

1 had several matters in another Court earlier. That didn't  
2 hold us up. But after we got through that, and I feel I must  
3 tell you why you have been cooped up in your jury room.

4 There were specific allegations made concerning one  
5 of the jurors possibly talking concerning facts that have  
6 developed about this case in violation of your oath. This  
7 matter immediately had to be investigated because as you  
8 know this is a very important case. It is very important  
9 for you not to discuss this case with anyone or any aspect  
10 of it. An investigation has been made this morning. The  
11 person making the allegation has been talked to by the Court  
12 and the Attorneys involved. Needless to say the person was  
13 not in the courtroom so they had to be located and be  
14 brought into the courtroom and questioned under oath.

15 This Court is well satisfied that the incident did  
16 not happen and that we can proceed at this time.

17 Call your next witness.

18 MR. WISEMAN: We would call Richard Warren.

19 THE BAILIFF: The witness desires that  
20 photographs not be taken.

21 RICHARD WARREN

22 Called as a witness for the State of Ohio, being  
23 first duly sworn in according to law by the Bailiff, was  
24 examined and testified as follows:  
25

DIRECT-EXAMINATION

BY - MR. WISEMAN:

Q Please state your name.

A Richard Warren.

MR. WISEMAN: Your Honor, I would request we not have the disclosure of this witnesses address.

THE COURT: That request is granted.

Q (Mr. Wiseman) Did you once live in Bucyrus?

A Yes, I did.

Q Where did you live in Bucyrus?

A 1712(B) Marion Road.

Q And that is known as Bucyrus Estates?

A Yes.

Q Here in Crawford County, Ohio?

A Yes.

Q How long did you live there?

A Approximately three weeks.

Q Three weeks -- were you living there on or about February 13, 1994?

A Yes, I was.

Q Were you at that residence on February 13, 1994?

A Yes, I was.

Q How long were you there on that date?

A All day.

Q Whose residence was that?

- 1 A It was Marichell Chatman's.
- 2 Q And she had the lease?
- 3 A Yes.
- 4 Q How long had you lived there at Marichell's?
- 5 A About three weeks.
- 6 Q Where did you meet Marichell?
- 7 A I met her at the Mad Bull.
- 8 Q In what City?
- 9 A Bucyrus.
- 10 Q How-- Give us the time frame when you met her in  
11 relation to February 13, 1994.
- 12 A Approximately four weeks, four, five weeks.
- 13 Q Who else lived at 1712(B) Bucyrus Estates?
- 14 A Her daughter, Marchae.
- 15 Q Do you know any of the neighbors there?
- 16 A Kathy, that's the one that lived at 1712(A).
- 17 Q Thank you.
- 18 I would like to direct your attention to  
19 February 13, 1994, the evening hours slightly before  
20 9:00 O'clock. And if you would, who was present in the  
21 apartment at 1712(B)?
- 22 A Myself, Marichell, Marchae and two of her cousin's  
23 children.
- 24 Q Two children?
- 25 A Two children.

1 Q Do you know whose they were?

2 A I know they were her cousin's. I don't know her  
3 name.

4 Q How were the children related, if at all, to  
5 Marchae?

6 A They were their aunt's children to Marchae. I guess  
7 that would make them cousins.

8 Q Now, at about 9:00 O'clock, did somebody else come  
9 to the apartment?

10 A Yes.

11 Q Who was that?

12 A Linda Chatman.

13 Q Who is Linda Chatman?

14 A Marichell's aunt.

15 Q All right. And do you recall why she came?

16 A She came to pick up the children.

17 Q All right, when you say the children is that the  
18 two -- the niece and nephew?

19 A Yes.

20 Q Shortly after she arrived, and this would have been  
21 about what time that she arrived approximately?

22 A About 8:45.

23 Q Did somebody arrive after that?

24 A Yes, sir.

25 Q And tell us about that.



1       A       I was on the couch watching T.V. and I noticed a guy  
2 outside the door, but he didn't knock and he was walking  
3 away from the door. So I got up and opened the door to see  
4 who it was. And when I opened the door the gentleman turned  
5 around and asked if Linda was there. And I said yes and I  
6 turned around to tell Linda somebody was there to see her.

7       Q       Do you see the person that came to your door that  
8 night, in the courtroom?

9       A       Yes, sir, I do.

10      Q       Would you point him out and identify him.

11      A       That's him over there, sir. (Indicating)

12               MR. WISEMAN: Your Honor, may the record  
13 reflect the witness identified the defendant?

14               THE COURT: It shall.

15               MR. WISEMAN: Thank you, Your Honor.

16      Q       (Mr. Wiseman) What happened then?

17      A       He had asked for Linda and I turned around and told  
18 Linda somebody was there to see her, and she came to the  
19 door. And he said, "Linda, can I talk to you for a minute."

20               She said, "Yes."

21               MR. BANKS: Objection to what she said, Your  
22 Honor.

23               MR. WISEMAN: I think it is clearly  
24 admissible under 803.1.

25               THE COURT: I will overrule the objection.

1 MR. WISEMAN: Thank you, sir.

2 MR. BANKS: Your Honor, we are going to have  
3 a continuing objection with regard to anything anyone said  
4 and I'm sure it will be the same ruling. Just so I don't  
5 have to keep objecting, we would like it to be continual.

6 THE COURT: Fine, thank you.

7 MR. WISEMAN: I will state, in light of  
8 that, that the State does rely on State vs. Wages W-A-G-E-S,  
9 cite, 87 OH App 3d, 780, 623 Northeast Section, regarding  
10 this rule.

11 THE COURT: Fine.

12 Q (Mr. Wiseman) Let's back up a bit. You told Linda  
13 somebody was there to see her?

14 A Yes.

15 Q Then what happened?

16 A Then she came -- her and Marichell were in the  
17 kitchen area and she came from there to the door.

18 Q And what did she do?

19 A She just stood there and the guy said, "Can I talk  
20 to you for a minute."

21 And she said, "Yes," and went outside with him.

22 Q So Linda is outside with the defendant?

23 A Yes.

24 Q And then what happened?

25 A Well, I was standing at the door and by that time

1 Marichell was standing next to me and I asked her who this  
2 guy was and she told me his name was Kevin.

3 Q And did she mention the last name?

4 A She mentioned the last name. I didn't recall it.

5 Q What else did she say?

6 A She mentioned his name was Kevin and said his last  
7 name and that he was involved in a big drug bust. But she  
8 didn't say when or where.

9 Q What did you do after that?

10 A I went and sat back down on the couch and watched  
11 T.V.

12 Q What is the next thing that happened?

13 A The next thing that happened is that they both came  
14 back into the apartment.

15 Q And by both, you mean Linda and Kevin -- Linda and  
16 the Defendant?

17 A Yes.

18 Q Then what happened?

19 A He stood there for a minute and asked Marichell for  
20 a glass of water and she got him a glass of water.

21 Q As he was drinking it was he making conversation?

22 A He said to me that it was cold outside.

23 And I said, "Yeah."

24 And then he asked me who was winning the basketball  
25 game.

1 I said, "It's not over yet but I think the East is  
2 winning."

3 Q Was he carrying anything? Could you tell if he was  
4 carrying anything?

5 A A green garbage bag.

6 Q What was the interior of the apartment like? Was it  
7 dark, lit, what?

8 A It was well lit because the children were getting  
9 ready to leave.

10 Q Can you estimate how long you talked to the  
11 defendant there in the apartment?

12 A I only responded to the questions and stuff that he  
13 made. I didn't actually have a conversation with him.

14 Q Okay. I am going to direct your attention to what's  
15 been marked as State's Exhibit 21 for identification. It  
16 is, obviously, a drawing. Do you know what that depicts?

17 A Yes.

18 Q What?

19 A The inside of the apartment.

20 Q 1712B?

21 A Yes.

22 Q All right. Would you--

23 MR. WISEMAN: I guess with the Court's  
24 permission, may he leave the chair?

25 THE COURT: Sure.

1 Q (Mr. Wiseman) Would you please then come up here and  
2 speak up since you are away from the microphone. Direct  
3 your answers to the questions to the jury so they can make  
4 sure that they understand you.

5 A Okay.

6 Q At the point in time we have been discussing--  
7 Would you stand aside so the jury can see. Show us the  
8 relative positions of the people in the apartment at the  
9 time of the conversation while the defendant was drinking  
10 the water and you were watching the game and talking to him.

11 A I was sitting on this end of the couch and he was  
12 standing about there. And Linda and Marichelli were somewhere  
13 around in that area. And I have no idea where the children  
14 were playing.

15 Q Okay. Go ahead and take your seat.

16 So you are within how many feet-- Can you estimate  
17 how far away from the defendant you were?

18 A That was approximately seven, eight feet.

19 Q What happened at that point in time?

20 A He reached into the garbage bag and pulled out a  
21 weapon, a gun.

22 Q What did it look like to you?

23 A To me it looked like a Tech nine.

24 Q What is that?

25 A A nine millimeter handgun.

1 Q How are you familiar with such a gun?

2 A I use to work at a pawn shop. We sold guns. And I  
3 have frequently handled the weapons and described them to  
4 the customers.

5 Q After he pulled this weapon, did he say anything?

6 A Well, he cocked it back to load the cartridge and  
7 pointed it at me and told me to come over there.

8 Q Over where?

9 A Over to where he was standing.

10 Q What else did he say?

11 A At first when he pulled it out and pointed it at me,  
12 I just sat there because I didn't know what to do. I was  
13 pretty scared. Then he said, "I ain't bullshitting, get  
14 over here."

15 And at that time I came over there and he made us --  
16 "Get on the floor," he goes.

17 Q Who said that to you?

18 A The defendant.

19 Q So what did you do after he said that to you?

20 A I went over and laid down.

21 Q And what did the rest of the occupants do?

22 A They laid down as well.

23 Q What would have been-- Can you name them?

24 A Yes, Marichell, Linda, Marchea, and the other two  
25 children.

1 MR. WISEMAN: I apologize to Mr. Banks. I  
2 keep putting this in his view. I don't know any other way  
3 to do it Judge.

4 Q (Mr. Wiseman) Would you please come up here and show  
5 us where, after the statement was made to get on the ground,  
6 where the occupants of the apartment were in relation to the  
7 defendant.

8 A I was here, laying on the ground here. Marichell  
9 was here with her head this way at this end. And Linda was  
10 leaning up against the wall under the window.

11 Q How about the children if you recall?

12 A I don't recall where they were at.

13 Q Were they in the section -- in the room you were in?

14 A They were, as far as I know, they were in the living  
15 room area. I was right here. I couldn't see behind me and  
16 I couldn't see anything past this chair.

17 Q Okay thank you. You may take your seat.

18 After everyone was ordered to the floor then what  
19 happened?

20 A Then Marichell was saying, you know, "What are you  
21 doing? Why are you doing this. We didn't have anything..."  
22 She used his name. She said, "You know, Kevin, we didn't do  
23 anything."

24 He told her, "Don't say my name. Don't say my name."

25 And then she said, "Well, you don't hurt us -- you

1       ain't going to hurt us while the children are here. I don't  
2       want anything to happen to those children."

3               And then he said, "What the fuck would I do that  
4       for."

5       Q       Is that a quote?

6       A       That is a quote. Then he put the gun to her head  
7       and told her to shut up. There was just more conversation  
8       that went on and he said, "Well, you should have thought  
9       about this before your brother started ratting on people."

10      Q       Then what happened?

11      A       Then she said, "Well, my brother didn't rat on  
12      anybody and even if he did we didn't have anything to do  
13      with it."

14              And then he put the gun to her head and began --  
15      that's when it went off.

16      Q       Did you see it?

17      A       I didn't see it. I seen him with the gun to her  
18      head but I didn't see him discharge the weapon.

19      Q       How do you know it went off?

20      A       I heard it.

21      Q       Then what happened?

22      A       Then, after that is when I got shot in my jaw right  
23      here. And after that I turned my head away from what was  
24      going on because when he shot me my head turned that way and  
25      I didn't see anything after that but I heard the gun going



1 off maybe ten, twelve more times. Then I got shot two more  
2 times in my back. And after that I heard the door close and  
3 I looked and he was gone so that's when I got up and ran out  
4 of the apartment yelling to try to get help and running  
5 straight over to Ike's

6 Q What kind of condition were you in at that point?

7 A Physically?

8 Q Physically.

9 A I was in pain but it didn't really bother me. I  
10 went to get some help.

11 Q All right. So you left the apartment and went  
12 where?

13 A Across the field to Ike's Restaurant.

14 Q Did anything happen to you between the apartment and  
15 Ike's Restaurant?

16 A Yes, I was running, I heard the weapon firing four  
17 or five more times and then I got struck in my butt.

18 Q And what happened then?

19 A When I got hit? I fell on the ground.

20 Q What happened after you fell on the ground?

21 A I got back up and continued running over to Ike's.

22 Q What happened at Ike's?

23 A When I got to Ike's, I went to the side door. There  
24 was glass on the window and I banged on the door and a guy  
25 came around the corner and he seen me. When he seen me he

1 ran to the front of the restaurant and went in and told them  
2 to call the police that I had been shot.

3 Q Now, let's go back a little bit. You said Linda  
4 Chatman was under the window?

5 A Um hum.

6 Q Was she facing down on the floor?

7 A No, she was kind of like leaning to the side smoking  
8 a cigarette, like nonchalant, like nothing was happening.

9 Q Now would you tell us how many -- what kind of  
10 injuries you sustained as a result of this incident?

11 A I received a broken jaw. I had two gunshot wounds  
12 to the back and one in my butt and came out the front and it  
13 broke the main artery in my leg which I received surgery  
14 for.

15 Q How many surgeries have you had Richard?

16 A Four.

17 Q Are you contemplating anymore? Are you scheduled  
18 for anymore?

19 A No.

20 Q Have you ever seen the defendant before that night?

21 A No, I hadn't.

22 Q Richard I am going to show you a photograph that's  
23 been previously marked as State's Exhibit 20 for  
24 identification, and ask you to take a look at that. Can you  
25 identify what it depicts?

1 A Yes.

2 Q What are these buildings?

3 A These buildings here?

4 Q Yes.

5 A That is the apartments--

6 Q Are you able--

7 A --and the restaurant and stuff.

8 Q By apartments, you mean the ones we are talking

9 about?

10 A Bucyrus Estates.

11 Q Are you able to locate in this picture and identify

12 the apartment you were living in?

13 A Yes.

14 Q Could you step up here and please, with the use of

15 this pointer, identify for the jury the apartment you lived

16 in at the time this happened?

17 A Right about there.

18 Q Can you describe the path you took when you fled the

19 apartment?

20 A I like, ran right across like that.

21 Q Can you estimate if you can, what point in that

22 flight you were hit with the fourth shot?

23 A About here.

24 Q Okay, thank you very much. You can take your seat.

25 Did you own a vehicle at the time?

1 A Yes.

2 Q What kind of a vehicle?

3 A An '84 Olds Cutlass Sierra.

4 Q Where was it the night of the shooting?

5 A In Good Year.

6 Q Why was it there?

7 A Cause it didn't work. The engine was shot and I was  
8 attempting to get it repaired.

9 Q Was it driveable?

10 A No.

11 Q Thank you. You indicated when the defendant came to  
12 the apartment he had a trash bag. Do you know what color it  
13 was?

14 A Green.

15 Q You indicated that he drank a glass of water?

16 A Yes.

17 Q Do you know what kind of glass he drank out of?

18 A It was glass, it was made of glass.

19 Q Do you know what happened to that glass when he was  
20 done with it?

21 A No, I didn't see. Marichell put it somewhere behind  
22 the wall where I was sitting on the couch and so somewhere  
23 in the kitchen and dining room area.

24 MR. WISEMAN: One minute. Thank you  
25 Richard. I have no further questions.

1 THE COURT: You may inquire.

2 CROSS-EXAMINATION

3 BY - MR. BANKS:

4 Q Mr. Warren, do you remember when you ran over to  
5 Ike's Restaurant that night? I am trying to do a  
6 chronological sequence of events. Do you remember telling  
7 the people inside at Ike's that you didn't know who shot  
8 you?

9 A Yes.

10 (Mr. Banks was writing on the blackboard.)

11 Q And do you remember telling the people at Ike's that  
12 the man that shot you was wearing a mask, a ski mask?

13 A No.

14 Q Do you remember that?

15 A I didn't say that.

16 A Okay. Did you tell them it was a masked man?

17 A No, I didn't.

18 Q Prior -- and I am focusing on the time frame right  
19 there. When he came to the apartment can you tell us what  
20 he was wearing?

21 A He had on a coat and what I believed to be a  
22 turtleneck shirt pulled up over the bottom part of his face.

23 Q Did he have a hat on?

24 A No.

25 Q Did he have gloves on?

1 A I believe so.

2 Q And how many times, would you suggest up until the  
3 time you left the apartment, did Marichell mention his name?

4 A She told me his name once and then probably two or  
5 three more times after that.

6 Q She mentioned the name Kevin?

7 A Yes.

8 Q A total of how many times?

9 A Three to four.

10 Q As a matter of fact, you said that she called him  
11 Kevin when you asked her who that was and he went outside  
12 with Linda?

13 A Right.

14 Q And then she called him Kevin when she asked why he  
15 was doing this to us and he said not to say his name. And  
16 you are saying there were possibly two other times?

17 A Well, while she was saying, you know, "Why are you  
18 doing this," and she kept using his name in that  
19 conversation there.

20 Q Okay, so three or four times she mentioned the name  
21 Kevin?

22 A Yes.

23 Q And when you got over to the restaurant and they  
24 asked who shot you, and you had heard the name Kevin three  
25 or four times within the last ten minutes?

1 A Yes.

2 Q And you told everybody you didn't know who?

3 A I didn't know the man.

4 Q Did you tell them the name Kevin or use the name  
5 Kevin?

6 A I don't remember.

7 Q Well, you gave the police a report; didn't you?

8 A Yes.

9 Q And did you sign that statement?

10 A Yes, I did.

11 MR. BANKS: Could I please have a copy of  
12 that signed statement.

13 MR. WISEMAN: You have one.

14 MR. BANKS: I don't have the signed one.

15 MR. WISEMAN: The only one we have is the  
16 video transcript, Jim.

17 MR. BANKS: All right.

18 Q (Mr. Banks) So then, after that, you were taken to  
19 the Emergency Room at Bucyrus?

20 A Yes.

21 Q And you were interviewed by a Dr. Novack? Do you  
22 remember Dr. Novack talking to you?

23 A I remember a doctor.

24 Q And the doctor asked you did you know who shot you;  
25 didn't he?

1 A Yes.

2 Q And you told him you didn't know who shot you;  
3 right?

4 A Right.

5 Q And do you remember being asked again that evening  
6 about who shot you?

7 A It was sometime while I was in the emergency room  
8 they asked did I know the name.

9 Q Who did?

10 A One of the doctors, I don't recall his name.

11 Q At Bucyrus?

12 A Yes.

13 Q And what did he ask you?

14 A He asked did I know the name of the guy.

15 Q And you told him, "I did not"?

16 A I told him I knew his name. I did not know the guy.

17 Q What did you tell him his name was?

18 A I told him Kevin.

19 Q And that was the Bucyrus Hospital?

20 A Yes.

21 Q Were there any police officers there with you?

22 A Not that I am aware of.

23 Q Now, after you got to the Grant Hospital, you talked  
24 to several detectives; didn't you?

25 A Not right after I got there.



- 1 Q Did you talk to any of the nurses?
- 2 A Yes.
- 3 Q And what did they ask you?
- 4 A Same question, if I knew the guy, if I know who it  
5 was or his name.
- 6 Q And what did you tell them?
- 7 A I told them I knew his first name.
- 8 Q And what name did you use?
- 9 A Kevin.
- 10 Q And did you tell what he was wearing?
- 11 A Yes.
- 12 Q And what did you tell them?
- 13 A He was big and black and had a turtleneck shirt --  
14 to the best of my knowledge a turtleneck shirt pulled up  
15 over half his face.
- 16 Q Do you remember telling the police that the only way  
17 you could identify this man was by his build and size?
- 18 A I told them that I thought that would be the only  
19 way I would be able to identify him.
- 20 Q If you saw his face from the nose up and you saw his  
21 head because he didn't have a hat on, why would you say you  
22 could only identify him based on his build?
- 23 A Because I wasn't sure at that time if I would be  
24 able to recognize his face.
- 25 Q As a matter of fact, you didn't know what the last

1 name was; did you?

2 A No, I didn't.

3 Q And the police called you that evening after you  
4 came out of surgery?

5 A Yes.

6 Q And what did they tell you?

7 A They asked me if I knew the name and I told them  
8 yes.

9 Q If you knew what name?

10 A The name of the guy who--

11 Q And what did you tell them?

12 A I did know the first name but I couldn't remember  
13 his last name.

14 Q And what did he say?

15 A They said, would you know it if you heard it? And I  
16 said I probably would.

17 Q And so what did they do?

18 A He asked me approximately four to five names,  
19 different last names.

20 Q Can you remember the names?

21 A I can only remember one was like Smith and one was  
22 Keith and a couple of other ones I don't remember.

23 Q Okay, so it was Smith and Keith and what did you  
24 tell him?

25 A I told him that it was Keith was the last name.

1 Q Did you tell them absolutely?

2 A Yes.

3 Q Okay. Do you remember talking to Captain Stanley?

4 A Vaguely.

5 Q Do you remember telling him you were only 75 percent  
6 sure that the last name was Keith after having that  
7 conversation with him?

8 A I don't remember telling him that.

9 Q You don't remember?

10 A No, sir.

11 Q You don't recall that?

12 A No, sir.

13 Q You do recall the conversation?

14 A Yes.

15 Q And that one of the last names was Keith?

16 A Yes, sir.

17 Q And you said also Smith?

18 A Yes, sir, I believe so.

19 Q Did he give you the last name of Thomas?

20 A I don't remember.

21 Q You don't recall.

22 Now, later on that next day, you had an interview;  
23 didn't you, on the 14th?

24 A Yes, sir.

25 Q You refreshed your notes and things before coming

1 here today?

2 A Refresh-- What do you mean by that?

3 Q Looked at your statement that you gave?

4 A Yes, I have.

5 Q And talked to the police officer, Captain Corwin?

6 A Yes.

7 Q About your statement to make sure you tell the same  
8 thing twice?

9 MR. WISEMAN: Objection Your Honor.

10 MR. BANKS: I will withdraw that.

11 THE COURT: The jury should disregard that.

12 Q (Mr. Banks) You used it to refresh your recollection  
13 about what you had told prior?

14 A They just asked me if I would like to see the  
15 statement and see if it was the same as what I said. They  
16 didn't tell me to do anything.

17 Q Where are you from Mr. Warren?

18 A From Indianapolis, Indiana.

19 Q How long have you been here in Ohio?

20 A I had been in Ohio for approximately five to six  
21 weeks.

22 Q Okay. And as a matter of fact, you didn't work  
23 anywhere?

24 A No, sir.

25 Q Had you worked from the time you got here?

1 A From the time I got to Ohio? No, sir.

2 Q Do you have any type of felony convictions?

3 A Yes, sir, I do.

4 Q Could you tell us about that please?

5 MR. WISEMAN: May we approach the Bench?

6 (The following conference was had at the Bench  
7 between Court and Counsel out of the hearing of  
8 the jury:)

9 MR. WISEMAN: I don't think he is allowed to  
10 go into the details.

11 MR. BANKS: I asked if he was convicted. If  
12 he says yes, he is stuck with it. It's in.

13 MR. WISEMAN: But I don't think you can ask  
14 him what the conviction is.

15 THE COURT: Yes, he can.

16 (The following proceedings was had in the presence  
17 of the jury:)

18 MR. WISEMAN: Note my objection for the  
19 record.

20 Q (Mr. Banks) What was the conviction for?

21 A It was a charge of receiving stolen property.

22 Q And where was that?

23 A Indiana.

24 Q Was that all you were convicted with?

25 A No, sir, I have a misdemeanor charge.

1 Q Well, I don't care about that, just your felonies.  
2 That is the only felony conviction that you have?

3 A Yes, sir.

4 Q And what year was that?

5 A I believe '89 or '90.

6 Q The first time you had any communications with the  
7 police was over the phone; is that correct?

8 A Yes.

9 Q From your room. And then the second time was around  
10 7:00 p.m. on the 14th?

11 A I'm not sure of the time.

12 Q It was in the evening?

13 A Yes.

14 Q As a matter of fact they had a video camera?

15 A Yes.

16 Q And they brought a photo lineup there; didn't they?

17 A Yes.

18 MR. BANKS: Do you have that?

19 MR. WISEMAN: May we approach the Bench.

20 (The following conference was had at the Bench  
21 between Court and Counsel out of the hearing of  
22 the jury:)

23 MR. WISEMAN: That was listed in the  
24 suppression motion.

25 MR. BANKS: Well, he picked someone out of

1 the photo lineup and I want them to see the photo lineup and  
2 how he picked him out.

3 MR. WISEMAN: I would have to research it.

4 THE COURT: Are the photos available?

5 MR. WISEMAN: Yes. But I've never done it  
6 this way.

7 MR. BANKS: Well, you see part of our  
8 defense is that the state has put these names and pictures  
9 into his mind. All he had was this photo lineup with a  
10 large black man just standing out, almost three dimensional  
11 and no others fit that description in the lineup. That's  
12 how he identified the defendant.

13 THE COURT: He has a right to go into it.

14 (The following proceedings was had in the presence  
15 of the jury:)

16 Q (Mr. Banks) Now Mr. Warren you were, that evening,  
17 handed pictures or a folder with six pictures on it; is that  
18 correct?

19 A No sir, I never was handed the photos.

20 Q You were pointed to a folder with pictures on it; is  
21 that correct?

22 A It was shown to me.

23 Q And you had already told the police that you had  
24 identified this person as rather a large black person; is  
25 that correct?

1 A Yes.

2 Q What would you say was the description that you gave  
3 to them with regard to the identity? Let's talk about the  
4 height and weight?

5 A I said approximately six to six/two, 250, 275.

6 Q Did you tell them anything about his face being  
7 round or fat or--

8 A I didn't give a description of his face.

9 Q And then you were handed a picture or were you not  
10 shown a picture of the six persons--

11 THE COURT: Pardon me, would you both  
12 approach the Bench.

13 (An off-the-record discussion was had at the Bench  
14 between Court and Counsel.)

15 Q (Mr. Banks) You were shown six photos?

16 A Yes.

17 Q Okay, now, you were shown pictures of six persons;  
18 is that correct?

19 A Yes.

20 Q And you had already identified the person as being a  
21 black person?

22 A Yes.

23 Q And what nationality are you?

24 A I am white.

25 Q And do you recall the pictures that you were shown



1 and whether they showed you big men weighing 250 or 275?

2 A I don't recall all the individuals in the pictures.

3 Q Okay. Handing you what has been marked as  
4 Defendant's Exhibit 7. Do you recall seeing that?

5 A Yes.

6 Q And do you see anyone that fits the description of a  
7 six foot or six two, 250 to 275 pounds--

8 A I can't tell from the pictures.

9 Q Okay, but you pointed out from that picture or those  
10 pictures, picture number five; didn't you?

11 A Yes, I did.

12 Q And said that was the person?

13 A Yes.

14 Q Now, you are an artist; is that correct?

15 A Yes.

16 Q So you know features and dimensions; you know about  
17 facial distinctions. And can you tell me if there is, out of  
18 those six pictures, excluding number five, if there is any  
19 other picture there that is in the same dimension, projected  
20 toward the front?

21 A Could you rephrase that question.

22 Q Well, would you agree with me that picture number  
23 five is like three dimension, just a big person right at the  
24 front and everybody else is back against the wall and looks  
25 like they are slender and smaller?

1 A They don't all look slender and small.

2 Q Do any of them look the size of number five?

3 A From the picture?

4 Q And projected in the same way?

5 A Number four could possibly be that big.

6 Q Could possibly be that big. Is that picture  
7 projected the same as number five, close up?

8 A No, sir.

9 Q So the police gave you six pictures and gave you one  
10 down at the bottom that is a big person projected to the  
11 front showing the head and shoulders--

12 MR. WISEMAN: Objection. I'm sorry but it  
13 sounds like he is stating the answer to the question there.

14 MR. BANKS: I'm sorry. Let me rephrase the  
15 question.

16 THE COURT: Fine.

17 Q (Mr. Banks) Did the police show you the pictures?

18 A Yes.

19 Q And you believed they made them up for you to make  
20 an identification of a person from that? That's what they  
21 told you?

22 A I don't know what the lineup was for. This is the  
23 one they showed me.

24 Q So that evening you picked out a photo in the photo  
25 lineup and you had already talked with a representative from

1 the police department who had given you some names and you  
2 picked the last name based on what your recollection was to  
3 what you heard and being 75 percent sure that, in fact was  
4 it. And when you, in fact saw the photo lineup, did you  
5 tell them you were absolutely sure that was the person?

6 A I told them I was 95 percent sure.

7 Q Now, Mr. Warren, you had a lengthy conversation with  
8 them; is that correct?

9 A Yes, sir.

10 Q And as a result of your conversation they  
11 transcribed what they video'd and taped that evening; is  
12 that correct?

13 A You mean they wrote it down? Yes.

14 Q There was a video camera and they made you aware of  
15 that and made you aware that there was a tape recorder  
16 there?

17 A Yes, sir.

18 Q And then they transcribed what was on that  
19 particular document?

20 A By transcribe what do you mean?

21 Q They typed it up?

22 A Yes, sir.

23 Q And in fact, if you said to them that evening that  
24 he called her name or she called his name three or four  
25 times, that would be on the video tape; wouldn't it?

1 A I didn't say that at that time. I just said she  
2 said his name. I didn't say how many times.

3 Q But during the interview, you are telling us that he  
4 told her to get over here and she said -- she called his  
5 name and, "You aren't going to hurt the kids, Kevin," and he  
6 said, "Quit calling my name." Now, wouldn't that be on your  
7 video here?

8 A Yes.

9 Q And there is the second meeting you had with them  
10 where you were -- you are already sure about the  
11 identification -- 95 percent, and 75 percent sure about the  
12 last name. Do you remember anything about the ending of the  
13 interview as to questions that you had of the police?

14 A I remember asking what was the guys name that I  
15 picked out.

16 Q Now you had already talked about Kevin and you said  
17 it was Keith, you had seen the pictures, and then after the  
18 interview you asked Captain Corwin, "Could I ask you a  
19 question, sir? What is that guy's name that I picked out?"  
20 Now, if you had heard the name, and you had heard the first  
21 and last name, and identified that, why would you ask him  
22 what's the name of the person in the photo?

23 A Because like I said, I was not a hundred percent  
24 sure.

25 Q Number 25, page number 25 of this particular

1 transcription, your exact words were: "What is that guy's  
2 name that I picked out?" So you really weren't sure who  
3 that person was that night based on the picture. Then the  
4 prior telephone conversation about names, you really didn't  
5 know; did you Mr. Warren?

6 A I wasn't sure of the picture.

7 Q And you weren't sure of the name?

8 A I was sure of the name Kevin but--

9 Q Prior to that, you had two telephone conversations  
10 and in one you told you were 75 percent sure about the last  
11 name?

12 A Yes, but I was sure the first name was Kevin.

13 Q But the other conversation the police told you that  
14 there was a Kevin involved in a drug bust the same size as  
15 this man right here; didn't they?

16 A I don't recall.

17 Q I will hand you what has been marked as Defendant's  
18 Exhibit 8. Take a moment to look at that please. Sorry I  
19 noticed it was thick. You can take all the time you want to  
20 make sure. Have you read it?

21 A I have read this before. I am going over it to make  
22 sure it looks the same.

23 Q Had you had an opportunity to review that?

24 A Yes.

25 Q And that is your statement that you gave?

1 A Yes.

2 Q Turn to page number six. Do you remember being  
3 asked, I believe it was Captain Corwin--

4 MR. WISEMAN: May we approach the Bench?

5 THE COURT: Sure.

6 (An off-the-record conference was had between  
7 Court and Counsel.)

8 Q (Mr. Banks) Look at page number six. You were asked  
9 the questions by Captain Corwin: "Can you describe him to  
10 me?"

11 A Um hum.

12 Q And your description of him was just, "A black guy.  
13 A fat black guy."

14 And then you were asked, "A fat black guy?"

15 And you said, "Yes."

16 And then you were asked the question: "What was he  
17 wearing?"

18 And your response was, "I don't remember."

19 Now, you told us today about things -- that you  
20 thought he was wearing gloves, no hat, he had a coat on, a  
21 turtleneck. When did you remember that?

22 A I always knew he had a coat on. I don't remember  
23 what the color was but I knew he had a coat on.

24 Q My question is, when did you recall that? You told  
25 Captain Corwin you didn't remember what he was wearing?

1 A I don't recall when I remembered it.

2 Q Turning to page number 21, you were asked by Captain  
3 Corwin, "Do you think you can recognize this guy if you saw  
4 him again?"

5 And your response was, "I'm not sure." Is that  
6 correct?

7 A Yes.

8 Q And he said, "This Kevin," Captain Corwin is  
9 speaking. And you responded, "I'd recognize him by his  
10 build, that's about it."

11 Now, if you could only recognize a person by his  
12 build, then you really didn't see his face; did you?

13 A Yes, I did see his face. I wasn't sure if I would  
14 remember it at that time.

15 Q You are an artist, you draw facial features, and why  
16 would you tell Captain Corwin that the only way you could  
17 identify him was by his build?

18 A Because I wasn't sure at the time.

19 Q And the only thing that has made you sure today,  
20 Mr. Warren, is the fact that you read the newspapers, you  
21 have watched the television, and the fact is--

22 MR. WISEMAN: Objection. I'm sorry, I  
23 didn't mean to interrupt. I withdraw the objection.

24 THE COURT: I was ready to sustain it, but--

25 MR. WISEMAN: Go ahead.

1 Q (Mr. Banks) That is the only reason that you are  
2 sure today because of the publicity that you read and seeing  
3 him on the the T.V. and not from your own independent  
4 recollection or observations, then I take it?

5 A No, sir, it is not true.

6 Q Did you remember in the hospital while you were  
7 there talking to any of the nurses?

8 A Yes. Well, when I first got there I couldn't talk  
9 to them. When I first came out of surgery.

10 Q You couldn't actually talk. So when were you able to  
11 talk?

12 A Sometime on the 14th in the evening.

13 Q Do you remember a Miss Wishman (sounds like)?

14 A I don't recall the name, sir.

15 Q Do you remember Mr. Foor, a male nurse?

16 A I remember a male nurse, I don't remember the last  
17 names, or first names for that matter.

18 Q Do you remember the male nurse taking biographical  
19 information about you -- asking you about your life?

20 A No, sir, I don't remember that.

21 Q Do you remember him asking you any questions at all?

22 A I remember speaking with him. I don't recall the  
23 conversation?

24 Q Did he have you sign any documents?

25 A No, sir, I don't believe so.



1 Q Did you write any letters to anyone or any notes?

2 A Yes, sir I did.

3 Q What did you do -- who did you write to?

4 A At first I tried to -- I couldn't talk and my hands  
5 were strapped down. So I tried to do sign language and none  
6 of the nurses knew it. When my father got there he  
7 translated my sign language to the nurses then they wrote it  
8 down on paper.

9 Q Okay, wait a minute, let's get this correct. You  
10 were using sign language because of your pain and coming out  
11 of surgery?

12 A Yes.

13 Q And Nurse Foor came up and the others and they  
14 didn't understand sign language?

15 A No one understood the sign language so it was  
16 translated by my father.

17 Q Your father translated the sign language?

18 A Yes.

19 Q And what did he translate?

20 A He translated the letters that I was signing.

21 Q The letters?

22 A That I was signing.

23 Q So you didn't write the word Kevin on a piece of  
24 paper for Nurse Foor?

25 A No, sir.

1 Q Now, during the examination Mr. Warren, if you get  
2 tired or need to take a break or some water, we can do that.  
3 I don't want you to feel uncomfortable.

4 A Okay.

5 Q During the investigation, Captain Corwin talked to  
6 you about some other issues; isn't that correct?

7 A Can you restate the question.

8 Q You mentioned that Miss Chatman told you about a  
9 large drug bust; is that correct?

10 A She didn't talk to me about it. She mentioned that  
11 he was involved in a big drug bust.

12 Q That Kevin was involved in a drug bust?

13 A Yes.

14 Q And in fact, you were talked to about a Dameon  
15 Chatman; weren't you?

16 A By who?

17 Q By any of the police officers -- do you remember  
18 that?

19 A No, sir, I mentioned Dameon Chatman's name on my  
20 own.

21 Q Why did you mention his name?

22 A Because he was one of her brothers.

23 Q Okay and you also felt that he was involved in this  
24 drug arena and possibly the reason that the shooting came  
25 about. Didn't you tell them that?

1 A No, sir, I didn't say he was involved in it. I said  
2 he could have possibly been the one because he was always  
3 out around that area and I very seldom see her other  
4 brother.

5 Q And they had mentioned a name to you after that, a  
6 Rudell Chatman; isn't that correct?

7 A No, sir, they asked me and I said the name. They  
8 asked me did she have any other brothers. And I said yes,  
9 that she had one named Rudell.

10 Q They also asked you about being attacked earlier or  
11 prior to the incident, by seven or eight black males that  
12 arrived and got out of a van; is that correct?

13 A At the time of this statement?

14 Q Yes.

15 A No, they didn't.

16 Q After that statement?

17 A Yes.

18 Q And what did they ask you about that?

19 A They asked if I had any knowledge of that incident.  
20 And I told them that I didn't.

21 Q You were not ever threatened while living at the  
22 Chatman residence by anyone?

23 A No, sir.

24 Q They asked about a Caprice Smith and a Jonathon  
25 Moore?

1 A Yes.

2 Q And one of your friends from Mansfield had come to  
3 see about it because he was there when the argument happened  
4 between Caprice Smith and yourself; is that correct?

5 A No, sir. Caprice and myself never got into an  
6 argument.

7 Q Do you know a Mr. Lang out of Mansfield -- you  
8 stayed with Jerry?

9 A Yes.

10 Q And if he said he was concerned about that because  
11 of that argument, he would be misstating that?

12 A I never actually got into a argument with Mr. Smith.

13 Q Now, when you talked to the officer on the telephone  
14 prior to your recorded interview, did they give you the name  
15 Kevin or did you give them the name Kevin, excuse me?

16 A I gave them the name Kevin.

17 Q Have you seen a copy of the transcript?

18 A No, sir, I haven't.

19 Q I am handing you what has been marked as Defendant's  
20 Exhibit Number 4, would you take a minute and review that  
21 please. You have had an opportunity to review that?

22 A Yes.

23 Q Could you show me -- Does it look like or appear to  
24 be the telephone conversation that you had?

25 A I don't actually recall the conversation in detail.

1 Q So you don't recall whether you mentioned the name  
2 to them or they mentioned it to you; do you?

3 A No, sir, I do not.

4 Q Now--

5 A Not on the phone. If I said that in a phone  
6 conversation, I don't remember.

7 Q Now, I think your earlier testimony was that the  
8 person that came in your apartment asked for a drink of  
9 water?

10 A Yes.

11 Q And he drank the water through his mask or--

12 A That's what it looked like to me.

13 Q Okay, was there a mouth piece opening to the mask?

14 A That's not what I seen -- not that I seen.

15 Q And you are sure it was a turtleneck pulled up over  
16 his nose?

17 A I'm not sure it was a turtleneck, that's what it  
18 appeared to be to me.

19 Q I would like you to look back at Defendant's Exhibit  
20 Number 8, which was one of your statements. Turn to page  
21 number 9. Your response to that question by Captain Corwin  
22 was, "And he drank through the mask, or through the shirt."  
23 Now, were you unsure at that time whether it was a mask or a  
24 shirt?

25 A Could you repeat the question.

1 Q Yes. My question is, were you unsure by using the  
2 word, mask, and using the word, shirt, whether it was a mask  
3 or whether it was a shirt?

4 A I wasn't sure it was a mask or a shirt. It appeared  
5 to be a shirt, using that as a mask.

6 Q Okay. Turn to page 9, you said the kids were in the  
7 apartment?

8 A Yes.

9 Q That is correct. And you were asked whether the  
10 kids recognized or knew the person that came in the  
11 apartment; weren't you? Or didn't-- Weren't you asked that  
12 question?

13 A What page was that?

14 Q Page number 10. "Did the kids act like they knew  
15 who the person was?"

16 A They really didn't have any response to him being  
17 there.

18 Q And you in fact, told the police that?

19 A Yes.

20 THE COURT: Would this be a good stopping  
21 point for lunch?

22 MR. BANKS: Yes, Your Honor.

23 THE COURT: At this time, we will recess for  
24 lunch. Please remember the previous admonitions of the  
25 Court. Do not discuss this case or allow anybody to

1 approach you concerning it. We are adjourned until 1:15.

2 (The jury left the courtroom at 11:55 a.m. and  
3 returned at 1:25 p.m.)

4 THE COURT: You may be seated.

5 Q (Mr. Banks) Mr. Warren before we left, well strike  
6 that.

7 Let me start by asking you: When you exited  
8 Apartment 1712B, did you go to any other apartment and knock  
9 on the door?

10 A No sir, I didn't.

11 Q Now your earlier testimony you stated that you  
12 believed the person that was in your apartment had on  
13 gloves; is that right?

14 A I said I wasn't sure but I believed he did.

15 Q And do you remember telling in your interview with  
16 Captain Corwin that he asked for a drink of water, and in  
17 fact, drank a glass of water and another half a glass of  
18 water. Do you remember that?

19 A Yes.

20 Q And do you remember telling him also that the glass  
21 that he used should still be there and ought to be checked  
22 because his fingerprints should be on it?

23 A I said they could be on it.

24 Q They could be on it. So, did that refresh your  
25 recollection as to whether the person either had gloves on

1 or didn't have gloves on?

2 A No, sir.

3 Q Was it your testimony that you were with Miss  
4 Chatman approximately two or three days or two or three  
5 weeks?

6 A Two or three weeks.

7 Q And during that time that you were there, that  
8 particular day the nephew and niece were there being babysat  
9 with?

10 A Yes.

11 Q And you don't recall their names?

12 A No.

13 Q But you heard the name Kevin called and you recall  
14 that name?

15 A Yes.

16 Q Finally, again, you said you used a sign language  
17 with your father?

18 A Yes.

19 Q And it wasn't just your father; right?

20 A And I did it for the nurses first but they didn't  
21 understand it. They couldn't understand sign language and  
22 my father translated it for them.

23 Q Could you kind of demonstrate for us how you used  
24 the language?

25 A Well, I like spelled out the K-E-V-I-N. (Using his



1 fingers)

2 Q Okay. And you said your hands were strapped down at  
3 that point?

4 A Yes, like this, on the side of me.

5 Q Now, we talked about you asking Captain Corwin what  
6 the guy's name was that you picked out?

7 A Right.

8 Q And prior to that you agreed that you had already  
9 had a conversation with someone from the police department  
10 over the phone and they gave you several names of which you  
11 only remember two: Smith and Keith. And you were 75  
12 percent sure it was Keith. Now, this was all prior to your  
13 talking to Captain Corwin that evening; is that right?

14 A Yes.

15 Q Do you remember Captain Corwin responding to you  
16 that he didn't want to give you the last name because he  
17 didn't want to plant that in your mind?

18 A Yes.

19 Q But at that point you had already decided that it  
20 was Keith as the last name; is that correct?

21 A Yes.

22 MR. BANKS: I have nothing further. Thank  
23 you.

24 THE COURT: All right. You may redirect.  
25

REDIRECT-EXAMINATION

BY - MR. WISEMAN:

Q Did you ever give the name Kevin to anybody prior to talking to the police?

A Yes, I gave it to the doctor at the Bucyrus Hospital and signed it to the nurses and staff at Grant Medical Center.

MR. WISEMAN: May I approach the witness?

THE COURT: Um hum.

Q Handing you Defendant's Exhibit 7, and I will ask is there any names on that?

A No, sir.

Q Why did you identify the defendant when you were shown that?

A Because that was the face I recognized.

Q From that night in your apartment?

A Yes.

MR. WISEMAN: Thank you, no further questions.

RECROSS-EXAMINATION

BY - MR. BANKS:

MR. BANKS: May I approach?

THE COURT: Sure.

MR. BANKS: No, just the witness.

Q (Mr. Banks) Can you tell me what you read on the

1 back of that picture number 5?

2 A It's in a hole I think.

3 Q What does that say, whose name is--

4 A Kevin Keith.

5 Q So there is a name associated with that picture on  
6 the back?

7 A Yes.

8 MR. BANKS: Thank you, nothing further.

9 FURTHER DIRECT-EXAMINATION

10 BY - MR. WISEMAN:

11 Q Did you ever see the back of this before?

12 A No, sir.

13 MR. WISEMAN: No further questions.

14 THE COURT: You are excused. Thank you very  
15 much.

16 Can this witness be excused now for the rest of the  
17 trial?

18 MR. WISEMAN: I have no intention of  
19 recalling him. I'm finished.

20 MR. BANKS: Yes, subject to -- as long as we  
21 can get in touch with him.

22 THE COURT: You will have to hang around.

23 MR. WARREN: Okay.

24 THE COURT: Call your next witness.

25 MR. WISEMAN: Thank you, Your Honor. Nancy