhibit 20, Defense Exhibit 21, State's Exhibit 25, State's
16 Exhibit 23, Defense Exhibit 24, and Defense Exhibit 23 to the
17 jury?

18 THE COURT: Yes.

19 (Exhibits published to the jury.)

20 MR. COHEN: Nothing further. Thank you,
21 Mrs. Washington.

22 THE COURT: Thank you.

23 MR. MOOMAU: Your Honor, can we begin the cross
24 after the jury views the pictures?

25 THE COURT: After the jury looks or during? What

1 are you asking?

2 MR. MOOMAU: After they're passed, Your Honor.

3 **CROSS-EXAMINATION**

4 BY MR. WRIGHT:

5 Q. Ms. Washington, do you remember the conversation
6 with the Marlo salesman Steve Gorham?

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

9 THE COURT: Yes.

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

12 THE COURT: What was the name of that person?

13 MR. WRIGHT: Do you remember the phone conversation
14 with the Marlo salesperson Steve Gorham.

15 MR. COHEN: That's not what she said. Number one,
16 Keith testified that he spoke with Steve Gorham.
17 Ms. Washington testified that she didn't speak with the
18 salesman, but she learned later that they were coming at
19 7:30. She clearly testified that she didn't speak with him.

20 THE COURT: Sustained.

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

23 BY MR. WRIGHT:

24 Q. Ms. Washington, were you present when
25 Mr. Washington spoke with the Marlo salesperson?

1 A. At one point, yes.

2 Q. And did you hear a conversation about
3 Mr. Washington being compensated for the lateness?

4 A. I couldn't tell you what the conversation was. I
5 was probably in the room, but I wasn't, I guess, totally
6 aware of the conversation. No, I don't know what was said,
7 really.

8 Q. Where was the conversation being held?

9 A. As I recall, he talked to the salesman in the
10 kitchen area of our house, I believe.

11 Q. And you do not remember the contents of that
12 conversation as you sit here now?

13 A. Correct, I don't recall. I really wasn't paying
14 that close attention to what he was saying.

15 Q. Now, on January 24th you gave a statement to
16 Detective Perry?

17 A. I gave a statement. I don't know the officer's
18 name, what the officer's name was.

19 Q. I'm showing you Defense Number 22. Do you
20 recognize that?

21 A. Yes.

22 Q. What is it?

23 A. That's a statement I gave that night.

24 Q. And who did you give the statement to?

25 A. An officer. I don't really know what the officer's

1 name was.

2 Q. Now, that night on the 24th, you did not hear any
3 conversation between Mr. White, Mr. Clark or Mr. Washington;
4 did you?

5 A. Correct. I heard my husband say get out of my
6 house but, other than that, I heard no other conversations.

7 Q. The only thing you heard was your husband yelling
8 get out of my house, correct?

9 A. Well, he wasn't really yelling, but I heard him say
10 get out of my house.

11 Q. But he was loud enough for you to hear it down in
12 the kitchen, correct?

13 A. Yes.

14 Q. And what were you doing in the kitchen?

15 A. I was eating.

16 Q. And when he went to answer the door, what were you
17 all doing together, collectively?

18 A. Eating.

19 Q. He being Mr. Washington. Mr. Washington, what was
20 he doing with you?

21 A. We were all eating. We were having dinner.

22 Q. Do you remember where you were sitting?

23 A. Yes. To the far right counter.

24 Q. Where was Mr. Washington sitting?

25 A. To the far left.

1 Q. Let me show you what's been previously marked as
2 State's Exhibit Number 23 that was shown to defense counsel.
3 It was shown to you earlier. Do you recognize this?

4 A. Yes.

5 Q. Is that a wine glass in State's Exhibit Number 23?

6 A. Yes.

7 Q. Is that an empty wine glass in State's Exhibit
8 Number 23?

9 A. It looks empty, yes.

10 Q. And there was wine in it at some point?

11 A. It could have been water or juice or -- it could
12 have been anything. I don't know what was in it at this
13 point.

14 Q. Take a careful look at State's Exhibit 23. Do you
15 see anything at all in the glass? Scratch that. Do you see
16 something red in the glass that appears to be in the bottom
17 of State's Exhibit Number 23?

18 A. Yes.

19 Q. Do you think that may be water that's red in the
20 wine glass?

21 A. It could be grape juice or something like that. I
22 don't know. We drink out of the them just because sometimes.

23 Q. The night of the incident itself, you heard
24 Mr. Washington yell "get out of my house, get out of my
25 house" several times, correct?

1 A. Yes.

2 Q. You never once heard Mr. Clark or Mr. White say
3 anything, correct?

4 A. I did not hear them, no.

5 Q. You said that you saw your husband being beaten,
6 and I think you used the word "severely."

7 A. Yes.

8 Q. You said he was pummeled.

9 A. Yes.

10 Q. He was being beaten to his death.

11 A. That's what it looked like to me, yes.

12 Q. You also said you heard shots.

13 A. Yes.

14 Q. But you did not say, on January 24th, that you saw
15 shots though, correct?

16 MR. COHEN: Objection, Your Honor. May we
17 approach?

18 THE COURT: Okay.

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

21 MR. COHEN: Your Honor, Ms. Washington didn't
22 testify to seeing shots.

23 THE COURT: I can't hear you.

24 MR. COHEN: Ms. Washington did not testify to
25 seeing shots.

1 MR. WRIGHT: That is correct.

2 MR. COHEN: He said it in an impeachment form,
3 saying you didn't say that you saw shots.

4 THE COURT: Well, let me ask is there any more
5 questions you intend to direct, other than the one you asked
6 about seeing shots?

7 MR. WRIGHT: Yes. It will be cleared up with her.
8 But yes.

9 MR. COHEN: Can we get a proffer how, Your Honor?

10 MR. WRIGHT: At this point, Your Honor, I've asked
11 her. She said she didn't see shots, and I agree that that's
12 the testimony, but at this point --

13 THE COURT: Okay.

14 MR. WRIGHT: -- I can just go forward.

15 THE COURT: Overruled.

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

18 BY MR. WRIGHT:

19 Q. You didn't say you saw shots though; did you?

20 A. I don't really know exactly what I said, but I was
21 standing at the bottom of the steps, looking up at the three
22 men, when I heard the shots, so --

23 Q. Let me ask my question, if I can. Did you ever
24 say, on the night of the 24th, in Defense Exhibit Number 22,
25 your statement here, that you saw shots?

1 A. I don't know exactly what I said in it but --

2 Q. You never said you saw shots; did you?

3 MR. COHEN: Objection, Your Honor.

4 THE WITNESS: I don't know.

5 BY MR. WRIGHT:

6 Q. If I showed you Defense Exhibit Number 22, would it
7 help refresh your memory?

8 A. If I could read through it, I might know exactly
9 what I said. I don't recall exactly what I said.

10 (Document shown to witness.)

11 BY MR. WRIGHT:

12 Q. Take your time.

13 A. I say here that I heard the shots.

14 Q. You said you heard shots and that's it, correct?

15 A. Um-hmm.

16 Q. You didn't say that you saw the shots.

17 A. "I looked up and saw two men in the upstairs
18 hallway beating my husband severely. I then heard shots."

19 Q. You weren't sure though who was doing the shooting;
20 were you?

21 A. No, I wasn't. I didn't know.

22 Q. You thought it could have been your husband
23 shooting though, right?

24 A. I didn't know who it was.

25 Q. But you did think it could have been your husband.

1 A. I thought it could have been any of them, yes.

2 Q. You thought it could have been the deliverymen?

3 A. Yes. I didn't know who it was.

4 Q. But you never saw them at all, correct?

5 A. Correct.

6 Q. You didn't see them come in.

7 A. Correct.

8 Q. You didn't hear them make a single conversation.

9 A. No.

10 Q. And so after you heard the shooting, you're telling
11 me that you thought it could have been the deliverymen
12 shooting your husband?

13 A. Yes, I did. I didn't know who was doing the
14 shooting. I saw them beating him and then I heard shots.

15 Q. Let me ask you another question. You called 911,
16 correct?

17 A. Yes.

18 Q. Do you remember when Lieutenant Walls came to see
19 you on February 23rd?

20 A. When he came to see me on February 23rd? No, I
21 don't --

22 Q. Do you remember giving a statement to Lieutenant
23 Walls?

24 A. Yes.

25 THE DEPUTY CLERK: State's Exhibit 115 marked for

1 identification.

2 (State's Exhibit No. 115 was
3 marked for identification.)

4 BY MR. WRIGHT:

5 Q. And I may be using a term you're not familiar with.
6 I used the term "statement." Did you talk with Lieutenant
7 Walls?

8 A. Yes.

9 Q. And when you talked to him, was what you said to
10 him recorded?

11 A. Yes.

12 Q. How was it recorded?

13 A. I don't recall. I'm assuming he had a recorder
14 there, but I don't recall.

15 Q. Let me show you what's been marked as State's
16 Exhibit Number 15 and shown to defense counsel. Do you
17 recognize that document?

18 A. Not really, but I guess it's his interview with me.

19 Q. Pardon me?

20 A. I don't really recognize it, but it looks like the
21 interview that he had with me.

22 Q. Okay. But take a look through it, if you need to,
23 but you believe that is the interview that you had with
24 Lieutenant Walls?

25 A. Yes.

1 Q. On that day, February 23rd, you did tell Lieutenant
2 Walls that you went to work that day, right?

3 A. Yes.

4 Q. You were unsure whether Mr. Washington worked that
5 day, right?

6 A. Yes. I leave before he does, so.

7 Q. And so you had no idea whether he went to work that
8 day or not, right?

9 A. I didn't know for sure, correct.

10 Q. You had no contact with Marlo at all until you got
11 home that evening.

12 A. Correct.

13 Q. Keith had been home all day -- Mr. Washington had
14 been home all day waiting for the delivery, right?

15 A. I don't know how long he had been home waiting. He
16 took our daughter to school that morning, so.

17 Q. The delivery was late.

18 A. Yes.

19 Q. While sitting at the family dinner table, did you
20 know, in fact, he was armed with his nine millimeter?

21 A. I didn't know it, no.

22 Q. Did you know whether he was armed with his nine
23 millimeter when he was playing with your daughter?

24 A. I didn't know, no.

25 Q. Did you know that all the safeties were off and it

1 was ready to fire?

2 A. No. I didn't know he had it at the time.

3 Q. The doorbell rings, correct?

4 A. Yes.

5 Q. You stay in the kitchen, correct?

6 A. Yes.

7 Q. Keith Washington goes to answer the door, right?

8 A. Yes.

9 Q. He goes outside with them, correct?

10 A. I don't know. I couldn't see him.

11 Q. And once he goes outside with them, he comes back
12 in the house.

13 MR. COHEN: Objection, Your Honor.

14 THE COURT: Sustained.

15 BY MR. WRIGHT:

16 Q. You hear them, the men and Mr. Washington, going up
17 the stairs.

18 A. Correct.

19 Q. You can't see it but you can hear it.

20 A. Yes.

21 Q. You agree that the men weren't upstairs any more
22 than four minutes.

23 A. I really don't know how long it was. I mean, it
24 wasn't a long time, but I couldn't tell you exactly how long
25 it was.

1 Q. Three minutes?

2 A. I think it was --

3 MR. COHEN: Objection, Your Honor.

4 THE WITNESS: I don't know. I think it was longer
5 than three.

6 THE COURT: Sustained.

7 BY MR. WRIGHT:

8 Q. In the statement you gave on February 23rd --

9 MR. WRIGHT: Court's brief indulgence.

10 BY MR. WRIGHT:

11 Q. On February 23rd, Lieutenant Walls asked you to
12 describe the shooting incident, right?

13 A. (No audible response.)

14 Q. You said you weren't sure if one of the men had a
15 weapon or not, right?

16 MR. COHEN: Objection, Your Honor. May we --

17 THE COURT: Yes, you want to approach the bench?
18 Come on up.

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

21 THE COURT: When you question her about any
22 interview or statement she had with Lieutenant Walls, you
23 have to ask her the questions properly, whether or not she
24 may recall the statement that she made, etc.)

25 MR. WRIGHT: Thank you.

1 MR. COHEN: Your Honor, this is the second time, at
2 least, that we've been up on this issue. Can we get a
3 proffer to find out where -- how this statement is being
4 used? Because it's not being used for impeachment purposes
5 at this point.

6 THE COURT: I can only rule on what I hear.

7 MR. COHEN: Alright, Your Honor.

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

10 BY MR. WRIGHT:

11 Q. Are you sure whether or not the men had weapons?

12 A. Was I sure?

13 Q. Yes.

14 A. No.

15 Q. So you just saw both men beating him, right?

16 A. Yes.

17 Q. You heard gunshots, correct?

18 A. Correct.

19 Q. You stood in the foyer for about 15 seconds; isn't
20 that correct?

21 A. After I heard it, you mean? Or --

22 Q. Yes.

23 A. I don't know how long it was. It was long enough
24 for me to -- I was in the foyer long enough to look up at
25 him, see that they were beating him, think to myself he needs

1 help, realize at that point that I could not go up there and
2 help him, and think, okay, then you need to call 911 because
3 they're going to beat him to death and you need to get him
4 some help. And then, after that, that's when I heard the
5 gunshots and that's when I ran out. However long it took to
6 go through that series of thoughts in my head, that's how
7 long I was in the foyer.

8 Q. Do you remember when Lieutenant Walls questioned
9 you about the incident and whether you were in the foyer for
10 about 10 or 15 seconds?

11 A. I remember him questioning me. I don't remember
12 all of his questions though.

13 Q. I'm showing you what's been marked State's Exhibit
14 Number 115. Lieutenant Walls. Take a look at that.

15 A. Um-hmm. Okay.

16 Q. Did that help refresh your memory?

17 MR. COHEN: Your Honor, objection.

18 THE COURT: Grounds?

19 MR. COHEN: It's improper impeachment.

20 THE COURT: Are you going to ask her the question
21 first?

22 BY MR. WRIGHT:

23 Q. Do you remember Lieutenant Walls asking about the
24 length of time that you were in the foyer?

25 A. I don't really remember it but, I mean, it's

1 written in there, so I'm assuming he did, but I don't really
2 remember the whole conversation we had.

3 Q. Now I'm showing you State's Exhibit Number 115.
4 Does that help refresh your memory?

5 A. It refreshes my memory that he asked it, yes.

6 Q. Do you remember now the answer you gave when he
7 asked you that question?

8 A. You know, that was a year ago. I don't really
9 remember all of the stuff I gave him --

10 Q. What answer did you give him --

11 A. -- but, apparently, in there I said 10 seconds or
12 so. Ten or 15 seconds I think is what --

13 Q. You said 10 or 15 seconds, correct?

14 A. That's what I said.

15 Q. During this 10 or 15 seconds, didn't you see
16 flashes from the gun?

17 A. I don't know. I really don't -- I was going up --
18 I was going to go up and help him, and then, right as I'm
19 getting ready to walk up the stairs --

20 MR. WRIGHT: May I object, Your Honor, to
21 unresponsive.

22 THE COURT: If you recall seeing flashes from the
23 gun, ma'am.

24 THE WITNESS: I just don't recall. I just don't
25 recall. Maybe I did and I just don't remember.

1 BY MR. WRIGHT:

2 Q. Do you remember being questioned by Lieutenant
3 Walls on February 23rd about whether you saw flashes from the
4 gun?

5 A. Again, I -- he asked a lot of questions, and I do
6 not remember all of the questions that he asked.

7 MR. WRIGHT: If I may approach, Your Honor, and
8 show her State's Exhibit Number 115.

9 THE COURT: Please.

10 BY MR. WRIGHT:

11 Q. Take a look and read from here to here.

12 A. Okay.

13 MR. COHEN: Your Honor, what page?

14 THE COURT: Would you give him the page number and
15 the lines, please.

16 MR. WRIGHT: Page 17, first three lines.

17 BY MR. WRIGHT:

18 Q. Does that help refresh your memory as to the
19 questioning regarding flashes?

20 A. Yes.

21 Q. Did Lieutenant Walls ask you if you saw any flashes
22 from the gun?

23 A. He did.

24 Q. And what was your response to him?

25 A. I can remember seeing flashes.

1 Q. And what are flashes?

2 MR. COHEN: Objection, Your Honor.

3 THE COURT: Sustained.

4 BY MR. WRIGHT:

5 Q. You saw the gunshots, correct?

6 A. I'm assuming that's what I saw. I guess I
7 didn't -- yeah. I registered hearing them.

8 Q. But you saw them.

9 A. If that's what the flashes were. I honestly do not
10 remember flashes. I just remember hearing the sounds and
11 then running out of the room.

12 Q. For 10 or 15 seconds you watched this incident,
13 correct?

14 A. I watched and -- yes, I was probably in there for
15 maybe 10 seconds or so. I don't really know how long it was.

16 Q. And during the course of this incident, you saw
17 flashes, correct?

18 MR. COHEN: Objection, Your Honor. Asked and
19 answered.

20 THE COURT: Overruled. Go ahead.

21 THE WITNESS: I'm sorry?

22 BY MR. WRIGHT:

23 Q. During the course of this incident, you saw
24 flashes, correct?

25 A. I think so, maybe. I don't remember, now, seeing

1 flashes. I remember hearing it. I just don't remember.

2 Q. On February 23rd, 11 months ago, you remember
3 seeing flashes of the gun, correct?

4 A. Yes, that's what I told Lieutenant Walls.

5 Q. But now you're telling the jury you do not remember
6 seeing the gun flashes?

7 A. Right now I do not remember seeing -- I remember
8 hearing the sound of the gun. I remember the pop, pop, pop,
9 pop going off.

10 Q. Tell me again what did you hear?

11 A. I remember hearing the gunshots.

12 Q. How many flashes did you see? Did you see five
13 flashes?

14 A. I have no idea.

15 Q. Do you remember how many flashes you saw?

16 A. No, I don't.

17 Q. When you saw the flash, did it correspond to the
18 pop, pop, pop noise you heard?

19 A. I don't know. I just remember hearing the pop,
20 pop, pop, pop noise.

21 Q. When you saw the flash, did you see Keith
22 Washington with the gun in his hand, shooting?

23 A. I didn't see a gun at all. I didn't see a gun. I
24 just heard it.

25 Q. Keith's back was to you.

1 A. Yes.

2 Q. And you can't tell me whether you saw flashes on
3 the right side or the left side?

4 A. No, I don't know.

5 Q. You called 911, correct?

6 A. Correct.

7 Q. While you're talking to the dispatcher, Keith
8 Washington picks up the phone eventually, correct?

9 A. Yes.

10 Q. After you saw the flashes, you go grab your
11 daughter, correct?

12 A. After I heard the gunshots, I ran and grabbed her
13 and grabbed the phone at the same time.

14 Q. You grab the phone. You go out to the garage?

15 A. Yes.

16 Q. You call 911.

17 A. Yes.

18 Q. You tell them someone has been shot.

19 A. Yes.

20 Q. Right?

21 A. Yes, that's right.

22 Q. You didn't tell them my husband was shot; did you?

23 A. No, I didn't.

24 Q. You just said someone was shot.

25 A. I said -- I think I said I think someone's been

1 shot.

2 Q. And then, eventually, you also said two people were
3 shot, correct?

4 A. No. I said two people were there, beating my
5 husband. I don't think I said two people were shot.

6 Q. You didn't say two people were shot?

7 A. No, because I didn't know.

8 Q. Because you, in fact, saw two people get shot.

9 MR. COHEN: Objection, Your Honor. May we
10 approach?

11 THE COURT: Yes.

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

14 MR. COHEN: Your Honor, Mr. Wright is completely
15 misleading the jury. Ms. Washington says on the 911 tape --
16 and this is the transcript I'm showing Your Honor. She says,
17 to the question "who was shot," her response is, "Two people.
18 I don't know." Not two people were shot.

19 THE COURT: Overruled.

20 MR. WRIGHT: Thank you.

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

23 BY MR. WRIGHT:

24 Q. Do you remember the question I asked you?

25 A. No.

1 Q. You said two people were shot; correct?

2 A. No, I didn't. I didn't know, when I called 911,
3 who was shot.

4 Q. But instead of saying one person was shot two or
5 three times or my husband was shot two or three times, you
6 were specific and said two people were shot, right?

7 A. I did not say that, sir.

8 Q. This was a long conversation with 911; wasn't it?

9 A. Yes.

10 Q. How long was it?

11 A. I don't know how long.

12 Q. More than ten minutes?

13 A. I don't know. I was on the phone with them until
14 the police officers arrived.

15 Q. When you were on the phone, you were in the garage
16 or outside with 911?

17 A. Yes.

18 Q. Who was inside the house with Brandon Clark and
19 Robert White?

20 A. My husband was inside.

21 Q. He was the only one inside the house with Brandon
22 Clark and Robert White during the whole duration of this 911
23 tape?

24 A. Yes.

25 Q. Do you know what was going on inside the house with

1 Brandon Clark and Robert White?

2 A. No, I don't, until he picked up the phone and you
3 could hear.

4 Q. You then went next door to the neighbor's house,
5 correct?

6 A. Yes, across the street.

7 Q. You never spoke with Keith that evening until he
8 came to see you, correct?

9 A. Yes.

10 Q. He came to see you roughly about 9:40; is that
11 correct?

12 A. I don't know what time it was.

13 Q. But you hadn't spoken to him since the shooting,
14 correct?

15 A. Correct.

16 Q. You didn't know still, at that point, whether he
17 had been shot himself, correct?

18 A. Well, I knew that he was conscious because he was
19 talking on line with 911.

20 Q. But you never asked him whether he was shot, did
21 you, on the 911 tape?

22 A. No, I didn't.

23 Q. You never asked Mr. Washington whether he was shot
24 at this point during the evening; did you?

25 A. No, I didn't.

1 Q. Because you knew he wasn't shot, correct?

2 A. Well, because I knew he was talking. He was okay
3 enough to talk and I assumed he was okay.

4 Q. You assumed he wasn't shot because he was talking.

5 A. Yes, because he was talking to the 911 operator,
6 and he didn't say that he was shot. He just said he had
7 injuries.

8 Q. And you didn't want to know whether your husband
9 had been shot?

10 MR. COHEN: Objection, Your Honor.

11 THE COURT: Sustained.

12 BY MR. WRIGHT:

13 Q. When he came with you -- I'm sorry. When he came
14 to see you at the neighbor's house, do you agree that it was
15 about 9:40?

16 A. I don't know what time it was when he came.

17 Q. Do you agree that it was quite a length of time
18 after the shooting incident?

19 A. It was after. I don't know how long after. I just
20 don't know of the time frame of that.

21 Q. And this was the very first conversation you had
22 actually had with Keith, in person, since the shooting,
23 correct?

24 A. Correct.

25 Q. How many people were with him when he came to see

1 you?

2 A. I don't know. There were a lot of police officers
3 around and I don't know who -- I think there may be two
4 people with him, but I don't really know because there were
5 just a lot of police officers there.

6 Q. When you saw him, did he have his gun on at that
7 point still?

8 A. I don't know.

9 Q. Did he have his badge on him at that point?

10 A. I don't know.

11 Q. You saw the shooting; didn't you?

12 A. I saw them beating him and then I heard the shots.

13 Q. If I could ask my question one more time. You saw
14 the shooting; didn't you?

15 MR. COHEN: I'm going to object, Your Honor.

16 THE COURT: She can answer that question.

17 THE WITNESS: I don't know how else to answer it
18 except --

19 BY MR. WRIGHT:

20 Q. It's a yes or a no.

21 MR. COHEN: Objection, Your Honor.

22 THE COURT: Ma'am, did you or did you not --

23 MR. WRIGHT: Your Honor, I'll withdraw the
24 question.

25 MR. COHEN: Court's indulgence, Your Honor.

REDIRECT EXAMINATION

1
2 BY MR. COHEN:

3 Q. A couple of questions, Ms. Washington. Do you
4 remember Mr. Wright's question about your husband having his
5 gun on him? Do you remember those sets of questions?

6 A. Yes.

7 Q. Is it unusual for Mr. Washington to have his gun on
8 him when he's around the house?

9 A. No, it's not unusual.

10 Q. Mr. Wright showed you a statement that you made to
11 Mr. Walls. I think it was Defense Exhibit -- I'm sorry. It
12 was State's Exhibit 115. Do you remember him showing you
13 that document?

14 A. Yes.

15 Q. Can you look at the last page of that document, the
16 second to the last page, and tell the ladies and gentlemen
17 how long that document is?

18 A. Thirty-five pages.

19 Q. Do you remember everything you said to Lieutenant
20 Walls in that 35-page document?

21 A. No.

22 Q. Thank you. You described the noise you heard as a
23 pop, pop, pop. Do you remember that description you gave?

24 A. Yes.

25 Q. Were those pops in rapid succession?

1 A. Yes. Like pop, pop, pop, pop, like that.

2 Q. At the time you made the 911 call, Ms. Washington,
3 did you know who was shot?

4 A. No, I didn't.

5 Q. And when you were asked who was shot, isn't it true
6 that you said it was two people, and then you said I don't
7 know?

8 A. Yeah. Because she asked me something else first.
9 Like something -- I don't remember what she asked now, but it
10 was something, and I guess I was answering two questions at
11 once.

12 Q. So in terms of whether you knew who was shot at the
13 time the 911 dispatcher answered, your answer was I don't
14 know, correct?

15 A. I don't know, yes.

16 MR. COHEN: Thank you, Mrs. Washington.

17 MR. WRIGHT: Your Honor, may I approach?

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

20 MR. WRIGHT: In order to recross, the State would
21 like to play a portion of the 911 tape. It's the first --
22 about 12 seconds or so.

23 THE COURT: What are you playing?

24 MR. WRIGHT: The part where she says two people
25 were shot.

1 THE COURT: How are you going to phrase your
2 question?

3 MR. MOOMAU: Your Honor, she's heard the 911
4 recording, and she recognizes that it's an accurate
5 reproduction of what she said then.

6 MR. COHEN: We would object to it, Your Honor.
7 He's already asked her on cross.

8 THE COURT: And you brought it up again --

9 MR. WRIGHT: I didn't hear what you said. I'm
10 sorry. Go ahead.

11 MR. COHEN: I said I object to the fact he's
12 already crossed her on this issue.

13 THE COURT: Well, and you made it a point to go
14 back in, on redirect, and ask her if that is not, in fact,
15 how she did it. She explained that she was answering two
16 questions at once. So they're going to have the ability to
17 play it.

18 MR. WRIGHT: Thank you, Your Honor.

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

21 **REXCROSS EXAMINATION**

22 BY MR. WRIGHT:

23 Q. Ms. Washington, did you listen to the 911 tape
24 portions that the defense played?

25 A. Did I listen to it?

1 Q. Yes.

2 A. Yes.

3 Q. And you could recognize your voice on the tape
4 itself?

5 A. Yes.

6 (Audiotape played.)

7 MR. WRIGHT: Thank you. Nothing further, Your
8 Honor.

9 **FURTHER REDIRECT EXAMINATION**

10 BY MR. COHEN:

11 Q. Ms. Washington, immediately prior to you saying the
12 two words "two people," did you say, "I think someone has
13 been shot. They were beating him upstairs in my house"?

14 A. Yes. And then she said who was. And then she said
15 who was shot. And I said two people; I don't know.

16 Q. In response to which portion of the question?

17 A. She said who was, and my response to that was two
18 people, and then she said who was shot, and then I said I
19 don't know.

20 MR. COHEN: Nothing further. Thank you,
21 Mrs. Washington.

22 MR. WRIGHT: Nothing from the State, Your Honor.

23 THE COURT: Thank you, ma'am.

24 MR. COHEN: Your Honor, may we approach on a
25 scheduling matter?

1 THE COURT: Certainly.

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

4 MR. COHEN: I guess we cut our list shorter over
5 the lunch break. At this point we have Jonathan Arden left
6 and, as I told the Court, he is not going to be available
7 until the morning.

8 THE COURT: Who is Mr. Harden?

9 MR. COHEN: He's the expert.

10 THE COURT: Okay. Do you have any other witnesses
11 you're going to call tomorrow, in addition to Mr. Harden?

12 MR. COHEN: Court's indulgence. I don't think so.
13 Your Honor, there's a slim chance that we may call an officer
14 who collected some evidence. It would be no more than five
15 to ten minutes. He's supposed to be here, per the State's
16 subpoena, at nine o'clock in the morning.

17 MR. MOOMAU: Who is that?

18 MR. COHEN: Webb.

19 MR. MOOMAU: Oh, you all might call him tomorrow?

20 MR. COHEN: Yes.

21 THE COURT: What do you want me to tell the jury?
22 Administrative matters or something?

23 MR. COHEN: That would be great.

24 THE COURT: And we'll bring them back the same
25 time, 8:30, and be ready for nine. Is that agreeable to

1 everybody?

2 MR. WRIGHT: That's fine.

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

5 THE COURT: Ladies and gentlemen, we have more
6 administrative matters to take care of. So instead of making
7 you wait for us to complete those matters, we're going to
8 excuse you for the day.

9 I'm going to ask you again to return tomorrow at
10 8:30 in the morning, to the main jurors lounge. Sheila will
11 bring you back, as she did this morning and every morning, to
12 the jury deliberation room here at nine.

13 I need, again, to advise you that you're not
14 permitted to speak to anyone about what you have learned
15 through the course of this trial. You are not even able to
16 speak amongst yourselves about any aspects of this trial.

17 Please do not put yourself in a position to hear,
18 see or read any news media accounts that may develop this
19 evening or tomorrow regarding this case.

20 Again, you're not entitled to conduct any of your
21 own independent investigation by going to the Accokeek
22 address or by, in any manner, trying to check, in any
23 fashion, on any of the issues that may have come up during
24 the course of this trial.

25 We thank you very much for your attention thus far.

1 We know that this certainly isn't the easiest thing to do.
2 You are all being pulled away from work and your families,
3 and we appreciate it very much. With those admonitions, we
4 will see you again tomorrow morning. Thank you.

5 (The jury retired at 3:25 p.m.)

6 THE COURT: You want to approach the bench one last
7 time? I say one last time for today.

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

10 THE COURT: Now, tomorrow, I take it the issue is
11 going to pop up that the State is raising about the form of
12 the testimony of the expert, assuming that the expert is
13 qualified, correct?

14 MR. MOOMAU: Well, not -- I mean, I agree that he
15 can testify to some things. I mean, he is an expert in
16 forensic pathology. My objection is how broad that goes.

17 THE COURT: Then we'll play it question by
18 question; is that how you --

19 MR. MOOMAU: Or maybe have some testimony outside
20 the presence of the jury.

21 MR. COHEN: I don't think he's going to have a
22 problem being qualified in all of the areas that we are going
23 to be asking him questions about. At that point Mr. Moomau
24 can do a voir dire. I'll just let the Court know that my
25 understanding is he's testified for the State before in the

1 same areas that he's going to testify to tomorrow.

2 THE COURT: My question, I guess, again assuming
3 that he is qualified in the areas that you anticipate him or
4 her to testify -- I can't remember the name -- I'm sure
5 that's going to be concerning a review of physical evidence
6 that has taken place during the trial, correct?

7 MR. COHEN: Correct.

8 THE COURT: And I'm assuming that he or she is
9 going to be asked questions about whether or not that
10 evidence would be consistent with or not consistent with
11 distance, range of gunshot fired, etc.?

12 MR. COHEN: Yes.

13 THE COURT: But you do not intend to ask any
14 questions about consistent with one account or the other
15 account for any of the witnesses, correct?

16 MR. COHEN: No, not in that manner. I will be
17 asking --

18 THE COURT: In what manner? How would you propose
19 to do it?

20 MR. COHEN: Strike that. I don't intend to do
21 that. What I do intend to do is ask him hypothetical
22 questions about distances and things of that nature that have
23 been --

24 THE COURT: Well, okay.

25 MR. COHEN: My understanding is it's completely

1 appropriate.

2 THE COURT: Hypothetical questions based on
3 appropriate predicate and assume certain things, my belief is
4 it is appropriate. You might want to look at that over
5 night.

6 MR. MOOMAU: Don't worry. We'll be ready.

7 THE COURT: Okay.

8 MR. MOOMAU: What about instructions?

9 THE COURT: I'm assuming that at some point
10 tomorrow you may rest?

11 MR. COHEN: Yes, Your Honor, that's a good
12 assumption. We will be.

13 THE COURT: Usually one thing that -- we have them
14 in the computer already. So it would be a question of
15 comparing them off, if you both have asked for a number of
16 similar instructions.

17 So what I would propose to do is, assuming that
18 everything goes as it is, that you both anticipate, that
19 perhaps, either during a break or what have you, we can go
20 over them in chambers. Again, not on the record, and then
21 put everything on the record you want, to compare those to
22 what you can agree to and those that you object. That gives
23 me a few moments to review law, if I have to.

24 And then we'll come in and do it all again on the
25 record, so that any exceptions can be taken by either side or

1 what have you. But I've generally found that, on many
2 occasions, there may be some agreement about the instructions
3 and, on some slight occasions, there may not be.

4 MR. STARR: There will certainly be some agreement.
5 Reasonable doubt.

6 One thing that we didn't ask to come up, and I just
7 want the Court aware. I'm sure there's going to be a motion
8 for judgment of acquittal that we're going to want to
9 discuss --

10 THE COURT: Absolutely.

11 MR. STARR: -- and also the issue of the verdict
12 form and how the Court finds the structure.

13 THE COURT: Well, I was going to see if there is
14 some way that both of you could agree to a verdict form and
15 the way it's depicted. If not, I'll do it. But, once again,
16 it's an interesting aspect.

17 What I've seen done in that area is just a list of
18 the charges, presuming that all of them remain or some of
19 them remain, and just a term that would correspond to the
20 setting itself.

21 In this one, it's a little bit -- there's a number
22 of accounts with regard to the specific kind of offense; the
23 same offense, different methodologies. So you may want to
24 think about that when you're both -- whatever line or word
25 you may want to have should comport with what the

1 instructions say, and that will just give them some idea. So
2 you'll have some -- you both may have some work to do.

3 That's why I'm saying the reason we put everything
4 in the computer is we don't want to hold the jury up unduly
5 while we hash it out for hours. So if you have any other
6 suggestions of how you would like to proceed on that issue --

7 MR. MOOMAU: You're talking about the verdict sheet
8 or the jury instructions?

9 THE COURT: Both. Do you want to retire to my
10 chambers to hash it out now, or do you want to do it sometime
11 tomorrow? It doesn't matter. The jury is going to be here
12 all day tomorrow no matter what we do.

13 MR. MOOMAU: It would be nice to get it out of way.

14 THE COURT: It would probably be better for
15 everyone that they don't wait for any extended period of
16 time.

17 MR. MOOMAU: We can go to your chambers now.

18 THE COURT: Do you want to do that or do you
19 want --

20 MR. COHEN: We don't mind going to your chambers,
21 Your Honor, but we do have some hours to put in this evening.
22 And we think we're going to get done early tomorrow.

23 THE COURT: Okay. We'll just do it tomorrow. I
24 can't imagine it would take longer than an hour. Then
25 tomorrow, if you don't mind, when we get to that point, if I

1 were to tell the jury, ladies and gentlemen, we're going to
2 work up some instructions for you. So at least they know
3 what it is, without saying anything more, so they know what
4 the wait is. I don't want to tell them administrative again.
5 Do you agree with that or not?

6 MR. COHEN: We don't oppose that.

7 MR. STARR: That's fine. Does the Court give the
8 jury instructions before or after the closings arguments.

9 THE COURT: We give them before. At the federal
10 level they give them after. The difference is between the
11 feds and the State. The feds, they give it after. The State
12 gives it before.

13 MR. MOOMAU: As far as any State rebuttal, based on
14 the witnesses they say they're going to call, I am going to
15 have Dr. Locke in the courtroom when their expert is
16 testifying.

17 MR. COHEN: Just for the record, Your Honor, he
18 wrote a motion to the Court requesting that Dr. Arden not be
19 allowed to sit in on testimony. For the record.

20 MR. MOOMAU: It didn't say all the testimony. It
21 was the testimony as it was proposed.

22 THE COURT: I didn't make any ruling, so.

23 MR. MOOMAU: Well, are you going to tell me that
24 your expert hasn't been reading the transcripts of our
25 witnesses?

1 THE COURT: I was not asked to rule on that and
2 made no ruling on that, for the record.

3 MR. MOOMAU: But I am going to ask for permission.
4 If they want to make a motion to exclude tomorrow, they can
5 do that, but he will be here as a potential rebuttal witness.
6 It might just be to talk to me after direct. So maybe I can
7 have a few minutes to prepare the cross.

8 MR. STARR: Your Honor, it was brought to our
9 attention over the lunch break by a police officer -- I think
10 he's a detective. I spoke to him in the hallway. His name
11 is -- I think it's Edward Robertson. That he was sitting
12 near Mr. King while Mr. Washington was testifying and that --
13 I'm going to do my best, but please don't use my statement to
14 impeach Mr. Robertson later, because this is a rough summary
15 of what he said to me. Something along the lines of that
16 when there was a discussion -- or when Mr. Washington
17 testified, that it was consistent with the police procedure
18 for his gun to be kept on him with the safety off; that the
19 witness, Mr. Robertson, said something under his breath to
20 himself, like that's right; and then an exchange ensued,
21 based on Kevin King turning around and saying something to
22 him, like -- forgive my language -- shut the fuck up or who
23 the fuck are you or something like that, and there was some
24 other expletive involved.

25 This is what he told us, Your Honor. I don't know

1 if I'm recalling it one hundred percent accurately, but this
2 has come up.

3 THE COURT: Well, I certainly can't get Mr. King
4 out of this courtroom because, again, he is not a witness or
5 a participant in this case, but I would urge the state's
6 attorney to at least speak to Mr. King that if he is going to
7 be in here, to comport himself properly and for him not to
8 say anything to anyone that may relate to this or any other
9 matter that is going to be before the Court again, and I know
10 that you may --

11 MR. WRIGHT: We would never doubt Mr. Starr's
12 credibility; however, I guess we'll look into that and see
13 exactly -- if anything transpired, we'll look into it and we
14 will talk to Mr. King.

15 MR. MOOMAU: We'll talk to him.

16 MR. WRIGHT: I'm not sure if we need to bring it to
17 your attention, but we will speak to Mr. King.

18 MR. STARR: I just wanted to put it on the record
19 as it was happening.

20 THE COURT: I know why the defense is bringing it
21 to my attention. They have to bring it to my attention.
22 Thank you.

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

25 THE COURT: I'll see everyone tomorrow. We are

1 recessed for the day.

2 (The trial was recessed at 3:40 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 January 19, 2008, before the Honorable Michael P. Whalen, Associate Judge.

I further certify that the page numbers 1 through 208 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 19th day of June, 2008.

Cindy S. Davis, RPR

Official Court Reporter