

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

FILED
JAN 19 2000
PHIL G. CIAVASIS
STARK COUNTY OHIO
CLERK OF COURTS

STATE OF OHIO

PLAINTIFF

VS.

DAVID G. THORNE

DEFENDANT

CASE NO. 1999CR0873

JUDGE REINBOLD

JUDGMENT ENTRY

On January 6, 2000, Counsel for the Defense filed a series of motions, all of which are interrelated. The first was a motion to continue, the second to renew testing of certain evidence, which was previously withdrawn, the third motion was for release of any further exculpatory evidence, and the fourth motion was for this Court to inventory "that evidence in the possession of the Stark County Prosecutors".

As to the continuance, this Court denies the same. The Defense argues that a statement from John Marsh "indicates that there is yet another suspect in the murder of Yvonne Layne", and counsel requests time to "investigate this new information".

In analyzing the statement attributed to John Marsh, the Court notes as follows:

1. Joseph Wilkes confessed to this murder and has been sentenced to life imprisonment. He has entered into a plea agreement with the Stark County Prosecutors to testify against David Thorne.
2. The State's allegation against David Thorne is that he was a complicitor to the aggravated murder and that he committed this offense for hire.

3. The State, based upon the evidence known by this Court (through the Bill of Particulars and statements made during a series of hearings) is that David Thorne was not present during the murder and was not involved in the actual act of committing the murder.
4. John Marsh was interviewed by the Alliance Police Department, but was never and is not now a State's witness. His name is known because the Defense was given an inventory sheet of all evidence received by the State of Ohio from the Alliance Police Department.
5. The statement of John Marsh is clearly hearsay. The actual declarant is a "Doug Williams", who, at this time, is an unknown individual from an unknown location somewhere in the State of Indiana. The State has represented that they have no information as to whether or not a "Doug Williams" even exists or his present location.
6. The State did ID that the second individual, Shannon Morales, was in fact a living person, but that he was incarcerated in the St. Joseph County Jail in Indiana at the time this murder was committed. Morales has never made a statement. The State has divulged that John Marsh was released from Marion State Correctional Institute on January 7th or 8th, was placed on post release controls and will be back in the Canton area prior to the start of trial. He will, therefore, be able to be interviewed by Defense Counsel.

The Defense now asks this Court to continue this matter for "their further investigation of this information". The Court is being asked to continue this matter for

an unspecified period of time to enable the Defense to speak to an individual by the name of John Marsh, who was only a conduit of a statement given by an individual whose true identity could not be confirmed, who came from Indiana in a stolen car.

While Morales may be identifiable, his location is unknown and he has never made any statement in regards to this incident. The State of Ohio has further advised this Court and Defense counsel that Morales was in the St. Joseph County Jail in Indiana on the day this murder was committed.

Further, the theme of this statement is that "Morales" walked out of the victim's house, thereby implying that Morales committed the murder. However, the co-Defendant, Joseph Wilkes, has made a written confession, disclosed the location of certain evidence, plead as charged and received a life sentence.

It is the duty of this Court to balance these factors and to determine whether or not they justify a continuance of this matter, and if in fact the continuance is granted, what would be achieved by such continuance. The Court finds there to be insufficient credible evidence to so justify a continuance and therefore denies the same.

The Court has reviewed State v. Landrum (1989), 53 Ohio St.3d 102 and State v. Unger (1981), 67 Ohio St. 65 and has reviewed that criteria in determining whether a continuance should be granted. Based upon a review of those cases and the factors listed, the Court, in its discretion, finds the Defense has not made a legitimate argument to continue.

The renewal of the Motion for Testing of Evidence and Blood Samples is also based upon this new information. This same motion was filed earlier, and at a pre-trial, the Court ordered two items to be tested. Based upon this compromise, Counsel for

the Defense withdrew the balance of his request for testing on numerous other items. The Court had advised the Defendant that it would not have granted such testing as one, the Defendant had the information for 83 days prior to his request; two, the request was made on numerous items; three, the request was made approximately fourteen days before the commencement of trial and that based upon a "Landrum" review, his request would be denied. The above compromise was reached and the matter was resolved until the "John Marsh statement".

Upon review and for the reasons earlier stated, the Court finds that the "John Marsh statement" is not sufficient for the Court to grant this renewal and therefore denies the same.

In regards to the "renewed request for exculpatory evidence", the Court notes that the State has a continuing duty to disclose such information and that they have, in open Court, represented that they have reviewed their evidence, the evidence in the custody of the Alliance Police Department, and that they have no further responses.

Finally, the Defendant has requested that this Court inventory all the evidence now in the possession of the Prosecutor's Office for Stark County. For the reasons stated in his motion and for further reasons stated during a hearing on this matter, the Court finds that such a request is beyond the authority, power and scope of this Court and denies the same.


JUDGE RICHARD D. REINBOLD, JR.

cc: Prosecutor ✓
Jeffrey D. Haupt
George Keith

1 admonitions. I will see you at that time.

2 - - - - -

3 (Thereupon, court recessed at
4 2:58 p.m. and reconvened at
5 3:17 p.m. and the following
6 proceedings were had.)

7 - - - - -

8 THE COURT: State of Ohio.

9 MS. HARTNETT: Thank you, Your
10 Honor. The State would call Rose Mohr.

11 ROSE MOHR

12 who, after being first duly sworn,
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MS. HARTNETT:

16 Q. Good afternoon. Ms. Mohr, you can look
17 over here. I'm going to be asking you the
18 questions. State your full name and spell
19 your last name for us?

20 A. Rose M. Mohr, M-o-h-r.

21 Q. How old are you, Rose?

22 A. Twenty-three.

23 Q. Where do you live?

24 A. In Boyd.

25 Q. Who lives with you?

- 1 A. My father and my children.
- 2 Q. How many children do you have?
- 3 A. Two.
- 4 Q. How old are they?
- 5 A. Five and two.
- 6 Q. Are you nervous?
- 7 A. Yes.
- 8 Q. Just take a breath. We will go slow, all
9 right? Do you know an individual by the
10 name of Chris Campbell?
- 11 A. Yes.
- 12 Q. How do you know Chris?
- 13 A. We used to be boyfriend and girlfriend.
- 14 Q. You are not any more?
- 15 A. No.
- 16 Q. About how long did you go out or see Chris?
- 17 A. For about a year.
- 18 Q. Do you know about when that relationship
19 ended?
- 20 A. It was about eight or nine months ago.
- 21 Q. Were the two of you seeing each other then
22 back around the date of the end of March
23 and into April of 1999?
- 24 A. Yes.
- 25 Q. Were you working at that time?

- 1 A. Yes.
- 2 Q. Where were you working?
- 3 A. At ITC in Carnation Mall.
- 4 Q. What is ITC?
- 5 A. It's a telemarketing. They sell jewelry.
- 6 Q. What did you do there?
- 7 A. Basically called people in different states
8 and tried to sell jewelry or upgrade
9 jewelry they had already bought.
- 10 Q. And the place where you would go to make
11 these phone calls where you worked was
12 actually at the Carnation Mall?
- 13 A. Right.
- 14 Q. That's the mall in Alliance there?
- 15 A. Yes.
- 16 Q. Was it a full-time job?
- 17 A. No, was part time.
- 18 Q. Did you work any particular shift on a
19 normal basis?
- 20 A. We were scheduled four hours, but if you
21 didn't make so many sales per shift they
22 would send you home early.
- 23 Q. Did Chris work there at any point in time?
- 24 A. Yes.
- 25 Q. Was he working there back at the end of

1 March, April of last year?

2 A. Yes.

3 Q. That same time you were working there?

4 A. Right.

5 Q. Do you recall specifically whether you
6 worked there at ITC at the Carnation Mall
7 in the early evening of March 31st, 1999?

8 A. Yes.

9 Q. Do you happen to recall the hours that you
10 worked on that particular date?

11 A. I just remember that we were sent home
12 early that night. Maybe I only worked two
13 hours I believe. I'm not really sure how
14 long, but I just remember getting sent home
15 early.

16 Q. Ms. Mohr, did you clock in or clock out in
17 any way at ITC or did anybody do that for
18 you?

19 A. No, we clocked ourselves in and out.

20 Q. I'm going to show you a piece of paper
21 that's been marked as State's Exhibit 53
22 and just ask if you can take a look at that
23 and tell me if you recognize that?

24 A. Yes.

25 Q. What it is?

- 1 A. My time card.
- 2 Q. That's your time card for ITC?
- 3 A. Right.
- 4 Q. Does it reflect the date of March the 31st
- 5 on there anywhere?
- 6 A. I believe it's this day.
- 7 Q. Where it says MR 31?
- 8 A. Right.
- 9 Q. What time does it say that you clocked in?
- 10 A. 6:22 p.m.
- 11 Q. When did you clock out?
- 12 A. 8:01 p.m.
- 13 Q. Does that seem consistent with your memory
- 14 of having worked there?
- 15 A. Right.
- 16 Q. That day. Do you remember was Chris
- 17 working with you?
- 18 A. Yes.
- 19 Q. That day. Do you know if he left around
- 20 the same time you did?
- 21 A. Yes.
- 22 Q. Do you remember what you did or where you
- 23 went after you left?
- 24 A. We went to the food court and got something
- 25 to eat.

1 Q. Did you do anything else? Well, let me ask
2 you this. Did you drive to work there that
3 day?

4 A. No.

5 Q. How did you get to work?

6 A. My dad.

7 Q. How were you going to get home from the
8 mall?

9 A. My dad.

10 Q. Did you have to call him or anything?

11 A. Yes.

12 Q. Did you do that after you got off work?

13 A. Yes.

14 Q. Do you know about how long after you got
15 off work you did that, approximately?

16 A. I'm not real sure. It was -- I believe it
17 was probably before I got something to
18 eat. The pay phones are in the food court.

19 Q. I'm just asking for what you remember. You
20 said you thought you got some food. Did
21 you sit down there in the food court?

22 A. Yes.

23 Q. Was Chris with you?

24 A. Yes.

25 Q. What, if anything, happened while you were

1 sitting in the food court?

2 A. There was a guy sitting diagonal from us
3 and he was staring at us.

4 Q. Did you know or recognize that guy?

5 A. No, I have never seen him before.

6 Q. What happened after you noticed that?

7 A. I asked Chris -- I looked at Chris and I
8 asked him if he knew that guy because he
9 was staring at us. And Chris said I don't
10 know, he looks a little familiar and then
11 they looked at each other again and they
12 must have recognized each other and then he
13 come and sat at our table.

14 Q. Did Chris introduce you to him?

15 A. Yes.

16 Q. Who did you learn his name to be?

17 A. His name was Joe Wilkes.

18 Q. Was there a conversation that took place
19 once he came over to you?

20 A. Yes.

21 Q. Do you know how Chris knew him?

22 A. They used to go to school together I
23 assume. That's what they started talking
24 about as soon as he come over in Ravenna.

25 Q. Were you taking part in the conversation?

1 I mean are you saying anything during the
2 conversation?

3 A. Well, he introduced us.

4 Q. Other than that was it mostly them talking?

5 A. Well, he was mainly just yeah, talking to
6 both of us.

7 Q. Did Joe Wilkes say or indicate what he was
8 planning to do there in Alliance?

9 A. Said that he was there to kill some girl in
10 Alliance, that some guy had paid him.

11 Q. Did he show you anything at that time?

12 A. He pulled a knife out of his pants.

13 Q. Do you know -- do you remember exactly
14 where he pulled it from at this point?

15 A. I don't remember exactly where. I just
16 remember him pulling it out. I don't.

17 Q. All right. Do you remember anything in
18 particular about how the knife looked?

19 A. I really don't remember exactly. I just
20 remember seeing the knife.

21 Q. Do you remember anything like size or
22 anything like that?

23 A. Approximately that big (indicating).

24 Q. Tell us where everyone was seated and where
25 you were in relation to where he was

1 showing you this so we can kind of get an
2 idea of what you were able to see?

3 A. Well, the tables at the mall in the food
4 court is kind of small. So I was sitting
5 like here and Chris was sitting here and
6 then Joe was sitting right across from me.

7 Q. So Chris was sitting to your right and then
8 Joe would have been sitting to Chris'
9 right?

10 A. Right.

11 Q. And when he showed you the knife was it
12 above the table, below the table? How did
13 he do it? Can you demonstrate?

14 A. Was probably about this high because I
15 assume he did not want everyone in the food
16 court seeing it (indicating).

17 Q. Rose, show you what's been marked as
18 State's Exhibit 1. Does that knife appear
19 to be consistent or is it possible that was
20 the knife that he showed you?

21 A. It's possible.

22 Q. Now, about how long did you have -- how
23 long did this conversation take?

24 A. I don't remember the exact time. It wasn't
25 that long.

1 Q. Did this information come out right away or
2 was it kind of over the course of the
3 discussion?

4 A. It was through the discussion of them
5 talking about school.

6 Q. Did it take any kind of prodding from
7 Chris?

8 A. Chris -- yeah, because he wanted to know
9 why he was in Alliance. I assume he did
10 not come to Alliance often.

11 Q. How did Joe Wilkes appear physically at
12 that time? Is there anything you remember
13 about how he appeared?

14 A. He was very shaky. He seemed very nervous.

15 Q. Do you recall anything about the way he was
16 dressed?

17 A. What he was wearing? It was like a balloon
18 outfit.

19 Q. Nylon like?

20 A. Yes, like the exercise outfit or that type
21 of outfit.

22 Q. Kind of makes noise if you rub it together?

23 A. Right.

24 Q. Do you remember anything about the colors
25 or what it looked like?

1 A. It was -- I don't remember the exact. I
2 just know that I remember seeing white and
3 that there was dark colors.

4 Q. Do you remember seeing any emblems as far
5 as brand or anything like that?

6 A. I know it was brand name and it said Nike.
7 It might have been something else. I just
8 remember knowing it was a brand name.

9 Q. Are you referring -- when you are talking
10 about seeing the white and knowing there
11 was some color, are you talking more about
12 his top or a bottom at this point?

13 A. Well, the top part -- I remember the top
14 part being more white than anything.

15 Q. What about the bottom? Do you remember
16 anything about those?

17 A. Just white and dark.

18 Q. I'm going to show you what's been marked as
19 State's Exhibit 28, a pair of pants. I
20 realize they're kind of dirty and soiled
21 now, but if you can imagine them without
22 that dirt and soil on them, do those appear
23 consistent with what you saw him wearing?

24 A. Yes.

25 Q. Did you know at that point -- strike that.

1 Without telling me anything else that was
2 actually said in the conversation, was
3 there more conversation that took place?

4 A. Yes.

5 Q. During that conversation was there any
6 mention by Joe of a girlfriend?

7 MR. HAUPT: Objection to the
8 leading nature of the question, Your Honor.

9 THE COURT: I'm going to caution
10 you to keep it limited. I understand your
11 rebuttal argument so go on.

12 BY MS. HARTNETT:

13 Q. Was there any mention of girls or any
14 particular girlfriend?

15 A. Yes.

16 Q. Do you recall him ever mentioning anything
17 about a girlfriend in connection with a
18 girlfriend being the one who had paid him?

19 MR. HAUPT: Objection.

20 THE COURT: Sustained.

21 BY MS. HARTNETT:

22 Q. I just want to ask you --

23 THE COURT: Come, approach.

24 - - - - -

25 (A conference was held at the bench

1 outside the hearing of the jury.)

2 - - - - -

3 MS. HARTNETT: I only want to
4 clarify because she stated that he said a
5 guy paid him to do that. That was
6 something that you allowed. I wanted to
7 refresh her memory as to whether she was
8 certain that he said a guy. Because there
9 is going to be testimony I anticipate from
10 the other witness that he thought he might
11 have said something different. I just
12 wanted to be --

13 THE COURT: She testified as to
14 what she said. She said it clearly. And
15 you're anticipating another witness
16 statement. You are trying to gain her
17 credibility by anticipating from the
18 testimony. No, because then we are going
19 to get off into an area that I think is
20 going beyond the line I drew. So no, you
21 can't.

22 MS. HARTNETT: Okay.

23 - - - - -

24 (Thereupon, the side bar conference
25 ended.)

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BY MS. HARTNETT:

Q. Did anything else happen during the conversation? Again not going into anything else that was said during the conversation, did he do anything else while you were there?

A. I don't know what you mean.

Q. Did he ever give anything to Chris?

A. Yes.

Q. What did he give him?

A. He wrote his name and number on the back of a card.

Q. And he gave that to Chris and Chris took that?

A. Yes.

Q. What happened after he did that?

A. He put it in his wallet.

Q. Who is he?

A. Chris.

Q. And then what?

A. Well, I was so nervous. I didn't want to stay there no more. I told Chris I wanted to go walk around the mall because this guy was making me really nervous and so that's

1 what we did.

2 Q. So you left him then?

3 A. Right.

4 Q. Then did you leave the mall at some point?

5 A. Yes.

6 Q. How did you do that?

7 A. After we were walking around the mall and
8 left Joe there, and we came back in the
9 food court, he was gone. And I saw my
10 dad's car pull up.

11 Q. So your dad took you home?

12 A. Right.

13 Q. Did you go to the police with this
14 information at that point?

15 A. No.

16 Q. Why not?

17 A. Well, a few reasons. One --

18 MR. HAUPT: Objection.

19 THE COURT: Overruled. You may
20 answer.

21 THE WITNESS: I was scared. And
22 I didn't know this guy to believe he would
23 do something like this. I didn't know him.

24 BY MS. HARTNETT:

25 Q. Did you do anything after you got home?

1 A. Yes.

2 Q. What?

3 A. I took the number out of Chris's wallet and
4 hid it behind my dad's dresser.

5 Q. At some point in time months later did you
6 retrieve that card?

7 A. The cops got it.

8 Q. Did you give it to them?

9 A. Well, I told them where it was. I wasn't
10 living at my dad's at that time. They went
11 there and got it.

12 Q. I'm going to show you what's been marked as
13 State's Exhibit 55. You can take a look at
14 that item front and back. Do you know what
15 that is?

16 A. Yes.

17 Q. What is it?

18 A. It's a Flexteam card.

19 Q. What's on the back?

20 A. Got Joe W. on the back and his number.

21 Q. Is that the card that you took out of
22 Chris' wallet?

23 A. Yes.

24 Q. Why did you take it out of Chris's wallet?

25 A. Because the way this guy was talking --

1 THE COURT: Just a moment. Just
2 a moment.

3 MS. HARTNETT: I will move on,
4 Your Honor.

5 THE COURT: Okay.

6 MS. HARTNETT: Don't finish the
7 answer to that question.

8 BY MS. HARTNETT:

9 Q. At some point in time did you come to
10 learn, Rose, that a woman had been killed
11 in Alliance?

12 A. Yes.

13 Q. How did you learn that?

14 A. I read it in the paper.

15 Q. Did you do anything after you read that?

16 A. I was scared.

17 Q. Did you tell anybody about your encounter
18 with that person?

19 A. Yes.

20 Q. Who did you tell?

21 A. I told my mom and my brother.

22 Q. You didn't go to the police at that point?

23 A. I didn't, no.

24 Q. Did you eventually go to the police?

25 A. Yes.

1 Q. Do you know when that was or about when
2 that was?

3 A. I don't remember the exact time.

4 Q. Couple of months afterwards, something like
5 that?

6 A. Something like that.

7 MS. HARTNETT: If I can just have
8 a moment.

9

10 (Thereupon, a discussion was
11 held off the record.)

12 BY MS. HARTNETT:

13 Q. Rose, you said after you got up from the
14 table that you got uncomfortable and you
15 walked around. You were still at the
16 mall. You said you noticed Joe was already
17 gone when you went back to that area?

18 A. Right.

19 Q. Did you see him again?

20 A. Yes.

21 Q. When and where was that?

22 A. After me and Chris got in my dad's car we
23 were going in towards town. And we saw Joe
24 walking towards town.

25 Q. So you saw him on the street walking headed

1 in the direction like towards the center of
2 town?

3 A. Right.

4 MS. HARTNETT: I don't have
5 anything further.

6 THE COURT: Counsel approach.

7 - - - - -

8 (A conference was held at the bench
9 outside the hearing of the jury.)

10 - - - - -

11 THE COURT: I have the statement
12 that she gave to the detective here if you
13 want to take a recess and go over that.

14 MR. KEITH: All right.

15 THE COURT: Jim, have the
16 witness get off the stand and come and sit
17 in that chair. Turn it around and stand by
18 the door. Just have her turn off the
19 microphone. Do you want to go with us in
20 -- let's go review it over and if you find
21 any inconsistencies you guys come out and
22 tell me. If there is any disagreement we
23 can come out here and do that. Let's go do
24 that.

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(Thereupon, the side bar conference ended.)

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THE COURT: Folks, we are going to recess for just a couple of minutes. Please feel free to stand and stretch if you want.

(Brief pause.)

- - - - -

(A conference was held at the bench outside the hearing of the jury.)

- - - - -

THE COURT: The Court has done a Rule 16 review of a witness statement with the Court in camera with counsel and reviewing the copy of it. The Court finds no inconsistencies in this statement and the statement made in court, with the one minor exception during her statement to the police she may have or she did say the pants were white in color and I will allow you to inquire into the pants and you can use this if she forgets.

If we get into such as didn't you say on such and such a date about the white

1 pants and the sheath issue with the knife,
2 the police are saying things back and
3 forth. So I will make a decision if and
4 when it becomes relevant.

5 - - - - -
6 (Thereupon, the side bar conference
7 ended.)

8 - - - - -
9 THE COURT: Mr. Haupt, you may
10 inquire. Thank you, ladies and gentlemen.

11 CROSS-EXAMINATION

12 BY MR. HAUPT:

13 Q. Ms. Mohr, on the date that you were shown
14 your time card, do you know if that's the
15 date that you were let off early that
16 night, did you see on your time card how
17 you were let off early the night before?
18 Do you want to look at that time card
19 again?

20 A. I don't know what you mean.

21 Q. Do you want to look at that time card
22 again. Take a look.

23 THE COURT: Help her with it.

24 Q. Here you go. If you will look at your time
25 card. That week what time did you start

1 and what time did you finish each night
2 throughout your work that week?

3 A. What do you mean?

4 Q. Take the night before. Say for instance on
5 the April the 1st, what time did you go in
6 on April 1st and what time did you finish?

7 THE COURT: Let me just stop you
8 now. First question was the night before.
9 Now you have alluded to April 1st. Let's
10 stay easy here now. Come on.

11 BY MR. HAUPT:

12 Q. On April the 1st, what time did you go into
13 work?

14 A. 6:33.

15 Q. What time did you finish?

16 A. 8:00.

17 Q. Does that time card show just two days of
18 work for that week?

19 A. Yes.

20 Q. And do you know if the week before, do you
21 remember the week before had you worked?

22 A. I don't remember.

23 Q. Do you know the week after did you work?

24 A. I don't remember.

25 Q. With regard to April the 1st when you got

1 off work, on April the 1st when you got off
2 work, did you call the police and say I
3 have just had an experience that's
4 frightened me?

5 A. No.

6 Q. On March 31st did you call the police and
7 say I've just had an experience and that's
8 frightened me?

9 A. No.

10 Q. Were you still working for I believe ITC
11 into the month of April?

12 A. I don't remember.

13 Q. Were you let go from ITC?

14 A. I quit.

15 Q. You quit. You had some absences with ITC?

16 A. Right.

17 Q. And with regard to when you quit ITC, do
18 you know when that was?

19 A. No.

20 Q. With regard to telling the police that the
21 pants that Joe Wilkes had on were white,
22 did you do that?

23 A. I said white, yes.

24 Q. All right. Now, the pants that the
25 prosecutor held up and showed to you, those

1 are what color, white or black?

2 A. White and black.

3 Q. All right. Are they -- I'm sorry -- in
4 looking at those pants?

5 THE COURT: Let me stop you.

6 Let's bring the pants up.

7 Q. In looking at those pants, if you were to
8 describe those pants, would you describe
9 these pants and with the assistance of the
10 gloves, would these gloves be or would
11 these pants be best described to you as
12 being white or black?

13 A. They are white and black.

14 Q. When you talked to the police you talked to
15 Detective Mucklo. You told him the pants
16 were white, didn't you?

17 A. I said white.

18 Q. You didn't say they were white and black,
19 did you, ma'am?

20 MR. BAUMOEL: Objection, Your
21 Honor.

22 THE COURT: Overruled.

23 THE WITNESS: I don't remember.

24 BY MR. HAUPT:

25 Q. Now you don't remember.

1 A. I remember I said white and dark. I
2 remember him having a white and dark outfit
3 on.

4 Q. I understand. But when I asked you the
5 question did you say that the pants were
6 white?

7 A. I said white because I remember seeing
8 white in his pants.

9 Q. If I were to show you your statement to say
10 whether or not you said white and dark or
11 white and black, do you believe that would
12 be in your statement?

13 THE COURT: First of all, lower
14 the tone. Lower the speed.

15 MR. HAUPT: I'm sorry.

16 BY MR. HAUPT:

17 Q. Would you say when you talked to Detective
18 Mucklo that you said white or black or
19 white and black or black and white?

20 A. I believe I said white. I wasn't looking
21 at his pants. I saw white in his shirt.

22 Q. You did say his pants were white?

23 A. Right. I remember having a white and dark
24 outfit on.

25 Q. You say that he had on white undergarment,

1 didn't you?

2 A. I believe I said that.

3 Q. So he had on -- in addition to a white
4 undergarment he had on some other top in
5 addition to the undergarment; is that what
6 you're saying?

7 A. I don't really remember.

8 Q. All right. And with regard to reading the
9 Alliance Review; is that the paper you get?

10 A. Yes.

11 Q. Do you read it on a regular basis?

12 A. Sometimes.

13 Q. Did you read it in April?

14 A. I read it when I heard about what happened.

15 Q. Do you know when you heard about what
16 happened, ma'am?

17 A. What was that?

18 Q. Do you recall when you heard about it?

19 A. When it was in the paper.

20 Q. Do you recall when that may have been?

21 A. I don't remember.

22 Q. You don't remember. And --

23 THE COURT: Sustained.

24 MR. BAUMOEL: Your Honor --

25 THE COURT: Caution on the

1 editorial.

2 BY MR. HAUPT:

3 Q. In the month of May you never called the
4 police to say you had information, did you?

5 A. No.

6 Q. And, ma'am, when you saw Joe Wilkes you
7 didn't believe that he was going to take
8 the life of somebody, did you?

9 A. No.

10 Q. He dressed with new clothes, didn't he?

11 A. They appeared clean.

12 Q. Did they appear to be new clothes, new
13 shoes, new slacks, new shirt?

14 A. I don't know.

15 Q. You did say that the knife may have had a
16 sheath on it, didn't you, ma'am?

17 A. Yes.

18 MR. HAUPT: If I could have a
19 second.

20

21 (Thereupon, a discussion was
22 held off the record.)

23 MR. HAUPT: Nothing further, Your
24 Honor.

25 THE COURT: State, anything

1 further?

2 MS. HARTNETT: No, Your Honor.

3 THE COURT: Thank you, young
4 lady. You may step down.

5 MR. BAUMOEL: Cheryl Balfour.

6 CHERYL BALFOUR

7 who, after being first duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. BAUMOEL:

11 Q. Please state your full name for the court
12 and spell your last name?

13 A. Cheryl Balfour, B-a-l-f-o-u-r.

14 Q. Are you presently employed?

15 A. Yes.

16 Q. As what?

17 A. General manager Comfort Inn.

18 Q. Of the Comfort Inn?

19 A. Yes.

20 Q. Are you the general manager of a specific
21 Comfort Inn?

22 A. In Alliance, Ohio.

23 Q. And how long have you been employed in that
24 capacity?

25 A. Since '92.

1 Q. '92?

2 A. Yes.

3 Q. And generally the scope of your employment,
4 what are your duties?

5 A. Accounting, bookkeeping, checking people
6 in, checking people out, taking
7 reservations.

8 Q. Specifically where is the Comfort Inn in
9 Alliance located?

10 A. We are on the west end of Alliance on State
11 Route 62 behind and attached to Carnation
12 Mall.

13 Q. And you indicate behind and attached to
14 Carnation Mall; is that right?

15 A. Correct, sir.

16 Q. Is there a means to travel between the two,
17 Carnation Mall and the Comfort Inn without
18 exiting, going outside?

19 A. Yes, there is that -- is a hallway that
20 leads into the food court and there is a
21 fire door open at all times.

22 Q. I'm handing you what's been marked for
23 identification purposes as photographs
24 marked as State's Exhibits 45A through
25 45L. I will show you A, B, C, D, E and F.

1 And ask you if you are able to identify
2 those photographs?

3 A. Yes. It's the exterior of the Comfort Inn.

4 Q. Let me show you State's Exhibit 45G, ask
5 you if you are able to identify that
6 picture?

7 A. This is in the entrance of the food court
8 of the mall and they have two pay phones
9 there.

10 Q. Show you State's Exhibit 45H?

11 A. That's our fire door leading into the food
12 court of the mall.

13 Q. That perspective is going from the Comfort
14 Inn into the mall?

15 A. Yes.

16 Q. 45I, J, K and L, ask you to identify those
17 photographs?

18 A. Okay. First one is the mall food court
19 entrance. Same with the next one. This is
20 the entrance going into the Comfort Inn and
21 the other one shows the pay phones. It's
22 also the food court of the mall.

23 Q. Do all those photographs fairly and
24 accurately depict the Comfort Inn, the
25 doors leading to the Carnation Mall and the

1 pay phones in the Carnation Mall?

2 A. Yes, they do.

3 Q. How many rooms are located at the Comfort

4 Inn in Alliance?

5 A. 113.

6 Q. And approximately how many floors?

7 A. We have five floors.

8 Q. When a person checks into the hotel there

9 at the Comfort Inn, would you please tell

10 us what type of procedure occurs, what

11 records are kept in regards to those

12 procedures?

13 A. Okay. If a person calls in advance for

14 reservations, we have it in the system. If

15 a person walks in we ask them for

16 identification if they have it with them.

17 And we check them into a room.

18 Q. And are specific written records kept of

19 these activities?

20 A. Yes

21 - - - - -

22 (State's Exhibits

23 56 A-B were marked for

24 identification.)

25 - - - - -

1 BY MR. BAUMOEL:

2 Q. I'm going to hand you what's been marked
3 for identification purposes as State's
4 Exhibit 57A and 57B -- 56A and 56B, I
5 apologize.

6 A. Okay.

7 Q. Do you recognize those documents?

8 A. Yes, this is a printout from our computer.

9 Q. And specifically what are they printouts
10 of?

11 A. Okay. 56B is the registration. It shows
12 the room number, the person's signature.
13 We also show how the customer paid and
14 whether they ask for phone service or not.

15 Q. First of all, in regards to these records,
16 do they indicate whether the individual
17 prepaid or prereserved the room?

18 A. This does not.

19 Q. And are you aware of who this -- first of
20 all, who is the individual who checked into
21 the room according to the records?

22 A. The person who checked into the room is
23 Joseph Wilkes.

24 Q. And when he checked into the room, what
25 date did that occur?

1 A. Okay. March 31st, 1999.

2 Q. Do you know if when he checked in it was a
3 reservation or whether he just showed up?

4 A. The computer showed that it was a walk in.
5 He did not have a prior reservation.

6 Q. Does it indicate a time of when he would
7 have been checked in?

8 A. Yes, sir. It shows 1:46 he checked in on
9 the 31st.

10 Q. 1:46 in the afternoon?

11 A. Yes.

12 Q. And have you had an opportunity to check
13 during the course of your employment there
14 whether -- first of all, where does the
15 time come from 1:46?

16 A. It's a computer system, it's an automatic
17 system.

18 Q. And have you learned through your
19 experience whether that time is always
20 accurate in regards to the actual time of
21 day?

22 A. It can vary 15 to 25 minutes.

23 Q. Fifteen to 25 minutes. Can it vary one
24 direction or the other?

25 A. It can go either direction. If our

1 satellite system goes out, it cuts the time
2 off.

3 Q. Do these records indicate whether this
4 Joseph Wilkes was with anybody at the time
5 when he came in?

6 A. He was just one person.

7 Q. Does he provide any personal information
8 such as an address or phone number?

9 A. We have a phone number, and we just have a
10 city.

11 Q. There is no street address listed?

12 A. No, there is not.

13 Q. What is the city that is listed?

14 A. It shows Randolph, Ohio.

15 Q. But a phone number was given at the time?

16 A. Yes, sir. And without my glasses I can't
17 read that. It shows 325.

18 Q. 325?

19 A. 2563.

20 Q. 2563. Any other personal information?

21 A. We had a checkmark for a car and he failed
22 to fill it out. It also shows he paid us
23 with a hundred dollar bill and we marked
24 off the price that we gave in change.

25 Q. In regards to the car, is that based on any

1 oral indication from the customer, or did
2 you all have procedures to check to see if
3 there is actually a car?

4 A. We do not check to see there is actually a
5 car. We ask them please fill out the name
6 and the type of your vehicle and driver's
7 license.

8 Q. What did he do in this case?

9 A. He didn't fill it out. He just marked it
10 with an X.

11 Q. In regards to the cost of the room, how
12 much did the room cost?

13 A. Room plus tax was \$59.76.

14 Q. And how was payment made in this case?

15 A. A \$100 bill.

16 Q. How do you know that based on the record
17 before you?

18 A. When somebody gives us a large bill, we
19 write it on there for accounting purposes.

20 Q. And how much change would he have received?

21 A. \$40.25. Looking at the statement he gave
22 us a \$100 bill and a penny.

23 Q. And a penny?

24 A. Um-hmm.

25 Q. Do the records indicate any room charges?

- 1 A. There was no additional room charges, just
2 room and tax.
- 3 Q. And do the records indicate what time Joe
4 Wilkes would have checked out of the hotel?
- 5 A. Yes. 8:35 in the morning.
- 6 Q. 8:35 of what morning?
- 7 A. April 1st.
- 8 Q. So he was there just for one night?
- 9 A. One night.
- 10 Q. Once again, the 8:35 is reliable to within
11 a?
- 12 A. That time in the morning is probably closer
13 to maybe five to ten minutes off.
- 14 Q. You don't know why that happened?
- 15 A. No.
- 16 Q. With your computer. The records you have
17 before you, are these type of records that
18 you keep in the ordinary course of your
19 business at Comfort Inn?
- 20 A. Yes, we do.
- 21 Q. Were those records in regard to Joseph
22 Wilkes checking in on March 31st and
23 checking out April 1st, were those made at
24 or near the time of March 31st or April
25 1st?

1 A. Yes.

2 Q. Joseph Wilkes' signature appears on those
3 records?

4 A. Yes. It does.

5 Q. Is it one of your responsibilities with the
6 Comfort Inn to maintain and keep those type
7 of records?

8 A. We keep them for up to two years.

9 Q. And State's Exhibit 56A and B, is that a
10 true and accurate copy of the Comfort Inn
11 record for Joseph Wilkes from March 31st,
12 1999 and April 1st, 1999?

13 A. That is correct.

14 MR. BAUMOEL: No further
15 questions, Your Honor.

16 THE COURT: Defense.

17 MR. HAUPT: No thank you.

18 THE COURT: Thank you, ma'am.

19 You may step down. Next witness.

20 MR. BAUMOEL: David Woehrman.

21 THE COURT: This will be the
22 last witness for the day. And I don't
23 believe that it will be very long and we
24 will recess for the day.

25 DAVID WOHRMAN

1 who, after being first duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. BAUMOEL:

5 Q. Please state your full name for the court
6 and spell your last name for the record?

7 A. David Woehrman, W-o-e-h-r-m-a-n.

8 Q. And how are you presently employed?

9 A. I'm employed with Ameritech, the telephone
10 company.

11 Q. In what capacity?

12 A. I am at this time security manager at
13 Ameritech.

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

16 A. Twenty-eight and-a-half years.

17 Q. Generally, what are your present
18 responsibilities?

19 A. We do internal investigations for Ameritech
20 as well as we are the liaison from
21 Ameritech to the law enforcement community.

22 Q. Being the liaison to the law enforcement
23 community, what type of services can you or
24 do you provide to law enforcement?

25 A. The corporate security department answers

1 the subpoenas to law enforcement and
2 provides them with subscriber records of
3 listing of telephones.

4 Q. And would you please explain to the jury
5 the procedures by which phone records and
6 subscriber information as to people's phone
7 services are kept?

8 A. The telephone records by Ameritech
9 obviously are kept in gigantic computer
10 systems and data bases. The local toll
11 records, the toll long distance records are
12 provided to Ameritech by long distance
13 carriers and we subsequently bill the local
14 subscribers for the long distance calls.

15 Local records, local call records
16 are kept for billing purposes for measuring
17 data, local calls for measuring local
18 service calls.

19 Q. When you have a specific phone line or
20 phone number, what type of records are you
21 able to produce in regards to that phone
22 line?

23 A. The records that we keep are the kind of
24 call that was made, whether it was a long
25 distance call, or local call, we keep the

1 record of the telephone number that
2 originated the call and where the call went
3 to or terminated.

4 Q. And because there is several different
5 terms in regards to calls that go out and
6 go in, originating, what does that term
7 mean?

8 A. That means when you pick up the telephone
9 and you hear the dial tone and you dial the
10 number that you originated a call. So we
11 call that originating information.

12 Q. So it would be outgoing phone calls from a
13 specific number?

14 A. That's correct.

15 Q. What does the word terminating refer to?

16 A. Terminating would refer to incoming calls
17 to a particular number. If I received a
18 phone call that would become a terminating
19 record, an incoming call.

20 Q. Did you receive a subpoena from the
21 Alliance Police Department or from the
22 Alliance legal department in regards to
23 phone records in the spring of 1999?

24 A. Yes, corporate security did.

25 Q. Would you please tell us about the first

1 subpoena that was received?

2 A. Let me get to the right day here. We
3 received one on May 5th, 1998.

4 Q. 1999?

5 A. Sorry, you are correct, 1999. And we
6 received another one on April 23rd. Would
7 have been prior to the May 5th one.

8 Q. In regards to April 23rd, 1999, what type
9 of information was requested?

10 A. The information requested on that
11 particular one was for two -- incoming and
12 outgoing local and long distance records
13 for two particular telephone numbers. One
14 was for a telephone No. 330 947-2770. And
15 the other one was for a 330 628-4805.

16 Q. And do you have subscriber information in
17 regards to those two phones?

18 A. Yes, I do. The first number belonged to a
19 David G. Kosisko living at 2554 Porter Road
20 in Atwater, Ohio; and the second number
21 belonged to an Arnold D. Kirkbride at 3226
22 Samuel Road in Akron, Ohio.

23 Q. Were you later asked for phone records both
24 originating and terminating information to
25 a third number?

1 A. That is correct.

2 Q. What was that third number?

3 A. That also was to a David G. Thorne, Post
4 Office Box 8, Atwater, Ohio, and the phone
5 number there was 330 947-7479.

6 Q. In regards to that specific number, do your
7 records also indicate any type of features
8 that the phone may have?

9 A. Yes.

10 Q. And do you have that information in front
11 of you? Let me try to help you out.
12 Handing you what's been marked as State's
13 Exhibit 57A?

14 A. That's the paper. Thank you. Yes. This
15 is the equipment record that Ameritech
16 keeps which describes this type of service
17 that this particular subscriber has.

18 Q. What type of features did he have?

19 A. In this particular case this subscriber has
20 what we call a call pack 30, which is he's
21 allowed 30 outgoing calls from his line
22 before we start billing him for each
23 additional outgoing telephone call. He
24 also has caller ID per line blocking and no
25 charge because he has a non-published

1 number. There is a line charge and calling
2 card, 911 number service portable charges.

3 Q. He has what you described as a caller ID
4 per line blocking?

5 A. Yes, that means when he makes a phone call
6 out of his home to another person who may
7 have caller ID service the number is
8 blocked on that individual's caller ID
9 box. They will see private number come up
10 on their caller ID so they don't know who
11 was calling them.

12 Q. He does not have caller ID himself?

13 A. That's correct. He has caller ID blocking.

14 Q. Did you also as a result of subpoenas from
15 the Alliance Police Department, were you
16 asked to provide a large number of
17 subscription information in regards to who
18 each phone number was listed to?

19 A. Yes, that's correct.

20 Q. Did you do that on more than one occasion?

21 A. Yes.

22 Q. Do you have the entire pack here?

23 A. Yes, I have one that was asked of us on May
24 26th and also one on April 30th.

25 Q. For the April 30th I'm going to show you

1 what's marked as State's Exhibit 57B and
2 the second group of subscriber information
3 57C. Now, you indicated first of all, that
4 records were requested for a 947-2770
5 registered to a David Kosisko?

6 A. Yes.

7 Q. What was the time frame for those records
8 as far as what date did it start, what date
9 did it end?

10 A. It started on March 24th and ended on April
11 8th.

12 Q. And you have then all the originating and
13 terminating records?

14 A. Yes, that's correct.

15 Q. Of that number. I will label the records
16 of David Kosisko the originating and
17 terminating for that time period as 57D.
18 You were requested the phone records for
19 628-4805 too. What time period were you
20 asked to provide in regards to that number?

21 A. The same time period March 24th, 1999,
22 through April 8th, 1999.

23 Q. We will label those records as 57E. And
24 then in regards to the phone records of
25 David Thorne, once again what was the time

1 period which was requested?

2 A. That was also March 24th through April 8th,
3 1999.

4 Q. Those are originating and terminating and
5 we will label that as State's Exhibit 57F.
6 Now, is this type of information that is
7 kept in the regular course of business
8 there at Ameritech?

9 A. Yes, it is.

10 Q. It is a part of your duty to be a
11 supervisor in the making and preserving of
12 those records?

13 A. That's correct.

14 Q. Were the records or the outgoing for the
15 originating and terminating calls from
16 David Thorne, David Kosisko and Arnold
17 Kirkbride made at or near the time of each
18 phone call?

19 A. Yes, that's correct.

20 Q. And as the supervisor of these records, are
21 those records true and accurate of the
22 phone calls made and received by these
23 three numbers?

24 A. Yes, they are.

25 Q. In regards to the subscriber information,

1 were these records made at or near the time
2 that the accounts were established?

3 A. Yes, they were.

4 Q. And as supervisor of these records are
5 those true and accurate copies in front of
6 you?

7 A. Yes, they are.

8 Q. In regards to the information which was
9 requested, you were not able to provide
10 subscriber information as to every single
11 number that was requested by the Alliance
12 Police Department; is that correct?

13 A. That is correct. It was too voluminous.

14 Q. Are there also certain numbers that
15 Ameritech does not have the capability to
16 tell us whose line that is registered to?

17 A. That's correct. The telephone lines of
18 other telephone companies such as All-Tell
19 or GTE or certain telephone companies we
20 don't have the subscriber listing for those
21 people so we wouldn't have known who the
22 subscriber would have been.

23 Q. And in the records themselves indicating
24 either originating or terminating numbers
25 that had contact with our three numbers

1 that we are talking about, in some places
2 there are omissions in which certain
3 numbers are not even listed in regards to a
4 phone call. Do you understand my question?

5 A. Yes, that's correct.

6 Q. Why is that?

7 A. That's because we use a system called
8 signaling system seven that is a
9 transmission system Ameritech uses with
10 other carriers and that's what carries the
11 originating data as well as the terminating
12 data for us to record the information. If
13 a carrier, a long distance carrier or a
14 local carrier does not have signaling
15 system seven connected ability with
16 Ameritech then we would not see the
17 originating information terminating into an
18 Ameritech number.

19 Q. So there are some omissions in the records
20 where no number is listed where a time and
21 date for a certain phone call is there,
22 just no number?

23 A. That's correct.

24 Q. In regards to the phone records then, I
25 want to go over the type of information

1 that is there. In the order that it
2 appears first, there is a type call column
3 in regards to the phone records.

4 A. That is correct.

5 Q. What does this refer to?

6 A. That refers to how the call was
7 originated. In other words, if it was
8 originally made from your home when you
9 pick up the telephone if you made a call
10 it's classified as an O6 type record. If
11 you say make a directory assistance call by
12 dialing 411, we would have a specific type
13 of a call. We do that so we know how the
14 call was originated.

15 Q. Then you have a date which is
16 self-explanatory?

17 A. That's correct.

18 Q. You have the number, the originating number
19 which is where the call started; is that
20 correct?

21 A. That's correct, the area code plus the
22 seven digit telephone number.

23 Q. You would have the terminating number,
24 seven digit number indicating who the call
25 was placed to?

1 A. That's correct, the area code plus the
2 seven digit phone number.

3 Q. Then you have time connect. What does that
4 refer to?

5 A. That refers to the time in which the
6 telephone rang at the distance end.
7 Obviously if the person at this distant end
8 does not pick up the telephone call, we
9 would still record that as a call being
10 made, but not connected and therefore a
11 lapse time in the next column you are going
12 to ask would be zero.

13 Q. So these records will indicate a phone call
14 in which nobody answers the phone?

15 A. That's correct.

16 Q. Do these phone records indicate if a phone
17 call is made and receives a busy signal?

18 A. That would be a no connect time.

19 Q. Once again it would be listed in here,
20 tells the time connected, then the final
21 column time elapsed would be 0.0?

22 A. Correct.

23 Q. And the time elapsed it would be that tells
24 you how long the connection lasted?

25 A. How long, that's correct.

- 1 Q. Once somebody picks up the phone?
- 2 A. Right.
- 3 Q. I want to go over --
- 4 A. Excuse me. There is one last column.
- 5 Q. What would that be?
- 6 A. That's the IXC interchange carrier.
- 7 Q. What is that column?
- 8 A. That records the long distance carrier that
- 9 carried the call. In the case of a long
- 10 distance call if you pick the phone and you
- 11 used AT&T who was your choice of carrier,
- 12 it would record AT&T's code on there so we
- 13 would know that AT&T was the carrier who
- 14 transported.
- 15 Q. I want to go over some of the specific
- 16 calls that are listed in these records.
- 17 I'm going to refer you to the records of
- 18 calls that terminated or received by David
- 19 Thorne at No. 947-7469. Do you have that
- 20 information in front of you?
- 21 A. Yes, I do.
- 22 Q. And in regards to the date of March 25th of
- 23 1999?
- 24 A. Yes.
- 25 Q. Do the records indicate a call which had a

1 connection time at 3:28 in the afternoon?

2 A. Yes, 3:28.04 and-a-half.

3 Q. And what was the number, where that phone
4 call originated?

5 A. It only states 330 325-1800.

6 Q. And what was the elapsed time of that phone
7 call?

8 A. 29.5 seconds.

9 Q. Based on the subscriber information that
10 you had can you tell us whose phone number
11 is 330 325-1800?

12 A. It will take me a moment to go through all
13 these.

14 Q. Take your time.

15 A. This number 330 325-1800 belongs to a
16 Sterling Wilkes, Jr. Address is 2352
17 Spring Lake Circle, Randolph Township, zip
18 code is 44201.

19 Q. In regards to the same date March 25th,
20 1999, calls to David Thorne, is there a
21 call with a connect time of 4:54 in the
22 afternoon?

23 A. Yes.

24 Q. And what was the originating number?

25 A. The originating number was 330 825-9517.

1 Q. I will ask you first of all, what was the
2 elapsed time of the connection on that
3 phone call?

4 A. Eight minutes and 4.7 seconds.

5 Q. And I will ask you if you have this
6 subscriber information in regards to the
7 phone number of 330 325-9517?

8 A. Yes, that was an Ameritech pay phone, coin
9 phone located at Ron's Minimart, 1497 State
10 Route 44 in Randolph Township.

11 Q. And are there any indications as to the
12 location of that pay phone?

13 A. Not on this record.

14 Q. Jumping ahead once again to calls to Dave
15 Thorne to March 27th of 1999 and ask you if
16 there was a call at 1:10 a.m.?

17 A. Yes.

18 Q. And could you please tell us what was the
19 originating number?

20 A. The originating number was 330 678-9651.

21 Q. And what was the lapse time of that
22 telephone conversation?

23 A. 43.8 seconds.

24 Q. And can you give us the subscriber
25 information for that number?

- 1 A. That was an Ameritech pay phone located at
2 Country Manner, the address of where the
3 pay phone was located was 122 West Main
4 Street in Kent, Ohio.
- 5 Q. Is there any other information with regard
6 to the location of that?
- 7 A. Not on this record, sir.
- 8 Q. I will ask you if there was a call to that
9 number of David Thorne at 1:11 a.m.?
- 10 A. Yes, there is.
- 11 Q. And what was the originating number?
- 12 A. Came from the same pay phone.
- 13 Q. What was the lapse time of that connection?
- 14 A. 43.6 seconds.
- 15 Q. Is there a phone call at 1:24 in the
16 morning of March 27th?
- 17 A. Yes, there is.
- 18 Q. And what was the originating number?
- 19 A. The same No. 330 678-9651.
- 20 Q. And what was the elapsed time of that
21 connection?
- 22 A. 43.6 seconds.
- 23 Q. Is there a call at 1:43 a.m.?
- 24 A. Yes, that's correct.
- 25 Q. And what was the originating number?

1 A. From the same 678-9651.

2 Q. What was the elapsed time?

3 A. 43.8 seconds.

4 Q. Was there a phone call at 2:04 a.m.?

5 A. Yes, there was.

6 Q. And what was the originating number?

7 A. That is a different number. That is 330
8 677-5481.

9 Q. What was the elapsed time of that
10 connection?

11 A. 16.4 seconds.

12 Q. And could you look up the subscriber
13 information in regards to the 677-5481
14 number?

15 A. Yes. That telephone belongs to a Maria
16 Espina located at 200 Spaulding Drive in
17 Apartment 102 in Kent, Ohio.

18 Q. Continue on then, sir, to March 27th, 2:22
19 a.m.

20 A. Yes.

21 Q. What was the originating number?

22 A. 678-9651.

23 Q. We referred to that as the pay phone at the
24 Country Manner?

25 A. That's correct.

- 1 Q. Call at 2:37 a.m. on March 27th?
- 2 A. Yes.
- 3 Q. And what was the originating number?
- 4 A. It would be 330 678-9651 again.
- 5 Q. And what was the elapsed time of that
- 6 connection?
- 7 A. 43.6 seconds.
- 8 Q. March 27th at 2:44 a.m.?
- 9 A. That's correct, same number.
- 10 Q. What was the elapsed time of that
- 11 connection?
- 12 A. 44 seconds.
- 13 Q. 2:47 a.m. on March 27th?
- 14 A. Yes, the same number again.
- 15 Q. And what was the elapsed time?
- 16 A. That would be 43.6 seconds.
- 17 Q. March 27th at 2:51 a.m.?
- 18 A. 2:51 a.m. was a call from the same pay
- 19 phone again 678-9651.
- 20 Q. What was the elapsed time of the
- 21 connection?
- 22 A. 43.6 seconds.
- 23 Q. Again March 27th at 3:21 a.m.?
- 24 A. That one was from 330 677-4615.
- 25 Q. That's a different number?

1 A. That's correct.

2 Q. First of all, what was the elapsed time of
3 that connection?

4 A. 43.7 seconds.

5 Q. And can you tell us what the subscriber
6 information is for that phone number?

7 A. That number belongs to a coin telephone
8 located at the Cipher Cafe at 106 West Main
9 Street in Kent, Ohio. It's an outdoor coin
10 phone.

11 Q. Outdoor pay phone?

12 A. That's correct.

13 Q. Take you to the morning of April 1st,
14 1999. I will ask you if there was a call
15 to David Thorne at 947-7469 at 8:28 in the
16 a.m.

17 A. Yes, there was.

18 Q. What was the originating number?

19 A. It was 330 821-3566.

20 Q. What was the elapsed time of that
21 connection?

22 A. 8.7 seconds.

23 Q. And could you please give us the subscriber
24 information for 330 821-3566?

25 A. That was a coin telephone located at the

1 Carnation Mall at 2500 West State Street in
2 Alliance, Ohio. It's designated as an
3 indoor coin pay phone.

4 Q. In regard to when we have a connection and
5 the elapsed time begins to run, do the
6 records differentiate between a human
7 picking up the connection or an answering
8 machine picking up the connection?

9 A. The records wouldn't be able to tell that,
10 sir.

11 Q. The elapsed time would begin to run when an
12 answering machine picked up the connection?

13 A. That is correct.

14 Q. Go then to April 6th of 1999. Ask you if
15 there was a call that was terminated at
16 David Thorne at 3:42 p.m.?

17 A. Yes, there is.

18 Q. And you have an originating number?

19 A. Yes. It's 330 325-2563.

20 Q. Do you have subscriber information in
21 regards to that number? I'm uncertain.
22 You may not.

23 A. It might be in my other stack. I have to
24 take the staples out. The telephone No.
25 330 325-2563.

- 1 Q. Yes.
- 2 A. Belongs to a Brent Enoch spelled E-n-o-c-h
3 located at 1557 State Route 44 in Randolph
4 Township.
- 5 Q. Is there a phone call to David Thorne at
6 3:43 p.m.
- 7 A. Yes, there is.
- 8 Q. What was the originating number?
- 9 A. The same No. 330 325-2583.
- 10 Q. What was the elapsed time?
- 11 A. 11.3 seconds.
- 12 Q. What about a call to David Thorne at 3:43,
13 44 seconds?
- 14 A. Came from the same telephone No. 330
15 325-2556.
- 16 Q. On April 6th at 3:49 p.m.?
- 17 A. Yes. That was from a different telephone
18 number. That was from a 330 325-2828.
- 19 Q. 2828?
- 20 A. Maybe it's 2628. My copy is a little --
- 21 Q. What was the elapsed time of that?
- 22 A. 4.2 seconds.
- 23 Q. Do you have a subscriber information for
24 325-2628?
- 25 A. Figures it was the last one. 330 325-2628,

1 that belongs to Bob's Pizza, Inc. It's an
2 outdoor pay telephone located at 1539 State
3 Route 44 in Randolph Township.

4 Q. Is that designated indoor or outdoor?

5 A. An outdoor pay phone.

6 Q. Finally, in regards to calls which have
7 terminated as David Kosisko's number, does
8 it designate whether that was an indoor or
9 outdoor?

10 A. Bear with me a moment.

11 Q. It would be a number that was incoming to
12 David Kosisko's number. Do you have that
13 information?

14 A. Yes, I have.

15 Q. Do you have a phone call on that April 6th
16 date at 3:52 p.m.?

17 A. Yes. It came from 330 325-2563.

18 Q. And you have that as the Brent Enoch
19 number. What was the elapsed time?

20 A. 2.6 seconds, sir.

21 Q. Now, in regards to two of these phone
22 numbers that we have found records, the
23 David Thorne and the Arnold Kirkbride
24 numbers, do the records indicate calls
25 going back and forth between those two

1 numbers?

2 A. Yes, it does.

3 Q. And how would you describe the number of
4 calls between those two numbers during that
5 two week period?

6 A. There was a number of calls made between
7 the two. I counted them up. There were 35
8 calls between Mr. Thorne and Mr.
9 Kirkbride's number. And Mr. Kirkbride to
10 Mr. Thorne's there were 44 calls during
11 that time period of March 24 through April
12 8th.

13 Q. So 35 calls from Thorne to Kirkbride and 44
14 calls from Kirkbride to Thorne?

15 A. That's correct.

16 Q. In that two week period?

17 A. That is correct.

18 MR. BAUMOEL: No further,
19 questions.

20 THE COURT: Counsel approach for
21 a moment.

22 - - - - -
23 (A conference was held at the bench
24 outside the hearing of the jury.)

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THE COURT: Unless cross is going to be less than three and-a-half minutes, I think I will have him come back.

MR. KEITH: May we take a moment.

THE COURT: You may.

- - - - -

(Thereupon, Mr. Keith and Mr. Haupt conferred.)

MR. KEITH: I could try and cross him in under five minutes.

THE COURT: Don't go over. I will bring him back. I don't want to rush you.

- - - - -

(Thereupon, the side bar conference ended.)

CROSS-EXAMINATION

BY MR. KEITH:

Q. Mr. Woerhman, my name is George Keith. I represent David Thorne here today. I think you and I have met ones before when you testified for AT&T, which you may not remember that.

A. I don't know when.

1 Q. Sir, you have shown us or I don't know if
2 you saw the posters that the State put up
3 that they have asked you to testify about,
4 I have a very brief number of questions.

5 First of all, your machine records
6 that a call came in or a call went out and
7 I assume you have to do some kind of a
8 search in order to find the calls that came
9 in; is that correct?

10 A. That's correct.

11 Q. Probably all recorded as outgoing calls so
12 you do a search to see who might have tied
13 them to a given incoming number?

14 A. That's correct.

15 Q. Second of all, you cannot tell us if any
16 person said anything during any of those
17 connections; is that right?

18 A. That's right.

19 Q. You can't tell us who placed it or whether
20 even a machine or a human being picked it
21 up; is that right?

22 A. That's correct.

23 Q. Now, through a period of time and March the
24 27th you record a series of calls from
25 three telephones I think in the City of

1 Kent to a 947 number in Atwater; is that
2 correct?

3 A. That's correct.

4 Q. And there is almost a pattern to the length
5 of them, 43.6 seconds, 43.7, 43.8?

6 A. That's correct.

7 Q. Can you explain that in any fashion?

8 A. If you are asking me for an opinion, it
9 could be an answering machine answering the
10 phone.

11 Q. Thank you.

12 MR. KEITH: No further questions,
13 Your Honor.

14 THE COURT: State?

15 MR. BAUMOEL: No questions, Your
16 Honor.

17 THE COURT: Thank you, sir. You
18 are free to go and if you will just stay
19 right there, sir. I'm going to release the
20 jury and then you can gather up all your
21 things there.

22 Folks, we are going to retire for
23 the evening. Thank you for a good day's
24 work. I appreciate it very much. I
25 believe 8:30 tomorrow, folks. I don't know

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what the weather is going to be. Let's
shoot for 8:30. And we will get started as
soon as thereafter as we can. And remember
all the admonitions that I gave to you and
have a nice evening and I will see you
tomorrow morning.

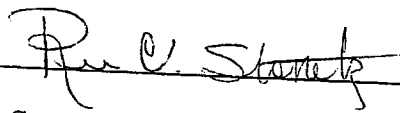
- - - - -

(Thereupon, court adjourned at
5:00 p.m. on January 19, 2000.)

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C-E-R-T-I-F-I-C-A-T-E,

I, Ruth C. Stoneking, a Registered Professional Reporter and Notary Public in and for the State of Ohio, do hereby certify that I reported in Stenotypy the testimony had; and I do further certify that the foregoing is a true and accurate transcription of said testimony.



Ruth C. Stoneking, RPR

All exhibits are being maintained by the Evidence Administrator, William Johnson, 438-0700, and are available upon ADVANCE request.

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(Thereupon, court opened at
8:47 a.m. and the following
proceedings were had.)

THE COURT: Good morning, ladies
and gentlemen. It's a testament to the
great snow blowing crew to Stark County.
I'm sure you see some roads are better than
others.

Nice to see you all here today.
If today is one of those that you would all
prefer not to go brave it on your own, why
don't you at the break get together and
decide that and then let us know and we
will place an order for you. We can get
sandwiches from across the street. Maybe
we can get them from the Conestoga or there
is Napoli right down the street if you want
something along those lines. Think about
that and we will discuss that at the
break.

Mr. Haupt, are you all ready? You
may call your next witness.

MR. BAUMOEL: Call Joe Wilkes.

JOSEPH WILKES

1 who, after being first duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. BAUMOEL:

5 Q. State your name for the record and spell
6 your last name?

7 A. Joseph Isaac Wilkes, W-i-l-k-e-s.

8 Q. How old are you?

9 A. Nineteen.

10 Q. And what is your date of birth?

11 A. 6-5-80.

12 Q. Therefore, on the date of March 31st of
13 1999 you were 18 years old at that time; is
14 that correct?

15 A. Yes, sir.

16 Q. Where are you presently living?

17 A. Hazen Road in Ravenna.

18 Q. Are you presently incarcerated in jail at
19 this time?

20 A. Portage County.

21 Q. The clothes you are wearing, is that
22 standard uniform for inmates at the jail?

23 A. Yes, sir.

24 Q. You indicated that your name is Joseph
25 Wilkes. Was that the name given to you at

1 your birth?

2 A. No, sir.

3 Q. And who were your parents when you were
4 born?

5 A. Dorothy and Joseph Brown.

6 Q. Where were you born?

7 A. Dover, Ohio.

8 Q. How many brothers or sisters do you have?

9 A. I have two other brothers and five sisters.

10 Q. And if you would, can you go through the
11 names of them?

12 A. Jennifer and Thomas were adopted with me.
13 And Barbara and Julie and Jason and myself
14 and my oldest sister and me.

15 Q. Were do you fit in that as far as youngest
16 to oldest?

17 A. I'm the second oldest.

18 Q. And you indicated the word adopted. I
19 think you were jumping ahead. You were not
20 adopted by Joseph and Dorothy Brown?

21 A. No.

22 Q. Did all your brothers and sisters, are they
23 all fathered by Joseph Brown?

24 A. No, sir, they weren't.

25 THE COURT: Mr. Baumuel, would

1 you pull that microphone towards you.

2 Thank you

3 BY MR. BAUMOEL:

4 Q. Let me go back to my previous question.

5 Were all your brothers and sisters fathered
6 by Joseph Brown?

7 A. No, sir. They weren't.

8 Q. Were any of your brothers and sisters
9 besides yourself fathered by Joseph Brown?

10 A. Yes, my sister Jennifer and my brother
11 Jason.

12 Q. And for what period of time did you live in
13 the same house as your father Joseph Brown?

14 A. For maybe a year and-a-half.

15 Q. Why was that?

16 A. Because he threw my older brother down the
17 steps and put him in the hospital and we
18 were all put in foster homes.

19 Q. And did you remain in a foster home?

20 A. Until I was five years old.

21 Q. Then what occurred at that time?

22 A. Then they placed back me in the home.

23 Q. Was your father Joseph Brown still present
24 at the home at that time?

25 A. No, sir, he was not.

1 Q. How long did you remain under the care of
2 your mother Dorothy Brown?

3 A. Until I was nine years old.

4 Q. You were nine years old?

5 A. Yes.

6 Q. What happened from that point?

7 A. Then I was put in foster care until I was
8 12.

9 Q. What happened at age 12?

10 A. I was adopted by Sterling and Brenda
11 Wilkes.

12 Q. Why were you taken out of the home at age
13 nine, if you recall?

14 A. Because I lived -- in the home they were
15 abusive physically, emotionally, sexually.

16 Q. And once again, what are the names of your
17 adoptive parents?

18 A. Brenda and Sterling Wilkes.

19 Q. Any of your brothers and sisters also get
20 adopted by Brenda and Sterling Wilkes?

21 A. Yes, my sister Jennifer and my brother
22 Thomas.

23 Q. And where did Brenda and Sterling Wilkes
24 live?

25 A. They lived in Atwater.

1 Q. Tell me then once you go and live with
2 Brenda and Sterling Wilkes, after being
3 adopted, what schools did you attend in
4 that area?

5 A. For most of the period of time I attended
6 Waterloo High and Waterloo Middle School.

7 Q. When did you leave Waterloo High School?

8 A. My 11th grade year.

9 Q. And what happened at that point?

10 A. I went to Maplewood.

11 Q. What is Maplewood?

12 A. It's a JVS, Joint Vocational School.

13 Q. Was that by your choice?

14 A. Yes, it was.

15 Q. How long did you remain at Maplewood JVS?

16 A. For maybe two months.

17 Q. What happened at that point?

18 A. I got in a fight and got in some trouble
19 and they put me in a behavioral school.

20 Q. You got kicked out of Maplewood and placed
21 in a behavioral school. Do you recall the
22 name of the behavioral school?

23 A. Walnut.

24 Q. How long did you remain at Walnut?

25 A. Until last year when I dropped out.

1 Q. Being 1999?
2 A. Yes, sir.
3 Q. And you did not graduate then from high
4 school?
5 A. No, sir.
6 Q. At that time being it's the spring semester
7 or whatever?
8 A. Yes, sir.
9 Q. And spring of 1999, that would have been
10 your senior year?
11 A. (Indicating.)
12 Q. During your school years did you get
13 involved in drugs?
14 A. Yes, sir.
15 Q. What type of drugs did you do?
16 A. Acid, cocaine.
17 Q. And during your school years up to the
18 evening of March 31st, 1999, did you
19 continuously live with your adoptive
20 parents Brenda and Sterling Wilkes?
21 A. No, sir, I did not.
22 Q. Did they continue to live together during
23 that period of time?
24 A. They had split up a point in time over the
25 summer of I think it was '97 or '98.

1 Q. They had separate residences then?

2 A. Yes.

3 Q. Tell us then did you go and live with one
4 as opposed to the other during that time?

5 A. Yes, I was living with my father.

6 Q. That would be Sterling Wilkes?

7 A. Yes, sir.

8 Q. And did you remain with him continuously up
9 to the night of March 31st?

10 A. No, sir, I did not.

11 Q. Where did you live -- when did you start
12 not living with your father Sterling
13 Wilkes, approximately?

14 A. About September after that summer.

15 Q. September after which summer?

16 A. '97 or '98.

17 Q. And where did you live during that period
18 of time?

19 A. Pretty much anywhere I could.

20 Q. Did you at times return to the home of your
21 father and mother?

22 A. Excuse me?

23 Q. Did you return during the time -- after you
24 left the home, you said you stayed wherever
25 you could. Would you on occasions return

1 to either Brenda or Sterling Wilkes home?

2 A. I did once.

3 Q. Finally, during those school years, did you
4 ever own an automobile?

5 A. Yes, sir.

6 Q. Please tell us about the purchase of your
7 first car?

8 A. My first car -- David paid for my first
9 car. It was an '87 or '88 Volkswagen
10 Rabbit.

11 Q. And when did that occur?

12 A. About October.

13 Q. October of which year?

14 A. '98 I want to say.

15 Q. October of '98. When you say David, do you
16 know David's last name?

17 A. Thorne.

18 Q. Do you see David Thorne in the courtroom
19 today?

20 A. Yes, I do.

21 Q. Would you please point him out and briefly
22 describe what he is wearing?

23 A. He's sitting right there, has on a teal
24 turtleneck, white sweatshirt.

25 Q. Record reflect identification of the

1 Defendant by the witness.

2 How long did you own that car for?

3 A. Until about December.

4 Q. Just a two month period?

5 A. Yes.

6 Q. What happened to the car?

7 A. I had -- my mom had put it in a junkyard
8 because I was buying a new car.

9 Q. Was the car working at that time?

10 A. No.

11 Q. You bought a new car when?

12 A. January 1st.

13 Q. Let me go back. You said David helped you
14 buy it. What did you mean by he helped
15 you?

16 A. He paid for the car for me.

17 Q. How much did that cost at that time?

18 A. I think -- I'm not exactly sure, but I
19 think it would have been \$300.

20 Q. During the time that you go out and start
21 living away from your adoptive parents
22 house, how do you support yourself
23 financially?

24 A. My girlfriends.

25 Q. And did you have any jobs during that

1 period of time?

2 A. No, I did not.

3 Q. In regards to the second car then, tell us
4 about the circumstances of purchasing your
5 second car?

6 A. My adoptive mother Brenda Wilkes, she
7 cosigned for me to purchase a '96 Geo
8 Metro.

9 Q. And how long did you own that car for?

10 A. Until towards the end of January.

11 Q. What happened at that point?

12 A. I got into a car accident.

13 Q. And were you hurt in the car accident?

14 A. Yes, sir, I was.

15 Q. Tell us about that.

16 A. I was driving back from Streetsboro and it
17 was snowy out. I was going down 44 I think
18 it is, or 14 comes out of Streetsboro. I
19 was -- I hit a patch of ice and I started
20 spinning and I was sideswiped by a truck.

21 Q. What happened to you?

22 A. I had received like 23 stitches in my head.

23 Q. Where did you go to receive those stitches?

24 A. Robinson Memorial.

25 Q. And did your family or parents or brothers

1 or sisters visit you there?

2 A. No, sir, they did not.

3 Q. Is there a reason for that?

4 A. They were -- my parents were upset because
5 I had wrecked my automobile and they were
6 liable because my mother cosigned for it.

7 Q. This caused a strain in your relationship
8 with your mother and father?

9 A. Yes, sir, it did.

10 Q. What about your brothers and sisters, did
11 you remain in contact with them during this
12 period of your life?

13 A. Not at that point in time.

14 Q. We have mentioned now the Defendant, David
15 Thorne. Approximately how long have you
16 known David Thorne?

17 A. Anywhere from three to five years.

18 Q. And so you are presently 19, so anywhere
19 from the age of 14 to 16 you have known
20 David Thorne?

21 A. Yes, sir.

22 Q. And do you recall how you first became
23 acquainted with David Thorne?

24 A. It was -- the first time that I met him was
25 through a guy named Marty.

1 Q. And did you become friends right off the
2 bat?

3 A. No, sir, I did not.

4 Q. Tell us how the relationship between
5 yourself and David Thorne began.

6 A. It was at a party at Atwater at a friend's
7 Jay Brennan's house and that's when we
8 started hanging out and talking.

9 Q. And how often would you say then after that
10 point?

11 A. After that I saw him quite a bit.

12 Q. And when you say quite a bit, how often are
13 we talking about?

14 A. Whenever he was not working.

15 Q. Do you recall where he was working at that
16 time?

17 A. I don't know the name of where he works.

18 Q. Do you know what kind of work he did?

19 A. Yes, he does light sticker detail for cars.

20 Q. Are you familiar with the term shoot
21 fighting?

22 A. Yes, sir.

23 Q. What does that term mean to you?

24 A. It was a sport that Thorne was training.

25 Q. What kind of sport?

- 1 A. It was a jujitsu and kick boxing.
- 2 Q. And did you become involved in the sport of
3 shoot fighting?
- 4 A. Yes.
- 5 Q. Tell us how that happened if you recall.
- 6 A. I'm not exactly sure how.
- 7 Q. Let me ask you this: Were you involved in
8 shoot fighting first or was David Thorne
9 involved in shoot fighting?
- 10 A. David was.
- 11 Q. Do you recall, was it David Thorne or was
12 it somebody else who got you involved in
13 this sport?
- 14 A. It was David Thorne that got me involved.
- 15 Q. Why did you get involved in it?
- 16 A. It was a sport that, you know,
17 self-defense, taught you how to fight
18 and --
- 19 Q. Did you have actual training sessions in
20 regards to shoot fighting?
- 21 A. Not actual training sessions. They were in
22 his basement of his house.
- 23 Q. Did you go to a place such as Independence,
24 Ohio, where they would have a formal class?
- 25 A. No.

- 1 Q. You need to talk orally.
- 2 A. No.
- 3 Q. You did get informal training; is that
4 correct?
- 5 A. Yes, sir.
- 6 Q. And where would that occur?
- 7 A. In David Thorne's basement.
- 8 Q. Can you describe David Thorne's basement?
- 9 A. It's two rooms down there, got a water bed,
10 pool table, exercise machine, punching
11 bags.
- 12 Q. Is it a residence where he lives by
13 himself?
- 14 A. No.
- 15 Q. Who else lives with him at that residence?
- 16 A. His grandparents.
- 17 Q. Do you know their names?
- 18 A. I don't remember.
- 19 Q. Just grandmother and grandfather of David
20 Thorne. Anybody else at the residence?
- 21 A. No.
- 22 Q. To your knowledge, did David Thorne get any
23 what we call formal training in shoot
24 fighting?
- 25 A. Yes, sir.

1 Q. Where did he get his formal training?

2 A. At I believe the name is Tracy's Dojo up in
3 Cleveland.

4 Q. In regards to the training that he was
5 training you, is that an accurate statement
6 as to what was going on?

7 A. Yes, sir.

8 Q. Did you refer to David Thorne talking to
9 other people as your trainer?

10 A. Yes, sir, I did.

11 Q. What type of things would he teach you
12 during the training sessions?

13 A. Grappling, kick boxing.

14 Q. How often would these training sessions
15 occur?

16 A. When I first started we were trying for at
17 least once every week or every two weeks.
18 And eventually it just dropped off to
19 whenever I saw him.

20 Q. And how long a time period did this start?
21 How many years or months or weeks were
22 involved in this training sessions?

23 A. It wasn't too long after we had started
24 really hanging out that he started training
25 me.

1 Q. And did it continue on either on a weekly
2 basis that you have described all the way
3 up to the evening of March 31st?

4 A. No, sir.

5 Q. When approximately do you think that the
6 training sessions ended?

7 A. It was really -- for a while it was once
8 like every week and then it turned out to
9 be whenever I saw him.

10 Q. So still was some training, just wasn't on
11 a weekly basis up to March 31st?

12 A. Yes.

13 Q. Was there any mental aspect David Thorne
14 talked to you about in regards to being a
15 successful or good shoot fighter?

16 A. To be the best, we shouldn't have to fear
17 anybody.

18 Q. And during the shoot fighting training,
19 would there ever be I guess all out shoot
20 fighting or physical combat between the two
21 of you?

22 A. Not as in kicking or boxing, but as in
23 ground grappling, yes.

24 Q. Wrestling?

25 A. Yes.

1 Q. It would be all out him versus you in his
2 basement at times?

3 A. Yes.

4 Q. Was that a common thing?

5 A. That was pretty much how it went.

6 Q. And was there a winner or a way to win?

7 A. He pretty much won all the time. It's tap
8 out.

9 Q. Tap out. What does that mean?

10 A. That's you have to tap out.

11 Q. Is that asking for mercy or saying --

12 A. Pretty much.

13 Q. When we talk about wrestling, are we
14 talking about holds in which you would
15 cause the other person extreme pain to
16 where he would ask for mercy?

17 A. Yes, sir.

18 Q. Submission hold, would that be something
19 that was used during the course of this?

20 A. Yes.

21 Q. What did you personally then -- what did
22 you like about the shoot fighting?

23 A. Myself when I first met Thorne, I was
24 pretty much afraid of everything and that's
25 one thing that really brought me to him was

1 that I saw he feared nothing and that I
2 wanted to be just the way he was.

3 Q. And as you sit here today, are you glad you
4 had the experience or the training in the
5 shoot fighting?

6 A. No, sir, I'm not.

7 Q. Why is that?

8 A. Because I wouldn't be in this situation
9 that I'm in.

10 Q. Why do you say that?

11 A. Because before I met Thorne I was afraid of
12 everybody and I was pretty much a little
13 mommy's boy. And when I met Thorne, he
14 helped me -- well, at the point in time he
15 helped me change to self-defense and I
16 wasn't running from everybody.

17 Q. Based on these training sessions and your
18 contact with David Thorne, how would you
19 describe your feelings about David Thorne
20 during that time period, your relationship
21 with David Thorne during that time period?

22 A. I looked up to him as pretty much a bigger
23 brother that I never had that I always
24 wanted.

25 Q. Was he a friend?

1 A. Yes.

2 Q. Were you either scared or intimidated by
3 him?

4 A. Yes.

5 Q. Why is that?

6 A. Because it seemed he was better than me.

7 Q. Did you respect him as a person?

8 A. Yes, sir.

9 Q. Why was that?

10 A. Because I wanted to be pretty much the same
11 way he was and I wanted to be -- I wanted
12 to -- he was afraid of nothing and he
13 always got his way. That's the way I
14 wanted to be.

15 Q. During the time you knew David Thorne
16 besides the shoot fighting that you
17 testified to, besides the first automobile,
18 did he help you out with things?

19 A. Yes. It was a few times that I needed
20 spare money because I had none. Mr. Thorne
21 helped provide me with money to support
22 myself.

23 Q. During the course of your relationship with
24 David Thorne would he ask you or order you
25 to do things?

1 A. At point in times.

2 Q. Would you elaborate?

3 A. As in pretty much if I had a problem with
4 somebody I didn't deal with it, there was
5 going to be problems between me and him.

6 Q. Do you have any specific examples?

7 A. Well, before all this happened, there was a
8 time with Mr. Josh McComb.

9 Q. Who is Josh McComb?

10 A. He was a friend of mine and David's.

11 Q. And tell us about the events involving Josh
12 McComb?

13 A. It was at a party and McComb showed up and
14 Thorne told me that we had a problem over
15 Josh's ex-fiance and David kept telling me
16 that I should kick his butt and that
17 everybody thought that I should too. And
18 at that point in time instead we never
19 fought. We became -- we shook hands on it.

20 Q. You and Josh?

21 A. Yes.

22 Q. Did you ever beat up anyone for David
23 Thorne based on his request?

24 A. For him, no.

25 Q. Based on his request?

1 A. Yes.

2 Q. Tell us about that.

3 A. I was having a problem with one kid and he
4 told me that I should deal with it the way
5 that he taught me to and that if I didn't
6 that he was going to deal with me.

7 Q. What did you do as a result of that?

8 A. I beat up the kid.

9 Q. How would you describe your relationship
10 with Josh McComb?

11 A. Me and him were good friends at one time
12 and then we had problems with -- between me
13 and him with his fiance and after that me
14 and him was pretty much against each other.

15 Q. Did David Thorne ever instigate problems
16 between the two of you?

17 A. He would always say stuff to and ride it,
18 but it never went to the point.

19 Q. During the time that you knew David Thorne,
20 did he have any girlfriends that you were
21 aware of?

22 A. Amy.

23 Q. Amy who?

24 A. Davis.

25 Q. Anybody else?

- 1 A. And I knew of Yvonne Layne.
- 2 Q. Who was Yvonne Layne to David Thorne?
- 3 A. His son's mother.
- 4 Q. And prior to the date of March the 31st,
- 5 had you met Yvonne Layne?
- 6 A. Yes.
- 7 Q. How many times had you met Yvonne Layne?
- 8 A. Two or three times.
- 9 Q. Could you tell us about those two or three
- 10 times?
- 11 A. First time was we went over to pick up his
- 12 son Brandon and I met her then. And second
- 13 time --
- 14 Q. Let me just stick to the first time. Where
- 15 did you go to pick up Brandon?
- 16 A. At her house.
- 17 Q. The house on Devine Street?
- 18 A. Yes, sir.
- 19 Q. And did you go in the house at that time or
- 20 was it just go up to the front door and get
- 21 Brandon and leave?
- 22 A. No, we went in the house.
- 23 Q. How long did you stay in the house for?
- 24 A. We were there approximately anywhere
- 25 between ten minutes and half an hour.

1 Q. With regard to the second time, when would
2 that have occurred or what occurred I
3 should ask?

4 A. We had stayed the night at Yvonne's house.

5 Q. Who stayed the night?

6 A. Me and David.

7 Q. What was the purpose of that?

8 A. So David could sleep with Yvonne.

9 Q. So the two of you spent the entire night
10 there?

11 A. Yes, sir.

12 Q. Where were you while they were sleeping
13 together?

14 A. Downstairs on the couch.

15 Q. Once again was that at the house on Devine
16 Street?

17 A. Yes, sir.

18 Q. Were there any other times that you were at
19 Yvonne Layne's house?

20 A. I myself stopped by one time where I had a
21 couple of friends and I was out in Alliance
22 and I stopped by to say hi and see how she
23 was.

24 Q. The one on Devine Street?

25 A. Yes, sir.

1 Q. And tell us about that meeting.

2 A. I just went to her house to see how she was
3 and Eric was there. He had just got out of
4 jail.

5 Q. Who?

6 A. Her boyfriend. I don't know his last name.

7 Q. Cameron, does that sound familiar, or you
8 don't know?

9 A. (Indicating.)

10 Q. And how long were you at the house on this
11 occasion?

12 A. For maybe ten or 15 minutes.

13 Q. Any other times that you would have had
14 contact with Yvonne Layne prior to March
15 31st?

16 A. Not that I recall.

17 Q. Did you have any romantic relationship with
18 Yvonne Layne?

19 A. No, sir.

20 Q. Did you have any reason to dislike Yvonne
21 Layne?

22 A. No, sir, I did not.

23 Q. Did you dislike Yvonne Layne?

24 A. No, sir, I did not.

25 MR. HAUPT: Your Honor, could we

1 approach.

2 - - - - -

3 (A conference was held at the bench
4 outside the hearing of the jury.)

5 - - - - -

6 MR. HAUPT: Your Honor, I
7 understand this is preliminary information
8 and just sitting there and I would say that
9 I counted 25 leading questions and I have
10 to object to the leading nature of the
11 testimony.

12 THE COURT: I think we are
13 starting to get into the area where you can
14 leave it up to him. And pull that mic
15 towards you a little bit. I think it's
16 hard to hear you. Just if you could bend
17 it that way a little bit.

18 MR. BAUMOEL: Okay.

19 - - - - -

20 (Thereupon, the side bar conference
21 ended.)

22 - - - - -

23 BY MR. BAUMOEL:

24 Q. During your relationship with David Thorne
25 you knew Amy Davis you testified to; is

1 that correct?

2 A. Yes, sir.

3 Q. And tell us about how you knew her?

4 A. I met her through David and her brother.

5 Q. Who was her brother?

6 A. Brian.

7 Q. How often would you see them?

8 A. Whenever she was with David.

9 Q. And for what period of time do you think
10 you saw her in regards to weeks, months or
11 years that you knew her?

12 A. I have known her pretty much the same. I
13 started hanging with David is when I recall
14 first meeting her.

15 Q. Were they boyfriend and girlfriend when you
16 first met her?

17 A. Yes, sir.

18 Q. How would you describe your relationship
19 with her?

20 A. To start out with, we really had no problem
21 and she was cool with me.

22 Q. Did it continue that way?

23 A. No, it didn't. It was a point in time the
24 night that we stayed at Yvonne's house she
25 approached me about it and I was rude about

1 it to her and she didn't like me from then
2 on.

3 Q. Were you aware of any relationship or
4 feelings between Yvonne Layne and Amy Davis
5 during this time period?

6 A. No, sir.

7 Q. You didn't know how they felt about each
8 other?

9 A. No, sir.

10 Q. You indicated that you did pick up Brandon
11 on one occasion?

12 A. Yes, sir.

13 Q. Did you have an opportunity during this
14 entire time period to see Brandon more than
15 that one time?

16 A. I don't recall.

17 Q. Did David Thorne talk about Brandon?

18 A. Yes, sir.

19 Q. Tell us about the conversations he would
20 say about Brandon?

21 A. That he loved his son.

22 Q. Anything else?

23 A. No.

24 Q. Did he ever talk to you about any legal
25 situation going on between him and Brandon?

1 MR. HAUPT: Your Honor,
2 objection.

3 THE COURT: Overruled. You can
4 answer the question.

5 THE WITNESS: At a point in time
6 not too long from when it happened he told
7 me that he didn't want to be paying child
8 support no more.

9 BY MR. BAUMOEL:

10 Q. When you say not too long in time before it
11 happened, are you talking about March 31st?

12 A. Yes, sir.

13 Q. How often did he talk about that?

14 A. Every now and then he would bring it up.

15 Q. Would it be -- when would it be that he
16 would bring these things up?

17 A. When nobody else was around.

18 Q. Where would you all be?

19 A. One time we was at his house, I remember
20 that.

21 Q. Did he ever talk about how he wanted to
22 resolve the situation?

23 A. He told me that he wanted Yvonne Layne out
24 of the picture.

25 Q. Please elaborate as to what he said.

- 1 A. As in he wanted her dead so he could have
2 his son.
- 3 Q. Where did it go from there?
- 4 A. To start off with, I really did not want
5 nothing to do with it.
- 6 Q. Then what happened?
- 7 A. Then one day he brought it up to me and
8 told me that things in my life would be
9 better because at that in point time I had
10 nothing. And he had brought it up to me
11 and I agreed on it.
- 12 Q. You agreed to what?
- 13 A. To kill Yvonne Layne.
- 14 Q. And why did you agree to kill Yvonne Layne?
- 15 A. Because that's what Thorne wanted.
- 16 Q. You said something about a better life.
17 What did Dave Thorne specifically say about
18 you getting a better life?
- 19 A. He told me that I would have a better life,
20 that he would be able to get me out of here
21 to where I would have a better life.
- 22 Q. You said you agreed to it because he wanted
23 you to do it.
- 24 A. Yes, sir.
- 25 Q. Can you elaborate? What if I wanted you to

1 do it?

2 A. David was like an older brother that I
3 never had and that I always wanted and for
4 a point in time he really treated me like
5 that. And I would have done anything in
6 the world just to be number one really.

7 Q. To be number one?

8 A. Yes, sir.

9 Q. Tell me then about discussions that you
10 would have had with David Thorne in regards
11 to what or how this was going to be done?

12 A. It started out that he wanted her shot and
13 then he decided that would be too loud, so
14 then he told me that he wanted her neck
15 cut.

16 Q. Where was that to be done?

17 A. At her house.

18 Q. The house in Alliance?

19 A. Yes, sir.

20 Q. Did you discuss with David how you were
21 going to get to this house?

22 A. Yes.

23 Q. Tell us in your own words as much as
24 possible about plans that you discussed
25 with David Thorne?

1 A. I was going to get a motel at the Comfort
2 Inn up by the Carnation Mall. Then I was
3 going to go from there to Yvonne's house
4 and make sure everything was done by 10:00.

5 Q. When you are telling us these plans, who
6 developed these plans? Who came up with
7 these plans?

8 A. David.

9 Q. Did you come up with any of the ideas?

10 A. No, sir.

11 Q. Why did it have to be done according to
12 David by 10:00?

13 A. Because he was going to shoot fighting and
14 on his way back he would be stopping at a
15 convenience store to get something to drink
16 or eat and he would be on the surveillance
17 camera.

18 Q. Did he ever suggest to you about getting
19 anybody else besides yourself to do it?

20 A. Not in this situation.

21 Q. What do you mean by that?

22 A. On the situation with Yvonne, no.

23 Q. Do you know individuals by the name of
24 Brent and Karen Enoch and Summer Enoch?

25 A. Yes, sir.

1 Q. How do you know them?

2 A. Summer was one of my best friends since I
3 have been 12 or 13.

4 Q. Did you have an occasion prior to March
5 31st to live at their house?

6 A. Yes, sir.

7 Q. Where were you living prior to living with
8 the Enochs?

9 A. Pretty much anywhere I could in Ravenna.

10 Q. Do you remember specifically where you were
11 living the day before you moved in with the
12 Enochs?

13 A. I was staying with my ex-girlfriend and her
14 brother and his wife the day before I moved
15 in.

16 Q. Where were they located?

17 A. Kent.

18 Q. And how did you end up living with the
19 Enochs?

20 A. Because I got into an argument, got into a
21 fight with my ex-girlfriend and her family
22 and I had called that night they kicked me
23 out of the house. So I called Summer's
24 house and talked to her mother Karen.

25 Q. What time of night are you calling?

1 A. I'm not exactly sure.

2 Q. Is it dark out?

3 A. Very dark.

4 Q. Was it before or after midnight if you
5 recall?

6 A. Probably was.

7 Q. Was what?

8 A. After midnight.

9 Q. We heard some testimony yesterday in
10 regards to some phone records about a call
11 March 25th to a number 325-1800 registered
12 to a Sterling Wilkes in Randolph Township.
13 Do you know who that person is?

14 A. It's my father.

15 Q. That would have been a call to David
16 Thorne. Do you recall if you are the one
17 who made that call?

18 A. I'm sure I did.

19 Q. And there was another call that same day
20 from a pay phone at 4:00 p.m. that lasted
21 eight minutes, 1497 State Route 44, Ron's
22 Minimart. Show you some pictures before I
23 ask you questions about that.

24 First hand you what's been marked
25 for identification purposes, these are

1 photos 44K, 44L, 44M, 44N, 44O, 44P, 44Q,
2 44R, 44S, and 44T. Ask you to look at all
3 those photos.

4 A. (Witness complies with request.)

5 Q. Do you recognize those photographs?

6 A. Yes, sir, I do.

7 Q. What do those photographs depict? What do
8 they show in the photographs?

9 A. The pay phone that I used to call Thorne.

10 Q. Where is that pay phone located? What
11 establishment or business?

12 A. Sonoco.

13 Q. And there is a picture -- there is a
14 photograph there indicating a specific
15 phone number on the pay phone there; is
16 that correct?

17 A. Yes, sir, there is.

18 Q. Show that to you. Would you please tell us
19 what the phone number is in this
20 photograph?

21 A. 330 325-9517.

22 Q. In relation to the Enoch house, where is
23 that Sonoco station?

24 A. Pretty much right across the road.

25 Q. As I told you, there is a phone record of

1 an eight minute conversation from that pay
2 phone on 3-25 to David Thorne. Would that
3 have been you called him on that date?

4 A. Yes, sir.

5 Q. Can you tell us the circumstances of that
6 telephone conversation?

7 A. I had -- I don't know what it was about. I
8 just remember talking to him and he came
9 over to my girlfriend's house at the point
10 in time.

11 Q. We also heard testimony in regards to a
12 variety of phone calls from Kent, Ohio,
13 during the early morning hours of March
14 27th to the phone belonging to David
15 Thorne. One -- I believe ten calls from
16 the Country Manner pay phone. Are you
17 familiar with that pay phone?

18 A. Yes, sir.

19 Q. And do you recall if you would be making
20 those calls during that time period?

21 A. Yes, sir, I was.

22 Q. One phone call from an apartment in Kent,
23 Marie Espida, once again during that time,
24 as well as an outdoor pay phone by the
25 Zepher Cafe in Kent, Ohio. Would that have

1 been you calling David Thorne?

2 A. Yes, sir.

3 Q. Why were you calling him?

4 A. I was trying to find a ride and I was
5 trying to find a place to stay at this
6 point because I got kicked out of my
7 girlfriend's.

8 Q. Is that the same night you would have
9 called the Enochs?

10 A. Yes, sir.

11 Q. Did you ever talk to David Thorne?

12 A. No, sir, I did not.

13 Q. Do you remember there was an answering
14 machine or anything picked up?

15 A. Yes, there was an answering machine.

16 Q. Tell us what you remember about moving into
17 the Enochs?

18 A. I just -- I can remember calling them that
19 night and the next day I remember moving in
20 their house.

21 Q. Did you have to move your furniture or
22 anything?

23 A. Just clothes.

24 Q. What did you have at that time?

25 A. I just had like a black basket with clothes

1 in it.

2 Q. How many clothes?

3 A. Very little.

4 Q. Any money at that time?

5 A. No, sir.

6 Q. Let's go to March 31st, 1999. Did you have
7 contact with David Thorne that day?

8 A. Yes, sir, I did.

9 Q. Tell me about that.

10 A. He came over to the Enochs and picked me up
11 and we had drove out to Alliance and got a
12 motel room.

13 Q. Were you expecting David Thorne to pick you
14 up that day?

15 A. Yes, sir, I was.

16 Q. Why was that?

17 A. We had prior planned it.

18 Q. You had prior planned it. Do you recall,
19 did you indicate to anyone at the Enoch
20 household that David Thorne was going to be
21 picking you up?

22 A. Yes.

23 Q. Where specifically, if you recall, did he
24 pick you up at the Enoch household?

25 A. I do not remember. I believe it was at the

1 house, but I do not recall.

2 Q. And what did he pick you up in?

3 A. His red Cavalier.

4 Q. Where did you go at that time?

5 A. We went into Alliance to the Carnation
6 Mall.

7 Q. Whereabouts did the vehicle go?

8 A. It was parked back by the Comfort Inn
9 entrance.

10 Q. What happened?

11 A. He had give me a hundred dollar bill to get
12 a motel. And I went in, got the motel and
13 went and bought some gloves.

14 Q. Why did you buy some gloves?

15 A. For later on that night.

16 Q. Whose idea was the gloves?

17 A. Thorne's.

18 Q. When he gave you the hundred bill what did
19 he tell you?

20 A. He told me to buy a room and get gloves and
21 a knife. He told me to get the room and to
22 hurry up because he had prior plans.

23 Q. Show you what's been marked as State's
24 Exhibits 56A, 56B, ask you if you can
25 identify those two exhibits?

1 A. Yes, sir. That's the form from the Comfort
2 Inn stating that I had got a motel room
3 there.

4 Q. Is there a signature on that form?

5 A. Yes, sir, there is.

6 Q. Whose signature is that?

7 A. That's mine.

8 Q. You also see a telephone number listed
9 there? Help you out.

10 A. Yes, sir.

11 Q. And do you recognize that telephone number?

12 A. Yes, I do.

13 Q. Whose telephone number is that?

14 A. That's the Enochs.

15 Q. So you first went and registered at the
16 Comfort Inn and then where did you go after
17 that?

18 A. I went down to K-Mart and bought a pair of
19 batting gloves.

20 Q. How did you get to K-Mart?

21 A. I walked through the entrance from the
22 Comfort Inn into the mall.

23 Q. And why did you not purchase the knife at
24 that time?

25 A. Because Thorne said that he had prior plans

1 and I didn't want to take up time.

2 Q. What happened after you made the purchase
3 at K-Mart?

4 A. I went back through the Comfort Inn, went
5 out to the car and we had left.

6 Q. When you get in the car, do you all discuss
7 at all these plans anymore?

8 A. Yes, he told me that I was to have it done,
9 I was to walk there and have it done by
10 10:00, that way he would be covered on the
11 surveillance camera at the convenience
12 store and he was going to shoot fighting
13 that night.

14 Q. And you were at the time living at the
15 Enochs?

16 A. Yes, sir.

17 Q. If you have any idea, how far away is the
18 Carnation Mall from the Enochs?

19 A. I'm not exactly sure.

20 Q. Within walking distance?

21 A. Not really.

22 Q. How were you to get home from the Comfort
23 Inn?

24 A. He was to pick me up the next morning.

25 Q. After leaving the mall with David Thorne

1 then tell us what you recall happening the
2 rest of the day.

3 A. We went back to his house. I'm not sure
4 how long we were there. But we had picked
5 up -- he had a baby lion and we had picked
6 it up and went over to the Enochs because
7 he was on his way to pick up one of his
8 friends and go to shoot fighting.

9 Q. Do you know who the friend was?

10 A. Josh.

11 Q. Josh McComb?

12 A. No.

13 Q. Different Josh?

14 A. Yes.

15 Q. Do you know his last name?

16 A. No, sir, I don't.

17 Q. So you went to his house, got a lion cub,
18 then you go directly to the Enochs from
19 there, do you recall?

20 A. I do not recall.

21 Q. What happened at the Enochs?

22 A. We had showed Karen and Brent the lion cub
23 and one of Brent's friends and then he took
24 off and went to pick up Josh to go to shoot
25 fighting.

1 Q. So where were you showing them the lion
2 cub, in the house, outside?

3 A. Outside.

4 Q. And showed it both to Brent and Karen
5 Enoch?

6 A. Yes, sir.

7 Q. David Thorne left at that point?

8 A. Yes, sir.

9 Q. Took the lion cub with him?

10 A. Yes, sir.

11 Q. What happened the rest of that day?

12 A. I had helped Brent take dry wall out to a
13 house that he was working on.

14 Q. And did Brent and Karen Enoch -- were you
15 working for Brent or he tried to get you a
16 job or what was that situation?

17 A. I was helping Brent with a side job and in
18 the meantime they were working on helping
19 me get a job.

20 Q. So that was part of that side job to take
21 dry wall to Tallmadge?

22 A. Yes, sir.

23 Q. And about what time of day is this?

24 A. Anywhere between 6:00 and 7:00.

25 Q. Early evening?

1 A. Yes.

2 Q. What happened then?

3 A. After we had dropped off the dry wall, I
4 had asked him if he could take me to the
5 Carnation Mall and he drove me.

6 Q. You asked Brent to take you to the
7 Carnation Mall?

8 A. Yes, sir.

9 Q. Did you indicate to him why?

10 A. I told him that I was meeting David up
11 there.

12 Q. That you were what?

13 A. Meeting David up there.

14 Q. And for what purpose?

15 A. I told him I was helping him -- later on
16 this evening helping him clean out his
17 garage.

18 Q. Did you indicate to them whether you would
19 be back that night?

20 A. I told them I would not.

21 Q. Where did you tell them you were going to
22 be that evening?

23 A. With David at his house.

24 Q. Did you indicate to them whether you were
25 going to receive anything for cleaning that

1 garage up?

2 A. Yes, I did. I told them that David was
3 going to pay me for cleaning the garage.

4 Q. So you leave Tallmadge with Brent Enoch?

5 A. Yes, sir.

6 Q. And where do you go?

7 A. To the Carnation Mall.

8 Q. You make any stops along the way?

9 A. I made a stop at the phone at Citco in
10 Randolph or Sonoco. I had got a page.

11 Q. Who was the page from?

12 A. I'm not exactly sure.

13 Q. Was it from David Thorne?

14 A. No, sir, it wasn't.

15 Q. You use that same pay phone we discussed
16 earlier?

17 A. Yes, sir.

18 Q. Done with the phone call. What happens
19 then?

20 A. And then Brent took me out to the mall and
21 it was about 8:00 when he dropped me off.

22 Q. Where did he drop you off?

23 A. He dropped me off down close by J.C.
24 Penney's.

25 Q. And looking at the mall from the Main

1 Street there, where is J.C. Penney's
2 located?

3 A. Furthest to your right.

4 Q. Do you recall what you were wearing that
5 evening when he dropped you off?

6 A. I was wearing a pair of black wind pants
7 and Nike shoes and a Nike jacket.

8 Q. Do you recall what kind of shoes?

9 A. Sport running shoes, cross trainers.

10 Q. I'm going to hand you a photograph of
11 State's Exhibit 60, ask you if you are able
12 to identify that?

13 A. Yes, sir.

14 Q. What do you identify that photograph to be?

15 A. That was the jacket that I wore that
16 night. That's my friend's Summer Enoch's.

17 Q. That's not your jacket?

18 A. No, sir.

19 Q. It belongs to Summer Enoch?

20 A. Yes, sir.

21 Q. Also show you what is marked as State's
22 Exhibit 28.

23 A. Those were mine.

24 Q. These were your pants?

25 A. Yes.

1 Q. Do you have one pair of pants like those?

2 A. I have many, but those were the only name
3 brand that I had.

4 Q. What do you mean by that?

5 A. They were -- the rest of them that I had
6 were -- weren't Addidas or Nike or nothing.

7 Q. But they were similar in color?

8 A. Yes.

9 Q. He dropped you off outside by J.C.
10 Penney's. What happens next?

11 A. I went into the mall and went up to my
12 room, then I went back down to K-Mart.

13 Q. Did you do anything in your room?

14 A. Yes.

15 Q. What did you do in your room?

16 A. Cocaine and acid.

17 Q. Where did you get the cocaine and acid
18 from?

19 A. From David.

20 Q. David Thorne?

21 A. Yes, sir.

22 Q. When did he supply you with that?

23 A. Earlier that morning when we went to the
24 mall.

25 Q. Why did he do that?

- 1 A. Because I asked him for it.
- 2 Q. You had asked him for it?
- 3 A. Yes, sir.
- 4 Q. Why did you want the acid and cocaine?
- 5 A. I just wanted it, no specific reason.
- 6 Q. How much acid or cocaine did you do?
- 7 A. I'm not exactly sure.
- 8 Q. Do you remember how much he gave you?
- 9 A. No.
- 10 Q. What happened after you left your room
- 11 then?
- 12 A. I went down and went to the K-Mart and
- 13 bought the knife and then I ran into a
- 14 friend there and I had spoke with him for a
- 15 few minutes and then --
- 16 Q. Let me stop you. You stated earlier that
- 17 David Thorne gave you a \$100 bill.
- 18 A. Yes, sir.
- 19 Q. Is that what you used to register to the
- 20 room, to buy the gloves and to buy the
- 21 knife?
- 22 A. Yes, sir, I did.
- 23 Q. Covered all three items?
- 24 A. Yes, sir.
- 25 Q. You are leaving the K-Mart. What happens?

1 A. I had left K-Mart and then I was walking
2 through the food court and I had run into a
3 friend of mine.

4 Q. You have the knife at this point?

5 A. Yes, sir, I do.

6 Q. Who is your old friend?

7 A. Christopher Campbell.

8 Q. Was he by himself?

9 A. No, he wasn't.

10 Q. Who was he with?

11 A. His girlfriend.

12 Q. What happened?

13 A. I had saw him and sat down and was talking.

14 Q. About what?

15 A. I don't recall.

16 Q. What do you mean you don't recall?

17 A. I really don't remember. I remember seeing
18 him sitting down smoking a cigarette and
19 talking with him, but I don't recall what
20 we had spoke about.

21 Q. Why is that?

22 A. Because I was on cocaine and acid.

23 Q. You don't recall anything you talked about?

24 A. No, I do not.

25 Q. Do you remember how long you talked to him?

- 1 A. No, I do not.
- 2 Q. Do you remember the circumstances in which
3 you left them?
- 4 A. As far as I know, they were still sitting
5 there.
- 6 Q. What happened then?
- 7 A. I had went back to the room and then when I
8 went back to the room, I went back
9 downstairs and out the door. That's when I
10 started walking to Yvonne's house.
- 11 Q. Any idea what time it is?
- 12 A. I'm not exactly sure.
- 13 Q. Tell us what happened next?
- 14 A. And I walked to Yvonne's house and --
- 15 Q. How long of a walk is it?
- 16 A. I'm not exactly sure. It's pretty far.
- 17 Q. Do you remember what street either by name
18 or by description that you would have taken
19 to get to Yvonne's house?
- 20 A. Main Street I think is what it's called
21 right out in front of the mall. Down by
22 the -- you got to take the road down the
23 park and the road right next to the park.
- 24 Q. Which way did you go then?
- 25 A. Left.

1 Q. Then where did you go?

2 A. I do not exactly recall from there.

3 Q. What happened then?

4 A. I had went to her outside and knocked on
5 the door and opened the door and called her
6 name. And when I had shut the door, was
7 walking up the first set of stairs, she was
8 coming down from her bedroom.

9 Q. The door was unlocked?

10 A. Yes, sir.

11 Q. Did you see any children when you were in
12 the first floor?

13 A. No, sir, I didn't.

14 Q. Were you aware that Yvonne Layne had
15 children?

16 A. Yes, sir.

17 Q. How were you aware of that?

18 A. From when me and David picked up Brandon.

19 Q. How many children do you believe she had?

20 A. Four or five.

21 Q. Tell me what happens. You go up to the
22 second floor. What happens?

23 A. She was coming down from her bedroom. And
24 she asked me what I was doing there. I
25 told her David told me to stop by and see

- 1 how she was doing.
- 2 Q. What happened then?
- 3 A. Then we sat down. We sat down on the couch
- 4 and we was talking.
- 5 Q. Where is the couch located on the second
- 6 floor?
- 7 A. Right next to the steps.
- 8 Q. Do you recall how you were sitting on the
- 9 couch?
- 10 A. She was sitting on my right-hand side.
- 11 Q. What happens?
- 12 A. And she turned her head to grab something
- 13 and --
- 14 Q. Go on.
- 15 A. That's when I grabbed her by her hair, cut
- 16 her throat.
- 17 Q. Where had the knife been up to that point?
- 18 A. In my pocket.
- 19 Q. And when she turned her head she had been
- 20 looking at you or you would have been
- 21 looking at the back of her head?
- 22 A. I was looking at the back of her head.
- 23 Q. How did you cut her throat?
- 24 A. I reached around her.
- 25 Q. Showing you State's Exhibit No. 1, do you

1 recognize this exhibit?

2 A. Yes, sir.

3 Q. What do you recognize that exhibit to be?

4 A. The knife that I used.

5 Q. That you purchased at K-Mart?

6 A. Yes, sir.

7 Q. What happened after you cut Yvonne Layne's
8 throat?

9 A. She had went for the sliding glass door and
10 I had stepped towards her and that's when
11 she turned around and came back and she
12 looked at me and I barely heard her kind of
13 say why to me and I told her David wanted
14 me to.

15 Q. What happened to her?

16 A. Then she fell on the floor.

17 Q. What happened next?

18 A. And I turned around, went to run out of the
19 house. I ran into the TV stand and it fell
20 over and I ran down the steps and went out,
21 went back to the mall.

22 Q. Went back to the wall you said?

23 A. Back to the mall.

24 Q. Back to the mall. Did you ever go to the
25 third floor of the house on that date?

1 A. No, sir, I didn't.

2 Q. Did you take anything in her house?

3 A. No, sir, I did not.

4 Q. Had that ever been discussed with you and
5 David Thorne?

6 A. Yes, he told me that she had some money
7 upstairs and that I should take that to
8 make it look like it was a robbery.

9 Q. Why didn't you do that?

10 A. I wanted to get out of the house.

11 Q. Did you exit the house the same way you had
12 entered it?

13 A. Yes, sir, I did.

14 Q. What happened once you left the house?

15 A. I went up, I cut across the yard across her
16 house and went on that road and threw the
17 knife in the ditch and ran up to the
18 McDonald's and threw the gloves in the
19 trash can.

20 Q. Was that part of the plan?

21 A. No, sir.

22 Q. Do you know exactly where you threw the
23 knife as far as street names?

24 A. No, sir.

25 Q. Can you describe the area where you threw

1 the knife?

2 A. It was -- they all pretty much look the
3 same. It was on the corner.

4 Q. Do you remember what you threw the knife
5 in?

6 A. It was a like a drain, street drain.

7 Q. Now, which McDonald's are you referring
8 to? How far away is the McDonald's from
9 Yvonne Layne's house?

10 A. I'm not exactly sure how far. It's pretty
11 close.

12 Q. Close to her house?

13 A. Yes.

14 Q. What did you do there?

15 A. I had thrown the gloves in the dumpster.

16 Q. Was that David's plan or your idea?

17 A. It was just an automatic thing, automatic
18 reaction.

19 Q. What happened next?

20 A. Then I ran back to the motel and slept
21 there all night and waited for Thorne.

22 Q. How did you get back to the motel as far as
23 Main Street or you take back streets?

24 A. Main Street.

25 Q. What happens when you get back to the

1 Comfort Inn?

2 A. I had sat there all night long.

3 Q. Do you change clothes at any time?

4 A. No, sir.

5 Q. Why not?

6 A. I didn't have any.

7 Q. You had the same clothes the entire time?

8 A. Yes, sir.

9 Q. Let's move ahead to the morning time. Tell
10 us about the morning. Now it would be
11 April 1st, 1999.

12 A. I had woke up -- well, I got up from the
13 motel and I went to use the pay phone to
14 call Thorne at his house because I forgot
15 that he was at work.

16 Q. Why did you call him?

17 A. Because I wanted him to get there.

18 Q. Why was that?

19 A. Because I was worried.

20 Q. You called him at his house?

21 A. Yes, sir.

22 Q. We heard testimony yesterday of a phone
23 call to David Thorne's from a pay phone at
24 Carnation Mall that lasted 8.7 seconds,
25 8:28 a.m. Would that have been your phone

1 call?

2 A. Yes, sir.

3 Q. Why didn't you call him at work?

4 A. I didn't know his work phone number.

5 Q. What happened after the phone attempt?

6 A. I had turned back in my room key and I was
7 pacing around the mall waiting for him to
8 show up.

9 Q. How much time elapsed?

10 A. I'm not sure.

11 Q. Did he show up?

12 A. Yes, he did.

13 Q. Tell us about that.

14 A. He pulled up in behind the -- by the exit
15 doors from the food court on the outside
16 where you drive around the place.

17 Q. What did he drive up in?

18 A. His red Cavalier.

19 Q. And do you have any idea what time it was?

20 A. It was around 9:00.

21 Q. What happened then?

22 A. Then he took me back to Randolph.

23 Q. What was said once you got in the car?

24 A. He just he asked me if it was done and I
25 said it was done and he said he didn't want

1 to know nothing about it.

2 Q. That was it?

3 A. Yes.

4 Q. What happened then?

5 A. He took me back to Randolph and dropped me
6 off across the road from the Enochs.

7 Q. Did he make any indication whether he would
8 be seeing you again?

9 A. Yes, he told me that he would be by in a
10 couple of days.

11 Q. For what reason?

12 A. To give me money.

13 Q. How much money?

14 A. \$200.

15 Q. Why was he giving you \$200?

16 A. For what I had done.

17 Q. Did you ever see that \$200?

18 A. Yes, sir, I did.

19 Q. Do you recall approximately when that
20 occurred?

21 A. Morning of Yvonne Layne's funeral.

22 Q. Tell me about what you remember about that
23 occurrence?

24 A. He picked me up in his grandfather's truck
25 and he had Brandon in the back of the truck

1 with him.

2 Q. What happened?

3 A. We had sat out in the driveway and was
4 talking and he had given me the money. And
5 then he went to the funeral.

6 Q. Purchase anything right there and then?

7 A. Yes, a 12 pack of Heineken I think.

8 Q. How did you do that?

9 A. I had David go through the drive-through
10 for me.

11 Q. Which drive-through are you referring to?

12 A. Bob's Drive-Through.

13 Q. Show you pictures 44A through 44J. Ask you
14 if you are able to identify those pictures?

15 A. Yes, that's Bob's Drive-Through.

16 Q. How close is Bob's Drive-Through to the
17 Enoch residence?

18 A. Right across the yard.

19 Q. Can you see the Enoch residence in any of
20 those pictures?

21 A. Yes.

22 Q. And you bought a 12 pack of beer?

23 A. Yes.

24 Q. And did you drive in the truck through the
25 drive-through?

1 A. Yes.

2 Q. And then right back to the Enochs?

3 A. No. He had dropped me off there and
4 because he had to get going he dropped me
5 off there and I walked across the yard over
6 to the Enochs.

7 Q. Let me go take you back one step to
8 something I didn't get to specifically. In
9 regards to the morning of April 1st when
10 David Thorne picks you up at the mall and
11 drives you back to Randolph, where
12 specifically does he drop you off, if you
13 recall?

14 A. Right across the road from the driveway.
15 It's a car dealership.

16 Q. That's on State Route 44 there?

17 A. Yes, sir.

18 Q. How close is that to the Enoch house?

19 A. Right across the road.

20 Q. Across the street from Bob's Pizza?

21 A. Diagonal from it.

22 Q. What did you do with the rest of the money?

23 A. I don't recall.

24 Q. You don't recall what you did with the rest
25 of the money?

- 1 A. The \$200 that he gave me that day?
- 2 Q. Right.
- 3 A. I took that and I bought a pair of shoes
- 4 and a pair of rollerblades, pair of work
- 5 boots with them.
- 6 Q. When did you do that?
- 7 A. The day after he gave it to me.
- 8 Q. Tell me about that.
- 9 A. I had -- I wanted David to go with me to
- 10 get them, but he was busy and Summer took
- 11 me.
- 12 Q. Summer Enoch?
- 13 A. Yes.
- 14 Q. Where did you go?
- 15 A. I don't recall. We went to a store.
- 16 Q. Did you go to one store or a mall shopping?
- 17 A. We went to a shopping strip.
- 18 Q. You indicated you called David Thorne that
- 19 day if he would go shopping with you; is
- 20 that correct?
- 21 A. Yes, sir.
- 22 Q. Is that what you just stated. We heard
- 23 testimony yesterday with regards to phone
- 24 calls on April 6th in the afternoon, three
- 25 calls from Brent Enoch to David Thorne, one

1 call from Bob's Pizza to David Thorne, one
2 call from Brent Enoch to David Kosisko's
3 number ranging from 3:42 to 3:52 p.m. Would
4 those be your phone calls?

5 A. Yes, sir.

6 THE COURT: Repeat the answer,
7 please.

8 THE WITNESS: I said yes, sir.

9 BY MR. BAUMOEL:

10 Q. Tell us about your contact with David
11 Thorne then from that point on.

12 A. After that he really didn't speak with me.
13 Pretty much -- I didn't really even see
14 him.

15 Q. Did you have a hernia operation?

16 A. Yes. He came over to take me to my
17 operation.

18 Q. And what about the shoot fighting?

19 A. It wasn't going on no more.

20 Q. During that time did you ever specifically
21 tell David Thorne what had occurred at
22 Yvonne Layne's house that night?

23 A. No, sir.

24 Q. Did he ever ask you about it?

25 A. No, sir.

1 Q. Did you ever talk with Amy Davis after the
2 murder?

3 A. No, sir.

4 Q. You indicated earlier that David Thorne
5 talked about taking care of you or getting
6 you out of town. What happened with that?

7 A. Nothing. He just gave me \$200 and that was
8 pretty much the last I saw of him except
9 for my surgery.

10 Q. Did you talk to him? Did you say when are
11 you getting me out town or anything like
12 that?

13 A. No, sir.

14 Q. Why not?

15 A. I just didn't.

16 Q. Were you working then at that time?

17 A. I got a job doing landscaping.

18 Q. Do you recall how long you lived at the
19 Enoch residence?

20 A. I'm not sure.

21 Q. Do you recall when you left the Enoch
22 residence?

23 A. Me and Karen had had a problem because I
24 wasn't really helping out around the
25 house. She was doing my laundry and

1 everything. And all I was doing was
2 running around.

3 Q. You got kicked out?

4 A. Yes, sir.

5 Q. Do you recall the day that the Alliance
6 Police Department interviewed you about the
7 investigation and the homicide of Yvonne
8 Layne?

9 A. Yes, sir.

10 Q. Where were you living at that time?

11 A. 645 Hazel.

12 Q. And tell me what you recall about that
13 contact with Alliance Police Department?

14 A. They were at the apartment when I showed up
15 and they stopped me and asked me if I would
16 go into the police station with them. I
17 told them yes.

18 So I went down and I asked them
19 what it was about and they said it was
20 about David, and I asked them what kind of
21 mess he got me into now. And they told me,
22 when I got to the jail is when they had
23 told me what had happened.

24 Q. They told you what happened?

25 A. What they were really there for.

- 1 Q. That was?
- 2 A. For the death of Yvonne Layne.
- 3 Q. What happened during that interview?
- 4 A. I had admitted to it.
- 5 Q. You admitted to what?
- 6 A. Killing Yvonne Layne.
- 7 Q. Did you mention David Thorne during the
- 8 course of that interview?
- 9 A. Yes, I did.
- 10 Q. What did you tell them?
- 11 A. I told them that he wanted me to do it and
- 12 he had paid me to do it.
- 13 Q. In regards to State's Exhibit 1, the knife
- 14 that you used to kill Yvonne Layne, do you
- 15 know how it ended up here in court today?
- 16 A. I had told the police where it was.
- 17 Q. Did you just tell?
- 18 A. I took them to it.
- 19 Q. Would that have been the same day as when
- 20 you were interviewed by them?
- 21 A. Yes, sir.
- 22 Q. And what happened when you took them to it?
- 23 A. They found the knife.
- 24 Q. Did you take them to any other piece of
- 25 evidence?

- 1 A. To my -- to the pants.
- 2 Q. What had happened to the pants?
- 3 A. What do you mean?
- 4 Q. In other words, why did you have to take
- 5 them to the pants? What had you done with
- 6 the pants after the murder?
- 7 A. I had thrown them in the woods.
- 8 Q. Which woods?
- 9 A. The ones right off Lover's Lane.
- 10 Q. I'm going to show you what's been marked
- 11 for identification purposes as 59A, 59B,
- 12 59C, 59D, 59E, 59F, and 59J. Ask you to
- 13 look at those items.
- 14 A. (Witness complies with request.)
- 15 Q. Do you recognize those photographs?
- 16 A. Yes, sir, I do.
- 17 Q. What are those photographs?
- 18 A. That's where I put the pants.
- 19 Q. Sorry?
- 20 A. Where I had put the pants.
- 21 Q. And did you show them the pants the same
- 22 day as the knife?
- 23 A. Yes, sir, I did.
- 24 Q. In the interview. What happened to the
- 25 other clothing items that you were wearing?

1 A. I'm not sure.

2 Q. Did you tell the police anything during the
3 interview about the clothes?

4 A. I told them that I had put them in a bag
5 and gave them to David, but I didn't.

6 Q. Sorry?

7 A. I said I had put them in a bag and gave
8 them to David.

9 Q. Did you do that?

10 A. No, sir, I did not.

11 Q. Why did you tell the police that?

12 A. I don't know.

13 Q. Did you tell the police anything else that
14 was false or wrong?

15 A. Yes, I told them that he had taken me to a
16 friend's house, dropped me off there and he
17 took me home.

18 Q. When are you talking about?

19 A. After we went to the mall.

20 Q. You mean the first time you went to the
21 mall?

22 A. Yes.

23 Q. You told them that you went to a friend's
24 house?

25 A. Yes.

1 Q. Why did you tell them that?

2 A. Just --

3 Q. That's not true?

4 A. No.

5 Q. Anything else?

6 A. Not that I recall.

7 Q. What then happened in regards to the legal
8 system with your case?

9 A. I was put in jail.

10 Q. And tell us what happened?

11 A. I was put in jail.

12 Q. Do you recall the specific offenses you
13 were charged with?

14 A. Yes.

15 Q. What were they?

16 A. Murder for hire.

17 Q. And did you plead guilty to those specific
18 charges?

19 A. Yes, sir, I did.

20 Q. And what was your sentence?

21 A. Thirty to life.

22 Q. Did you face other potential sentences
23 prior to pleading guilty?

24 A. Yes, sir, I did.

25 Q. What other potential sentences do you think

1 you were facing?

2 A. Death row, life without chance of parole.

3 Q. In regards to your life sentence with 30
4 years, did you make any agreement of what
5 you would do?

6 A. Yes, I did.

7 Q. What did you agree to do?

8 A. I would testify truthfully.

9 Q. You told us earlier why you agreed to kill
10 Yvonne Layne. Why did you actually kill
11 Yvonne Layne?

12 A. Because I wanted to be number one in
13 David's life and it was a way to prove
14 myself.

15 Q. Did you get paid for it?

16 A. Yes, sir, I did.

17 MR. BAUMOEL: No further
18 questions.

19 THE COURT: Counsel approach.

20 - - - - -

21 (A conference was held at the bench
22 outside the hearing of the jury.)

23 - - - - -

24 THE COURT: I'm going to take a
25 recess now and let the jury go out first.

1 I want you to stay with the jury. If they
2 go downstairs, clear out those in the way
3 and let them go first and get their
4 coffee. And then go back upstairs. One of
5 you stay with them. Go upstairs. None of
6 them go downstairs unaccompanied. Keep
7 everyone away from them. First in line.
8 After they leave the room, we will take the
9 Thorne down first.

10 After they leave the room we will
11 take Thorne down and we will take Joe
12 down. Take your client down. We will keep
13 the other one downstairs. Any other
14 questions? Take about 20 minutes. Okay.

15 - - - - -

16 (Thereupon, the side bar conference
17 ended.)

18 - - - - -

19 THE COURT: Ladies and
20 gentlemen, we will go ahead and take our
21 morning recess at this time.

22 Everyone in the courtroom stay
23 where you are. It's about almost ten
24 after. I'm going to have this break until
25 about 10:30. So I'm going to give you

1 about 20 minutes. When you leave the
2 courtroom if you want to go downstairs to
3 get refreshments or something, I think Mrs.
4 Cady is going to be with you and we are
5 going to have you go to the head of the
6 line and she is going to kind of make sure
7 your path to the refreshment stand is
8 open.

9 So please go take whatever you
10 want. She will then take you back up to
11 the third floor. If you do not want to go
12 downstairs, and you have something on the
13 third floor, Mr. Purses will take you up
14 there. Once you get in there stay in that
15 room and we will escort you back up. We
16 will come in 20 minutes to get you, about
17 10:30. We stand in recess. Remember my
18 admonitions.

19 - - - - -
20 (Thereupon, court recessed at
21 10:07 a.m. and reconvened at
22 10:30 a.m. and the following
23 proceedings were had.)

24 - - - - -
25 (Defendant's Exhibits

1 I-M were marked for
2 identification.)

3 - - - - -

4 (The following proceedings were
5 had outside the hearing of the
6 jury.)

7 - - - - -

8 THE COURT: The Court is holding
9 in its hand a piece of discovery regarding
10 a statement that John Marsh has made. We
11 will mark it for the record. And the
12 defense is requesting that they be
13 permitted to show this to Joe Wilkes for
14 the purpose, and tell me if I am wrong, for
15 the purpose of whether or not he made a
16 knowingly and intelligent decision to
17 plea. Is that the reason to show him
18 this?

19 MR. KEITH: Well, yes. To
20 understand, there is United States Supreme
21 Court law that says a person can make a
22 decision to plea in order to control what's
23 happening to them for a lesser penalty.

24 In this case the question is did
25 he make a decision to plea for a lesser

1 penalty being aware of that statement.

2 THE COURT: State?

3 MR. BAUMOEL: We are strongly
4 opposed to that statement. Obviously, they
5 are trying to backdoor this information
6 in. They have gone through all the
7 Constitutional rights with him. They went
8 through what he waived. It's just not
9 relevant. It's no motivation as to whether
10 his credibility is truthful or not based on
11 this statement.

12 THE COURT: The Court finds
13 first of all, the statement is clearly a
14 hearsay statement. We have been over this
15 before. This is what John Marsh says some
16 other person said to him. And that's No.
17 1. That's not competent evidence.

18 Secondly, nowhere in the statement
19 is either David Thorne or Joe Wilkes even
20 implicated or mentioned in the statement.

21 Thirdly, the issue whether this
22 individual made a knowingly and intelligent
23 decision to plead is not your issue. The
24 issue is his attorney and his counsel.
25 Your concern of whether he made a knowingly

1 and intelligent decision is not your
2 concern and it's not the jury's concern.
3 That's a legal decision. And if he wishes
4 to make a move on his plea based on that
5 that's another issue. You can mark it.
6 You can proffer after you're done here as
7 to what reason you would want to do this.

8 But I'm going to sustain the
9 objection. I'm not going to permit you to
10 show this to the witness, Joe Wilkes, nor
11 question him about it, nor any attempt to
12 get this information through any door back
13 or sliding door, trap door. Do I make
14 myself clear?

15 MR. HAUPT: Yes, Your Honor.

16 THE COURT: You can mark it. We
17 will preserve it for the record.

18 Just mark that.

19 - - - - -

20 (Defendant's Exhibit
21 N was marked for identification.)

22 - - - - -

23 (Thereupon, the jurors were
24 returned to the courtroom
25 at 10:36 a.m. and the following

1 proceedings were had.)

2 - - - - -

3 THE COURT: Mr. Keith.

4 MR. KEITH: Thank you, Your
5 Honor.

6 CROSS-EXAMINATION

7 BY MR. KEITH:

8 Q. Mr. Wilkes, my name is George Keith. I do
9 not believe we have ever met before; is
10 that correct?

11 A. That's correct, sir.

12 Q. You testified here in this courtroom today
13 that you cut a woman's throat because you
14 wanted David Thorne to like you; is that
15 correct?

16 A. Yes, sir.

17 Q. You testified here today that the only time
18 you told the police something that was not
19 true was where you had gone at a specific
20 time and who with; is that correct?

21 A. Yes.

22 Q. Everything else you told them was true and
23 accurate; is that correct?

24 A. As I recall.

25 Q. Tell us once again how old you are?

1 A. Nineteen.

2 Q. Nineteen today. Back on March 31st you
3 were 18?

4 A. Yes, sir.

5 Q. You turned 19 in June?

6 A. Yes, sir.

7 Q. Did you begin school for the 1998-1999
8 school year?

9 A. Yes, sir, I did.

10 Q. When did you leave school?

11 A. I'm not exactly sure.

12 Q. You told the police you dropped out with
13 two months left to go. Was that accurate?

14 A. Approximately that time.

15 THE COURT: Let me ask you to
16 move that mic up just a little bit. It's
17 turned. Let's see if that's better.

18 BY MR. KEITH:

19 Q. So would you have graduated in June of
20 1998; is that correct, or 1999?

21 A. Yes.

22 Q. Approximately eight months ago; is that
23 correct?

24 A. Yes, sir.

25 Q. You dropped out two months earlier. That

1 would have been about April the 1st of
2 1999; is that correct?

3 A. Yes, sir.

4 Q. What school were you going to when you
5 dropped out?

6 A. Walnut.

7 Q. Mr. Wilkes, you have told us that at the
8 age of 12 you were adopted by I believe
9 Sterling and is it Brenda Wilkes?

10 A. Yes, sir.

11 Q. Where did they live at that time?

12 A. Atwater.

13 Q. Where in Atwater?

14 A. 6942 Waterloo Road.

15 Q. How far is that from the intersection of
16 Waterloo Road and State Route 44?

17 A. Quite aways.

18 Q. How far?

19 A. I'm not exactly sure.

20 Q. And at the age -- did you go to live there
21 at the age of 12, or did you live there for
22 a period of time before they adopted you?

23 A. No, I don't recall.

24 Q. You don't know or you don't recall?

25 A. From the age of 12. I've lived there since

1 I have been 12 years old.

2 Q. How long did they live at that address
3 after you went to live there?

4 A. Until approximately a year, year and-a-half
5 ago.

6 Q. A year or year and-a-half from right now?

7 A. From now.

8 Q. So they may have left there in January of
9 1999; is that right?

10 A. They moved out. They were living in my
11 father's trailer in Randolph during when I
12 dropped out.

13 Q. When you dropped out?

14 A. Yes.

15 Q. They were living in your father's trailer.
16 Were you living there?

17 A. No, sir, I was not.

18 Q. Where were you living in January of 1999?

19 A. I'm not exactly sure.

20 Q. Were you living there in June of 1998?

21 A. I might have been. I don't recall.

22 Q. Now we are going to go back now probably
23 two and-a-half years, the 1997-1998 school
24 year. Where did you go to school that
25 year?

- 1 A. I believe Waterloo. I'm not sure.
- 2 Q. You believe Waterloo. You are not sure.
- 3 A. Yes, sir.
- 4 Q. Where did you go to school in the 1998-1999
- 5 school year?
- 6 A. I went to Walnut School.
- 7 Q. When did you start there?
- 8 A. In Ravenna. I'm not exactly sure.
- 9 Q. Tell us again how long you were at
- 10 Maplewood Joint Vocational School?
- 11 A. For approximately maybe a month to two
- 12 months.
- 13 Q. Why did you leave?
- 14 A. I got kicked out.
- 15 Q. Why did you get kicked out?
- 16 A. Because I got into a fight.
- 17 Q. Who did you fight with?
- 18 A. Some kid in my class.
- 19 Q. Do you know his name? Was the fight in the
- 20 classroom?
- 21 A. It was, yeah.
- 22 Q. During class?
- 23 A. Um-hmm.
- 24 Q. And you can't tell us if that was 1997,
- 25 '98? Can you tell us if it was in January

- 1 of '99?
- 2 A. No, sir, I'm not sure.
- 3 Q. Well, you went to live at the home of Brent
4 and Karen Enoch on Saturday afternoon March
5 the 27th of 1999; is that correct?
- 6 A. Yes, sir.
- 7 Q. And where did you live immediately before
8 that?
- 9 A. In Kent.
- 10 Q. Where?
- 11 A. Down by the Country Manner at an apartment.
- 12 Q. The apartments on Spaulding Drive?
- 13 A. I'm not sure. I don't know the name of the
14 room.
- 15 Q. That is the west end of Kent almost to
16 Stow, is it not?
- 17 A. Yes, sir.
- 18 Q. And how long had you stayed there?
- 19 A. Couple of weeks.
- 20 Q. Couple weeks. Did you have a car at that
21 time?
- 22 A. No, sir, I did not.
- 23 Q. Where were you working at that time?
- 24 A. I did not have a job.
- 25 Q. Okay. You say a couple weeks. Are you

1 saying two weeks, three weeks, how long?

2 A. I'm not exactly sure.

3 Q. Okay. Who lived in that apartment?

4 A. My ex-girlfriend's brother and his wife.

5 Q. What were their names?

6 A. I don't remember their names.

7 Q. What is the name of your ex-girlfriend?

8 A. Jenna Hillis.

9 Q. Where had you met her?

10 A. I have known her ever since I have been

11 younger through her brother.

12 Q. Now, you moved into her brother and his

13 wife's apartment; is that right?

14 A. Yeah.

15 Q. Did they have children?

16 A. Yes, they did.

17 Q. Where did you sleep?

18 A. On the couch.

19 Q. How did you eat?

20 A. There.

21 Q. You didn't have a job at that time, you

22 didn't have a car; is that right?

23 A. That's right, sir.

24 Q. Before you lived there where did you live?

25 A. On South Chestnut.

1 Q. In Ravenna?

2 A. Yes.

3 Q. Near the old hospital?

4 A. The old hospital right across the road from
5 it.

6 Q. What we call the administration building?

7 A. Yes.

8 Q. Do you know where Eadie's is now that is
9 closed?

10 A. Yes.

11 Q. How far was it from there?

12 A. Right up the road. It was a block.

13 Q. Let's go back to Kent for a minute. At
14 2:00 in the morning on March 27th you start
15 frantically calling a number of people
16 looking for help for a ride; is that right?

17 A. Yes.

18 Q. Why is it that you suddenly need a place to
19 stay so bad?

20 A. Because I had got into a fight with my
21 girlfriend's brother and his wife.

22 Q. What were you fighting with them about?

23 A. Because he asked me if his wife was
24 cheating on him and I told her the truth.

25 Q. You got into a domestic argument in the

1 middle of the people you were living with?

2 A. Pretty much.

3 Q. So before that you lived on South Chestnut
4 Street. Who did you stay with there?

5 A. Dave Moffit, Hasty Moffit.

6 Q. David Moffit and who?

7 A. Hasty.

8 Q. Hasty like Hasty Pudding?

9 A. Yes, sir.

10 Q. And who were they?

11 A. Hasty was a friend of mine and Dave was her
12 dad.

13 Q. How long did you stay there?

14 A. I'm not sure.

15 Q. Were you there for Christmas?

16 A. I don't recall.

17 Q. You don't know where you were on Christmas
18 Day of 1999?

19 A. I know where I was Christmas Day.

20 Q. Where were you Christmas Day?

21 A. I know I was with my parents.

22 Q. Were you staying at their residence at that
23 time?

24 A. No, sir, I was not.

25 Q. Where did you go home to from there?

1 A. Hasty's.

2 Q. So you lived with them from at least
3 Christmas through sometime in March; is
4 that correct?

5 A. Yes, sir.

6 Q. And why did you leave there?

7 A. There was no reason.

8 Q. You just pack up and moved to Kent?

9 A. Yep.

10 Q. Okay. Now, how did you eat while you were
11 living at Hasty's?

12 A. Her dad.

13 Q. Did you have a job or a car at that time?

14 A. No, sir.

15 Q. Before you moved to Hasty's, where did you
16 live?

17 A. I do not recall.

18 Q. You don't recall?

19 A. No, sir.

20 Q. And you don't recall when you left your
21 parents' home; is that right?

22 A. No, sir, I do not.

23 Q. You indicated that your adoptive mother
24 cosigned for an automobile for you in
25 January of 1998; is that right?

1 A. Yes, sir.

2 Q. And you had an accident on State Route 14
3 somewhere east of Streetsboro; is that
4 correct?

5 A. Yes, sir.

6 Q. And as a result of that you went to the
7 hospital; is that correct?

8 A. Yes, sir.

9 Q. And you have told others and told the
10 prosecutor that your family was angry about
11 that; is that right?

12 A. Yes, sir, they were.

13 Q. Now, as part of having the vehicle were you
14 going to make payments on that vehicle?

15 A. Yes, sir.

16 Q. So in January you had a vehicle, but no job
17 and somebody else was feeding you; is that
18 right?

19 A. I just lost my job the day that I had
20 got my car.

21 Q. Where were you working?

22 A. I was working for Michael Sabaro.

23 Q. Who?

24 A. Concrete guy out of Brimfield.

25 Q. How did you lose your job?

1 A. It was during the wintertime and there was
2 concrete and they usually stop people from
3 working during the winter and that's what
4 happened.

5 Q. So you worked up into January and then lost
6 your job; is that right?

7 A. (Indicating.)

8 Q. I didn't hear your answer?

9 A. Yes, sir.

10 Q. How long did you work for Michael Sabaro?

11 A. I'm not exactly sure.

12 Q. Was it two years, three years?

13 A. It wasn't even a year.

14 Q. And what hours did you work?

15 A. I'm not exactly sure.

16 Q. What days of the week did you work?

17 A. Monday through Friday, sometimes even
18 Saturdays.

19 Q. What time did you start in the morning?

20 A. I do not recall. I usually got off around
21 anywhere between four and six, but I don't
22 recall when I started.

23 Q. What time did you finish?

24 A. Around four or six.

25 Q. What did you make as an hourly wage?

1 A. I'm not exactly sure. I think it might
2 have been \$7.25.

3 Q. I can't hear you.

4 A. \$7.25 might have been.

5 Q. Did you work 40 hours a week?

6 A. Yes, sir.

7 Q. When did you start that job?

8 A. I don't recall.

9 Q. What did you do during the summer of 1998?
10 Did you stay with your parents?

11 A. I don't recall that summer.

12 Q. Where did you work during that summer?

13 A. I'm not sure, but that might have been the
14 summer that I worked at East Park.

15 Q. How old were you when you worked at East
16 Park?

17 A. Seventeen. I think 17 or 18.

18 Q. Well, the summer of 1998 since you were
19 born in 1980 you were 18, so you didn't
20 work at East Park that summer, did you?

21 A. No. I didn't have a job that summer then.

22 Q. And where did you live once again?

23 A. I do not recall.

24 Q. Okay. You don't know where you lived, who
25 fed you or how you caused that to happen;

1 is that right?

2 A. No, sir, I do not.

3 Q. When you worked for Michael Sabaro and you
4 lived at I guess it's the Moffits, did you
5 pay them any kind of rent?

6 A. No, sir.

7 Q. You had a job and an income and you didn't
8 pay for any of your keep; is that right?

9 A. Yes, sir.

10 Q. You did have money, because you made about
11 \$300 a week before taxes. Did he pay you
12 cash or a paycheck?

13 A. A check.

14 Q. You probably took home about \$225 a week,
15 didn't you?

16 A. Yes, sir.

17 Q. And you didn't have any living expenses?

18 A. No, sir.

19 Q. How long did that go on for?

20 A. Until the end of January, beginning of
21 December. I mean end of December,
22 beginning of January.

23 Q. So you bought a car, you wrecked it. I
24 assume as part of the car loan you had to
25 get insurance, didn't you?

1 A. Yes, sir.

2 Q. The insurance protected the car, didn't it?

3 A. Yes, sir.

4 Q. So that accident was not going to cost your
5 mother any money, was it?

6 A. It did. She got it all back.

7 Q. From the insurance company?

8 A. Yes.

9 Q. Okay. And you're saying at that point the
10 family that you can't remember when you
11 left lived with abandoned you; is that
12 correct?

13 A. Yes, pretty much.

14 Q. What changed about your relationship?

15 A. What do you mean?

16 Q. Well, you weren't living at their house,
17 they weren't providing you with support,
18 and other than having cosigned for the loan
19 apparently you were living based on the
20 generosity of others; is that correct?

21 A. Yes, sir.

22 Q. Once again what then changed about that
23 relationship?

24 A. I don't understand.

25 Q. Well, how did they abandon -- what were

1 they doing before the accident that they
2 ceased to do afterwards?

3 A. Be a family.

4 Q. How so?

5 A. Help me out at a point in time, I'm not
6 sure how long I did, but I stayed there.
7 When I bought my car I was staying there.

8 Q. Now, you were staying there sometime in
9 January. This is in your adoptive parents
10 trailer in Ravenna?

11 A. Yes.

12 Q. What trailer park are they in?

13 A. It's in Randolph. It was right off 44.

14 Q. Down by the fairgrounds?

15 A. Yes.

16 Q. So when you told us you were living at the
17 Moffits that was not correct; is that
18 right?

19 A. I was not at that point in time.

20 Q. What point in time did you go to the
21 Moffits?

22 A. Christmas Day.

23 Q. Where were you living before then?

24 A. With my parents.

25 Q. Why did you leave there?

1 A. Because me and my mother got into an
2 argument. She kicked me out.

3 Q. She kicked you out and then a week
4 and-a-half later she cosigned for a fairly
5 new car?

6 A. We got into an argument in December. She
7 kicked me out. We was still talking. She
8 cosigned for my car. And after that, she
9 never talked to me.

10 Q. You were working at Michael Sabaro's
11 concrete at least from sometime in the fall
12 of 1998 through January; is that right?

13 A. Yes, sir.

14 Q. You worked generally a 40 hour week; is
15 that right?

16 A. Yes.

17 Q. Okay. Essentially, you told us that you
18 had been doing drugs, acid and cocaine, LSD
19 and cocaine?

20 A. Yes, sir.

21 Q. When did you first start using cocaine?

22 A. I do not recall.

23 Q. Would you have been 14, 15, 16?

24 A. I'm not exactly sure.

25 Q. Would you have been living at home at that

1 time?

2 A. No.

3 Q. Would you have been going to school at that
4 time?

5 A. Yes.

6 Q. And when did you first start using LSD?

7 A. Approximately three or four years ago.

8 Q. Three to four years ago, so somewhere
9 between the ages of 15 and 16; is that
10 right?

11 A. Yes, sir.

12 Q. Now, when did you start drinking?

13 A. I was 12 or 13 years old.

14 Q. How regularly did you drink over the next
15 six or seven years?

16 A. Quite often.

17 Q. Once a week, twice a week, every day?

18 A. Whenever there was a party.

19 Q. Whenever you had access to it? In other
20 words, you had access to it. What about
21 marijuana? Did you smoke marijuana?

22 A. Yes.

23 Q. You never smoked marijuana?

24 A. I have.

25 Q. Just not as regularly as these other

1 things?

2 A. No.

3 Q. How regularly did you use cocaine?

4 A. It wasn't -- it was every now and then, not
5 very often.

6 Q. You have told us that you spent time with
7 David Thorne over a couple of years; is
8 that right?

9 A. Yes, sir.

10 Q. Did you ever know him to use any of these
11 substances?

12 A. He told me he used cocaine before and acid,
13 yes.

14 Q. Did you see him do those things?

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

16 Q. Did he ever do them in your presence?

17 A. No, sir.

18 Q. Did you see any evidence of him suffering
19 from a hangover, the disabilities that go
20 with those things?

21 A. No, sir.

22 Q. So during the time you knew him you had no
23 reason to believe he was involved in that,
24 right?

25 A. No, sir.

1 Q. You have no reason to believe he was
2 involved in that?

3 A. No, sir.

4 Q. Now, when did your adoptive mother and
5 father split up?

6 A. I'm not exactly sure.

7 Q. Well, I think that you said either the
8 September after the summer of 1997 or 1998
9 you had lived where you could, you weren't
10 sure which summer it was. But that they
11 split up the summer of either 1997 or
12 1998. You don't remember which one; is
13 that correct?

14 A. No, sir, I do not.

15 Q. Was it the summer you worked at the East
16 Park or was it the summer --

17 A. Yes, it was the summer I worked there.

18 Q. So they split up the summer of 1997; is
19 that right?

20 A. There it is.

21 Q. You lived in his trailer in Ravenna for a
22 period of time; is that right?

23 A. He had an apartment at that point.

24 Q. Where was that?

25 A. It was on Highland.

1 Q. In Ravenna?

2 A. Yes.

3 Q. That's a little further uptown than the
4 Chestnut Street address?

5 A. Yes.

6 Q. So you lived on Highland. How long did you
7 live there?

8 A. I'm not exactly sure.

9 Q. Where did you go from there?

10 A. I was living with my ex-girlfriend on
11 Hazen.

12 Q. Who was your ex-girlfriend?

13 THE COURT: Repeat your answer.

14 A. I said that I was living on Hazen at a
15 different apartment.

16 Q. That's H-a-z-e-n?

17 A. Yes, sir.

18 Q. Okay. Which ex-girlfriend was that?

19 A. Her name was Debbie.

20 Q. And her last name?

21 A. Grafton.

22 Q. Okay. And so this is the summer you are 17
23 into the fall. You are living with Debbie
24 Grafton; is that right?

25 A. Yes, sir.

1 Q. Did you have an automobile at that time?

2 A. No, sir.

3 Q. Did you have a job at that time?

4 A. Around that area I was working at East
5 Park. I don't know what time though.

6 Q. Did Debbie have a job?

7 A. Yes, sir.

8 Q. How old was Debbie?

9 A. Twenty-three.

10 Q. Who paid the rent?

11 A. She did.

12 Q. And did you own an automobile through that
13 period of time?

14 A. No, sir, I did not.

15 Q. Now, the two cars you have told us about,
16 you said that was a Volkswagon Rabbit; is
17 that right?

18 A. Yes, sir.

19 Q. What year was that again?

20 A. I want to say an '87. I'm not exactly
21 sure.

22 Q. You have testified on direct it was an '87
23 or '88; is that right?

24 A. Yes, sir.

25 Q. And when was that purchased once again?

- 1 A. Not too long before I got my new car.
- 2 Q. So sometime November or December of 1998?
- 3 A. Anywhere in October to December.
- 4 Q. And you say that \$300 was given for that?
- 5 A. I'm pretty sure. I'm not exactly sure.
- 6 Q. Whose name was it titled in?
- 7 A. I think it was in mine.
- 8 Q. Did you have insurance for that?
- 9 A. Yes, sir, I did.
- 10 Q. You did.
- 11 A. Yes.
- 12 Q. So you had that car maybe in October, maybe
13 in December. You were not sure. Had you
14 ever had a car at your own disposal before
15 then?
- 16 A. No, sir.
- 17 Q. Before the summer of 1997 do you know where
18 you lived?
- 19 A. No, sir, I do not.
- 20 Q. Do you know when you went to your adoptive
21 father's apartment in Ravenna?
- 22 A. No.
- 23 Q. You have indicated to us that your birth
24 parents were some people named Brown in
25 Dover?

1 A. Brown, yes.

2 Q. You were born in Dover, Ohio?

3 A. Yes.

4 Q. There are a lot of people in Ravenna named
5 Brown. Were they related to any of those
6 people?

7 A. Not that I know of.

8 Q. Not that you were aware of?

9 A. No.

10 Q. So Bo Brown, Doug and Robert, you don't
11 know that they were kin to you; is that
12 right?

13 A. Not that I know of.

14 Q. So you owned this VW until December and
15 then your mom put it in a junkyard?

16 A. Yes.

17 Q. Why?

18 A. Because it didn't run.

19 Q. How long did it run for?

20 A. From when I bought it until about
21 December. I always had problems with it.

22 Q. Couple of weeks, a month?

23 A. Probably about a month or two.

24 Q. You had the accident. You went to Robinson
25 Memorial Hospital. How long were you in

1 the hospital?

2 A. Just for the day for about five hours.

3 Q. As long as it took for them to see you and
4 stitch you up?

5 A. Um-hmm.

6 Q. Where did you go home to from there?

7 A. I went to my friend Samantha Pegg's house.

8 Q. You went to Samantha Pegg's house?

9 A. Yes.

10 Q. How long did you stay there?

11 A. Just the day.

12 Q. And then where did you go?

13 A. Back to Hasty's.

14 Q. Back to Hasty's.

15 A. Um-hmm.

16 Q. So before that you had been living at
17 Hasty's?

18 A. Yes, sir.

19 Q. Other than the job at East Park and the job
20 with Sabaro Concrete, have you had any
21 other jobs?

22 A. Worked for my family.

23 Q. What did you do for them?

24 A. Mowed grass, helped my grandpa fix houses.

25 Q. Things around the house, in other words, as

1 part of the family?

2 A. Yes.

3 Q. Now, the Enochs when you moved in there the
4 end of March, there were two things going
5 on in terms of your working, wasn't there?

6 A. I don't know, sir.

7 Q. Let me ask you a better question. You
8 moved in with the Enochs. You were asked
9 to help Brent Enoch on a side job putting
10 dry wall and refinishing the basement of a
11 residence in Tallmadge; is that correct?

12 A. Yes, it is.

13 Q. And they also got you a job with somebody,
14 I'm not certain who it was, a relative or a
15 good friend working as a landscaper, did
16 they not?

17 A. Yes, they did.

18 Q. When did you start the job as a landscaper?

19 A. I am not exactly sure.

20 Q. Well, we know you didn't start it before
21 March the 27th. Would you agree with that?

22 A. Yes, sir.

23 Q. And how long after March the 27th would you
24 have started it?

25 A. It was in April sometime.

1 Q. And how long did you work that job?

2 A. I do not recall.

3 Q. Well, did you work it for two weeks, two
4 months?

5 A. At least two months.

6 Q. For two months?

7 A. At least.

8 Q. Did you continue to work at that job after
9 you left the Enoch residence?

10 A. Yes, I was there at least for two months.

11 Q. When did you come to quit working at that
12 job?

13 A. I moved out of the area and moved back into
14 Ravenna.

15 Q. Out of the area and into Ravenna. How far
16 is it from Ravenna to the Enochs?

17 A. I'm not exactly sure. Probably about I
18 think it's 15 miles from Atwater to
19 Ravenna.

20 Q. It would be a 20, 25 minute drive; is that
21 right?

22 A. Yes.

23 Q. So you moved back into Ravenna. Where did
24 you move to at that time?

25 A. My friend Herb Stacy's house.

1 Q. How long did you stay there?
2 A. Maybe two weeks.
3 Q. Then where did you go?
4 A. I moved down to Hazen.
5 Q. Who did you live with there?
6 A. Girl named Jennifer Beckwirth.
7 Q. How long did you stay there?
8 A. Until I was arrested.
9 Q. So from March to July 14th you kind of know
10 where you were; is that correct?
11 A. Yes.
12 Q. Before that you are really not certain of
13 any dates, places or time; is that right?
14 A. No, sir.
15 Q. And you did not have transportation of your
16 own other than maybe for a month
17 and-a-half; is that right?
18 A. No, sir.
19 Q. You have learned to ask people for things
20 you need; is that correct?
21 A. Yes, sir.
22 Q. I couldn't hear you.
23 A. Yes, sir.
24 Q. You learned to ask them for rides, food,
25 clothing, places to live, whatever it is

1 you need; is that correct?

2 A. Yes, sir.

3 Q. Let's take a step back. When did you first
4 meet David Thorne?

5 A. It was approximately four or five years
6 ago.

7 Q. Where at?

8 A. The first time I met him one of his -- I
9 was with one of his friends Marty and we
10 had went to his house.

11 Q. You had gone to David Thorne's house with
12 Marty?

13 A. Yes.

14 Q. You didn't meet him at a party?

15 A. That's when I first met him, was at his
16 house, but I never talked to him or
17 nothing after that.

18 Q. You just met him. When was the next time
19 you saw him?

20 A. At a party at Jim Brennan's house.

21 Q. So if you had told somebody that you had
22 met him first at the party at Jim Brennan's
23 house, that would not be correct; is that
24 correct?

25 A. No, it wouldn't.

1 Q. Where were you living at that time four or
2 five years ago?

3 A. With my mom.

4 Q. And your dad?

5 A. Yes.

6 Q. Where at, in Atwater?

7 A. In Atwater.

8 Q. How far away from where David Thorne's
9 house was?

10 A. Approximately two to three miles.

11 Q. Two to three miles. And how long did you
12 live within two or three miles of him?

13 A. I'm not exactly sure.

14 Q. You met him at his house briefly, you then
15 met him at a party. When did you see him
16 next?

17 A. It wasn't too long after that, within a
18 couple days.

19 Q. Where did you see him at?

20 A. He was with -- I think he was with Josh and
21 Amy. I'm not exactly sure.

22 Q. This would have put you at 14 or 15 years
23 old; is that right?

24 A. About that, yes.

25 Q. You meet him and then see him again with

1 Josh and Amy. Where is that at?

2 A. I'm not exactly sure.

3 Q. Is it a church, is it a grocery store, is
4 it at his house?

5 A. It wasn't in his house.

6 Q. You don't know where?

7 A. No.

8 Q. When is the next time you go to his house?

9 A. I'm not exactly sure.

10 Q. How do you get there?

11 A. (Indicating.) I don't recall.

12 Q. How did you get invited? Do you just go
13 there or are you invited, is there a
14 function?

15 A. I don't recall.

16 Q. Okay. Did you go there to ask him for
17 something, do you know?

18 A. No.

19 Q. No. You say at some point he becomes your
20 teacher or trainer; is that right?

21 A. Yes, sir.

22 Q. And that you and he tried to get together
23 once a week; is that right?

24 A. Yes, sir.

25 Q. After a while that didn't work out so well;

1 is that right? I didn't hear an answer.

2 A. Yes, sir.

3 Q. For how long did you go to his house once a
4 week?

5 A. I'm not exactly sure.

6 Q. Was it for a period of weeks, days, or
7 years?

8 A. Maybe a month or two.

9 Q. Okay. At that time you probably could walk
10 to his house, you could show up there,
11 couldn't you?

12 A. Yes, sir.

13 Q. Okay. Later it became somewhat harder to
14 get yourself to his house; is that right?

15 A. Yes, sir.

16 Q. I can't hear you.

17 A. Yes, sir.

18 Q. You say he was training you in his
19 basement; is that right?

20 A. Yes, sir.

21 Q. The shoot fighting is combination, there is
22 some kick boxing, there are grappling holds
23 like judo on the floor, a whole number of
24 things that go on; is that right?

25 A. Yes, sir.

1 Q. How do those events end? What are the ways
2 they can end?

3 A. Tap outs, pass outs.

4 Q. There is five ways it can end. Do you know
5 the five ways?

6 A. I only know two of them.

7 Q. What -- first of all, let's go into the
8 grappling and floor wrestling. What kind
9 of holds did you learn? What were the
10 names?

11 A. Achilles hook, leg bar. I don't remember
12 all of them.

13 Q. What about standing things? What did you
14 learn?

15 A. Tai kicking.

16 Q. Did you do the wrestling on the floor in
17 the basement?

18 A. Huh?

19 Q. Did you do this wrestling on the floor in
20 the basement?

21 A. Yes, sir.

22 Q. What's that surface?

23 A. It's cement.

24 Q. How many times were you at that house?

25 A. I'm not exactly sure.

1 Q. And do you know the people who lived there?

2 A. Yes.

3 Q. Do you know their names?

4 A. No, I do not.

5 Q. You don't know their names?

6 A. No.

7 Q. How many times did you see them, every time
8 you went there?

9 A. Not every time.

10 Q. Were there times you went there and David
11 wasn't there and his grandfather and
12 grandmother greeted you at the door?

13 A. Yes.

14 THE COURT: Speak up.

15 THE WITNESS: Yes.

16 BY MR. KEITH:

17 Q. Sometimes you would try to get into their
18 garage and they made you sleep in a car; do
19 you remember that?

20 A. Huh?

21 Q. Do you remember the grandfather -- you
22 tried to get into his garage late one night
23 because you didn't have a place to stay?

24 A. No.

25 Q. You don't recall that?

1 A. No.

2 Q. I don't hear you?

3 A. No.

4 Q. Does that mean it didn't happen or does
5 that mean you don't recall?

6 A. No, that means that it wasn't like that.

7 Q. It wasn't like that.

8 A. No.

9 Q. Tell me how it was.

10 A. I was staying in the basement with David
11 and I wanted to see my girlfriend and my
12 girlfriend came over and he told me that he
13 wasn't going to let me back in the house if
14 I went out, that I would have to sleep in
15 his car.

16 Q. Is that how it was?

17 A. Yes.

18 Q. The wrestling with David -- let me ask you
19 this: In 1998, how often did you go over
20 to David's house to wrestle?

21 A. I'm not exactly sure.

22 Q. Would it have been four times, five times?

23 A. I don't recall. It was many more than
24 that.

25 Q. Was it --

1 A. I don't recall.

2 Q. You don't know? I would like to take you
3 forward a little bit to July the 14th of
4 1999. Apparently the Alliance Police show
5 up at the Hazen Street residence and ask
6 you to come to the Ravenna Police
7 Department with them; is that right?

8 A. Yes, sir.

9 Q. How many police officers show up?

10 A. Four.

11 Q. Four. How many cars?

12 A. I think two. I'm not sure.

13 Q. How do you get to the Ravenna Police
14 Department?

15 A. They take me.

16 Q. In one of the cars?

17 A. Yes.

18 Q. Do they handcuff you?

19 A. No.

20 Q. They take you there. They take you to the
21 police department. They don't really tell
22 you the truth about why they want to talk
23 to you; is that right?

24 A. Not exactly.

25 Q. They leave you with the impression it's

1 something different?

2 A. Yes.

3 Q. Once you get there, they go through with
4 you at some point a form, they read you
5 your rights commonly called the Miranda
6 rights, but it says that you are not under
7 arrest. Do you remember that?

8 A. Yes.

9 Q. Before you get to that point -- when they
10 do that they turn on a tape recorder, don't
11 they?

12 A. Yes, sir.

13 Q. Before you get to that point, how long did
14 they talk to you?

15 A. I'm not exactly sure.

16 Q. Well, give us your best recollection. Talk
17 to you for five minutes, ten minutes, a
18 half an hour, an hour? How long do they
19 talk to you?

20 A. Approximately a half an hour.

21 Q. Before they turn on the tape recorder?

22 A. Yes.

23 Q. And what words did they say to you? What
24 did they tell you before they turned on the
25 tape recorder?

1 A. What they were there for.

2 Q. What else did they tell you?

3 A. That David -- that David asked for immunity
4 in order to give evidence on me.

5 Q. David asked for immunity in order to give
6 evidence on you?

7 A. Yes.

8 Q. They tell you that?

9 A. Yes.

10 Q. So at the time they turn the tape recorder
11 on that's what you believe; is that
12 correct?

13 A. Yes.

14 Q. You have no way of knowing whether or not
15 that's true, but just they have asked you
16 to believe that; is that right?

17 A. Yes.

18 Q. Okay. What else did they tell you?

19 A. They told me what happened and how I did it
20 and was showing me pictures.

21 Q. They told you what happened, how you did it
22 and was showing you pictures?

23 A. Um-hmm.

24 Q. Okay. They told you a lot of information
25 about that crime scene, didn't they?

1 A. Yes.

2 Q. After they begin to interview you they tell
3 you a lot of information about that crime
4 scene, don't they?

5 A. Yes.

6 Q. At some point in the interview they tell
7 you that you grabbed her hair, don't they?

8 A. Yes.

9 Q. Did you ever tell them that or did they
10 tell you that?

11 A. They came to me. They were the ones that
12 stated to me.

13 Q. Okay. Now, during that interview, the
14 prosecutor went through with you for a
15 minute the things that you told them that
16 were not true. First that you told them
17 that your clothes, you put them in a bag
18 and gave them to David. That was not true;
19 is that correct?

20 A. No, that was not true.

21 Q. And then you told them that David had taken
22 you to a friend's house. Is this at some
23 point in the afternoon of March the 31st or
24 when was that?

25 A. He did not take me to a friend's house. He

1 dropped me off at my -- he took me to a
2 friend's, which was Summer Enoch's house.

3 Q. Once again, when was that? What time frame
4 was that?

5 A. I'm not exactly sure.

6 Q. Everything else you told them that day was
7 true; is that right?

8 A. As far as I recall, yes.

9 Q. Okay. They then took you after they got
10 done with you and put you in a jail
11 somewhere, did they not?

12 A. Yes, they did.

13 Q. Where did they take you?

14 A. Stark County.

15 Q. And the next day on July the 15th they came
16 and got you and took you back to the
17 Alliance Police Department, didn't they?

18 A. Yes, sir.

19 Q. And they took you back there and they once
20 again read you your Miranda warnings, only
21 this time you knew you were under arrest;
22 is that right?

23 A. Yes.

24 Q. Now, when you went to the Ravenna Police
25 Department did you think you were free to

1 leave?

2 A. Did I believe --

3 Q. After they explained to you that they
4 wanted you for cutting someone's throat,
5 did you think they were going to let you
6 leave?

7 A. I doubt it.

8 Q. Okay. They told you what they thought
9 happened and who else was involved, didn't
10 they?

11 A. Yes, sir.

12 Q. Did they tell you before they turned on
13 that tape recorder that you needed to help
14 yourself or you needed to do something to
15 help yourself?

16 A. I don't understand what you mean.

17 Q. Well, did they talk to you about the
18 possible penalty for what they were
19 accusing you of?

20 A. They never told me what could happen.

21 Q. Did they talk to you that you were in a lot
22 of trouble and you needed to protect
23 yourself from what could happen?

24 A. They told me I was in a lot of trouble.

25 Q. Told you to stand up for yourself, didn't

1 they?

2 A. I do not recall.

3 Q. I am going to hand you what has been marked
4 as Defendant's Exhibit I, which is the
5 transcript of your taped statement on July
6 the 14th of 1999 and for the moment I want
7 you to just hold on to it, all right?

8 A. Yes, sir.

9 Q. I would like to simply look over the first
10 page. Are you able to read well enough to
11 read this?

12 A. Yes, sir, I am.

13 Q. Would you read it over and tell us what it
14 says? No, just read it over. I will ask
15 you a question. I apologize. This is the
16 very first page.

17 A. (Witness complies with request.)

18 Q. Are you ready? First sentence says that it
19 is July the 14th and it is 1309 hours. Do
20 you understand that to be about 1:09 in the
21 afternoon?

22 A. Yes, sir.

23 Q. Now, looking at that paragraph, the last
24 sentence says you know that you are not
25 under arrest at this time; is that correct?

1 A. Yes, sir.

2 Q. Go to page 2. Would you briefly review
3 that. Is that simply a review of your
4 rights?

5 A. Yes, sir.

6 Q. Now, I would like you to set that aside. I
7 want to ask you if you told them the truth
8 during that interview?

9 A. Yes.

10 Q. They came and got you on July the 15th and
11 they took you to the Alliance Police
12 Department. By then did you know how much
13 trouble you were in?

14 A. Yeah.

15 Q. Had you been to court yet?

16 A. No.

17 Q. You had not yet been to court. Had you
18 talked to a lawyer?

19 A. No.

20 Q. And why did you continue to talk to them?

21 A. I don't know.

22 Q. I'm going to hand you what is marked as
23 Defendant's Exhibit J, which is your
24 statement of July the 15th of 1999. I'm
25 going to ask you to hold on to that. All

1 right?

2 A. Yes, sir.

3 Q. Now, on July 15th, 1999, they took you
4 there once again. They turned on a tape
5 recorder, didn't they, at some point?

6 A. Yes, sir.

7 Q. How long were you at the Alliance police
8 station before they turned on the tape
9 recorder?

10 A. I'm not exactly sure.

11 THE COURT: Speak up.

12 Q. How long, do you know?

13 A. I'm not exactly sure.

14 Q. How long do you think?

15 A. Anywhere between 15 minutes to a half hour.

16 Q. How much of that time did they spend
17 talking to you?

18 A. Most of it.

19 Q. Most of it. Once again did they tell you
20 information about this situation?

21 A. I don't recall.

22 Q. You don't recall what they said to you?

23 A. No, sir, I do not.

24 Q. Did they ask you questions?

25 A. When they turned on the recorder.

1 Q. Did they before they turned on the
2 recorder?

3 A. Not that I recall.

4 Q. Now, let's take a step back. Were you
5 straight and sober when you got arrested on
6 July the 14th?

7 A. Yes, sir.

8 Q. Were you -- certainly you were straight and
9 sober by the time you got to the Alliance
10 Police Department on the 15th; is that
11 right?

12 A. Yes, sir.

13 Q. Okay. Now, do you recall a time, and it's
14 my understanding it may have been in
15 August, about a month and-a-half or a month
16 later that you met with Dennis Barr from
17 the Stark County Prosecutor's Office?

18 A. (Indicating.)

19 Q. Do you recall that?

20 A. Yes, sir, I do.

21 Q. Where did this meeting take place at?

22 A. Portage County Jail.

23 Q. He came to the Portage County Jail?

24 A. Yes, sir.

25 Q. And that was in August?

1 A. Yes, sir.

2 Q. And he took a statement from you. Had you
3 entered a plea of guilty at that time?

4 THE COURT: Go ahead.

5 Q. Had you entered a plea of guilty to
6 anything at that time?

7 A. Not that I recall.

8 Q. Okay. When did you finally go to court to
9 enter a plea of guilty?

10 A. It was after I gave that statement.

11 Q. After you gave that statement.

12 A. Yes.

13 Q. Okay. I'm going to show you now what is
14 marked as Defendant's Exhibit K. It is
15 entitled State of Ohio versus Joe Wilkes,
16 Judge Reinbold, plea of guilty. Would you
17 look at that, please.

18 A. (Witness complies with request.)

19 Q. Do you recognize that document, sir?

20 A. Yes, sir.

21 Q. I would like you to go to the last page
22 that you have in your hands. Look to the
23 lower left-hand corner. Does it say page 8
24 there?

25 A. Yes, sir, it does.

1 Q. And do you see your signature on that
2 paper?

3 A. Yes, sir, I do.

4 Q. And is it dated September 27th, 1999, at
5 the top?

6 A. Yes, it is.

7 Q. So you went into court, plead guilty at the
8 end of September, but they came out to meet
9 with you in August; is that right?

10 A. Yes, sir.

11 Q. Set the paper down.

12 A. (Witness complies with request.)

13 Q. That meeting was at the Portage County
14 Jail; is that right?

15 A. Yes, sir.

16 Q. And who was present at that meeting?

17 A. I think it was Detective Mucklo, myself, my
18 lawyer Steve LoDico.

19 Q. It would be Dennis Barr?

20 A. Dennis Barr.

21 Q. Who is Dennis Barr?

22 A. The prosecutor.

23 Q. He wanted to hear your story; is that
24 right?

25 MR. BAUMOEL: Objection, Your

1 Honor.

2 THE COURT: Overruled.

3 BY MR. KEITH:

4 Q. Is that right?

5 A. Right.

6 Q. Who actually did the interviewing of you?

7 A. I don't recall.

8 Q. Who asked you the questions?

9 A. I'm not exactly sure. I think that was his
10 name.

11 Q. Mr. Barr has short, straight, very dark
12 hair and he does not have any facial hair.
13 He has a very youthful face. Is that who
14 you recall?

15 A. I don't recall a face.

16 Q. In any event, they take a statement from
17 you on that date; is that correct?

18 A. Yes.

19 Q. You tell the truth?

20 A. Yes, I do.

21 Q. And then later apparently these two folks
22 sitting at the table here come out to the
23 Portage County Jail to interview you and
24 they get a statement from you; is that
25 right?

1 A. Yes, sir.

2 Q. Do you tell them at the time the truth?

3 A. As I recall, yes.

4 Q. Now, the first time you tell anybody about
5 drugs and all this is the end of August; is
6 that right?

7 A. I'm not exactly sure.

8 Q. You don't remember?

9 A. No.

10 Q. Did you tell the officers -- in the first
11 statement that was taped did you tell them
12 everything that was important?

13 A. As I recall.

14 Q. Were drugs important to this?

15 A. I was not thinking about it at the time.

16 Q. Say what?

17 A. I was not thinking about it at that time.

18 Q. When is the first time you tell anybody you
19 spent the night at some point in time at
20 Yvonne Layne's house?

21 A. I'm not exactly sure.

22 Q. If I told you the first time we have any
23 mention of it is in your statement in
24 January of this year to the prosecutors
25 here in the room, would I be incorrect?

1 A. I'm not sure.

2 Q. Okay. What did you tell people about that
3 earlier?

4 A. Excuse me?

5 Q. Well, you told the prosecutors here that
6 you had seen Yvonne Layne on three
7 occasions. Once when you went with David
8 and saw Eric. What was his last name?

9 A. I don't recall.

10 Q. It's Eric, right?

11 A. Yes.

12 Q. Eric Cameron. And once when you went there
13 in September the night on the couch; is
14 that right?

15 A. It was me and Mr. Thorne.

16 Q. Right?

17 A. Yes.

18 Q. Your behavior was to be there and be on the
19 couch overnight, was it not?

20 A. Yes.

21 Q. And then one time you went all by
22 yourself. David didn't take you, did he?

23 A. No, he didn't.

24 Q. Okay. First time you explain those three
25 things to anyone was in your conversation

1 with these folks; is that correct, or am I
2 mistaken?

3 A. I'm sure it was.

4 Q. Okay. Do you recall what you told the
5 police about it on July the 14th?

6 A. No, I do not.

7 Q. I would like you to pick up your statement
8 of July the 14th.

9 A. (Witness complies with request.)

10 Q. I would like you to look at the top of page
11 12.

12 A. (Witness complies with request.)

13 Q. You see the pop of page 12?

14 A. Yes.

15 Q. Your statement of July the 14th. Begins
16 with an answer and then there is a
17 question. "Okay. Joe, you had been to the
18 house before; is that correct?" You see
19 that question?

20 A. Yes, sir.

21 Q. What is your answer?

22 A. "Once, now twice."

23 Q. Okay. There is no indication of your
24 having spent the night, your having gone
25 there on your own or anything else, is

1 there?

2 A. No, sir.

3 Q. Okay. Is it possible you have been there
4 more often than just these three times?

5 A. No, sir.

6 Q. Not at all. Not during any of this period
7 where you don't know where you ate or who
8 lived with; is that right?

9 A. Not that I recall.

10 Q. When did you first meet Yvonne Layne?

11 A. When me and David went to her house to pick
12 up Brandon.

13 Q. How old was Brandon?

14 A. I do not know.

15 Q. What year was that in?

16 A. I don't recall.

17 Q. Where did you go with Brandon?

18 A. I'm pretty sure back to David's house.

19 Q. And Eric Cameron was at Yvonne Layne's
20 house at that time; is that right?

21 A. Yes, sir.

22 Q. And he was angry with David Thorne being
23 there, was he not?

24 A. Yes.

25 Q. You described they almost had a fight at

1 some point, didn't you?

2 A. An argument.

3 Q. You go there on another occasion and you
4 spend the night. That might have been a
5 memorable experience. Why didn't you tell
6 the police about that on July 14th?

7 A. I don't know.

8 Q. They didn't tell you about it, did they?

9 A. No, they didn't.

10 Q. Okay. And then you go there on another
11 occasion. Who drives you there at that
12 time?

13 A. I did. That was the point in time that I
14 had my '96 Metro.

15 Q. You drive yourself there?

16 A. Yes.

17 Q. So that must be in that two week window in
18 January; is that right?

19 A. Yes.

20 Q. You don't have any problem getting there?

21 A. No.

22 Q. Who else goes with you?

23 A. My friend Samantha Pegg. I don't recall
24 who all was with me. There was quite a few
25 people in the car.

1 Q. And did they stay in the car?

2 A. Yes, they did.

3 Q. You go in to see her?

4 A. Yes, sir.

5 Q. Eric Cameron is there at that time?

6 A. Yes, sir.

7 Q. How long do you stay?

8 A. Approximately maybe ten to 15 minutes.

9 Q. Is he angry at you?

10 A. No, sir.

11 Q. How often before that did you go spend the
12 night?

13 A. I'm not exactly sure.

14 Q. Well, was it in the summer of 1998, was it
15 in the fall of 1998, when was it?

16 A. I'm not exactly sure.

17 Q. Do you know when David began to visit with
18 his son?

19 A. No, I do not.

20 Q. Well, sir, was it recent enough that you
21 remembered how to get there all on your
22 own; is that correct?

23 A. Yes, sir.

24 Q. Okay. And you went there, you spend the
25 night. You told us that at some point Amy

1 Davis approached you about that; is that
2 right?

3 A. Yes, sir.

4 Q. And when she approached you if I understand
5 it correctly, you said you were rude to
6 her?

7 A. Yes, sir, I was.

8 Q. You were rude to her and she hasn't thought
9 much of you since then; is that right?

10 A. That's true.

11 Q. Okay. What did you do or say to be rude to
12 her?

13 A. I don't recall my exact words.

14 Q. You don't recall your exact words.

15 A. No, I do not.

16 Q. What were they in response to? Why were
17 you rude to her?

18 A. It was about Yvonne and me and David being
19 there at Yvonne's house. And I pretty much
20 told her it was none of her business and if
21 we had I wasn't going to tell her. She
22 hasn't really cared for me ever since.

23 Q. So you didn't step into that domestic
24 argument; is that right?

25 A. That's right.

1 Q. Once again you can't tell us if that was a
2 year ago, two years ago, three years ago,
3 you don't know, do you?

4 A. No, I don't.

5 Q. Okay. Take you to the date of the event of
6 all this. Your statement is that sometime
7 -- I guess sometime before the afternoon
8 you and David Thorne meet up on March the
9 31st; is that right?

10 A. Yes, sir.

11 Q. Now, you have been staying at the Enochs
12 since the 27th, which is a Saturday, so the
13 28th is a Sunday, Monday is 29th, Tuesday
14 is the 30th, Wednesday is the 31st; is that
15 right?

16 A. Yes, sir.

17 Q. And sometime on that Wednesday you and
18 David meet up and he drives you to the
19 Carnation Mall; is that right?

20 A. Yes, sir.

21 Q. And from there you go into the Carnation
22 Mall, you rent a room, you buy gloves?

23 A. Yes, sir.

24 Q. But you don't buy the knife because you're
25 in a hurry at this particular time; is that

1 right?

2 A. Yes, sir.

3 Q. You want to get back out, you're going to
4 kill somebody later in the day and you are
5 in a hurry; is that correct?

6 A. Yes, sir.

7 Q. Okay. And David, then you go run his
8 errands with him, things more important
9 than buying a knife for this murder?

10 A. Yes, sir.

11 Q. Excuse me?

12 A. Yes, sir.

13 Q. What errands are there? What is more
14 important than this little event?

15 A. I don't recall.

16 Q. You don't know.

17 A. No.

18 Q. All right. What time do you get back to
19 the Enochs house?

20 A. It had to be around I would say anywhere
21 between 4:00 and 6:00 on. It's when Mr.
22 Enoch got off -- Brent got off work.

23 Q. Anywhere between 4:00 and 6:00. Okay. How
24 long are you there before you leave again?

25 A. At the Enochs?

1 Q. Yes.

2 A. I don't know.

3 Q. Well, in any event, when do you next leave
4 the Enochs?

5 A. When I left with Brent Enoch to drop off
6 some dry wall.

7 Q. Where do you go to do that?

8 A. Up in Tallmadge.

9 Q. Okay. And how long does it take?

10 A. I'm not exactly sure.

11 Q. And how many sheets of dry wall is it?

12 A. I do not recall.

13 Q. You don't recall how many sheets of dry
14 wall. How long does it take to unload?

15 A. Anywhere between half an hour and an hour.

16 Q. Then where did you go next?

17 A. Then we were -- he was going to take me out
18 to the mall and I stopped and used the
19 phone, the pay phone.

20 Q. You stopped and used the pay phone.

21 A. Yes.

22 Q. You said you got a page, but you don't know
23 whose phone call you were returning; is
24 that correct?

25 A. That's right.

- 1 Q. But the records of that pay phone might
2 tell us what call you made. Do you know
3 that? You wouldn't know that, would you?
4 I'm sorry?
- 5 A. I'm sure I would.
- 6 Q. What call you made?
- 7 A. I'm sure the phone would.
- 8 Q. In any event, why did you tell Brent Enoch
9 you wanted to go to the Carnation Mall?
- 10 A. Because I was supposed to meet David out
11 there.
- 12 Q. For what reason?
- 13 A. Because we was going to go back to his
14 house and clean the garage.
- 15 Q. That's what you told him. What did you
16 tell Karen Enoch?
- 17 A. The same thing as I recall.
- 18 Q. Okay. And so you were very sure that Brent
19 Enoch drove you to the Carnation Mall on
20 that date; is that right?
- 21 A. Yes, sir.
- 22 Q. Okay. I would like you to look at your
23 statement of July the 15th.
- 24 A. (Witness complies with request.)
- 25 Q. And I would like you to look at the first

1 paragraph, which is your answer to a
2 question, okay?

3 A. Yes, sir.

4 Q. Let's go back to the bottom of page 3. You
5 were asked a question did you stay in the
6 car? I would like you to read your whole
7 answer there all the way down to where the
8 next question is asked on the next page.

9 A. He had dropped --

10 Q. Just read it to yourself, make sure you're
11 familiar with it. Don't read it out loud.

12 A. Yes, sir.

13 Q. Have you read it?

14 A. Yes, sir.

15 Q. Okay. Would you agree that the last --
16 essentially the last two lines or sentences
17 say then David had come back and picked me
18 up later. On he took me out there before
19 he went to shoot fighting class. Then he
20 picked me up from Brent's house and Brent
21 witnessed -- Brent Enoch and Summer and
22 Karen were home. They witnessed that he
23 picked me up.

24 That's describing him taking you
25 to the Carnation Mall on the evening --

1 A. Yes, sir.

2 Q. -- Of March 31st.

3 THE COURT: Just a minute.
4 Folks. Please. He was talking over you.
5 Let him -- he was answering while you were
6 still talking.

7 BY MR. KEITH:

8 Q. Sorry, Your Honor. Please finish your
9 answer.

10 A. I think that was a mistake from earlier
11 that morning. When I had this statement I
12 was recalling the day and I do not recall
13 the whole day. And that was a mess up
14 because he had picked me up earlier that
15 morning.

16 Q. Wasn't true, was it? You told them
17 something that was not true?

18 A. Yes, sir.

19 Q. At that point you don't know if they had
20 ever talked to Brent, Summer or Karen
21 Enoch, do you?

22 A. No, sir, I do not.

23 Q. Let's move on to page 8 of the same
24 statement. Are you at page 8?

25 A. Yes, sir.

1 Q. Would you read for yourself the whole page.

2 A. (Witness complies with request.)

3 Q. Did you read it?

4 A. Yes.

5 Q. And can you tell us or do you agree that
6 page also says that David dropped you off
7 at the Carnation Mall that evening and
8 picked you up the next morning?

9 A. Yes, sir, it does.

10 Q. Okay. So once again that was not true, was
11 it?

12 A. No, it was not.

13 Q. You had told us you got to the Carnation
14 Mall and went to the room. You went down
15 through the lobby, you go to some double
16 doors which are sort of to the left after
17 you walk into the lobby. The swimming pool
18 is over to your left and you go through
19 some double doors into the Carnation Mall;
20 is that right?

21 A. Yes.

22 MR. BAUMOEL: Your Honor, I would
23 ask for a reference as to which time we are
24 talking about.

25 THE COURT: That would be

1 helpful.

2 BY MR. KEITH:

3 Q. This is after you return that evening
4 whomever may have brought you; is that
5 right? Do you recall that? You come back
6 to the Carnation Mall, you rented a room
7 about 1:00. You come back that evening
8 later after you have left. Do you recall
9 that?

10 A. Yes, sir, I do.

11 Q. You recall you testified that you went to
12 your room, then you went back down through
13 the lobby into the mall and to the K-Mart?

14 A. Yes, sir.

15 Q. Do you remember that. And you met somebody
16 you knew in the K-Mart, somebody named Web?

17 A. Yes, sir.

18 Q. They were there while you bought the knife?

19 A. Yes, sir.

20 Q. You had some conversation with them?

21 A. Yes, sir.

22 Q. You are sure that was on that evening?

23 A. Yes.

24 Q. Okay.

25 THE COURT: Speak up.

1 Q. You then walk out of the K-Mart and as
2 you're walking through the food court you
3 see who?

4 A. Christopher Campbell.

5 Q. Where do you know Christopher Campbell
6 from?

7 A. Maplewood.

8 Q. And he is with a woman or a girl, a young
9 lady?

10 A. Yes.

11 Q. Is that right. Would you remember her if
12 you saw her again?

13 A. Possibly.

14 Q. Were you sitting at the food court or were
15 you walking through?

16 A. I was walking through.

17 Q. And how did you greet Christopher Campbell?

18 A. I had saw him and I walked up to him and he
19 was -- as I recall, he was sitting at a
20 table. I sat down, was smoking a cigarette
21 with him.

22 Q. And how long were you there once again?

23 A. I'm not exactly sure.

24 Q. And what was the nature of the
25 conversation?

1 A. I do not recall.

2 Q. Well, if I told you that you told him that
3 you got paid \$300 up front, would that
4 refresh your recollection?

5 A. No, sir, it would not.

6 Q. Could you have told him that?

7 A. I could have.

8 Q. Could you have told him you were there to
9 do a hit for your girlfriend?

10 A. I could have.

11 Q. Okay. Could you have shown him the knife?

12 A. Yes, it's possible.

13 Q. Okay. You have no recollection of that
14 event?

15 A. No, sir, I do not.

16 Q. How were you dressed at that time?

17 A. I had on a black wind pants and I'm not
18 sure, but I'm pretty sure I still had my
19 Nike jacket on.

20 Q. Nike jacket?

21 A. Yes.

22 Q. When you say pants, are you saying black
23 wind pants?

24 A. Yes.

25 Q. W-i-n-d, because I can't understand that.

1 A. Yes.

2 Q. And you told us that you have a lot of
3 pairs of those, but only one name brand
4 pair; is that right?

5 A. Yes.

6 Q. How many pairs did you have at that time?

7 A. Quite a few.

8 Q. Five, six, seven?

9 A. Five or six about.

10 Q. Okay. You could very well have told him
11 that you were there on behalf of your
12 girlfriend; is that right?

13 A. Could have.

14 Q. Now, what did you tell the police about the
15 money you claim you got paid? What did you
16 tell them the first time you talked to
17 them, do you recall that?

18 A. No, I do not.

19 Q. Okay. Would you have told them the truth,
20 excuse me.

21 A. I'm not exactly sure.

22 Q. You are not exactly sure. When you say you
23 are not exactly sure. Would you have lied
24 to them?

25 A. Could have.

1 Q. Or maybe they didn't tell you what you
2 wanted to hear?

3 MR. BAUMOEL: Your Honor, is that
4 a question or a statement?

5 THE COURT: Question or
6 statement.

7 BY MR. KEITH:

8 Q. It's a question. For instance, they told
9 you you grabbed her hair, didn't they?

10 A. Yes.

11 Q. They told you you pulled her head back,
12 didn't they?

13 A. Yes, they did.

14 Q. They told you a lot of other stuff about
15 this. They tried to tell you about a dog
16 that you hadn't seen, had you?

17 A. That's very true.

18 Q. And they tried to tell you about a young
19 child that was talking to you there that
20 you don't have any memory of, do you?

21 A. That's right.

22 Q. So the question once again is when you told
23 them how much money you got and when, were
24 you telling them the truth on July 14th?

25 A. I'm not exactly sure.

1 Q. You started out today telling us you were
2 telling the truth except for those two
3 things you remember.

4 A. As I recall.

5 Q. Why are you not sure if you are telling the
6 truth?

7 MR. BAUMOEL: Your Honor, may he
8 finish his answer?

9 THE COURT: Okay. Be quiet.
10 Overruled. Keep going.

11 BY MR. KEITH:

12 Q. Why are you not now sure? Did you lie to
13 them?

14 A. No, I didn't lie. There was some things
15 that I didn't state there that weren't
16 exactly true.

17 Q. Some things that were not exactly true?

18 MR. BAUMOEL: Is that a
19 question?

20 THE COURT: Sustained. Make the
21 objection, Mr. Baumael.

22 MR. BAUMOEL: Yes, Your Honor.

23 BY MR. KEITH:

24 Q. Tell us again what things were not exactly
25 true?

1 A. Him dropping me off at my friend's house,
2 and I don't remember.

3 Q. You also told them that you gave him a
4 bagful of clothes?

5 A. Yes, sir, I did.

6 Q. That wasn't true?

7 A. No, it wasn't.

8 Q. Now, you had on a nylon wind breaker.
9 Whose was that?

10 A. That was my friend Summer Enoch's.

11 Q. And you had on a shirt, I think we have
12 pictures of it. You had on a shirt; is
13 that right?

14 A. (Indicating.)

15 Q. Weren't you shown a picture of a white Nike
16 shirt this morning?

17 A. That was the jacket.

18 Q. That was the jacket.

19 A. Yes, sir, it was.

20 Q. Okay. And then you had on black pants; is
21 that right?

22 A. Yes, sir.

23 Q. And the black pants end up the far side of
24 Ravenna over -- what was the name of the
25 road?

1 A. Lovers Drive.

2 Q. Lovers Lane. And that is out actually on
3 the northwest side of Ravenna, is it not?

4 A. Yes, sir.

5 Q. How did you get there?

6 A. I do not recall.

7 Q. Who drove you there?

8 A. I do not recall. Somebody did --

9 Q. I'm sorry. You do not recall. Somebody
10 did?

11 A. Yes.

12 Q. How did you get these pants you were
13 concerned with being bloody out there to
14 get rid of them? What did you tell these
15 people?

16 A. Nothing. I was -- I was with my friend
17 that lives in the house there the day
18 before that and I told her that I was going
19 to come out. She told me to come out about
20 8:00. And she told me to knock on the
21 bedroom window because she had been
22 asleep. And I walked around the house and
23 I don't recall who dropped me off. I
24 walked around the house. I disposed of the
25 pants and knocked on her window.

- 1 Q. When was that, on April 1st, April 2nd,
2 when was that?
- 3 A. I'm not sure.
- 4 Q. Had you gone there for that purpose? Did
5 you just happen to have the pants with you?
- 6 A. No, I had the pants with me.
- 7 Q. Okay. So at that point you are carrying
8 them around with you?
- 9 A. Yes.
- 10 Q. What about the wind breaker? What did you
11 do with the wind breaker?
- 12 A. Summer has got it.
- 13 Q. What did you do with the shoes?
- 14 A. I don't know.
- 15 Q. Where did the shoes come from? How did you
16 get those shoes?
- 17 A. I don't know. I don't know.
- 18 Q. Did you steal them?
- 19 A. No, I didn't steal them.
- 20 Q. Did you ever steal anything?
- 21 A. Yeah.
- 22 Q. Okay. Did you ever steal and not get
23 caught?
- 24 A. Yes.
- 25 Q. You always got caught?

1 A. No, I have stole stuff and not got caught.

2 Q. Did you ever tell lies and not get caught?

3 A. Yeah.

4 Q. I'm going to show you now what has been

5 marked as Defendant's Exhibits L and M.

6 Would you look at that, please.

7 A. (Witness complies with request.)

8 Q. Have you had an opportunity to review

9 those, sir?

10 A. Yes, sir.

11 Q. The first page is a complaint that accuses

12 you on January 21st of 1999 of stealing a

13 pair of shoes?

14 A. Yes, sir.

15 Q. The second page is where you are sentenced

16 to jail and suspended when you pled guilty

17 to that; is that right?

18 A. Yes, sir.

19 Q. Okay. That wasn't the pair of shoes you

20 had on?

21 A. No, sir, I was -- I did not receive those

22 shoes. I was -- there were multiple

23 friends with me and they got busted and I

24 was already out of the store and one of my

25 friends snitched on me so I had to return

1 the shoes and so no, it was not those.

2 Q. You put them on, walked out of the store
3 with them and got caught later; is that
4 right?

5 A. Yes, sir.

6 Q. Do you have in front of you the plea that
7 we talked about?

8 A. Yes, sir, I do.

9 Q. Did you read that before you signed it?

10 A. Yes, I did.

11 Q. Did you go over it with your lawyers?

12 A. Yes, sir.

13 Q. And they talked to you about the evidence
14 in the case; is that right?

15 MR. BAUMOEL: Objection, Your
16 Honor.

17 THE COURT: Are you going from
18 the plea agreement?

19 MR. KEITH: Yes. Or I'll
20 withdraw that question.

21 BY MR. KEITH:

22 Q. Before you entered into this plea agreement
23 you talked it over very carefully with your
24 lawyers; is that right?

25 A. Yes, sir.

1 Q. And you became aware of the things that
2 could potentially happen to you, did you
3 not?

4 A. Yes, sir.

5 Q. And you were offered this plea agreement if
6 you testified truthfully; is that right?

7 A. Yes, sir.

8 Q. I want to look at the page that says page 5
9 at the bottom.

10 A. (Witness complies with request.)

11 Q. You got that page in front of you?

12 A. Yes, sir.

13 Q. Okay. You understand that for what you
14 were accused of you could be sentenced to
15 die in the electric chair, to life with no
16 possibility of parole, in other words, you
17 would leave prison when you died finally,
18 30 full years and then perhaps parole, but
19 there is no guarantee or 25 years and
20 perhaps parole, but there is no guarantee;
21 is that correct?

22 A. Yes, sir.

23 Q. And you're satisfied that you understood
24 all of that when you entered into that
25 agreement; is that right?

1 A. To the best of my ability, yes.

2 Q. An part of the reason for this agreement is
3 the second full paragraph on page 5, is it
4 not? Read that.

5 A. (Witness complies with request.)

6 Yes, sir.

7 Q. The Defendant shall testify truthfully and
8 with complete disclosure in any and all
9 other proceedings concerning the death of
10 Yvonne Layne. Is that the first sentence?

11 A. Yes, sir.

12 Q. The second sentence says if the Defendant
13 fails to testify truthfully and with
14 complete disclosure in any and all
15 proceedings concerning the death of Yvonne
16 Layne, the State of Ohio may void this plea
17 agreement; is that correct?

18 A. Yes, sir.

19 Q. Now, the judge doesn't get to void it, does
20 he? That's not your understanding, is it?

21 MR. BAUMOEL: Objection.

22 THE COURT: Overruled.

23 THE WITNESS: I don't know.

24 BY MR. KEITH:

25 Q. Mr. Haupt and I can't void it, can we?

1 A. I don't know.

2 Q. You don't know.

3 A. I don't know the law.

4 Q. What does it say?

5 THE COURT: That's his answer.

6 BY MR. KEITH:

7 Q. Well, sir, let me ask you, when you signed
8 that agreement, you were making an
9 agreement with the prosecutor, were you
10 not?

11 A. Yes, sir, I was.

12 Q. You did it to control what was happening to
13 you, didn't you?

14 A. Yes, sir.

15 Q. And as part of that, you have to repeat the
16 words that they want, do you not?

17 A. No, I do not.

18 Q. You don't?

19 A. The words that I stated are the words that
20 I have to state.

21 Q. The words that you stated are the words
22 that you have to state. Which set of
23 words, which time?

24 A. The truth.

25 Q. The truth.

1 THE COURT: Caution on the
2 comments, Mr. Keith.

3 MR. KEITH: Excuse me?

4 THE COURT: Caution on the
5 comments after the answer.

6 MR. KEITH: I apologize, Your
7 Honor.

8 THE COURT: Just a caution.

9 BY MR. KEITH:

10 Q. Did you and David Thorne ever discuss any
11 of this in front of any third person?

12 A. No, sir.

13 Q. Did any person ever see David Thorne give
14 you money?

15 A. No, sir. They never saw it, but he did.

16 Q. Wait a minute. Once again, your testimony
17 was you went and you cut Yvonne Layne's
18 throat because David Thorne wanted you to
19 do it; is that correct?

20 A. That is correct.

21 Q. Because he would feel good about the
22 result; is that correct?

23 A. That is correct.

24 MR. KEITH: Can I have a moment,
25 Your Honor.

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THE COURT: You may.

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(Thereupon, a discussion was held off the record.)

BY MR. KEITH:

Q. Mr. Wilkes, from what age do you think you had to learn to take care of yourself?

A. Pretty much since I have been born.

Q. And you have told lies to take care of yourself; is that correct?

A. To a point, yes.

Q. You have stolen to take care of yourself; is that correct?

A. To a point, yes.

Q. And you have never hesitated to impose on others or ask others for help; is that correct?

A. That is correct.

Q. The Enochs take you in at 2:00 on a Saturday afternoon, into their home, they feed you, they house you, they do your laundry, they get you a job, and they give you some expectations of your behavior. They want to help you and follow some rules around their home, did not they?

- 1 A. Yes.
- 2 Q. And they don't want a whole gang of kids
3 running around their house or their yard?
- 4 A. Very true.
- 5 Q. And you don't respect any of that, do you?
- 6 A. I respect the fact -- I respected they did
7 want a bunch of people around their house.
- 8 Q. You didn't respect it enough to follow the
9 rules, did you?
- 10 A. I never had a bunch of people around their
11 house.
- 12 Q. Okay. You didn't hesitate to ask David
13 Thorne for help, did you?
- 14 A. No, sir.
- 15 Q. You didn't hesitate to start banging on his
16 answering machine at 2:00 in the morning on
17 March the 27th, did you?
- 18 A. No, sir.
- 19 Q. You didn't hesitate to call Karen Enoch at
20 2:00 this same morning and ask her to come
21 to Kent to get you, did you?
- 22 A. Yes, I did.
- 23 Q. You did that thing?
- 24 A. Yes, I did.
- 25 Q. Right. Okay. You have been in jail now

1 since July the 14th; is that right?

2 A. That's correct.

3 Q. And you have access to a telephone, do you
4 not?

5 A. That is correct.

6 Q. And you have called people from the pay
7 phone both in the Stark County and Portage
8 County Jails; is that correct?

9 A. That is correct.

10 Q. And you have talked to a Tad Simmons? Do
11 you know him?

12 A. (Indicating.)

13 THE COURT: You got to answer.
14 His question is a Tad Simmons.

15 Q. Would you have talked to any person named
16 Tad having made a call from the jail?

17 A. Ted no, but it was Tad.

18 Q. Tad?

19 A. Yes, Tad Simmons.

20 Q. Tad Simmons. Tad. Would you have told Tad
21 that you shouldn't have pled guilty?

22 A. Yes, sir.

23 Q. Okay.

24 MR. KEITH: I have no further
25 questions. Thank you, Your Honor.

1 MR. BAUMOEL: No further
2 questions, Your Honor.

3 THE COURT: You may step down.

4 Ladies and gentlemen, we are
5 going to go ahead and break for lunch at
6 this time. I believe your order has been
7 sent for. It should be on its way to be
8 delivered to you. I assume some of you
9 will need to go down and get something to
10 drink. I would ask Jim if you will stay
11 with them through that and push them to the
12 front of the line. May be a little
13 crowded. So ask other people to step
14 aside.

15 We will stay in recess. Why don't
16 we look to come back up at about ten
17 minutes to 1:00. And remember the
18 admonitions that I gave you. We are
19 becoming deeper into the case. Please
20 don't discuss this case among yourselves.
21 Do not form any opinions on this case.
22 Wait until all the evidence is presented,
23 all the arguments, and the law. With that
24 we will stand in recess until ten minutes
25 to 1:00.

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(Thereupon, a luncheon recess was
taken at 11:59 a.m. with the
proceedings resuming at
12:57 p.m.)

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AFTERNOON SESSION.

THE COURT: State of Ohio, you may call your next witness.

MR. BAUMOEL: Connie Harmon.

CONNIE HARMON

who, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BAUMOEL:

Q. Please state your full name for the court and spell your last name?

A. Connie Lynn Harmon, H-a-r-m-o-n.

Q. How are you presently employed?

A. I'm the loss prevention manager at the K-Mart in Alliance.

Q. Where is the K-Mart in Alliance located?

A. 2500 West State Street.

Q. Specifically the structure of it, is it located on a strip or how would you describe its location?

A. Carnation Mall. We are inside the mall.

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

A. Five years.

Q. And generally would you please tell the

1 jury what your duties are?

2 A. Well, K-Mart classifies us as loss
3 prevention specialists. We do a lot of
4 auditing for the books. We make sure that
5 there is no waste issues. We do what they
6 call inventory control audits, things like
7 that. We also try to prevent any theft or
8 misappropriation that could happen in our
9 store.

10 Q. As a result of all those responsibilities,
11 are certain records kept?

12 A. Oh, absolutely.

13 Q. What type of records?

14 A. Anything that would be for inventory
15 results, any type of bookwork, paperwork,
16 register receipts, detail tapes, charge
17 cards, slips. You know, there is like two
18 copies of your charge card slips and we
19 keep one. You get a copy. Anything that
20 has to do with any monetary transaction or
21 anything that deals with assets in the
22 store we keep all records.

23 Q. And if a customer comes in to your store
24 and makes a purchase, does he receive a
25 receipt; is that correct?

1 A. Absolutely.

2 Q. What record is there kept at K-Mart to show
3 evidence of that purchase?

4 A. It's called a detail tape. And which that
5 shows us in my position what the item was
6 sold, how much it was sold for, and also
7 the register is a computer. And when UPC
8 is scanned, that tells the computer that
9 this item needs to be replenished, we need
10 to get more of it in or also tells
11 inventory that it has been sold. That it's
12 depleted now from our inventory, whether we
13 are going to be replenished or not. So
14 that's basically what a register detail
15 tape is for.

16 Q. Did there come a time in July of 1999 the
17 Alliance Police Department came to you
18 interested in certain pieces of
19 information?

20 A. Absolutely.

21 Q. Could you please tell us about that?

22 A. Detectives Mucklo and Sampson contacted me
23 and wanted to know if I could research some
24 sales of some items.

25 Q. Specifically what were the items?

1 A. One was a knife and the other was some
2 batting gloves.

3 Q. And in regards to this search, were you
4 able to narrow it down to any day or to any
5 period of time?

6 A. Yes. They had most of the information.
7 They had the day, and they had time. And
8 so all we had then was through the register
9 detail tapes, and which the knife they
10 purchased was in a locked case. So we knew
11 that that had to be purchased at the
12 perimeter register.

13 THE BAILIFF: Sir, excuse me.

14 - - - - -
15 (Thereupon, a discussion was
16 held off the record.)

17 THE COURT: Thank you.

18 BY MR. BAUMOEL:

19 Q. Go on. Sorry.

20 A. And also then they had a time frame for the
21 batting gloves which we only had a few
22 registers open at that time so it was real
23 easy to go through the tapes.

24 Q. And were you able to come up with detail
25 slips in regard to the purchase of a

1 batting glove and a purchase of a knife?

2 A. Yes.

3 Q. Let me first show you what's been marked
4 for identification purposes as State's
5 Exhibit 47A, ask you if you are able to
6 identify that exhibit.

7 A. Yes.

8 Q. And what do you recognize that exhibit to
9 be?

10 A. That is a detail tape. It has our store
11 number. It has the transaction number and
12 it has the register number and it has the
13 time.

14 Q. Specifically, what is that a transaction
15 of?

16 A. This one has the batting gloves.

17 Q. What type of information then can we learn
18 from that slip about the purchase of the
19 batting gloves?

20 A. It has the UPC of the batting glove, which
21 everything that's bought today has a bar
22 code which is done by the manufacturer
23 which has a series of numbers. And so we
24 can identify that it is batting gloves and
25 the price that they were sold for.

1 Q. First of all, does it indicate a time and
2 date of those purchase?

3 A. Yes, it does.

4 Q. What is the time and date of the purchase
5 of the batting gloves?

6 A. Time and date was -- the date was March
7 31st, '99, and it was at 1:47.

8 Q. In the afternoon?

9 A. P.m., yes.

10 Q. Now, were there any other batting glove
11 purchases around that time that are shown
12 in the detail slip?

13 A. No.

14 Q. And what was the cost of the batting
15 gloves?

16 A. Cost was -- they were on ad because there
17 is an A and they were \$9.74.

18 Q. Let me hand you what's been marked as
19 State's Exhibit 47B. Ask you if you can
20 identify this exhibit?

21 A. Okay. This was done at an outlying
22 register. First it was -- the knife was
23 price checked. The person wanted to see
24 how much the knife was. And then it was
25 later then purchased, which the price was

1 \$19.99.

2 Q. What was the date and the time of the
3 purchase of that specific knife?

4 A. It was purchased at March 31st, '99, and
5 was purchased at 8:12 p.m.

6 Q. In regards to the time, how is the time
7 established on these records?

8 A. Okay. These are -- the computers are done
9 through fiber optics and there are -- we
10 have the base units in our office. And
11 everything is downloaded through fiber
12 optics which is done by our headquarters.
13 And that's how the time and stuff is on the
14 registers, everything is that way.

15 Q. In regards to the purchase of the knife,
16 did you do any more investigation in
17 regards to that specific item?

18 A. After we had located the detail tapes, and
19 we made copies, we went ahead and which we
20 have on our PC program called item
21 maintenance. It is our book inventory.
22 When an item is brought through the back
23 door, it is scanned so that now our store
24 knows that we own this item and it goes
25 into what is called item maintenance. And

1 it is where you can pull it up and it can
2 tell you how many quantities you have of
3 that item and for year to date our fiscal
4 year how many we have sold.

5 Q. And did you do that in regards to this
6 specific item of the knife?

7 A. Yes, we did.

8 Q. What did your information reveal?

9 A. At that point we had only sold one knife.

10 Q. One knife of that specific type?

11 A. That UPC, yes. That is the UPC we used.

12 Q. And what time period are we talking about?
13 What time period would that cover where
14 only one of those was sold?

15 A. At that point in time, our fiscal year
16 starts -- our new fiscal year for the year
17 2000 will start in February. So that was
18 February of '98, goes through January of
19 '99, so they would overlap.

20 Q. So I understand, since you got this
21 information in July of '99, am I accurate
22 in saying that your records show only one
23 of those knives had been purchased from
24 January of '99 until July of '99?

25 A. Yes.

- 1 Q. You did not print that information out
2 though?
- 3 A. No, we didn't. We just pulled it up. I
4 showed them that we had that information
5 for our computer.
- 6 Q. Did you at a later point try to print out
7 information?
- 8 A. Yes.
- 9 Q. I will hand you what's been marked as
10 State's Exhibit 47C.
- 11 A. Yes. This is an item maintenance report
12 that I picked up on January 7th of the year
13 2000.
- 14 Q. And for what items did you pull up that
15 report?
- 16 A. I pulled up -- the first one is the batting
17 gloves and it tells how many units sold for
18 the year, and for the year when I pulled
19 this up on the seventh we had sold three.
- 20 Q. Three of those batting gloves?
- 21 A. Um-hmm. And on this side the knife and we
22 had only sold three also.
- 23 Q. This would have been as of what date?
- 24 A. Okay. Our new fiscal year will be starting
25 this February, so this would have been from

1 last February to January, for the whole
2 year.

3 Q. In regards to the records then before you,
4 the three items, are those the type of
5 records that are kept at K-Mart in the
6 ordinary course of business?

7 A. Um-hmm.

8 Q. You need to answer orally.

9 A. Yes.

10 Q. And are they made at or near the time of
11 those specific purchases?

12 A. Yes.

13 Q. And is it your responsibility at K-Mart to
14 supervise the keeping and maintaining of
15 those records?

16 A. Not so much of supervising, the keeping of
17 the records. I mean that is just policy.
18 It's automatic. It's an implied rule we
19 keep everything.

20 Q. Are those true and accurate records?

21 A. Yes.

22 Q. I'm going to hand you what's been marked as
23 State's Exhibit 61, ask you if you can
24 identify that exhibit?

25 A. Okay. This is a copy of a K-Mart receipt.

1 It's from our store. And it was 7-20 on
2 '99 and the time is 10:34 a.m. and it is a
3 batting glove and a knife.

4 Q. And in regards to that receipt, can you
5 tell whether the knife listed in that
6 receipt would be the same make and model of
7 the knife purchased back on March 31st?

8 A. Yes, it's the exact same knife.

9 Q. I'm going to show you State's Exhibit 62,
10 which will later be identified as a knife
11 purchased at your K-Mart in July. Does
12 that appear to be identical to State's
13 Exhibit 1 based on visual observations?

14 A. On visual observations, yes.

15 MR. BAUMOEL: No further
16 questions, Your Honor.

17 THE COURT: Defense?

18 MR. HAUPT: We have no questions.

19 THE COURT: Thank you, ma'am.

20 You may step down.

21 MS. HARTNETT: State would call
22 Patricia Tuel.

23 PATRICIA TUEL

24 who, after being first duly sworn,
25 testified as follows:

1471
PHIL S. CIAVASIS
CLERK OF COURTS
STARK COUNTY, OHIO

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IN THE COURT OF COMMON PLEAS

STARK COUNTY, OHIO

60 MAY 15 PM 3:06

CASE NO. 1999-CR-0873

CA NO. 2000-CA-00067

STATE OF OHIO,)	
)	
Plaintiff,)	TRANSCRIPT OF
)	PROCEEDINGS
versus)	
)	
DAVID THORNE,)	VOLUME NO. VI
)	
Defendant.)	

BE IT REMEMBERED, That upon the hearing of the above entitled matter in the Court of Common Pleas, Stark County, Ohio, before the Honorable Richard Reinbold, Judge, and commencing on January 21, 2000, the following proceedings were had:

- - - - -

RUTH C. STONEKING, RPR
OFFICIAL COURT REPORTER
STARK COUNTY COURTHOUSE

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APPEARANCES:

On Behalf of the State of Ohio:

Jonathon Baumoel, Assistant
Prosecutor

Chryssa Hartnett, Assistant
Prosecutor

Citizens Savings Building
Canton, Ohio 44702

On Behalf of the Defendant:

Jeff Haupt, Attorney at Law
4884 Dressler Road
Canton, Ohio 44718

George Keith, Attorney at Law
135 Portage Trail
Cuyahoga Falls, Ohio 44221

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I N D E X

STATE'S WITNESSES

	<u>DX</u>	<u>CX</u>	<u>RDX</u>	<u>RCX</u>	<u>FDX</u>
1. Chris Campbell	1480	1493	1502	1505	
2. Karen Enoch	1507	1535	1543	1543	
3. Brent Enoch	1545	1555			
STATE RESTS	1560				

DEFENSE WITNESSES

	<u>DX</u>	<u>CX</u>	<u>RDX</u>	<u>RCX</u>	<u>FDX</u>
1. John Guia	1567	1576	1580	1582	
2. Jacqueline Huntley	1583	1588			

DEFENSE EXHIBITS

MARKED

Q-Campbell statement	1493
R-Campbell statement	1493

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(Thereupon, court opened at
9:00 a.m. and the following
proceedings were had outside the
hearing of the jury.)

- - - - -

MR. BAUMOEL: Judge, this witness
we have not had an opportunity to talk to
since your ruling so we would like to talk
to him. I assume that we want to limit
what he can answer in regards to the
question of --

THE COURT: Meet him in the
alley way there.

MR. BAUMOEL: Okay. Once again,
we are being very strict in regards to --

THE COURT: What he can say.
He said he was going to go kill a woman in
Alliance and he was -- someone hired him.
That's it.

MR. BAUMOEL: Right. He's going
to say the defense has brought out his
girlfriend hired him, wanted him to do it,
yeah.

THE COURT: I'm sorry.

1 MR. KEITH: In his statement he
2 says that Wilkes says to him my girlfriend
3 hired me to do it.

4 THE COURT: All right. Well,
5 that's a different context I suppose -- I
6 mean if that's -- is that what he's going
7 to say to you, or he is going to say
8 something different to you?

9 MR. KEITH: We haven't had access
10 to him either.

11 THE COURT: So the statement is
12 what? Joe Wilkes said my girlfriend.

13 MR. BAUMOEL: Said a guy hired
14 him. He's going to say Wilkes'
15 girlfriend.

16 THE COURT: And we let in the
17 phrase a guy hired him when she testified.

18 MR. BAUMOEL: She said a guy.

19 THE COURT: And so the only thing
20 difference is my girlfriend or his
21 girlfriend.

22 MR. BAUMOEL: Right.

23 THE COURT: Okay.

24 MR. BAUMOEL: Along those lines,
25 then, we may want to elicit from him, in

1 his statement he indicates that this, once
2 again talking about Wilkes' statement to
3 him, that Wilkes indicated that his
4 girlfriend had drove him to the mall.
5 Which we clearly are not trying to prove,
6 but we feel that's a statement we would
7 like to introduce to show Joe Wilkes is
8 purposely concealing who helped him to that
9 point.

10 THE COURT: Well, how does that
11 come in unless there is some other door
12 that opens that my girlfriend drove me
13 here?

14 MR. BAUMOEL: Because we are
15 really not trying to prove the truth of
16 that statement.

17 THE COURT: It's one of those.

18 MR. BAUMOEL: We are trying to
19 prove really that he's being untruthful at
20 that point.

21 THE COURT: Well, I don't see any
22 real prejudice in that. That's not really
23 an issue. I mean you guys even argue that
24 this guy drives him, that guy drives him.

25 MR. KEITH: Yeah. I understand

1 that. The other thing is Campbell in his
2 statement to the police says that Wilkes
3 told him that he got three hundred up
4 front. And I asked Wilkes about that. He
5 said he didn't remember. He might have
6 said that. So we plan to ask him to tell
7 us that.

8 THE COURT: You didn't confront
9 Wilkes with that when he's on the stand.

10 MR. KEITH: Yes, I did. I said
11 to Wilkes do you remember talking to
12 Christopher Campbell? No. Could you have
13 said that.

14 THE COURT: That's true. He
15 didn't say anything. So if the guy says I
16 don't remember talking to him that's as
17 good as a denial so you can impeach him.
18 All right. You can bring in -- that comes
19 in about did you say that.

20 MR. BAUMOEL: Okay.

21 THE COURT: Because it's not --
22 all right. I will open him up a little
23 bit. Anything else? Why don't you go have
24 a talk with him.

25 - - - - -

1 (Thereupon, a discussion was
2 held off the record.)

3 MR. BAUMOEL: Talking to the
4 witness, he is going to indicate that
5 Wilkes said to him that he's in town to do
6 a job. Shows him the knife, that he's
7 doing it for -- hired by his girlfriend.
8 He's not going to say that he knew what he
9 was talking about. He doesn't recall him
10 ever saying a murder, a kill, anything like
11 that.

12 THE COURT: All right.

13 MR. BAUMOEL: Just wanted to let
14 you know he indicated he's going to say
15 about what his recollection is.

16 THE COURT: Is he dressed in?

17 MR. BAUMOEL: He's in street
18 clothes.

19 THE COURT: I got the jury coming
20 in. Before he's on the stand does anybody
21 mind if he comes out of that door?

22 MR. BAUMOEL: I don't care.

23 THE COURT: Are you going -- you
24 are going to let them know where he's
25 living now.

1 MR. KEITH: Are you going to get
2 into his prior criminal history?

3 MR. HAUPT: Judge, could I ask if
4 he could be brought up ahead of time.

5 THE COURT: He's here now.
6 Bring him out and put him on the stand.

7 CHRISTOPHER CAMPBELL
8 who, after being first duly sworn,
9 testified as follows:

10 - - - - -
11 (Thereupon, the jurors were
12 returned to the courtroom
13 at 9:12 a.m. and the following
14 proceedings were had.)

15 - - - - -
16 THE COURT: Good morning, ladies
17 and gentlemen. Nice to see you all here on
18 this record-breaking day. Glad you all
19 could make it in. We appreciate your
20 getting out and getting in here. We will
21 get started here. You may be seated.
22 State, you may call your next witness. I
23 have done all that is necessary.

24 DIRECT EXAMINATION

25 BY MR. BAUMOEL:

- 1 Q. Could you please state your full name for
2 the court and spell your last name?
- 3 A. Me? My name is Christopher Campbell,
4 C-a-m-p-b-e-l-l.
- 5 Q. How old are you, Mr. Campbell?
- 6 A. Twenty-one.
- 7 Q. And where are you presently living?
- 8 A. With my dad.
- 9 Q. Are you at the Stark County Jail right now?
- 10 A. Yes, I am.
- 11 Q. And why are you in the Stark County Jail?
- 12 A. For a probation violation.
- 13 Q. What was the original charge that you were
14 placed on probation for?
- 15 A. Possession of crack cocaine.
- 16 Q. Mr. Campbell, do you know an individual by
17 the name of Joe Wilkes?
- 18 A. Yes.
- 19 Q. And how long have you known Joe Wilkes for?
- 20 A. I have known Joe Wilkes since say '98.
- 21 Q. How did you get to know Joe Wilkes?
- 22 A. From Maplewood JVS High School in Ravenna,
23 Ohio.
- 24 Q. And specifically, how did you get to know
25 him there at Maplewood?

1 A. We took masonry together.

2 Q. And how long were you in the same class
3 together?

4 A. I would say half of 12th grade, a semester.

5 Q. Would it have been starting in the 12th
6 grade year that you first met and got to
7 know Joe?

8 A. Yes.

9 Q. Did you know him prior to that?

10 A. No.

11 Q. Can you please describe your relationship
12 with him from the point you met him and
13 thereafter?

14 A. Joe and I was pretty close. I mean I'm
15 really the only one that was like a real
16 friend to him because, you know, he always
17 came up to talk to me and stuff like that.

18 Q. Did you do things socially together?

19 A. Yeah. We double dated a few times.

20 Q. Anything else?

21 A. No. Basically that's it. I mean he was
22 somewhat, you know, like a you can call it
23 family or whatever. I mean whatever we
24 did, Joe and his girlfriend did with us
25 basically.

1 Q. During the time that you had contact with
2 Joe Wilkes, did you talk to him, just on an
3 everyday basis?

4 A. Yes, yeah, talked a lot.

5 Q. What type of things did you talk about?

6 A. We -- the biggest subject was this art of
7 fighting, you know, he's taking called
8 shoot fighting.

9 Q. Okay. You talked about that?

10 A. Yes, he talked about that a lot.

11 Q. Did he mention any individuals in regards
12 to this shoot fighting?

13 A. Yes, he told me his teacher's name, which
14 was David Thorne.

15 Q. And during the course of time that you knew
16 Joe Wilkes, how often did you hear the name
17 of David Thorne in talking to him?

18 A. I would say like almost like every day
19 there was something different.

20 Q. He talked to you almost every day
21 mentioning the name of David Thorne. In
22 regards to talking about David Thorne, was
23 he speaking negatively about David Thorne
24 or positively?

25 A. His words, it was all positive. It was

1 like David was the biggest highlight.

2 Q. David Thorne was the biggest highlight?

3 A. Um-hmm.

4 Q. What else did he say about David Thorne
5 that you recall?

6 A. Well, he said one thing that, you know,
7 something like let's say they are walking,
8 okay, and there will be a group of people
9 and David would tell him, you know, I'm
10 giving you all these lessons and he claimed
11 that, you know, you're the big shot, you
12 have all these skills that I am teaching.
13 You prove it to me.

14 So David would tell him to go beat
15 this guy up and Joe would go do that.

16 Q. How long for a period of time then would
17 you say you were close with Joseph Wilkes?

18 A. I have been close to Joe for a while. I
19 mean even after I moved out of Ravenna, we
20 stayed in contact by phone.

21 Q. So you continued to talk to him when you
22 moved out of Ravenna?

23 A. I moved out of Ravenna in -- wow. I moved
24 out of Ravenna like in oh, beginning of
25 January of '99.

1 Q. You continued to talk to him by phone?

2 A. Yes.

3 Q. Let me move you ahead then to the day of
4 March 31st of 1999. And do you recall what
5 you did during the early evening hours of
6 that day?

7 A. I was at the mall.

8 Q. What were you doing at the mall?

9 A. Me and my girlfriend at the time was
10 working at ITC at the mall.

11 Q. What's your girlfriend's name?

12 A. Rose Mohr.

13 Q. And what is ITC?

14 A. It's a telecommunications place. You sell
15 jewelry.

16 Q. And what were your responsibilities there
17 at ITC?

18 A. I was a telephone solicitor, so I sold
19 jewelry.

20 Q. And that business is located right there in
21 the mall almost like another store in the
22 mall?

23 A. Um-hmm.

24 Q. Tell us what happened.

25 A. After work, Rose and I was waiting for a

1 ride home so we sat in the food court. And
2 we were sitting there talking. I see this
3 guy looking at me. And I glance at this
4 guy. He looks familiar to me. So I'm
5 trying to put a name to a face.

6 And he comes over and says my name
7 and we are talking. And as we are talking
8 I'm still trying to put a name to his face
9 and it just clicks in that he's Joe
10 Wilkes.

11 Q. You told us you were kind of close with Joe
12 Wilkes. So why were you unable to
13 recognize him I guess right off the bat
14 based on your prior relationship with him?

15 A. Because like he changed from back then when
16 I saw him before.

17 Q. Changed you mean appearance wise?

18 A. Yeah, clothes and everything because he had
19 on -- I don't know how to call it, some
20 expensive Nike gear. He never wore that
21 before.

22 Q. Mr. Campbell, first I'm going to show you
23 what's been marked State's Exhibit No. 71
24 and ask you if you recognize this exhibit.

25 A. This is my time card.

1 Q. That's your time card from ITC; is that
2 correct?

3 A. Um-hmm.

4 Q. And directing you to the March 31st date,
5 would those indicate what time you started
6 work on that date and what time you got off
7 work?

8 A. Yeah.

9 Q. What time was that?

10 A. 8:01.

11 Q. 8:01 is what time you got off work that
12 evening. What time did you start work that
13 day?

14 A. 6:02.

15 Q. Does that coincide with your recollection
16 of the events of that evening?

17 A. Um-hmm.

18 Q. Let me show you State's Exhibit 60 and
19 State's Exhibit 28, ask you if these items
20 look familiar?

21 A. Yes.

22 Q. Why do they look familiar? First of all,
23 in regards to State Exhibit No. 28, what
24 are these? What do they look like?

25 A. The pants I seen him wear, swishy pants.

1 Q. When you say "he," you mean Joseph Wilkes?

2 A. Yes.

3 Q. And in regards to the photograph, State's
4 Exhibit 60, does that look familiar?

5 A. Yes.

6 Q. What does that appear to be?

7 A. The Nike jacket he wore which I also call
8 swishees.

9 Q. When you say "he," you're referring to Joe
10 Wilkes?

11 A. Yes.

12 Q. We are back in the food court area. You are
13 sitting at a table with your girlfriend at
14 the time Rose Mohr and take us from there?

15 A. We were sitting at a table and I asked him
16 what's he doing here in Alliance. Because
17 I haven't seen him for a while. And he
18 tells me his girlfriend dropped him off and
19 paid for a room at the Comfort Inn because
20 he told us that he was having a party
21 there. And, you know, I'm like what did
22 she give you some money for? And he says
23 well, I'm here to handle some business and
24 I'm asking what business is that?

25 And, Joe he beats around the

1 bush. Like he doesn't want to -- like he's
2 hiding something. And, you know, I talk to
3 him, you know, I'm telling him, you know,
4 we go back. We are close. We tell each
5 other everything. So that's when he pulls
6 out this knife and opens it up and, you
7 know, right then, you don't really have to
8 say no more because I already know what it
9 is.

10 Q. Did you see where he got the knife from?

11 A. Did I see where he got the knife? He told
12 me that he got it from K-Mart.

13 Q. I mean on his person, did you see it? Did
14 you see where on his person, in a pocket?

15 A. Oh.

16 Q. If you can recall?

17 A. No.

18 Q. Now, did you know his girlfriend?

19 A. No, I didn't.

20 Q. Did you know previous girlfriends? You
21 talked about how you all would double date?

22 A. Yeah, I knew his previous girlfriend.

23 Q. Were any names mentioned during the course
24 of the conversation?

25 A. No.

1 Q. And tell me about how long did you get to
2 look at the knife?

3 A. Just long enough for him to open it up and
4 like I can't describe it.

5 Q. When you said opened it up, you were making
6 gestures with your hands. What did you
7 specifically mean by open it up?

8 A. It was a folding knife.

9 Q. Let me show you what's been marked as
10 State's Exhibit No. 1. Place it in front
11 of you. Ask you if that exhibit is similar
12 in appearance to the knife you saw on that
13 day?

14 A. Yeah.

15 Q. Once again he indicated to you according to
16 your testimony that his girlfriend had
17 dropped him off at the mall?

18 A. Yes, he did.

19 Q. How long would you say the conversation
20 took place?

21 A. I would say about 20 to 30 minutes.

22 Q. And what happened when the conversation was
23 over?

24 A. He said he had to go so he got up and left.

25 Q. And what did you all do, you and Rose?

1 Q. After that evening?

2 A. Yeah.

3 Q. Do you recall when you learned about that?

4 A. It was the next day because Rose's brother
5 Jason had called her at the house and they
6 were talking. And Jason had said that some
7 Alliance Police had went to where he was
8 staying at and was asking questions about
9 the girl that got murdered because his
10 friend was --

11 THE COURT: I'm going to he
12 interject here. You can't testify about
13 what other people said, okay? Testify
14 about events, but not about what people
15 said. All right?

16 BY MR. BAUMOEL:

17 Q. After you learned this information, did you
18 believe or feel that it was related to your
19 contact with Joseph Wilkes the previous
20 evening?

21 A. Um-hmm.

22 Q. Did you go to the police at that time?

23 A. No.

24 Q. Why is that?

25 A. Because I didn't really want to get

1 involved.

2 Q. Why is that?

3 A. I don't know. I just didn't want to.

4 Q. Were you scared of Joe Wilkes?

5 A. No, I wasn't scared of him, but I didn't
6 want to be a little snitch either. I
7 just -- wanted to stay out of it.

8 Q. What about Rose Mohr?

9 A. She wanted to go to the police and tell,
10 but I told her not to.

11 Q. You told her not to. Let me take you to
12 July and did the police eventually
13 interview you in regard to your contact
14 with Joe Wilkes on that day?

15 A. Yes.

16 Q. And did you go to the K-Mart in the mall
17 that day with the police?

18 A. Um-hmm.

19 Q. For what reason?

20 A. Because he wanted to find like a
21 description of the knife.

22 Q. Sorry?

23 A. He wanted to find a description of the
24 knife that --

25 Q. You went to the K-Mart to try to find a

1 knife like the one you had seen?

2 A. Yes.

3 Q. In regards to this David Thorne, you
4 testified that you had heard his name
5 often. But do you know David Thorne?

6 A. No.

7 Q. Have you ever met David Thorne?

8 A. No.

9 MR. BAUMOEL: No further
10 questions.

11 THE COURT: Defense.

12 CROSS-EXAMINATION

13 - - - - -

14 (Defendant's Exhibits
15 Q-R were marked for
16 identification.)

17 - - - - -

18 CROSS-EXAMINATION

19 BY MR. HAUPT:

20 Q. Chris, we just met this morning, didn't we?

21 A. Yes, we did.

22 Q. My name is Jeff Haupt. And, Chris, when
23 you talked to the Alliance police, that was
24 on July the 12th; is that a fair statement?

25 A. Um-hmm.

1 Q. Because in Defendant's Exhibit R that I've
2 got before you, it's a transcription of
3 taped statement of Christopher Campbell,
4 that's you, isn't it, Chris?

5 A. Yes.

6 Q. And here, Chris, I believe you told the
7 jury that when you were in school Joe
8 talked about his friend and --

9 THE COURT: Page?

10 MR. HAUPT: Page 7.

11 THE COURT: Thank you.

12 BY MR. HAUPT:

13 Q. You talked about Joe talked about his
14 friend and his trainer and you said David
15 Thorne. And this is David, this is the
16 gentleman that Attorney Keith and I are
17 representing here. But you told the ladies
18 and gentlemen that you said David Thorne
19 and that name stuck out in your brain,
20 didn't it? Stuck out in your head?

21 A. Yeah.

22 Q. Right. That impression was clear, it was
23 clear to you back when you were at school,
24 wasn't it?

25 A. Um-hmm.

- 1 A. Since we was waiting for a ride from his
2 dad or from her dad, we just sat at the
3 table and waited to see his car to pull up.
- 4 Q. And did he eventually pull up?
- 5 A. Um-hmm.
- 6 Q. And did you see Joe Wilkes at all again
7 after he had left you at the food court?
- 8 A. As we were pulling out heading down State
9 Street, to go towards Homeworth, I saw Joe
10 walking down the sidewalk.
- 11 Q. And do you know what street that would have
12 been that he was walking down?
- 13 A. He was down State Street.
- 14 Q. Was he heading towards the downtown Mt.
15 Union direction or the opposite direction?
- 16 A. Excuse me?
- 17 Q. Do you recall what direction he was
18 walking?
- 19 A. East.
- 20 Q. East. Would that be towards Mt. Union?
- 21 A. Yes.
- 22 Q. And towards downtown. Did you later learn
23 that a homicide or murder had occurred
24 shortly after that evening?
- 25 A. It wasn't the same night we were talking.

1 Q. Now, I'm going to ask you in defense
2 Exhibit R, do you think this is a
3 transcript of your statement if you were to
4 look here your name, address, and your
5 phone number, your age?

6 A. Yes.

7 Q. And on page 7, down at the seventh line,
8 then we started talking about his trainer,
9 right?

10 A. Um-hmm.

11 Q. And do you remember that, talking about his
12 trainer?

13 A. In the mall.

14 Q. Yeah.

15 THE COURT: Mr. Haupt, you can
16 allow him to read it to refresh his
17 recollection.

18 Q. If you are not comfortable, I want you to
19 be comfortable. Take your time.

20 THE COURT: If he can't remember
21 have him read what he's saying.

22 MR. HAUPT: I was thinking. I'm
23 sorry.

24 THE COURT: Let him read it so
25 he can refresh his memory.

1 BY MR. HAUPT:

2 Q. Would you like to read it?

3 A. Sure. (Witness complies with request.)

4 Q. At the top of page 8 for instance, do you
5 think you might have said the words I never
6 caught his name? Do you believe you might
7 have said those words?

8 A. In school?

9 Q. No, in the transcript did you say these
10 words when you talked to the Alliance
11 Police, I never caught his name?

12 A. Yes, I said those words.

13 Q. So you don't know who David Thorne is? You
14 only learned that because you're testifying
15 in a trial here today; is that a fair
16 statement to you?

17 A. I know who he is from who Joe tells me.

18 Q. And you and Joe are buddies?

19 A. Yeah.

20 Q. But here when you talk to the police you
21 said I never caught his name, that was in
22 reference to what, the trainer?

23 A. Um-hmm.

24 Q. Is that fair?

25 A. Yeah, I guess that's fair.

1 Q. Furthermore, Chris, you told the jury on
2 direct examination that Joe said he was
3 there for a party, he was having a party?

4 A. Yes.

5 Q. Furthermore, you told the ladies and
6 gentlemen of the jury that his girlfriend
7 dropped him off there at the mall?

8 A. Yes.

9 Q. Furthermore, you said that his girlfriend
10 had hired him to do a job?

11 A. Yes.

12 Q. Furthermore, you are not mistaken about
13 anything, are you today?

14 A. No.

15 Q. Furthermore, he got up and walked away and
16 you two just sat there and remained going
17 about your business waiting for a ride; is
18 that fair?

19 A. Yep.

20 Q. You never said that this guy was high on
21 drugs and he was walking around talking out
22 of his head, did you?

23 A. No.

24 Q. Because the impression you had was if he
25 had been high on drugs walking around

1 talking like a nut you would have said that
2 to the police, wouldn't you?

3 A. Yes.

4 Q. That wasn't the case on that night, was it?

5 A. No.

6 Q. You know Joe for being the type of person,
7 and I believe you said that he's capable of
8 killing someone, right?

9 A. Yes.

10 Q. He talked about killing people to you,
11 hasn't he?

12 A. No, he hadn't.

13 Q. You said to the police he is capable of
14 doing this?

15 A. Um-hmm.

16 Q. Right?

17 A. Yes.

18 Q. And you told Rose Mohr that this guy does a
19 lot of drugs and he's capable of killing
20 people? Did you tell Rose Mohr that?

21 A. I don't recall that.

22 Q. So when she said when she was scared, she
23 didn't want to go to the police, she didn't
24 to report this, was because you told her my
25 gosh, this guy is capable of killing

1 people, he's capable, he does a lot of
2 drugs and hangs around with those kind of
3 people?

4 A. No, I didn't.

5 Q. Never said that type of thing?

6 A. No.

7 Q. So Rose Mohr just didn't go to the police
8 and it wasn't because you told her hey,
9 this guy is a dangerous guy?

10 A. No, I just said it's best that we stay out
11 of it. I never said that he was capable
12 of.

13 Q. You clearly told the police that yes, he's
14 capable of doing this?

15 A. Yes. I never told Rose that.

16 Q. You clearly know Joe Wilkes to be the type
17 of person who is caught up in the drug
18 culture, don't you?

19 A. I never -- I knew him that he smoked weed,
20 you know, stuff like that. He never did it
21 around me.

22 Q. You knew he did it?

23 A. Yes.

24 Q. Why is that? He told you about it or
25 bragged about it?

1 A. Yes, in school, you know, he had talked
2 about smoking joints and stuff like that,
3 but --

4 Q. You guys were pretty tight, weren't you?

5 A. Yes.

6 Q. I believe you told the ladies and gentlemen
7 you guys were like family?

8 A. Um-hmm.

9 Q. Both you and Rose, I have got the words
10 right here, if you would like to look at
11 it, Defendant's Exhibits P and Q, Chris
12 Campbell, that's you, isn't it, Chris?

13 A. Yes.

14 Q. That's on P and on Q Rose Mohr, that's
15 Rose, that's your former girlfriend, right?

16 A. Yes.

17 Q. And date last worked 4-1-99, date last
18 worked 4-1-99, right?

19 A. Um-hmm.

20 Q. You both were terminated from this company,
21 weren't you, no show for three scheduled
22 days, right?

23 A. Um-hmm.

24 Q. Rose Mohr no rehire for three scheduled
25 days. Would rehire if worked consistent

1 schedule. You both were terminated,
2 weren't you?

3 A. Yes.

4 MR. HAUPT: If I could have one
5 minute, Your Honor.

6 - - - - -

7 (Thereupon, a discussion was
8 held off the record.)

9 BY MR. HAUPT:

10 Q. Finally, Chris, Joe Wilkes told you he got
11 paid up front, didn't he? Do you want to
12 look at your statement first?

13 A. No. Yes, he did.

14 Q. Told you he got 300 bucks up front? Do you
15 want to look at your statement?

16 A. No.

17 Q. He told you that, didn't he?

18 A. Um-hmm.

19 Q. Are you telling this jury today that those
20 are the words he used, he got paid up
21 front?

22 A. Yes, he got paid.

23 Q. He said he got \$300 paid up front?

24 A. Yes.

25 Q. Is that true or not?

1 A. That's true.

2 MR. HAUPT: No further questions,
3 Your Honor.

4 THE COURT: State?

5 REDIRECT EXAMINATION

6 BY MR. BAUMOEL:

7 Q. Mr. Campbell, on March 31st, 1999, Joseph
8 Wilkes told you that he was getting paid
9 \$300 to do this job; is that correct?

10 A. Yes.

11 Q. Show you again Defendant's Exhibit R and
12 refer you to the same area in which Mr.
13 Haupt referred you, bottom of page 7 and
14 page 8 which you talked about Joe's
15 trainer. And ask you do you recall -- if
16 you need to go ahead and read this, what
17 specifically were you able to tell the
18 police about this trainer? How much did
19 you know about him at that time?

20 A. What was the question again?

21 Q. Just start reading down here to help
22 refresh your recollection. Go on.

23 THE COURT: On page 7.

24 Q. Bottom of page 7 and then top of page 8.
25 Take your time and read that, if you

- 1 would.
- 2 A. (Witness complies with request.)
- 3 Q. Does that help refresh your recollection?
- 4 A. Um-hmm.
- 5 Q. What were you able to tell the police about
- 6 Joe's trainer?
- 7 A. Just what Joe Wilkes told me about him.
- 8 Q. Did he tell you where he lived?
- 9 A. He said he stayed in Atwater.
- 10 Q. Did he tell you where this training
- 11 occurred?
- 12 A. At his house.
- 13 Q. And specifically where in the house?
- 14 A. Oh, he had like --
- 15 Q. So he trained in his house in Atwater. You
- 16 told the police that right then and there
- 17 in July; is that correct?
- 18 A. Um-hmm.
- 19 Q. Did you also state to the police he talked
- 20 about him all the time in school; about his
- 21 trainer?
- 22 A. Yes, he did.
- 23 Q. He told you on that date that he was
- 24 getting \$300 to kill somebody; is that
- 25 correct?

1 A. Yes, that's how much his girlfriend paid
2 him.

3 Q. Did he use the word "kill"?

4 A. He didn't use the word "kill." But --

5 Q. Did you tell the police, once again you can
6 look at this transcript to help refresh
7 your recollection, did you tell them that
8 he used the word "kill"?

9 THE COURT: Page what?

10 Q. Page 3.

11 A. Um-hmm.

12 Q. So your recollection of the exact words
13 that were said are not necessarily right
14 on, time has elapsed, at that point it had
15 been three months after; is that correct?

16 A. Yeah.

17 MR. BAUMOEL: No further
18 questions.

19 THE COURT: Defense, Mr. Haupt?

20 MR. HAUPT: Could I have one
21 minute.

22 THE COURT: You may.

23 - - - - -

24 (Thereupon, a discussion was
25 held off the record.)

RE-CROSS-EXAMINATION

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BY MR. HAUPT:

Q. On page 3 the top of the page in looking at this, does that refresh your recollection of your statement to the police?

A. Um-hmm.

Q. Would you read to the jury what statement you made to the police?

MR. BAUMOEL: Objection, Your Honor.

Q. And the answer?

THE COURT: You can finish your question. But you are doing it to refresh his recollection, so now having refreshed it can he give the answer without reading it.

BY MR. HAUPT:

Q. In looking at your statement, does that help you refresh your recollection?

A. Yes.

Q. Did he tell you who he was doing this for?

A. He told me that he was doing it for his girlfriend.

Q. Did he tell you why he was doing this for his girlfriend?

1 A. Because his girlfriend didn't like this
2 girl.

3 Q. Now, you and Joe Wilkes, you two are like
4 family, right?

5 A. Um-hmm.

6 Q. And you had agreed with me that until you
7 talked to somebody about your testimony
8 here today, when you originally talked to
9 the Alliance Police you didn't even know
10 David Thorne's name, did you?

11 A. Joe had mentioned to me like maybe once or
12 twice in school, but, you know, it didn't
13 really click in, you know?

14 Q. That's when you told the police I never
15 caught his name, right?

16 A. Right.

17 MR. HAUPT: Nothing further, Your
18 Honor.

19 MR. BAUMOEL: No further
20 questions.

21 THE COURT: Thank you, sir. You
22 may step down. Call your next witness,
23 please.

24 MR. BAUMOEL: Karen Enoch.

25 KAREN ENOCH

1 who, after being first duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. BAUMOEL:

5 Q. Good morning. Please state your full name
6 and spell your last name for the court
7 record?

8 A. Karen Enoch, E-n-o-c-h.

9 Q. And where do you presently live, Mrs.
10 Enoch?

11 A. 1577 State Route 44 in Randolph.

12 Q. Are you presently employed?

13 A. Yes.

14 Q. What kind of work do you do?

15 A. I work for an anesthesia outfit in Akron.

16 Q. How long have you lived at your residence?

17 A. Ten years.

18 Q. Who else lives with you there?

19 A. My husband Brent and my daughter Summer.

20 Q. Would you describe the area in which you
21 live in?

22 A. Sure. We live pretty much in town. We
23 live out on 44. We live between where 224
24 crosses 44 and Waterloo Road crosses 44.

25 Q. In regards to where 44 is, is your house

- 1 right on the street?
- 2 A. No, our house sits back behind the houses
- 3 that are right on the street.
- 4 Q. Are there any businesses in front of you as
- 5 well?
- 6 A. Yes, right directly diagonally in front of
- 7 us is the business called Bob's Pizza.
- 8 Q. Bob's Pizza. What type of business is
- 9 Bob's Pizza?
- 10 A. It's a restaurant. They sell pizza and
- 11 sandwiches.
- 12 Q. Is there anything else there?
- 13 A. There is a drive- through.
- 14 Q. And are you familiar with a Ron's Minimart?
- 15 A. That's directly across 224 from Bob's
- 16 Pizza.
- 17 Q. Is there a sign that says Ron's Minimart?
- 18 A. It might just say Sonoco.
- 19 Q. What about across the street from you there
- 20 on Route 44, are there businesses in that
- 21 area?
- 22 A. There is a business, Wise Chevrolet.
- 23 Q. Chevrolet. I will show you some pictures,
- 24 44A through 44J, ask you to look at those
- 25 photographs.

- 1 A. Okay.
- 2 Q. Do you recognize those photographs?
- 3 A. Yes.
- 4 Q. What are those photographs of?
- 5 A. Picture of Bob's Pizza, standing across the
6 street and 44 is running right in front of
7 it, in front of Bob's Pizza. Here is the
8 parking lot of Bob's Pizza. If you look
9 behind it there is our house.
- 10 Q. And that would be then 44D, that picture?
- 11 A. Yes.
- 12 Q. You can see your house and from your house
13 then you can easily see Bob's Pizza and the
14 parking lot area?
- 15 A. Yes.
- 16 Q. Let me then hand you the rest of the
17 photographs 44K through 44T, ask you to
18 look at all those.
- 19 A. (Witness complies with request.)
- 20 Q. Do you recognize those photographs?
- 21 A. Yes.
- 22 Q. What are those photographs?
- 23 A. These are the photographs taken from the
24 Sonoco, which is across the street from
25 Bob's Pizza.

1 Q. That's the Sonoco that I referred to as
2 Ron's Minimart?

3 A. Ron's Minimart, correct.

4 Q. Do you know an individual by the name of
5 Joe Wilkes?

6 A. Yes, I do.

7 Q. How do you know this individual?

8 A. I had met Joe through my daughter Summer
9 who went to school with him.

10 Q. And how old is your daughter Summer?

11 A. Nineteen.

12 Q. And how long or during what period of time
13 did she go to school?

14 A. She went to school with Joe I believe since
15 the primary grades, third, fourth grade.

16 Q. How long would you say you've known Joe
17 personally yourself?

18 A. Personally a year or two.

19 Q. How did you get to know him during that
20 time period?

21 A. During that time period, I had met Joe
22 through friends of mine, who he was at that
23 time with her daughter, someone who I have
24 known since she was young I met.

25 Q. Would you continue to see Joe then

1 during --

2 A. Off and on, yes. He stopped by our house a
3 few times.

4 Q. Would he stop by, would he call you and
5 stop by or just stop by?

6 A. He would just stop by.

7 Q. And how often do you think you saw him
8 during that time period, a year or 18
9 months?

10 A. Probably at least six, seven, eight times.

11 Q. And during that time did you ever hear the
12 name of David Thorne?

13 A. Yes, I did.

14 Q. And how did you hear that name?

15 A. Joe would talk about David all the time.

16 Q. In what context would he talk about him?

17 A. He would talk, called him his trainer David
18 and we would ask him what that was. He
19 said that he trained him. He talked about
20 David constantly. He would say if I ever
21 got in trouble you just call David. He
22 will be there for me.

23 He talked about the time David
24 helped him get his first car.

25 Q. To your recollection during that time

1 period did he ever speak negatively about
2 David Thorne?

3 A. No, never.

4 Q. Did there come a period of time that you
5 allowed Joseph Wilkes to live in your
6 house?

7 A. Yes.

8 Q. Can you tell us how that occurred, please?

9 A. Joseph had gotten a ride to our house. He
10 tried to call us the night before. He said
11 that he was stranded. It was 2:00 or 3:00
12 in the morning. He was stranded in Stow,
13 Kent and he wanted to know if we could come
14 and pick him up. And I told him no, it was
15 late in the morning, that we weren't going
16 out.

17 Q. Do you recall what time that was?

18 A. It was late. It was 2:00, 1:00, late in
19 the morning.

20 Q. And he called you from Stow, Kent. Do you
21 recall what night that was?

22 A. It was Friday night the 26th.

23 Q. Going into the morning of the 27th is when?

24 A. Exactly.

25 Q. You got the call. What happened from

- 1 there?
- 2 A. Joe got somebody to drop him off at our
- 3 house the following Saturday afternoon.
- 4 Q. Did he have a car at that time?
- 5 A. No.
- 6 Q. What happened then?
- 7 A. Joe came in and proceeded to talk to me and
- 8 my daughter about the people that he was
- 9 staying with no longer would let him stay
- 10 there. He had no place to go. No money.
- 11 Could we let him stay at our house.
- 12 Q. What was your response to that request?
- 13 A. I said that I would have to talk to my
- 14 husband when he got home about it.
- 15 Q. Did you talk to him at that time about what
- 16 you would expect of him?
- 17 A. Yes, I did. Well, we told him that there
- 18 would be rules. He would have to get a
- 19 job. But that we would help him get on his
- 20 feet. He was not to bring friends, you
- 21 know, riffraff or anyone over to our house
- 22 that we didn't know.
- 23 Q. What about trainer David?
- 24 A. When I told Joe that we didn't want strange
- 25 people at our home, he said well, the only

1 person that I would want to be with or
2 associate with is my trainer David.

3 Q. What happened next?

4 A. My husband came home and we asked my
5 husband if it would be all right if Joe
6 stayed at our house.

7 Q. And what was your husband's response?

8 A. He again reiterated what I said and laid
9 down some rules for Joe and told him that
10 we would give him a chance.

11 Q. Had you ever previously allowed anybody
12 else to stay at your house?

13 A. Yes. My husband had a relative of his that
14 was mentally retarded. We had let him stay
15 there with us.

16 Q. Do you recall you talked about him -- about
17 Joe Wilkes getting a job? He did not have
18 a job at that time?

19 A. No, he did not.

20 Q. Were you aware at all of his financial
21 situation?

22 A. He told me that he had 50 cents I believe.

23 Q. And what about the belongings? Do you
24 recall what belongings he brought?

25 A. After my husband said that it would be all

1 right for him to stay at our house we asked
2 Joe where his clothes were and he said that
3 night when I started walking he had them in
4 a plastic container. And then he put them
5 in the bushes and could we give him a ride
6 up there to go get them.

7 Q. Did someone give him a ride?

8 A. My husband and my daughter I believe rode
9 along with them.

10 Q. What did he bring back?

11 A. They brought back a container, plastic
12 container about this deep, like a
13 Rubbermaid about this wide.

14 Q. What did that have in there?

15 A. It had some clothes, some laundry
16 detergent, I believe some shoes maybe.

17 Q. What happened next during that week?

18 A. During that week, my husband took Joe with
19 him on the job that he was working. Joe
20 and I looked in the paper for some jobs.

21 Q. Let me ask you this: Did Joe Wilkes return
22 to that Stow, Kent area at all while he was
23 staying in this first couple of days?

24 A. On Tuesday I gave Joe a ride into Ravenna.
25 He was going to walk to a friend's house

1 and visit. That was early afternoon.
2 Later that evening, about 9:00, Joe called
3 our house and said I'm stuck in Stow,
4 Kent. Can you give me a ride. My husband
5 and I took off to give him a ride and
6 proceeded to lay down the law when he got
7 in the truck about we are not going to
8 start this, we weren't going to give him
9 rides and, you know, that he needed to be a
10 little more responsible.

11 Q. Tell us then the next day Wednesday, March
12 31st what you recall about that day
13 starting in the early hours of the day?

14 A. Joe and I were going to make a trip to
15 Lowe's at Alliance to pick up some dry wall
16 for my husband's side job that he was
17 doing. We left the house and Joe asked if
18 I could buy him a pack of cigarettes
19 because he was out of money and out of
20 cigarettes. We went up to a little store
21 at the corner two blocks from where we live
22 and I bought him -- gave him \$5 to go in
23 and get two packs of cigarettes. He came
24 out and we then drove to the Lowe's in
25 Alliance.

1 Q. What did you do at Lowe's in Alliance?

2 A. Purchased the dry wall. While I was
3 purchasing it Joe filled out an application
4 for work.

5 Q. And do you recall about what time you would
6 have left Lowe's?

7 A. We left Lowe's roughly quarter to 12:00,
8 around in that time.

9 Q. And where did you go from there?

10 A. We went straight home.

11 Q. What did you do back at the house?

12 A. Back at the house, I fixed lunch. I knew
13 my daughter would be coming home for her
14 lunch hour so I fixed lunch for all of us.

15 Q. Joe was present at that time?

16 A. Yes, he was.

17 Q. Did Joe indicate to you that he had plans
18 to leave at that time?

19 A. He said that David was going to come over
20 and pick him up.

21 Q. And after lunch did that happen, in fact?

22 A. Yes.

23 Q. Tell us about that.

24 A. My daughter had arrived home and Joe was
25 watching out for David to come. And he

1 hollered to me David is here, I'm leaving
2 now.

3 Q. Did you see David Thorne at that time?

4 A. I believe that I looked out the window. I
5 had heard so much about David, I was kind
6 of curious and I believe that Joe walked
7 across to Bob's Pizza to get in the car
8 with David.

9 Q. Up to that point you had never seen David?

10 A. No, I had not.

11 Q. When is the next time you would have seen
12 Joe Wilkes that day?

13 A. Later in the afternoon.

14 Q. And tell us about that.

15 A. Later in the afternoon I was in the living
16 room and Joe popped through the door. He
17 said Karen, you got to come outside. I got
18 something I want to show you. So I went
19 outside and there was Joe and David and
20 they had a lion cub. And proceeded to show
21 me the lion cub. And Joe introduced me to
22 this is David.

23 Q. That was the first time you met David
24 Thorne?

25 A. Yes.

1 Q. Did you have any initial impressions upon
2 seeing him?

3 A. I did picture him a little bit older and
4 larger.

5 Q. Why is that?

6 A. I pictured him a little bit older only
7 because Joe had talked about David as an
8 older gentleman like an older brother or
9 father. And as far as trainer, I just
10 pictured somebody bigger.

11 Q. You were a little surprised by his --

12 A. Yes, I was.

13 Q. What happened at that point?

14 A. We talked. David and I talked about his
15 lions that he had, that he was watching
16 this lion for someone else. We talked back
17 and forth until my husband came home.

18 Q. And when your husband came home was he by
19 himself?

20 A. He was by himself driving and following
21 behind him was a friend from work.

22 Q. And was David Thorne still there?

23 A. Yes.

24 Q. With the lion cub. When did David Thorne
25 leave?

1 A. I would say roughly -- my husband gets home
2 at 4:30. We talked for a little while
3 longer. I would say roughly 5:00.

4 Q. And did he leave by himself?

5 A. Yes, he did.

6 Q. What about the lion cub?

7 A. The lion was with him.

8 Q. Let me then take you to the early evening
9 of that day. And did Joe Wilkes make any
10 indications to you about his plans for the
11 evening?

12 A. He said that he was going to meet David
13 down at the mall, did I think would Brent
14 give him a ride. They were to go over and
15 unload the dry wall that we bought earlier
16 that day. He then told -- I said you will
17 have to ask Brent and he then said he was
18 going to go up to Haps where we had been
19 earlier that day and buy some cigarettes.

20 Q. In regards to meeting up with David, did he
21 make any indications whether he would be
22 returning or spending the night at the
23 residence?

24 A. No, he said after him and David were going
25 down to the mall he was going to go Over to

1 David's to spend the night, they were going
2 to clean out his grandfather's garage.

3 Q. And did he, in fact, leave with your
4 husband then?

5 A. Yes, he did.

6 Q. Did you go with them at that time?

7 A. No, I didn't.

8 Q. Did Joe Wilkes return to your residence
9 that evening?

10 A. No, he did not.

11 Q. When did you next see Joe Wilkes?

12 A. The next morning.

13 Q. And there is a picture right in front of
14 you, State's Exhibit 60. Do you recognize
15 that photograph?

16 A. Yes. It's a picture of my daughter's
17 jacket.

18 Q. Joe Wilkes ever wear that jacket?

19 A. He wore it all the time.

20 Q. So the next time you see Joe Wilkes is
21 when?

22 A. The next morning.

23 Q. And tell me about that?

24 A. I was downstairs in the basement washing
25 clothes. Joe came home and said he was

1 home. I told him to go get his dirty
2 clothes and bring them down and he said he
3 was going to go up and take a shower.

4 He acted kind of quiet and I asked
5 him what was wrong and he said that him and
6 David had been up all night.

7 Q. And what happened next?

8 A. Joe went up and took a shower and proceeded
9 to come into the living room and get on the
10 phone and watch television.

11 Q. Did you at some point learn about the death
12 of Yvonne Layne?

13 A. Yes, I did.

14 Q. And prior to that had you heard the name
15 Yvonne Layne?

16 A. No.

17 Q. Joe Wilkes ever mention the name Yvonne
18 Layne to you?

19 A. No.

20 Q. How did you learn about the death of Yvonne
21 Layne?

22 A. My daughter and I were in the kitchen and
23 the newspaper was sitting on the table.

24 Q. Do you know what day we are talking about
25 now?

1 A. I believe it was Friday.

2 Q. Friday?

3 A. The 2nd. Joe picked up the newspaper and
4 was reading. I believe he flipped it open
5 and he exclaimed that oh, my gosh, that's
6 Yvonne. That's David's -- the mother of
7 David's little boy. Someone has killed
8 her.

9 Q. Joe Wilkes had been there about a week at
10 that point?

11 A. Yes.

12 Q. And during that time had he ever read the
13 paper before?

14 A. No.

15 Q. Do you recall anything special about that
16 weekend?

17 A. It was Easter weekend. Joe kept saying
18 David is supposed to bring over the rest of
19 my money. If Joe would leave the house he
20 would make sure to say Karen, if David
21 comes by with my money, make sure you tell
22 him when I will be home at this time.

23 Q. What had Joe indicated he was getting money
24 for?

25 A. For cleaning out his grandfather's garage.

1 Q. What did Joe -- do you recall what Joe did
2 that weekend?

3 A. Joe worked with my husband on a side job
4 both Saturday and Sunday. It was Easter
5 Sunday.

6 Q. Did you see David Thorne at all that
7 weekend?

8 A. No, I did not.

9 Q. When did you see David Thorne next?

10 A. Monday the day after Easter.

11 Q. Tell me about that.

12 A. Joe mentioned that David was supposed to
13 stop by and see him to bring him the rest
14 of his money. He had mentioned that --
15 sometime over the weekend he mentioned that
16 David was supposed to come by after
17 Yvonne's funeral.

18 Q. Did you see David Thorne on April 5th?

19 A. Yes, I did.

20 Q. And what was he driving at that time?

21 A. He was driving a pickup truck.

22 Q. So he was not driving a red Cavalier?

23 A. No.

24 Q. Do you know whose pickup truck it was?

25 A. I believe he said his grandfather's.

1 Q. What happened on that date that you were
2 able to observe?

3 A. David pulled in the driveway. He parked at
4 the end of the driveway in the spot my
5 daughter normally parks. And Joe saw him
6 pull in. He had been watching for him all
7 day. Joe went out and got in the truck
8 with David.

9 Q. How long were they in the truck for?

10 A. They were in the truck quite a while. Half
11 hour at least.

12 Q. Then what happened?

13 A. My daughter arrived home and she had parked
14 in the yard being David's truck was at the
15 end of the driveway and I had opened the
16 door to go outside and Joe motioned for my
17 daughter to come over to the truck where
18 they were.

19 Q. Did Joe leave in that truck at all?

20 A. Yes, he did.

21 Q. Tell me about that.

22 A. After my daughter had been out there
23 talking to the both of them for a while,
24 she came back in the house and Joe came in
25 real briefly to say that David was going to

1 take him over to the drive-through at Bob's
2 Pizza to get some beer.

3 Q. And did that happen?

4 A. Yes.

5 Q. Do you recall what Joe bought at that time?

6 A. Joe bought a 12 pack of Heineken. He said
7 he bought it for my husband he said since
8 he had drank one or two of his beers that
9 he wanted to kindly repay the --

10 Q. What happened next?

11 A. Joe brought the beer in the house and put
12 it in the refrigerator and then left with
13 David.

14 Q. Was it your understanding that Joe was ever
15 paid by David Thorne?

16 A. My daughter came in the house after she had
17 been out in the truck with them --

18 MR. HAUPT: Your Honor, I'm
19 going to object. It's not responsive to
20 the question.

21 THE COURT: Sustained.

22 BY MR. BAUMOEL:

23 Q. During that period of time did Joe go
24 shopping?

25 A. Yes, Joe came in the house and said that he

1 had gotten paid from David.

2 MR. HAUPT: Objection, Your
3 Honor.

4 THE COURT: Sustained.
5 Sustained.

6 BY MR. BAUMOEL:

7 Q. Specifically he went shopping?

8 A. Yes, he did.

9 Q. Do you recall what day that occurred?

10 A. The following day, Tuesday.

11 Q. And that would have been April 6th?

12 A. Yes.

13 Q. Tell us about the circumstances of that.

14 A. Joe had asked my daughter the day before if
15 she would take him Monday. She told him
16 no, she had homework to do. She can take
17 him on Tuesday. She came home from work
18 and then took Joe shopping.

19 Q. And how long were they gone for?

20 A. Couple of hours.

21 Q. And when they returned were you at the
22 home?

23 A. Yes, I was.

24 Q. And what happened then?

25 A. Joe brought in the things that he had

1 bought into the living room to show my
2 husband and I.

3 Q. What were those things?

4 A. He had bought a couple of pair of Nike
5 socks, new tennis shoes, rollerblades, and
6 a pair of work boots.

7 Q. When was the next time you believe you saw
8 David Thorne?

9 A. The next time I believe that I saw David
10 Thorne was when he stopped by the house
11 looking for Joe.

12 Q. Was Joe Wilkes home?

13 A. No.

14 Q. Tell me what happened?

15 A. I let David in. I said that Joe wasn't
16 home at that time. And he came in. He
17 started talking and I had asked him, you
18 know, about Yvonne, how was his son. And
19 did they have any idea who had done such a
20 thing and he said -- David said to me I
21 believe maybe it was -- one of the fathers
22 of her child was in prison, you know, maybe
23 he hired someone to do it.

24 Q. So David Thorne said the phrase "maybe he
25 hired somebody to do it"?

- 1 A. Yes.
- 2 Q. Is that correct. What else did he say
3 during that conversation?
- 4 A. He said to me, he said the police have
5 impounded my car, gone through it, he was
6 upset that he had to pay to get it
7 unpounded. And that he had said that they
8 had tapped his phone. He said tell Joe not
9 to call my house because if he does your
10 number is going to come up and it will just
11 get you and Brent and your family into the
12 middle of this.
- 13 Q. So he indicated a belief the police were
14 tapping his phone?
- 15 A. Yes.
- 16 Q. And he wanted you to tell Joe?
- 17 A. Not to call his house.
- 18 Q. How long did Joe Wilkes stay at your
19 residence?
- 20 A. Until the end of May.
- 21 Q. And during that time did he get a job?
- 22 A. Yes, he did.
- 23 Q. Tell us about that.
- 24 A. We got Joe a job with a landscaping company
25 through a relative of mine.

1 Q. And did you continue to see David Thorne
2 during that time?

3 A. Yes, he would stop by a number of
4 occasions. I met his little boy. He would
5 stop by to see Joe and to talk to him.

6 Q. And during that time Joe had a hernia
7 operation?

8 A. Yes, when David had stopped by on Monday,
9 the 12th I was going back to work the next
10 day. I had been off for an operation
11 myself.

12 Friday the 9th I taken Joe to the
13 doctors because he had had a lump in his
14 stomach and they diagnosed it as a hernia.
15 And they set Joe up with surgery. When
16 David stopped over that day I didn't know
17 of anyone else that Joe knew of. And I
18 gave David the papers of when his pre-op
19 testing was and asked him could he please
20 take him.

21 Q. Let me just jump ahead. Did David Thorne
22 take him to the hernia operation?

23 A. Yes.

24 Q. Why did Joe Wilkes stop living at your
25 residence?

1 A. Joe Wilkes stopped living at my residence
2 after he had worked for a couple of weeks
3 and he started bringing kids around to the
4 house we didn't know. Was hard to get him
5 up to go to work. Just the usual teenage.
6 We had a talk with him about you need to
7 help out around the house. Let us know if
8 you are going to be here or not for dinner,
9 that sort of thing.

10 Q. After Joe Wilkes moved out of your house in
11 July did you then have contact with the
12 Alliance Police Department?

13 A. Yes, I did.

14 Q. Talk to them about the things you knew?

15 A. Yes.

16 Q. Did the Alliance Police Department at that
17 time search any of your property?

18 A. They came to my house to search, there is a
19 field back behind our house.

20 Q. Why was that?

21 A. One time David had come over to the house
22 and was looking for Joe and I said he's in
23 the backyard I believe. Well, David and I
24 walked in the backyard and Joe was nowhere
25 around. So I started hollering for Joe and

1 he was way back in the woods and he came
2 out.

3 Q. Would that have been after Yvonne Layne's
4 funeral?

5 A. Yes.

6 Q. And did they find anything there?

7 A. No, they did not.

8 Q. In regards to the shopping that occurred,
9 let me show you what's been marked State's
10 Exhibit 70 and ask you if you are able to
11 identify that exhibit.

12 A. Yes.

13 Q. What do you identify this as being?

14 A. After we had talked to the Alliance Police
15 Department, my daughter had remembered that
16 Joe had put receipts from their shopping in
17 her glovebox. She went out and got it and
18 I gave it to the police when they came to
19 my house.

20 Q. So you received State's Exhibit 70 from
21 your daughter and gave it to the police?

22 A. That's correct.

23 Q. What about -- that's just one receipt; is
24 that correct?

25 A. That's correct.

1 Q. Does that cover all the purchases?

2 A. No, it does not.

3 MR. KEITH: Objection.

4 THE COURT: Sustained.

5 BY MR. BAUMOEL:

6 Q. On April 6th when you saw all the items
7 that he had brought back, do you see all
8 those items on State's Exhibit 70?

9 A. No, I don't.

10 Q. Were any other receipts located?

11 A. No, they weren't.

12 Q. Does that appear to be in the same
13 condition as when you last handed it over
14 to the Alliance Police?

15 A. Yes.

16 Q. The person that we have referred to as
17 David Thorne, do you see him in the
18 courtroom today?

19 A. Yes, I do.

20 Q. Please describe what he's wearing and point
21 him out?

22 A. David is right here in the gray shirt.

23 MR. BAUMOEL: Let the record
24 reflect identification of the Defendant by
25 the witness. No further questions.

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THE COURT: Ladies and gentlemen,
we are going to go ahead and take our
mid-morning break. I will make it fairly
quick this morning since we are going to
quit at 11:30.

So if you will just go up to the
third floor and use the facilities and kind
of stretch out. I will bring you right
back down here in about nine or ten minutes
and we will go until 11:30, then we will
break for lunch. So remember the
admonitions. We will stand in recess.
Ma'am, if you will stay right there,
please.

- - - - -

(Thereupon, court recessed at
10:22 a.m. and reconvened at
10:32 a.m. and the following
proceedings were had.)

- - - - -

THE COURT: Mr. Keith.

CROSS-EXAMINATION

BY MR. KEITH:

Q. Thank you, Your Honor. Mrs. Enoch, my name
is George Keith, obviously we have met

1 previously; is that correct?

2 A. That's correct.

3 Q. Before March the 27th of 1999, apparently

4 you had known Joe to have met him off and

5 on over a period of years; is that right?

6 A. That's correct.

7 Q. Had you had any extended contact with him

8 during that period of time, or were they

9 just brief visits here and there

10 encounters?

11 A. He would stop by our house and stay for an

12 hour or longer.

13 Q. Apparently he calls 2:00 in the morning the

14 morning of the 27th, would be Friday night

15 into Saturday morning?

16 A. That's correct.

17 Q. And he asks for a ride and you explain that

18 you are not able to get up and go get him

19 at that hour of the morning?

20 A. That is correct.

21 Q. And what would it be from where you live to

22 Kent, maybe 35 minutes?

23 A. That's correct.

24 Q. He then appears at your door at 2:00 the

25 next afternoon; is that right?

1 A. Roughly around that, yes.

2 Q. Do you know how he got there?

3 A. A girl, an acquaintance that he knew gave
4 him a ride.

5 Q. He was able to get someone at some point to
6 give him a ride?

7 A. That's correct.

8 Q. Did you know -- do you have any idea how
9 many people he would have called that night
10 looking for a place to stay or a ride?

11 A. The only other person that I recall he
12 mentioned calling was David.

13 Q. Your husband came home. I assume your
14 husband was working on that side job on
15 that Saturday?

16 A. That's correct.

17 Q. And both of you set out to Joe Wilkes some
18 rules or expectations. You were willing to
19 take him into your home, but you had some
20 expectations about his behavior; is that
21 right?

22 A. That's correct.

23 Q. Later you drive, you find his clothing in
24 somebody's bushes somewhere?

25 A. That's correct.

1 Q. You have indicated to us that on March 31st
2 Joe tells you sometime after lunch that
3 David is there to get him and he leaves?

4 A. That is correct.

5 Q. You look out the window; is that right?

6 A. I believe so, yes.

7 Q. Later on in the day, they then return with
8 a lion cub?

9 A. That's correct.

10 Q. They stay there, your husband comes home, a
11 friend of his is also there to see this?

12 A. That's correct.

13 Q. About 5:00 they leave -- David and a lion
14 cub leave. Let me be clear. And your
15 husband, your daughter, yourself and Joe
16 Wilkes then have dinner later?

17 A. That's correct.

18 Q. Okay. At some point in time your husband
19 leaves to drive the dry wall to the job in
20 Tallmadge?

21 A. That's correct.

22 Q. About what time is that, if you know?

23 A. 6:00 or after.

24 Q. What time did your husband come back?

25 A. Between 8:00 and 8:30 roughly.

1 Q. Your recollection is that Joe had told you
2 he going to find David so he can go to
3 David's grandfather's house and clean out
4 the garage?

5 A. He was to meet him down at the mall and
6 then they were going to go back to his
7 house and he was going to spend the night
8 with David.

9 Q. Taking a step back, he moves in on the 27th
10 of March, and he leaves sometime at the end
11 of May; is that correct?

12 A. That's correct.

13 Q. During that time do you see any evidence of
14 drug use by Joe Wilkes?

15 A. None.

16 Q. You don't see any physical evidence?

17 A. That's correct.

18 Q. Now, he wouldn't need to go back in the
19 woods in order to smoke cigarettes, you
20 permitted him to do that at your home or
21 outdoors near?

22 A. That's correct.

23 Q. So he did not need to hide that from you?

24 A. That's correct.

25 Q. You didn't see any physical evidence of

1 drug use. Do you see any emotional
2 evidence of drug use?

3 A. No, I did not.

4 Q. You have Exhibit 60 in front of you.
5 That's a picture. I believe that's it
6 right there?

7 A. Yes.

8 Q. That's your daughter's windbreaker?

9 A. Yes, it is.

10 Q. Where is that now, do you know?

11 A. At my home.

12 Q. Has anybody ever examined that?

13 A. No, they have not.

14 Q. So Joe left with that on March the 31st,
15 came back with it on April the 1st, and
16 it's been in your possession ever since?

17 A. That's correct.

18 Q. Did someone come there and take a picture
19 of it?

20 A. Yes, they did.

21 Q. But it was never taken out of your
22 possession?

23 A. No, it was not.

24 Q. Okay. In any event, Joe leaves on the
25 31st. He comes back April the 1st. You do

1 not see how he gets back?

2 A. No, I do not.

3 Q. On the 31st you had driven to Lowe's at the
4 Carnation Mall and back. About how long a
5 trip is that for you?

6 A. From my house roughly 25 minutes, 20.

7 Q. Okay. From the 27th forward you met David
8 Thorne on a number of occasions; is that
9 correct?

10 A. That's correct.

11 Q. Was he polite with you?

12 A. Yes, he was.

13 Q. Is he courteous with you?

14 A. Yes, he was.

15 Q. When he was talking about him being upset
16 that they had impounded his car and he had
17 to pay the storage, all of those things,
18 was he the kind of person who was barking
19 at you like you were responsible, or was he
20 just relating his story of his experience
21 with you?

22 A. He was saying I'm upset, this is what they
23 have done.

24 Q. So he's not in your face barking at you,
25 just sharing with you his experiences?

1 A. Yes.

2 Q. Okay. I guess you contacted him to ask him
3 to take Joe to his hernia operation?

4 A. I asked him when he stopped by the house.

5 Q. How frequently did he stop by your house?

6 A. Once, twice a week.

7 Q. And he stopped by. You asked him did he
8 have -- let me start that again. Did he
9 appear to have any concerns about doing
10 that or being involved in that?

11 A. I'm sorry.

12 Q. He had stopped by the house. You had asked
13 him to take Joe to get his hernia
14 pretesting and whatever?

15 A. Exactly.

16 Q. It must have been a fairly simple
17 procedure?

18 A. Exactly.

19 Q. In this day and age. You had asked him to
20 see those things through?

21 A. Yes.

22 Q. Because you had a conflict, you had to go
23 back to work?

24 A. Exactly.

25 Q. Did he have any hesitation about that?

1 A. None.

2 Q. Eventually Joe left because he wouldn't
3 follow your rules; is that right?

4 A. We asked him if he could find another place
5 to stay.

6 Q. Well, based on what we know of him he
7 probably would have stayed indefinitely had
8 you not asked him to leave?

9 A. That's correct.

10 Q. The reason you asked him to do that was
11 because the things that you had originally
12 told him were your expectations you
13 couldn't rely on him to meet; is that
14 right?

15 A. That's correct.

16 MR. KEITH: May I have just a
17 moment, Your Honor.

18 - - - - -

19 (Thereupon, a discussion was
20 held off the record.)

21 MR. KEITH: Thank you, Your
22 Honor. We have no other questions.

23 THE COURT: State of Ohio?

24 REDIRECT EXAMINATION

25 BY MR. BAUMOEL:

1 Q. In regards to Summer's jacket there, that
2 picture was taken by myself and Ms.
3 Hartnett about two or three weeks ago?

4 A. That's correct.

5 Q. From April 1st until that time, had you
6 washed that jacket?

7 A. Yes.

8 Q. About how many times do you think you
9 washed it during that time?

10 A. Once a week.

11 Q. Once a week from April until?

12 A. She wore it all the time.

13 Q. Until January?

14 A. Yes.

15 MR. BAUMOEL: Thank you.

16 MR. HAUPT: If we could have just
17 one minute, Your Honor.

18 - - - - -

19 (Thereupon, a discussion was
20 held off the record.)

21 RE-CROSS-EXAMINATION

22 BY MR. KEITH:

23 Q. Ma'am, with regard to the jacket, did the
24 Alliance Police ever ask to see it?

25 A. I believe I showed it to them when they

1 stopped by my house.

2 Q. When would that have been?

3 A. When they came to search the back field
4 behind my house.

5 Q. Did they ask to see it, or did you offer
6 it?

7 A. I believe they asked -- I had mentioned it
8 so they asked to see it.

9 Q. One other thing just very briefly. On the
10 31st you went to Lowe's and Joe filled out
11 an application. How long did that take?

12 A. I got a receipt to make sure my time I was
13 there. I checked out at 11:00. I then
14 waited for them to get the dry wall.
15 Loaded my truck. And they shorted me four
16 pieces and I had to go back and get more.
17 I waited for Joe to finish his
18 application. I was there probably at least
19 45 minutes.

20 MR. KEITH: Thank you very much.

21 MR. BAUMOEL: Nothing further.

22 THE COURT: Thank you, ma'am.

23 You may step down. Call your next
24 witness.

25 MR. BAUMOEL: Brent Enoch.

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BRENT ENOCH

who, after being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. BAUMOEL:

Q. State your name for the court and spell
your last name for the record?

A. Brent Enoch.

Q. How do you spell your last name?

A. E-n-o-c-h.

Q. And how are you presently employed, Mr.
Enoch?

A. I'm a union carpenter in Cleveland, Ohio.

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

A. About 20 years now.

Q. Besides that employment do you do any other
type of work?

A. Yes, I do a lot of contracting on my own.

Q. How long have you done that for?

A. Probably the last ten years.

Q. Where do you presently live, Mr. Enoch?

A. 1557 State Route 44, Randolph, Ohio.

Q. Who else lives with you at that address?

A. My wife Karen, my daughter Summer.

1 Q. And do you know an individual by the name
2 of Joe Wilkes?

3 A. Yes, I do.

4 Q. How did you get to know that individual?

5 A. He was a friend of my daughter's in school
6 and late in March he got a hold of my wife
7 and wanted to know if he could move in with
8 us. He needed a place to stay. And I had
9 met him two or three times before we had
10 discussed it and said we will give it a
11 try.

12 Q. In those two or three times that you had
13 met Joe Wilkes before had you ever heard
14 the name of David Thorne?

15 A. Yes, I had.

16 Q. In what context did you hear the name?

17 A. He was always referred to as Joe's trainer.

18 Q. Did he speak positively or negatively about
19 David Thorne?

20 A. Positively.

21 Q. Tell us about the initial contact between
22 Joe Wilkes and your family in regards to
23 him moving in with you. When and where did
24 that occur?

25 A. He called, it would have been early

1 Saturday morning March 27th like 2:00 or
2 3:00 in the morning. He said he needed a
3 place to stay, could he come stay with us.
4 My wife said Joe, this is the middle of the
5 night. Can you come tomorrow. We will
6 talk about it. So he showed up sometime
7 during the day. I was working that day.

8 Q. Where were you working that day?

9 A. A side job in Tallmadge, Ohio.

10 Q. Do you recall about what time you would
11 have gotten home?

12 A. Yes, it would have been approximately 6:00
13 Saturday evening.

14 Q. Who was there when you got back home?

15 A. My wife, my daughter Summer and Joe Wilkes
16 were in my living room.

17 Q. Is that when there was an agreement to let
18 Joe stay at your residence?

19 A. That's right.

20 Q. Was there any talk during that time of Joe
21 Wilkes helping you out with any of the work
22 that you did?

23 A. Yes. I mentioned to him I wasn't going to
24 charge him anything. I was going to try to
25 get him on his feet and he could work with

1 me and he did the next day.

2 Q. Very next day being Sunday?

3 A. Yes.

4 Q. Did you pay him at that time?

5 A. No. The agreement was he would be paid
6 when I got paid at the end of the job.

7 Q. And when did that happen?

8 A. The end of that job was not until July and
9 Joe was in jail at that time.

10 Q. So he never got paid?

11 A. Never got paid.

12 Q. Let me take you to the evening of Tuesday,
13 March 30. Do you recall a situation in
14 which you had to go get Joe Wilkes?

15 A. Yes. I had worked that side job that
16 evening. Joe that night didn't go with
17 me. He wanted to go with some friends
18 somewhere. And they picked him up.

19 We got a phone call I'm going to
20 say between 9:00 and 10:00 that evening and
21 he needed a ride. And we had to go get
22 him. Bring him home. And I was giving to
23 him the lecture Joe, we don't do this kind
24 of thing, take off and not find your way
25 home.

1 Q. Let me take you back a couple of days to
2 the day he moved in. Were you at all
3 involved in getting whatever belongings or
4 possessions he had?

5 A. Yes. That Saturday evening when he moved
6 in, my daughter went with me and we picked
7 up his clothes.

8 Q. Where were his clothes?

9 A. Where he formerly lived. He had hid them
10 outside behind a bush and he directed me to
11 where the place was.

12 Q. So you were present when he went behind the
13 bush and got the stuff?

14 A. That's right.

15 Q. So Tuesday night you have to go get him.
16 You are not happy about that?

17 A. Right.

18 Q. Next day is Wednesday, March 31st. Did you
19 work that day?

20 A. Yes, I worked that day.

21 Q. At your job in Cleveland?

22 A. Yes.

23 Q. Was there anything memorable work wise
24 about that day?

25 A. Yes. That was -- I had been working at the

1 Cleveland Public Library. That was my very
2 last day and a friend that I worked with
3 followed me home. He wanted to borrow a
4 tool.

5 Q. What were you doing at the Cleveland Public
6 Library?

7 A. I did mill work, replace doors and refinish
8 them.

9 Q. And do you recall about what time you would
10 have gotten home that evening?

11 A. Would have been approximately 4:30.

12 Q. Tell us what you observed when you arrived
13 at your residence?

14 A. Well, when I pulled in my friend followed
15 me and he pulled in the driveway behind
16 me. And in my front yard was Joe Wilkes
17 with a lion cub on a lead strap. And Mr.
18 Thorne was in the front yard with my wife
19 at the time, who I had never met until
20 right then.

21 Q. You never met David Thorne previously?

22 A. No, sir.

23 Q. So what happened then?

24 A. Got out, you know, kind of in awe about
25 this lion in my front yard and we started

1 to talk about it. And, you know, I was
2 asking questions, and David seemed like he
3 was full of information, knew all about
4 this and was willing to talk about it.

5 Q. How long were they there for after you had
6 arrived?

7 A. "They" meaning?

8 Q. David Thorne and the lion cub?

9 A. I would estimate until 5:00 p.m., a half
10 hour.

11 Q. Did you do any work that evening?

12 A. Yes, that evening I went to the side job I
13 had over in Tallmadge.

14 Q. And did you go by yourself?

15 A. No. Joe went with me after we ate supper.

16 Q. Did Joe make any request of you at that
17 time?

18 A. Yes. We no more than started to pull out
19 and he wanted to know if I could give him a
20 ride to Carnation Mall that night. And I
21 said yes as soon as we get done, no
22 problem.

23 Q. Were you curious as to how he was going to
24 get home from Carnation Mall?

25 A. Yes. I asked him that. He said he would

1 be home the next day, he would be helping
2 David clean out David's grandfather's
3 garage and that he would get a ride
4 somewhere during the day.

5 Q. He indicated he was not going to be
6 sleeping at your residence that night?

7 A. Yes. He let me know that.

8 Q. How long were you in Tallmadge for?

9 A. I would -- probably let me think about it.
10 Probably one hour.

11 Q. To be fair, you are not so concerned about
12 the time of day or how long everything is
13 taking, these are all estimates; is that
14 correct?

15 A. That's true.

16 Q. And was Joe Wilkes there helping you in the
17 job at that point?

18 A. Yes.

19 Q. Tell me what happened when you are finished
20 at Tallmadge?

21 A. Well, when we finished I knew I was going
22 to take him to Carnation Mall and my
23 thought was the best way to get there. And
24 we started to drive down the road and he
25 had got a page on his pager. And asked me

1 could I stop at a pay phone. And I did.
2 He talked on the pay phone, then I took him
3 to Carnation Mall.

4 Q. Where did you drop him off at the Carnation
5 Mall?

6 A. It would be the west end by J.C. Penney.

7 Q. Let me take you then to that weekend. Did
8 you do any more work in Tallmadge?

9 A. Yes, that Saturday and that Sunday, which
10 was Easter Sunday, we hung dry wall both
11 days.

12 Q. Who is we?

13 A. Me and Joe Wilkes.

14 Q. And did Joe make any references back to
15 about the cleaning of David Thorne's
16 grandfather's garage?

17 A. Yes. He mentioned a few times that he was
18 -- David owed him the money or David
19 grandfather's owed him the money for
20 cleaning the garage and I knew he was
21 waiting on that.

22 Q. Do you recall a time when Joe had gone
23 shopping?

24 A. Yes.

25 Q. Made some purchases. Do you recall when

1 that occurred?

2 A. That was Tuesday.

3 Q. After the weekend?

4 A. Yes, that would have been Tuesday, April
5 6th.

6 Q. Did you go shopping with him at that time?

7 A. No, my daughter took him.

8 Q. Were you present when they returned?

9 A. Yes, I was.

10 Q. Did you see what he had purchased at that
11 time?

12 A. Yes.

13 Q. What do you recall him purchasing?

14 A. He bought a new pair of tennis shoes, some
15 socks, and a pair of rollerblades and a
16 pair of work shoes.

17 Q. Did he show you all these items?

18 A. Yes, he did.

19 MR. BAUMOEL: No further
20 questions, Your Honor.

21 THE COURT: Mr. Keith.

22 CROSS-EXAMINATION

23 BY MR. KEITH:

24 Q. Mr. Enoch, my name is George Keith and we
25 have met previously; is that correct?

1 A. That's true.

2 Q. Did you know Joe Wilkes before that
3 Saturday when he moved into your home?

4 A. I had met him two or three,, four times he
5 would stop by.

6 Q. Stay for about an hour and leave?

7 A. I would say.

8 Q. Apparently when he moved in you and your
9 wife perhaps separately and then together
10 had a talk with him about your expectations
11 of his behavior if he lived in your home;
12 is that right?

13 A. That's true.

14 Q. Over time you could not rely on him to
15 respect those expectations; is that right?

16 A. I could rely on him most of the time.

17 Q. Well, with regards to helping out around
18 the house?

19 A. There was times when he got lacksidasical
20 like a teenager.

21 Q. Didn't want to get up and go to work?

22 A. True.

23 Q. Didn't follow through in some ways on the
24 side job you did?

25 A. He went every time I asked him to go there.

1 Q. Did he start having some of his pals show
2 up and hang around your house?

3 A. Yes, there was.

4 Q. And he had been told that was not
5 acceptable; is that right?

6 A. That's true.

7 Q. He asked you for a ride to the Carnation
8 Mall. Joe's grandfather -- David's
9 grandfather lived in Atwater; is that
10 correct?

11 A. That's what I have been told.

12 Q. Why did he go to the Carnation Mall?

13 A. He said that he was going to help David
14 with a show with this lion. I'm not sure
15 what that meant. I think they were going
16 to have a display in the mall the way he
17 explained it to me.

18 Q. So he was going to go over there at 8:00
19 that evening and then go clean the garage
20 and then come home?

21 A. That's the way it was, yes.

22 Q. As you went to the mall you said that he
23 got a page. He asked to stop and use the
24 phone; is that correct?

25 A. Yes.

1 Q. Do you recall where you stopped to use the
2 phone?

3 A. Yes, I do.

4 Q. Where was that?

5 A. The Sonoco gas station in Randolph.

6 Q. Now, you live very near the intersection of
7 old 224 and 44; is that correct?

8 A. That's correct.

9 Q. And you would live on what we will call the
10 northwest corner; is that right?

11 A. Yes.

12 Q. Okay. The Sonoco station is on the
13 southwest corner of that intersection?

14 A. That's right.

15 Q. And there is a pay phone I think at the
16 north end of the pavement, so it would be
17 back up to 224; is that right?

18 A. That's true.

19 Q. So you pulled in there to let him
20 essentially -- your choice was to go back
21 by your house and then go to the Carnation
22 Mall?

23 A. That was the most direct route, 532 to 224
24 to 44.

25 Q. Okay. How long did he talk on the phone,

1 do you know?

2 A. Approximately three to five minutes.

3 Q. Three to five minutes. He tell you what
4 that was about?

5 A. No.

6 Q. About what time of the day would that phone
7 call have been?

8 A. I'm estimating 7:45, 7:50.

9 Q. Okay. So then you take him to the mall.
10 That's another 20, 25 minutes depending on
11 if there is traffic; is that right?

12 A. Probably 15 minutes.

13 Q. Okay. So now we are at 8:00 or a little
14 after, then you turned around and came
15 home; is that right?

16 A. That's correct.

17 Q. During the time that Joe Wilkes lived with
18 you did you see evidence of his drug use?

19 A. I never knew Joe was on drugs. I never
20 seen anything.

21 Q. Did you know that he was capable of
22 stealing?

23 A. No.

24 MR. KEITH: May I have just a
25 moment, Your Honor.

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(Thereupon, a discussion was held off the record.)

MR. KEITH: Thank you, Your Honor. We have no other questions.

THE COURT: Thank you, Mr. Keith.

MR. BAUMOEL: No questions, Your Honor.

THE COURT: Thank you, sir. You may step down. Counsel approach. Off the record.

- - - - -
(Thereupon, a discussion was held off the record.)

THE COURT: Counsel approach real quick.

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(Thereupon, a discussion was held off the record.)

THE COURT: State of Ohio, further witnesses?

MR. BAUMOEL: No, Your Honor. At this time the State would rest subject to the admission of certain exhibits that

1 the State will move to admit.

2 THE COURT: Thank you. Ladies
3 and gentlemen, this is going to be the
4 order of business. We are going to recess
5 for lunch. I'm going to have you come back
6 at 12:15 or so. There are two witnesses
7 and we believe they are to be fairly short
8 in duration that would be presented by
9 counsel for the Defendant this afternoon,
10 Mr. Keith and Mr. Haupt. And so we will go
11 ahead and schedule those two on.

12 So if you are not here at -- 12:15
13 is kind of a target time to shoot for. We
14 will plan to start up again at 12:30.

15 I believe in speaking to all we
16 think there is probably an hour's worth of
17 testimony in between the witnesses, maybe a
18 little less, a little more. So 1:30 then
19 we will probably recess for the day. I
20 thought we will try and get at least two
21 witness on. Maybe it will be a little
22 later after. When they're finished we are
23 going to recess for the day. We have a
24 number of legal matters we must attend to.
25 And so there is no use you sitting around

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for a long time while we do so. We will recess for the day. I will have a lot more instructions for you at the recess for the afternoon and give you kind of a preview of the next week.

So the State has rested. You have heard their case subject to any rebuttal evidence they wish to present. It's a very critical part in the trial. Critical time in the trial. So I ask you again to insure that you don't form any opinions on this case, you don't discuss this case, you isolate yourself from any outside influence.

I will tell you now in case I forget you are specifically instructed not to view or watch or listen or hear any report of 20/20. There is a 20/20 program. You are not to watch it. You are not to let anybody talk to you about it. Other than that, I will see you about 12:15. We will resume the trial. Thank you, ladies and gentlemen.

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(The following proceedings were

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had outside the hearing of the jury.)

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MR. KEITH: Your Honor, the State of Ohio having rested, we would move pursuant to Criminal Rule 29 to have the Court dismiss this matter at this time. Obviously, we believe the evidence taken in the light most favorable to the government does not rise to the level that any reasonable person would find Mr. Thorne to be guilty.

THE COURT: State?

MR. BAUMOEL: Your Honor, I believe having heard the evidence, Joe Wilkes and all the supporting evidence, clearly the light most favorable to the government meets each and every element of the offense of complicity to aggravated murder as well as the specification that this was a murder for hire.

THE COURT: I will overrule the motion. Off the record.

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(Thereupon, a luncheon recess was

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taken at 11:10 a.m. with the
proceedings resuming at
12:27 p.m.)

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1 AFTERNOON SESSION

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3 (The following proceedings were
4 had outside the hearing of the
5 jury.)
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7 MR. HAUPT: Your Honor, at this
8 time, we are calling John Guia, attorney at
9 law to the stand as a witness in our case
10 for David Thorne's defense. John has a
11 relationship with David by virtue of the
12 fact that John had represented David in the
13 Stark County family court. And, David, at
14 this time we are going to ask if he will
15 allow John to speak concerning issues that
16 may have otherwise been deemed under
17 privilege of attorney/client. We are
18 asking at this time, David, do you
19 understand what I am saying?

20 THE DEFENDANT: Yes.

21 MR. HAUPT: Do you understand,
22 have you been informed fully that John Guia
23 we are asking to testify. Will you waive
24 the privileged communications that you
25 otherwise have enjoyed with Attorney Guia

1 and allow him to speak openly about
2 dealings that he has had with you that
3 might have been privileged and
4 confidential?

5 THE DEFENDANT: Yes.

6 THE COURT: Mr. Guia, anything
7 you would like to address?

8 THE WITNESS: No.

9 THE COURT: That sufficient for
10 you?

11 THE WITNESS: That's sufficient
12 for me.

13 THE COURT: Defense, anything or
14 I mean State?

15 MR. BAUMOEL: We would just
16 remark, Your Honor, that the fact that they
17 have waived the attorney/client privilege,
18 they're still the rules of hearsay and that
19 we will object to any self-serving
20 statements that they may be asking Mr.
21 Guia. Because of this privilege we haven't
22 been able to find out what statements may
23 be elicited, but we are concerned that
24 there are going to be some self-serving
25 hearsay statements.

1 THE COURT: I don't want to
2 presume for the reason you're calling Mr.
3 Guia, but one of the reasons that I could
4 presume is, in fact, the concern the State
5 has, is to have to Mr. Guia relate
6 conversations he has had with his client
7 regarding his attitude toward Yvonne Layne,
8 his attitude toward his child, his attitude
9 toward that whole area. And that's not
10 permissible. That is a self-serving
11 statement coming in through a third party
12 and that is absolutely prohibited by the
13 rules.

14 And if, in fact, that's what
15 you're eliciting and an objection is made,
16 I'm going to sustain it. I don't know what
17 he's going -- I don't know why you are
18 calling him, to say his opinion of your
19 client. That's one issue. If you are
20 going to character, that's one issue. If
21 there is a fact issue that's in dispute, I
22 understand that. But I will not permit you
23 to get that in through Mr. Guia.

24 MR. HAUPT: We understand.

25 THE COURT: Okay. Bring in the

1 jury.

2 JOHN GUIA

3 who, after being first duly sworn,
4 testified as follows:

5 - - - - -

6 (Thereupon, the jurors were
7 returned to the courtroom
8 at 12:31 p.m. and the following
9 proceedings were had.)

10 - - - - -

11 THE COURT: Ladies and gentlemen
12 of the jury, as you heard earlier, the
13 State of Ohio has rested their case. Mr.
14 Keith, Mr. Haupt.

15 MR. HAUPT: Thank you, Your
16 Honor.

17 THE COURT: The witness has been
18 sworn, ladies and gentlemen.

19 DIRECT EXAMINATION

20 BY MR. HAUPT:

21 Q. Would you state your full name to the
22 ladies and gentlemen and spell your last
23 name?

24 A. Yes. My name is John Guia, it's spelled
25 G-u-i-a.

1 Q. And you're a practicing attorney here in
2 Stark County for how long?

3 A. This is my 23rd year.

4 Q. And, John, within your practice you have
5 certain areas of emphasis that you utilize
6 your skills in. And would you describe
7 that for the Court?

8 A. I have a general practice in downtown
9 Canton. I do a lot of domestic relations
10 work, lot of work in Municipal Court with
11 DUI's, some criminal work in this court,
12 personal injury and a general practice. I
13 guess a major emphasis would be in domestic
14 relations work and DUI's.

15 Q. John, with regard to David Thorne, did
16 there come a time that you did represent
17 David Thorne?

18 A. Yes, I did.

19 Q. And while we have attorney/client
20 privilege, we did -- David did waive that
21 privilege and ask that you speak today as
22 in testimony today, did he not?

23 A. Yes, he did.

24 Q. And normally there otherwise would be a
25 privilege where communications would remain

1 confidential with the attorney?

2 A. That's correct.

3 Q. Did you meet Yvonne Layne?

4 A. During the course my representation?

5 Q. That is correct.

6 A. I met her briefly at the support hearing.

7 Q. And would you describe to the jury what
8 legal work you undertook for David and what
9 it encompassed?

10 A. Sure. I think David was referred to my
11 office. He lived in the Atwater area and
12 there is a lot of association with Ravenna
13 lawyers. I believe he was referred to me
14 from a classmate of mine in law school,
15 Attorney Lentz. He came to me. He had
16 been served with a motion to establish
17 child support by the Child Support
18 Enforcement Agency, which is a pretty
19 standard motion type of case that I would
20 handle.

21 Paternity of Brandon had been
22 established through the CSCA. They were
23 now seeking a support order against him.
24 My representation included handling that
25 particular motion, that being the

1 establishment of the child support, and I
2 also on his behalf filed a motion to
3 establish definite visitation rights with
4 his son.

5 It's not automatic in that type of
6 case. You have to ask the Court for that
7 type of relief.

8 Q. Within the alternatives that you may have
9 discussed with David, could you describe
10 what options David had when responding to
11 that request for child support? What other
12 options could David have exercised within
13 his rights as having been established the
14 father of this child?

15 A. Well, he could have -- No. 1, he could have
16 done nothing but establish child support
17 and at that point in time he would not have
18 a court order for visitation.

19 No. 2, he could have asked for a
20 court order of visitation, which we did.
21 And I guess No. 3, he could have petitioned
22 the Court for custody of Brandon, which we
23 did not do.

24 Q. David did not request a motion for change
25 of custody?

1 A. No, he did not.

2 Q. So with regard to David's description to
3 you of whether or not he was enjoying
4 visitation, did you describe whether or not
5 he was having visitation with Brandon?

6 A. He indicated he had visitation with
7 Brandon, but at certain times it would be
8 interrupted due to certain things that were
9 going on in Yvonne's life. I don't know if
10 you want me to get into what that was or
11 not, but --

12 MS. HARTNETT: I would object.

13 THE COURT: I don't believe so.
14 Sustained.

15 THE WITNESS: But for those
16 reasons, I advised him that it would be --
17 the best advice would be to seek a definite
18 order so that at least we had a definite
19 order that he would have companionship and
20 if he was not -- denied it for a reason, we
21 would at least have a court that would
22 enforce it.

23 BY MR. HAUPT:

24 Q. John, with regard to the hearing itself,
25 you attended that hearing with David?

1 A. Right.

2 Q. And Jackie Huntley who is an attorney whose
3 testified previously and who will testify
4 here today. And you were there with David
5 and Yvonne, Jackie and yourself; is that a
6 fair statement?

7 A. That's fair.

8 Q. And when you go into the hearing, what did
9 you personally observe about David and
10 Yvonne, if anything?

11 A. Okay. Well, let me back up a step. The
12 first part of the hearing which involved
13 Jackie is the child support establishment
14 of that amount. It's almost become --
15 well, it is a formula that we use. It's
16 almost a black and white type of situation
17 for establishing child support. And we had
18 some idea before we went there as to what
19 that number would be.

20 And aside from other issues that
21 might deviate the number lower or higher,
22 we really didn't have those issues and was
23 almost -- we did finally agree on the child
24 support that came by virtue of the
25 guidelines. So we agreed on that amount.

1 Jackie did a worksheet. I reviewed it with
2 David. It was pretty similar to the
3 numbers that we had thought it would be.
4 So we consented to that amount.

5 The issue of visitation though,
6 Jackie couldn't represent Yvonne on that.
7 She did have an opportunity to postpone the
8 hearing if she wanted to get counsel. I
9 suggested to David that he go talk to her
10 since they had what appeared to be a good
11 relationship. They sat down.

12 They discussed it. I remember
13 talking to both of them. It was very
14 congenial. And they agreed on the
15 visitation. It became part of an agreed
16 order at that time without any problem. It
17 was somewhat simple.

18 Q. And, John, while you've described what is a
19 routine legal matter, there were other
20 options that were available to David?

21 MS. HARTNETT: Objection, asked
22 and answered.

23 THE COURT: Asked and answered,
24 but go ahead. Caution with your leading
25 too.

1 BY MR. HAUPT:

2 Q. With regard to -- in another sense David
3 had options if you would describe -- if
4 they did not reach an agreement, John, if
5 they had not reached an agreement, what
6 other alternatives were available to David
7 as it relates to the child support amount,
8 as it relates to visitation from that
9 hearing?

10 MR. BAUMOEL: Objection, Your
11 Honor.

12 THE COURT: I'll allow him to
13 state the options that were available, just
14 the straight legal options available to
15 your client.

16 THE WITNESS: If we were not in
17 agreement with the child support amount, I
18 suppose the first option would have been a
19 full-scale evidentiary hearing. If we then
20 -- if the Court then issued a ruling on
21 the amount and we did not still agree with
22 it, we would have recourse through appeal.

23 If Yvonne didn't agree on
24 visitation and companionship at that point
25 in time, that would have been set out to

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another hearing with the Court. That didn't happen because it was agreed upon. Everything was agreed upon. As per those issues those were the only options.

MR. HAUPT: If I could have just one moment.

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(Thereupon, a discussion was held off the record.)

BY MR. HAUPT:

Q. During the course of your discussion with your client David Thorne, did he discuss with you the question of custody of Brandon?

MR. BAUMOEL: Objection.

THE COURT: Sustained.

BY MR. HAUPT:

Q. In your representation of Mr. Thorne, did you at any time do legal work to the extent of changing the custody from Yvonne to David?

A. No, I did not file anything that would change custody, nor was I hired to do that.

MR. HAUPT: No further questions, Your Honor.

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THE COURT: State of Ohio.

CROSS-EXAMINATION

BY MS. HARTNETT:

Q. Good afternoon, Mr. Guia. You have represented numerous clients in situations such as this when support is being requested, have you not?

A. Yes, I have.

Q. Would you agree with me that you have standard advice that you would give to an individual who is being put in a situation where support is requested and it's an amount right out of the guidelines?

A. It's pretty much standard unless there are issues that would -- I mentioned the word deviation.

Q. Okay. So it's an amount right out of the guidelines and if there is not really anything that you would call a deviation, you would have standard advice to give the client, would you not?

A. Yes.

Q. Would you agree with me that your standard advice would be not to contest the support?

A. If we -- when you get to the hearing, then

1 it's a question of what incomes -- if you
2 don't have access to all the income in the
3 office, and you have to wait until the
4 hearing to the CSCA, you have to
5 understand, the CSCA handles so many of
6 these cases that really -- they don't have
7 all their income until they are.

8 So once we get there, if it
9 matches and it looks like it's, you know,
10 the right income that we've guessed it was
11 going to be, then it's really difficult to
12 fight the guidelines unless you have a
13 really good reason.

14 Q. It's difficult to fight them because that's
15 what the guidelines are there for, to make
16 it easier to determine the amount?

17 A. That's right.

18 Q. So when you say that there was an option
19 for him to contest the amount or to file an
20 appeal or to have a full-scale evidentiary
21 hearing in a situation where the amount is
22 right out of the guidelines, the mother is
23 on public assistance, all that information
24 is there, there is really not going to be
25 any point in that, is there?

1 A. Well, my advice at that point in time was
2 that we would accept the guideline figure.
3 I think we also obtained the tax exemption
4 as well, which I don't believe he had by
5 Court order, so did that we did that too.

6 Q. You said that a custody or request was not
7 filed on David's behalf at that point in
8 time by you, correct?

9 A. No.

10 Q. Again, would you agree that you have
11 standard advice that you give to a client
12 who is faced with the situation first
13 coming up for child support with regard to
14 they have expressed an interest in custody?

15 A. First of all, I would ask the reasons why.
16 And if the client didn't give me what I
17 felt was a good reason to even try to
18 change the custody, I would explain to him
19 or her that you would -- you don't even
20 have support established for this child.
21 You don't have visitation established. You
22 have nothing by the way of the Court
23 order. You have to start in increments.

24 Now, that's my standard advice. I
25 don't recall and I do not believe that Mr.

1 Thorne ever asked me to change custody.

2 Q. In a situation where there has not been
3 support established yet, or visitation, you
4 would advise the client to establish that
5 pattern before you would seek custody,
6 would you not?

7 A. Unless the present situation was one in
8 which it would -- we would immediately have
9 reason to change custody. That's not
10 normal.

11 Q. Okay. In this case you didn't see any
12 situation like that?

13 A. No.

14 Q. You said that everybody seemed agreeable at
15 the visitation hearing?

16 A. Yes.

17 Q. How long did that take place? How long did
18 it take?

19 A. Well, we really didn't go in for a hearing
20 because we had it -- we did it by
21 agreement. So picture being on the sixth
22 floor across the street with several people
23 in domestic relations court. And going
24 back and forth with myself, with David,
25 with Jackie Huntley, up in the CSCA, David

1 and Yvonne sitting down actually and
2 discussing the visitation. We are there
3 maybe half hour to an hour at most.

4 Q. So this agreement is worked out and at that
5 point in time your role there is over and
6 you go and you leave, correct?

7 A. Yes.

8 Q. So you are not with David or Yvonne after
9 that point?

10 A. No.

11 Q. You don't know where they went or where
12 each of them went after that?

13 A. I have no idea.

14 Q. You don't know who they talked to?

15 A. No, I don't.

16 Q. You don't know what feelings they expressed
17 about what had just taken place, do you?

18 A. After the hearing? No.

19 MS. HARTNETT: I don't have
20 anything further. Thank you.

21 REDIRECT EXAMINATION

22 BY MR. HAUPT:

23 Q. Handing you what we have previously marked
24 as Exhibits D and C?

25 MS. HARTNETT: Can I see?

1 appear to accept the agreement that you had
2 entered into with Jackie and with Yvonne?

3 A. Yeah. David gave me no opposition. He was
4 aware of what was going to happen.

5 Q. And you have had hotly contested matters
6 where there have been custody disputes,
7 haven't you?

8 A. Of course.

9 Q. And contested issues of financial matters?

10 A. I have been on both sides of those cases.

11 Q. Certainly this wasn't the case in this
12 particular incident?

13 A. No, it wasn't.

14 MR. HAUPT: No further questions,
15 Your Honor.

16 MS. HARTNETT: If I can have a
17 moment, Your Honor.

18 - - - - -

19 (Thereupon, a discussion was
20 held off the record.)

21 RE-CROSS-EXAMINATION

22 BY MS. HARTNETT:

23 Q. Mr. Guia, you testified earlier that with
24 regard to David's information regarding
25 custody or feelings about that, are you

1 A. Yes.

2 Q. Could you identify Exhibit D?

3 A. D is the answer and the motion that I filed
4 in response to the motion and complaint
5 filed by Stark County Child Support
6 Enforcement Agency.

7 Q. Exhibit E?

8 A. There is no E. C.

9 Q. C.

10 A. C is the magistrate's decision which
11 emanated from the hearing which includes in
12 the order the actual agreed resolution of
13 the complaint, my answer and the motion
14 that I filed.

15 Q. John, the prosecutor said you don't know
16 what their feelings were after the
17 hearing. Can you describe what their
18 feelings were during the hearing?

19 MS. HARTNETT: Objection.

20 THE COURT: Answer what he
21 observed. I think he has testified to
22 that. They got along well. I think that's
23 been asked and answered.

24 BY MR. HAUPT:

25 Q. With regard to your client David, did David

1 aware of the fact that he had on previous
2 occasions spoken to fellow employees about
3 having expressed a desire to get full
4 custody of Brandon?

5 A. I was not aware of that.

6 MS. HARTNETT: Thank you.

7 MR. HAUPT: No questions.

8 THE COURT: Thank you, Mr.

9 Guia. You may step down.

10 MR. HAUPT: We are going to call
11 Jacqueline Huntley.

12 JACQUELINE HUNTLEY

13 who, after being first duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. HAUPT:

17 Q. Jackie, thank you very much for coming back
18 over. Please state your full name for the
19 record and I will move right to the
20 questions.

21 A. Jacqueline Huntley.

22 Q. And, Jackie, you testified here for us
23 previously concerning David and Yvonne. I
24 am calling you to ask specifically your
25 relationship as it goes with issues

1 involving support and then issues regarding
2 the visitation.

3 A. Okay.

4 Q. Is there a -- is there a separate issue
5 involving those two procedures?

6 A. Yes, there is. I'm representing the State
7 of Ohio. And often times that relationship
8 -- my relationship with the custodial
9 parents is blurred because they feel like
10 we are representing them personally. Our
11 representation is for the best interest of
12 the child. So we don't represent the
13 mothers or the fathers, the custodial
14 parent at all.

15 When it comes to visitation, we
16 must tell the custodial parent and usually
17 on the record that we do not represent them
18 personally. And that they have a right to
19 counsel for that issue.

20 Q. Each issue could, in fact, result in
21 controversies, cases and controversies that
22 are argued in court; is that a fair
23 statement?

24 A. Sure.

25 Q. And was there a case or controversy with

1 regard to the child support amount?

2 A. No, there wasn't.

3 Q. And could you describe then what you
4 observed about David and Yvonne after you
5 had advised her certainly that you don't
6 represent her with regard to the subsequent
7 issues.

8 A. My recollection is that she felt
9 comfortable agreeing to a standard order of
10 visitation.

11 Q. And in fact --

12 A. She did not wish to continue the matter for
13 further hearing.

14 Q. With regard to David, did you have an
15 opportunity to observe David and Yvonne
16 interact?

17 A. Not much, just in the courtroom because he
18 was represented by counsel.

19 Q. You have been in the courtroom and have
20 watched a wide variety of responses during
21 your tenure with Child Support
22 Enforcement. And some of them would be
23 best described as chaotic?

24 MS. HARTNETT: Your Honor, I
25 object.

1 THE COURT: It's a rather
2 lengthy question, Mr. Haupt.

3 BY MR. HAUPT:

4 Q. I will shorten it up. In your experience
5 have you had occasion to view individuals
6 with behaviors that were not consistent
7 with what you observed of David and Yvonne?

8 A. That's usually the norm. Not too many
9 people are pleased with the guideline
10 amount of support.

11 Q. But in this particular instance, can you
12 recall anything about David and Yvonne that
13 would allow you to testify that you
14 observed something about David being
15 displeased or otherwise?

16 A. No.

17 Q. With regard to Yvonne, she seemed to you as
18 you described satisfied and comfortable?

19 A. Yes.

20 Q. Was there any case or controversy further
21 with regard to the issue of visitation or
22 companionship?

23 A. No, not that I am aware of.

24 Q. And upon further recollection, was there
25 anything about that particular hearing that

1 you were in that gave you a -- withdraw
2 that question. At that hearing at the
3 conclusion of the hearing, what did you
4 observe David and Yvonne do together?

5 A. Nothing but walk out of the courtroom.

6 Q. Together?

7 A. How do you mean "together"? You mean as
8 friends?

9 Q. Walk out at the same time?

10 A. All of us did. We just vacated the
11 courtroom for the next hearing.

12 Q. Okay. It was a very brief encounter in the
13 courtroom?

14 A. Yes.

15 Q. Basically exhibits that you previously
16 identified?

17 A. Um-hmm.

18 Q. That encompasses the legal work that was
19 involved?

20 A. That's right.

21 MR. HAUPT: Nothing further.

22 THE COURT: State.

23 MS. HARTNETT: Very briefly.

24 CROSS-EXAMINATION

25 BY MS. HARTNETT:

1 Q. Ms. Huntley, after that very brief hearing
2 you didn't have any further contact with
3 Yvonne or David, did you?

4 A. No, I didn't.

5 Q. You don't know where they went after that
6 or who they went with or who they talked
7 to?

8 A. Right. I don't know that.

9 Q. Thank you. You don't know what they talked
10 about then either, do you?

11 A. No.

12 MS. HARTNETT: I don't have
13 anything further. Thank you.

14 MR. HAUPT: Nothing further.
15 Thank you.

16 THE COURT: You may step down.
17 Thank you, ma'am.

18 Counsel approach.

19

20 (A conference was held at the bench
21 outside the hearing of the jury.)

22

23 THE COURT: Anything further this
24 afternoon?

25

MR. HAUPT: Not at this time,

1 Your Honor.

2 THE COURT: I'm going to send
3 the jury back up to the third floor and
4 then I would like all four of us off the
5 record to go into the jury room and discuss
6 further.

7 - - - - -

8 (Thereupon, the side bar conference
9 ended.)

10 - - - - -

11 THE COURT: Ladies and
12 gentlemen, at this time I'm going to ask
13 you to go back upstairs. I'll allow you to
14 go downstairs and get something if you
15 want. Jim, you will remain with them
16 downstairs and make sure they get to the
17 front of the line. Immediately go back up
18 to the third floor. Go back into the third
19 floor room and wait until further orders
20 and that should not be too much longer. We
21 will stand in recess until that time.
22 Remember my admonitions.

23 - - - - -

24 (Thereupon, court recessed at
25 12:57 p.m. and reconvened at

15.99
PHILIP G. GARWAGE
CLERK OF COURT
STARK COUNTY, OH

60 MAY 15 PM 3:00

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IN THE COURT OF COMMON PLEAS

STARK COUNTY, OHIO

CASE NO. 1999-CR-0873

2000-CA-0067

STATE OF OHIO,)	
)	
Plaintiff,)	TRANSCRIPT OF
)	PROCEEDINGS
versus)	
)	
DAVID G. THORNE,)	VOLUME NO. VII
)	
Defendant.)	

BE IT REMEMBERED, That upon the hearing of the above entitled matter in the Court of Common Pleas, Stark County, Ohio, before the Honorable Richard Reinbold, Jr., Judge, and commencing on Friday, January 21, 2000, the following proceedings were had:

- - - - -

TINA C. MASTERS, RDR, CRR
OFFICIAL COURT REPORTER
STARK COUNTY COURTHOUSE

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APPEARANCES:

On Behalf of the Plaintiff:

Jonathan Baumuel, Assistant Prosecutor
and

Chryssa Hartnett, Assistant Prosecutor

On Behalf of the Defendant:

George Keith, Attorney at Law

and

Jeffrey Haupt, Attorney at Law

STATE'S EXHIBITS

(marked by attorneys)

RECEIVED

1			
2			
3			
4	1-	knife (murder weapon)	1606
5	2A-EE	Earliest photos of scene (second floor living room)	partial1607
6			
7	3A-GG	Photos of outside of house	part 1607
8	4A-FF	Photos of kitchen area	partial1608
9	5A-EE	Photos of rooms in home	partial 1609
10	6A-V	Photos of scene after labeling by police	partial 1610
11	7A-E	Photos of shoeprint	partial 1611
12	8A-BB	Photos of couch (sheet and cushions)	partial 1613
13			
14	9A-O	Photos of body turned over	partial1616
15	10A-JJJ	Crime lab photos of murder area	WD
16	11A-FF	Crime lab photos of home	partial1618
17	12A-J	Polaroid photos of scene	all out
18	13A-B	Photos of Yvonne Layne before her death	13B 1619
19	14A-J	Crime lab photos of Thorne's car at time of search	part1619
20			
21	15A-G	Child support court orders and related documents	1619
22	16-	Pair of red underpants	WD
23	17A&B	Cigarette butts found in living room ashtray	A-1620
24			
25	18A-	Fitted sheet white w/pink flowers	1621
	18B-	Flat sheet - pink w/white flowers	1621

	<u>I N D E X cont.'d</u>	<u>RECEIVED</u>
1	18C- Light blue pillow case	1621
2		
3	18D- Beige woven bedspread	1621
4	18E- Pink comforter	1621
5	19A-light brown bed sheet covering couch	1622
6	19B-Light brown pillow case -couch side cushion closest to dining area	1622
7		
8	19C- Light brown pillow case-couch side cushion closest to stairs	1622
9	20- Hunting knife from Thorne's car	out
10	21- Hair from Thorne's car	1623
11	22- Sweatshirt from Thorne's car	1623
12	23A-C Swabs of blood living room wall	1624
13	24- Scrapings of blood from floor near stairs	1624
14		
15	25- Sexual assault kit	1624
16	26A- Gray Everlast sweatshirt collected from body of Y. Layne	1624
17	26B- White shorts collected from body of Yvonne Layne	1625
18		
19	27A-C Blood samples of Yvonne Layne collected at Coroner's Office	1625
20	28- Black nylon pants - collected from wooden area	1625
21		
22	29- Knives collected from kitchen	1625
23	30- Knife collected at Liberty & South	1625
24	31- Couch cushion - side pillow closest to dining area	1626
25	32- Couch cushion - back rest cushion	1626

I N D E X cont'dRECEIVED

1
2 33- Couch cushion-side pillow 1626
3 closest to stairs
4 34A- Sections of flooring w/footprint 1626
5 in blood - "C" in crime lab photo
6 34B- Sections of flooring with footprint 1626
7 in blood - "A" in crime lab photo
8 35- Coke can from upstairs bedroom 1626
9 36A- Marlboro cigarette package from 1627
10 kitchen table
11 36B- Lighter from kitchen table 1627
12 37- Utility knife blade 1627
13 38A- Two unopened condoms - upstairs 1627 D*
14 bedroom floor
15 38B- One unopened condom - upstairs 1628
16 bedroom wall nook
17 38C- One opened condom package - 1628
18 upstairs bedroom
19 39A- Drinking glass from kitchen table 1628
20 39B- Fingerprint impression lifted 1628
21 from the glass
22 40A- Two Coca-Cola cans from kitchen 1629
23 trash can
24 40B- Fingerprint impression lifted 1629
25 from one can
41A- One opened box of condom packages 1629
41B- Penthouse magazine -Oct. '97 1629D*
41C- Penthouse magazine - Nov. '97 1630
42- Two packs of Swisher Sweets cigars 1630
D* Denotes admitted by request of Defense

I N D E X cont.'d

RECEIVED

1		
2		
3	43A-TT Coroner's photos	DD-1633
4	44A-T Photos Randolph/Route 44 area	1633part
5	45A-L Photos of Carnation Mall and Comfort Inn	1634part
6		
7	46- photo of sole of Nike Cross Trainer	1634
8	47A- Receipt from K-Mart (gloves)	1635
9	47B- Receipt from K-Mart (knife)	1635
10	47C- Receipt from K-Mart (inventory info)	1635
11	48A- Time card for Thorne from Dale's Cuda Shop (3/26/99 - 4/1/99)	1635
12	48B- Time card for Thorne from Dale's Cuda Shop (3/22/99 - 3/25/99)	1635
13		
14	48C- Time card for Thorne from Dale's Cuda Shop (3/15/99 - 3/18/99)	1635
15	49- misc. papers found in kitchen	1635
16	50A-H Photos of knife collected from Liberty & South Streets	part 1637
17		
18	51- Coroner's report	1637
19	52- Diagram	1637
20	53- Copy of Rose Mohr's time card	1638
21	54A-G Photos of recovery of knife (murder weapon)	1638part
22	55- Card with Joe Wilkes' name & number on back	1638
23		
24	56A, B- Records from Comfort Inn	1639
25	57A- Subscriber features of Deft.'s phone (Ameritech record)	1639

I N D E X cont.'d

RECEIVED

1		
2		
3	57B- Ameritech records- first group	1639
4	of subscriber info	
5	57C- Ameritech records- second group	1639
6	57D- Records of 947-2770 from 3/24-4/8	1639
7	57E- Records of 628-4805 from 3/24-4/8	1639
8	57F- Records of 947-7469 from 3/24-4/8	1639
9	58A-D Blow-up posters of phone records(out)	
10	59A-G Photos of recovery of pants	1640
11	60- Polaroid of jacket	1641
12	61 Receipt from K-Mart (Sampson's)	out
13	62- Duplicate knife	out
14	63-Letter to Dale's Cuda from CSEA	1644
15	64A & B-Payroll records Dale's Cuda	1644
16	65A-C Bank records	partial1646
17	66A-H Photos of Deft. on 4/2/99	1647
18	67- Letter in Defendant's car	1647
19	68A-DD Photos of Defendant's car	part1647
20	69- Page of Ameritech record provided	1640
21	to police from Defendant	
22	70- Receipt from Kohl's in Stow, shoes	1648
23	71- Chris Campbell's time card	1649
24		
25		

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P R O C E E D I N G S

TIME: 2:57 P.M.

- - - - -

(The following proceedings were had
outside the hearing of the jury.)

- - - - -

THE COURT: State of Ohio,
Exhibit 1.

MS. HARTNETT: Exhibit 1 is the
knife.

THE COURT: You seek to admit
Exhibit Number 1.

MR. KEITH: The knife found after
Joe Wilkes.

THE COURT: Let me tell you what
I like to do. Move to admit, no objection,
and then we will move on.

MR. KEITH: No objection.

THE COURT: Exhibit 1 admitted.
All right. Photographs, I have them
with me. This is off the record.

- - - - -

(Thereupon, a discussion was
held off the record.)

- - - - -

1 THE COURT: The Court is going to
2 admit subject to argument by Defense 2W, 2X,
3 2Y, 2Z, 2AA, 2BB, 2CC, 2DD, 2A, 2C, 2E, 2K,
4 2L, 2P, 2T and 2U.

5 Defense objection?

6 MR. KEITH: May I review those?

7 Your Honor, I state for the record a
8 general objection to any of the photographs
9 showing the bloody body on the floor, such
10 as State's Exhibit 2W.

11 Other than that, we have no
12 objection to this group of photographs.

13 We would -- I have the Defendant's
14 presence. We made him aware -- Your Honor,
15 for the record we made the Defendant, David
16 Thorne, aware that we're going to go through
17 the evidence.

18 Certainly, that we're objecting to
19 all the photographs in a general sense, and
20 the ones specifically that are
21 inflammatory. We would waive his presence.

22 MR. BAUMOEL: And for the record,
23 we are not seeking any additional
24 photographs in number 2.

25 THE COURT: The Court will admit

1 subject to argument 3B, 3C, 3D, 3G, 3H, 3I,
2 3J, 3L, 3N, 3P, 3W, the next one will be 3CC
3 and 3DD.

4 - - - - -
5 (The Defendant was
6 brought in the courtroom.)

7 - - - - -
8 THE COURT: Okay. I have given
9 over number 3.

10 MR. KEITH: Your Honor, we have
11 had the opportunity to review the
12 photographs as Exhibit 3. The ones that the
13 Court has read into the record and intends
14 to admit, they describe the outside of the
15 building where this event occurred on Devine
16 Street. We have no specific objection to
17 any of them.

18 THE COURT: State.

19 MR. BAUMOEL: Nothing to add,
20 Your Honor.

21 THE COURT: Exhibit Number 4,
22 photos of the kitchen area. Court intends
23 to admit 4A, 4B, 4C, 4D, 4E, 4F, 4G, 4H, 4I,
24 4J, 4K -- I'm sorry, 4L, K goes out; to L,
25 O, 4(O), 4P, 4R, 4S, 4T, 4W, 4Y, 4Z, 4BB,

1 4DD and 4EE photos of the kitchen area.

2 MR. KEITH: Having looked at the
3 photos under State's Exhibit 4 the Court is
4 to intending to be permitted, we have no
5 objection to any of those photographs.

6 THE COURT: State of Ohio.

7 MR. BAUMOEL: Nothing to add,
8 Your Honor.

9 THE COURT: Group 5, photos of
10 other rooms in home. The Court intends to
11 introduce into evidence or admit into
12 evidence 5A, 5B, 5C, 5E, 5K, 5L, 5M, 5T, 5U
13 and 5W.

14 MR. KEITH: Your Honor, with
15 respect to the photographs in State's
16 Exhibit 5 the Court has announced its
17 intention to admit, we have no specific
18 objection.

19 THE COURT: State of Ohio.

20 MR. BAUMOEL: Judge, we would
21 seek to add to that list 5G and 5J. 5G was
22 specifically referred to in the testimony,
23 the second floor bedroom from the hallway
24 and showing the locking mechanism that
25 Yvonne Layne used to keep the kids in at

1 night.

2 THE COURT: Any objection by the
3 Defense?

4 The record reflect the client was
5 brought up after we went through State's
6 Exhibits 1 and 2, but he has been reviewed
7 by his Defense attorneys with him.

8 All right. Let me just point out
9 I'm not here having you go over the
10 evidence, objection or not objection.

11 MR. KEITH: We have no objection
12 to the admission of those two additional
13 photos.

14 THE COURT: The Court will admit
15 them.

16 Okay 6, packet 6, photos of scene
17 after labeling by police.

18 The Court intends to admit into
19 evidence 6J, 6Q, 6R, 6S, 6A, 6B, 6C, 6D, 6E,
20 and 6G.

21 MR. KEITH: Your Honor, with
22 regard to State's Exhibit 6, without going
23 through, it contains, I think, five, what,
24 show pictures of the body and blood.

25 We would specifically object to

1 those. Otherwise, we have no specific
2 objection.

3 THE COURT: State, anything in
4 regards to the 6 series?

5 MR. BAUMOEL: No, Your Honor.

6 THE COURT: The 7 series is
7 photos of a shoe print. The Court is going
8 to admit into evidence 7A, 7B, 7C, D and E.

9 MR. KEITH: We have no specific
10 objection to any of those photographs, Your
11 Honor.

12 THE COURT: State, anything
13 further?

14 MR. BAUMOEL: Nothing to add,
15 Your Honor.

16 THE COURT: The 8 series are the
17 photos of the couch and the sheets -- well,
18 except I have -- I don't have any 8's.

19 MS. HARTNETT: Because we
20 separated them out. Your Honor wanted to
21 see them separately.

22 MR. BAUMOEL: I'll tell you this
23 much. These are the 8's that I'm interested
24 in.

25 THE COURT: All right. Let me

1 just look at those.

2 Out of the 8 series this is all you
3 are offering?

4 MR. BAUMOEL: I didn't know there
5 were no 8's.

6 MS. HARTNETT: Where is the rest
7 of the 8's?

8 THE COURT: Here are the 8's that
9 you are submitting. Why don't you all look
10 at those.

11 MS. HARTNETT: You don't have any
12 8's up there?

13 THE COURT: No, ma'am.

14 MS. HARTNETT: We have separated
15 out the group 10. Also we needed to talk
16 about those.

17 Eight are the photos of the couch
18 and the sheets.

19 MR. BAUMOEL: Here are the rest
20 of the 8's.

21 THE COURT: Are there more 8's
22 that you want to introduce?

23 MR. BAUMOEL: No.

24 MR. KEITH: We have no specific
25 objection to any of the 8's that have been

1 presented to the Court.

2 THE COURT: These are just the
3 8's from the State.

4 MS. HARTNETT: These are the ones
5 that Mr. Baumoe1 specifically handed to the
6 judge and said do you want.

7 THE COURT: Does the State wish
8 to add to the 8's?

9 MR. BAUMOEL: I don't believe.
10 Ms. Hartnett, would you like to add any of
11 those? Most of the -- the majority of ones
12 we have covered?

13 MS. HARTNETT: No.

14 THE COURT: And as far as
15 objections to the 8's, A, F, Y, Z, AA?

16 MR. HAUPT: No objection, Your
17 Honor.

18 THE COURT: The 9's are the
19 photos of the body after it was turned over.

20 MR. BAUMOEL: You have none at
21 this point.

22 THE COURT: No, you took those
23 away from me, Chris.

24 MS. HARTNETT: The 9's are right
25 here. You had taken out the entire stack.

1 THE COURT: That was in error.
2 I'm going to permit one or two in, so let's
3 see what you have. They must have melted
4 together because I put those together.

5 Let me see the whole stack and
6 I'll's do it this way.

7 In regards to the 9 series, the
8 Court would admit into evidence 9B, 9E as in
9 Edward and 9F as in Frank.

10 MR. KEITH: For the record, 9B is
11 a picture of the body after it was turned
12 over looking at it from feet closest to
13 head.

14 9E is a picture of the body after it
15 was turned over, really looking at the head
16 in the beginning of the picture through a
17 little bit of the body.

18 And 9F is a closer picture of the
19 head and the upper part of the body after it
20 was turned over.

21 The Defense would specifically
22 object to each of those photographs for the
23 reason, first of all, they are not an
24 accurate representation of how the scene was
25 found. It was after the scene was

1 disturbed.

2 Second of all, they are almost
3 grotesque in terms of what the person looks
4 like. The prosecution of this case does not
5 lie at the crime scene. The person who did
6 those acts has testified that he did them.
7 The State of Ohio does not need -- there is
8 ample evidence that this poor woman died,
9 that she was murdered, that her throat was
10 cut.

11 To put these pictures into evidence
12 does not serve to prove that part of the
13 State's case. All it does is to inflame the
14 prejudice and the passion of a Jury, and
15 once again, in this case that's the only --
16 it doesn't -- it just, it accumulates at
17 some fact in issue. It does not prove any
18 fact in issue. It is duplicative in that
19 sense and it really does arouse passion and
20 prejudice.

21 THE COURT: You only have to say
22 that one time.

23 MR. KEITH: Thank you, Your
24 Honor, so we object.

25 THE COURT: State.

1 MR. BAUMOEL: Your Honor, in
2 regards to the three exhibits, the State
3 would seek to admit those. To my knowledge
4 the Defense in this case has not conceded
5 that Joe Wilkes is, in fact, the murderer in
6 this case. His testimony is in question in
7 regards to his credibility and how he
8 committed the murder.

9 Also there was testimony as to the
10 observation of this body after it was turned
11 over; that that was the only time that they
12 learned what the specific injury and what
13 could have caused the injury. Up to this
14 point there are no other pictures showing
15 the body turned over and showing the actual
16 wound as it would appear on the scene.

17 Also I would note that these
18 pictures as opposed to pictures that we have
19 seen of the body on its stomach show the
20 amount of blood on the front of the body.

21 THE COURT: Okay. The Court is
22 going to withdraw 9E. I'll keep that out
23 but I'll admit into evidence B and F. The
24 objection will be noted.

25 Then 10 I don't have any of the 10

1 series either.

2 MS. HARTNETT: They are right
3 here.

4 THE COURT: Those are crime lab
5 photographs.

6 MS. HARTNETT: They are not in
7 any particular order, and I think there were
8 more.

9 THE COURT: I think part of the
10 problem is, Chris, these were banded
11 separately.

12 THE COURT: I think a lot of
13 these crime lab photos are the same as --

14 MS. HARTNETT: As 2 and 9, those
15 groups specifically and 8.

16 THE COURT: Let me go through them
17 again.

18 MS. HARTNETT: I can tell you
19 which ones we refer to specifically, this,
20 the testimony.

21 THE COURT: Yeah, that would
22 help. I'm going to give them all back to
23 you. Take out the ones that you want to
24 proffer.

25 MS. HARTNETT: 10F.

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THE COURT: This is off the record.

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(Thereupon, a discussion was held off the record.)
- - - - -

MR. BAUMOEL: Judge, at this time there is no pictures from the 10's that the State is seeking to admit. They are duplicative of what they have already seen.

THE COURT: Counsel, they are not admitting anything from the 10 set.

11 are crime lab photos of the house, and the only two I have are Exhibits 11DD and 11EE and I don't know if the State is going to admit those or if the Defense wants those.

It's your call.

MR. HAUPT: We would like them in.

MR. KEITH: Yes.

THE COURT: The Court will admit 11DD and EE.

The next one is a 13B, the photo of Yvonne Layne before her death.

1 MR. KEITH: We don't have any
2 objection, Your Honor.

3 THE COURT: Okay. That will be
4 admitted.

5 I'm sorry. It's 13B.

6 MS. HARTNETT: Is admitted?

7 THE COURT: Yes.

8 These are photos the Court is going
9 to admit 14A, 14D, 14E, 14F, 14H.

10 MR. KEITH: No objection, Your
11 Honor.

12 THE COURT: Anything further by
13 the State?

14 MR. BAUMOEL: No, Your Honor.

15 THE COURT: The next series goes
16 then to -- the next is Exhibits Number 15A,
17 through G, child support court orders and
18 related documents. Any objection?

19 MR. KEITH: No, Your Honor.

20 THE COURT: Admitted.

21 16 is a pair of red underpants.

22 MR. KEITH: No objection.

23 MR. BAUMOEL: I'm sorry?

24 THE COURT: Red underpants.

25 MR. BAUMOEL: We're not seeking

1 to admit those.

2 THE COURT: Withdrawn.

3 17 are cigarette butts found in the
4 living room ashtray.

5 MR. KEITH: No objection.

6 THE COURT: I'm saying it as if
7 you're introducing it. So if you're not,
8 just say withdrawn.

9 MR. BAUMOEL: I'll withdraw.

10 THE COURT: Now, let's divert
11 back to you guys going first.

12 So 17 is cigarette butts found in
13 the ashtray.

14 I'm waiting for you.

15 MR. BAUMOEL: I'm sorry. We are
16 seeking to admit 18A through 18E.

17 THE COURT: Wait a minute. 17,
18 cigarette butts, are you moving to introduce
19 those?

20 MR. BAUMOEL: No -- well, moving
21 to admit 17A.

22 THE COURT: Any objection?

23 MR. KEITH: No, Your Honor.

24 THE COURT: Okay. 18A is the
25 fitted sheet, white with pink flowers.

1 MR. BAUMOEL: We're seeking to
2 admit that.

3 MR. KEITH: No objection.

4 THE COURT: Admitted.

5 B is a flat sheet, pink with
6 flowers.

7 MR. BAUMOEL: Seeking to admit
8 that.

9 MR. KEITH: No objection.

10 THE COURT: Admitted.

11 18C, light blue pillow case.

12 MR. BAUMOEL: Seeking to admit
13 that.

14 MR. KEITH: No objection.

15 THE COURT: Admitted.

16 18D, beige woven bedspread.

17 MR. BAUMOEL: Seeking to admit
18 that.

19 MR. KEITH: No objection.

20 THE COURT: Admitted.

21 18E, pink comforter.

22 MR. BAUMOEL: Seeking to admit
23 that.

24 MR. KEITH: No objection.

25 THE COURT: Admitted.

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19A, light brown bedsheet.

MR. BAUMOEL: Seeking to admit
that.

MR. KEITH: No objection.

THE COURT: Admitted.

19B, light brown pillow case couch
side closest to dining area.

MR. BAUMOEL: Seeking to admit
that.

MR. KEITH: No objection.

THE COURT: Admitted.

19C, light brown pillowcase, couch
side closest to stairs.

MR. BAUMOEL: Seeking to admit
that.

MR. KEITH: No objection.

THE COURT: Admit that.

20, hunting knife from Thorne's car.

MR. BAUMOEL: Seeking to admit
that.

MR. KEITH: We object, Your
Honor. I'm not sure what fact at issue it
proves.

THE COURT: I'm not sure it was
even identified.

1 MS. HARTNETT: It was identified.

2 MR. KEITH: It was identified?

3 THE COURT: And it was an item
4 taken out of Mr. Thorne's car but it was not
5 in any way connected to that; is that
6 right?

7 MR. BAUMOEL: They did an
8 analysis of that knife and did not find any
9 blood on the knife.

10 THE COURT: Well, I don't find
11 probative value on behalf of the State, but
12 if the Defense doesn't want that issue in,
13 I'll keep it out.

14 MR. KEITH: We object, Your
15 Honor.

16 THE COURT: All right.
17 Sustained.

18 21, hair from Thorne's car.

19 MR. BAUMOEL: We seek to admit.

20 MR. KEITH: I have no objection.

21 THE COURT: Admitted.

22 22, sweatshirt from Thorne's car.

23 MR. BAUMOEL: Seek to admit it.

24 MR. KEITH: No objection.

25 THE COURT: Admitted.

1 23A through C, swabs of blood from
2 living room wall.

3 MR. BAUMOEL: We seek to admit
4 it.

5 MR. KEITH: No objection.

6 THE COURT: Admitted.

7 24, scrapings of blood from floor
8 near stairs.

9 MR. BAUMOEL: Seeking to admit
10 it.

11 MR. KEITH: No objection.

12 THE COURT: Admit it.

13 25, sexual assault kit.

14 MR. BAUMOEL: Seeking to admit
15 it.

16 MR. KEITH: No objection.

17 THE COURT: Admitted.

18 26A, gray Everlast sweatshirt
19 collected from the body of Yvonne Layne.

20 MR. BAUMOEL: Seeking to admit.

21 MR. KEITH: We object. It's a
22 biohazard, Your Honor.

23 THE COURT: Overruled.

24 26B, white shorts collected from the
25 body of Yvonne Layne.

1 MR. BAUMOEL: Seeking to admit
2 it.

3 MR. KEITH: We object.

4 THE COURT: Overruled.

5 27, blood sample of Yvonne Layne
6 collected at the Coroner's Office.

7 MR. BAUMOEL: Seeking to admit
8 that.

9 MR. KEITH: No objection.

10 THE COURT: 28, black nylon pants
11 collected from the woods.

12 MR. BAUMOEL: Seeking to admit
13 that.

14 MR. KEITH: No objection.

15 THE COURT: 29, the knives
16 collected from the kitchen.

17 MR. BAUMOEL: Seeking to admit
18 that.

19 MR. KEITH: No objection.

20 THE COURT: 30 is the knife
21 collected at Liberty and South Streets.

22 MR. BAUMOEL: Seek to admit that.

23 MR. KEITH: No objection.

24 THE COURT: 31, couch cushion,
25 side pillow dining area.

1 MR. KEITH: No objection.

2 THE COURT: 32, couch cushion,
3 back rest cushion.

4 MR. BAUMOEL: Seeking to admit
5 that.

6 MR. KEITH: No objection.

7 THE COURT: 131 -- I'm sorry, 31,
8 32 -- 33, couch cushion, side pillow closest
9 to the stairs.

10 MR. BAUMOEL: Seek to admit it.

11 MR. KEITH: No objection.

12 THE COURT: 34A, sections of
13 flooring with the footprint C; and
14 34B, sections of flooring with footprint A.

15 MR. BAUMOEL: Seeking to admit
16 both of those.

17 MR. KEITH: No objection.

18 THE COURT: Admit both, 34A
19 and B.

20 35, Coca-Cola can from upstairs.

21 MR. BAUMOEL: Seeking to admit
22 it.

23 MR. KEITH: No objection.

24 THE COURT: 36A, the Marlboro
25 cigarette pack on the kitchen table.

1 MR. BAUMOEL: Seeking to admit
2 it.

3 MR. KEITH: No objection.

4 THE COURT: 36B is the lighter on
5 the kitchen table.

6 MR. BAUMOEL: Seeking to admit
7 it.

8 MR. KEITH: No objection.

9 THE COURT: 37 is the utility
10 knife blade.

11 MR. BAUMOEL: Seeking to admit
12 it.

13 MR. KEITH: No objection.

14 THE COURT: 38A is two unopened
15 condoms in the upstairs bedroom.

16 MR. BAUMOEL: We're not seeking
17 admit it.

18 MR. KEITH: We are.

19 MR. HAUPT: We are moving for
20 admission.

21 THE COURT: It would be admitted
22 under request of the Defense.

23 38B is one unopened condom.

24 MR. BAUMOEL: Seeking to admit
25 it.

1 MR. KEITH: No objection.

2 THE COURT: Admitted.

3 38C, one opened condom, upstairs

4 bedroom.

5 MR. BAUMOEL: Seeking to admit

6 it.

7 MR. KEITH: No objection.

8 THE COURT: Admitted.

9 39A is one drinking glass from the
10 kitchen table.

11 MR. BAUMOEL: Seeking to admit

12 it.

13 MR. KEITH: No objection.

14 THE COURT: 39B, fingerprint
15 impression lifted from the glass.

16 MR. BAUMOEL: Seek to admit.

17 MR. KEITH: No objection.

18 MS. HARTNETT: Actually we need
19 to find that.

20 MR. HAUPT: That's what?

21 MS. HARTNETT: The fingerprint.

22 You know what? The bag, I'll find
23 the bag.

24 THE COURT: To expedite, if one
25 will look and we will continue on.

1 40A is two Coca Cola cans.

2 MR. BAUMOEL: Seeking to admit
3 it.

4 MR. KEITH: No objection, Your
5 Honor.

6 THE COURT: 40B is the
7 fingerprint impressions lifted from one of
8 the cans.

9 MR. BAUMOEL: Seeking to admit
10 it.

11 MR. KEITH: No objection, Your
12 Honor.

13 THE COURT: Admitted.

14 41A, one unopened box of condom
15 packages?

16 MR. BAUMOEL: Seeking to admit
17 it.

18 MR. KEITH: No objection.

19 THE COURT: Admitted.

20 41B penthouse, October '97.

21 MR. BAUMOEL: Not seeking to
22 admit it.

23 MR. HAUPT: We are.

24 THE COURT: Admitted for Defense.

25 41C, Penthouse magazine, '97.

1 MR. BAUMOEL: Seeking to admit.

2 MR. KEITH: No objection.

3 THE COURT: Two packs of Swisher
4 Sweets cigars.

5 MR. BAUMOEL: Seeking to admit
6 it.

7 MR. KEITH: No objection.

8 THE COURT: 43 are the coroner's
9 photographs. Let's see, I have DD. Let me
10 see the other coroner photographs. I want
11 to look at one other thing.

12 MR. HAUPT: Judge, may I make a
13 comment?

14 THE COURT: Sure, Jeff,
15 Mr. Haupt.

16 MR. HAUPT: All of these
17 photographs, they are just terrible. They
18 are just a tragedy. I don't know while one
19 photograph of her in the crime scene might
20 give them an idea of what they saw, but any
21 more than one, Judge, cumulatively they are
22 just grotesque. They are certainly
23 inflammatory, and the issue is not who
24 killed her. The question is did David pay
25 Joe Wilkes to kill her.

1 Joe has already confessed. Joe has
2 already been sentenced and Judge, I think as
3 a whole, I think all of those photographs as
4 this poor, young, helpless woman are -- just
5 do nothing to assist this Jury in deciding
6 whether or not David committed the act that
7 he's accused of, and I just want to make
8 that one comment about the photographs of
9 Yvonne Layne.

10 THE COURT: State of Ohio.

11 MR. BAUMOEL: Your Honor, once
12 again, credibility of Joe Wilkes is at
13 issue. The Defense in court has not
14 conceded that he is the killer. How he says
15 he killed her is the accurate factual
16 pattern in this case.

17 We believe it's relevant to his
18 testimony as well as to the testimony of the
19 coroner in the case, and these pictures
20 clearly show the specific injury that was
21 suffered without blood stains or any other
22 instructions to the view that is present in
23 the other pictures.

24 THE COURT: I have in regards to
25 the crime scene, I have admitted just two.

1 And when the body was turned over, because I
2 think they give a perspective, but
3 Mr. Haupt, but when the coroner was on, you
4 did a lengthy examination of the coroner,
5 and the thrust of it was whether that knife
6 wound went from the left side down or
7 whether it could have gone the other way up
8 or whether she was being pulled back or
9 whether she was looking at him.

10 You spent a great deal of time
11 making an issue out of that or you didn't,
12 Mr. Keith, and I listened carefully to it
13 and I listened carefully to the
14 cross-examination of the State's witness
15 regarding the murder.

16 And the State is correct at no time
17 did you ever concede that Joe Wilkes in a
18 sense was the murderer. I don't know that
19 you ever fought it but you didn't concede,
20 and you took in my opinion some -- I'm
21 trying to phrase the right word.

22 I thought you made some points as to
23 the way Joe Wilkes said it occurred as to
24 what the physical evidence shows it occurred
25 and tried to show there was an,

1 inconsistencies between his testimony and
2 the physical evidence, and you have raised
3 that issue, so I think the State has a
4 point.

5 Now, I'm only going to allow one
6 photo of the coroner, and it's Exhibit
7 Number 43DD, and I allow it in because I
8 think of all the photographs, this shows
9 that the knife wound began at the top and
10 went down, and it shows -- and I agree with
11 you. They are not pleasant, but I'm going
12 to admit 43DD for whatever purpose it may
13 serve, and that's the reason.

14 MR. KEITH: I will and you will
15 recognize our objection to that.

16 THE COURT: Absolutely will
17 recognize that. That will be the only
18 coroner's in.

19 44A is the photos of Randolph,
20 Route 44 area. Court is going to admit 44A,
21 44R -- oops, I'm sorry, B, not R, B; 44D,
22 44D, I, as in idiot; Q as in quantum, 44N as
23 in nice, 44P as in proper, 44R as in
24 Reinbold, 44T as in Tina.

25 MR. HAUPT: No objection.

1 MR. KEITH: We had a chance to
2 review them, no objection.

3 45 are photos of the Carnation Mall.

4 MR. HAUPT: No objection.

5 THE COURT: Any objection to
6 those?

7 MR. KEITH: We probably ought to
8 put which ones in the record but no
9 objection to the one that the Court showed
10 us and intended to offer.

11 THE COURT: Going to admit 45L,
12 45K, 45J, 45I, 45H, 45G, 45C, 45D, 45E and
13 45F.

14 MR. HAUPT: We have no objection.

15 THE COURT: 46 is the picture of
16 the Nike cross trainer. Any objection?

17 MR. KEITH: No.

18 THE COURT: 47 is the receipt of
19 the K-Mart gloves.

20 MR. HAUPT: Yeah, no objection,
21 the one dated for 3/31.

22 MR. BAUMOEL: 47A.

23 THE COURT: Okay. 47A, do you
24 have it?

25 MR. BAUMOEL: Yes.

1 THE COURT: Any objection?

2 MR. HAUPT: And we have no
3 objection.

4 THE COURT: 47B is the receipt
5 from K-Mart for a knife.

6 MR. HAUPT: No objection.

7 THE COURT: 47C is the receipt
8 from K-Mart for the inventory information.

9 MR. HAUPT: Objection only
10 because it's a cumulative effect and it's
11 already been testified to.

12 THE COURT: 47A, B and C will be
13 admitted.

14 48A is the time card for Thorne from
15 Dale's Cuda. 48B is Thorne's time card from
16 Dale's Cuda, and 48C is the time card from
17 Dale Cuda's 3/26, 3/22 and 3/15
18 respectively.

19 MR. HAUPT: No objection.

20 THE COURT: Admitted, 48A, B and
21 C.

22 49, miscellaneous papers found in
23 Yvonne Layne's kitchen.

24 MR. HAUPT: No objection.

25 THE COURT: Admitted.

1 50A, photos of knife collected from
2 Liberty and South Streets. I plan on
3 admitting 54. And that's all I have.

4 MS. HARTNETT: They are 50,
5 numbers 54.

6 THE COURT: I don't have those.

7 MR. BAUMOEL: I don't think we
8 ever introduced those. We didn't introduce
9 them.

10 MR. HAUPT: We have no objection
11 to 50.

12 THE COURT: I haven't seen them.

13 MR. BAUMOEL: I don't think we
14 even referred to --

15 THE COURT: Well, what do you all
16 want to do? Are you moving to admit?

17 MR. BAUMOEL: No.

18 MR. KEITH: We are just -- the
19 second one from the last, Your Honor, I
20 believe there is a fingerprint. Is that the
21 one?

22 THE COURT: 50G.

23 MR. KEITH: Is that the one that
24 stands out with the fingerprint?

25 MR. BAUMOEL: Yes.

1 THE COURT: 50G will be
2 admitted. The balance will be withdrawn.

3 MR. BAUMOEL: Can I see 50G? It
4 may lose the context.

5 If we're going to do that, why don't
6 we throw one picture in there a full
7 picture.

8 THE COURT: 50A will be admitted
9 and 50G will be admitted.

10 Now, I think that those are -- never
11 mind.

12 Coroner's report, 51.

13 MR. BAUMOEL: Seeking to admit.

14 MR. HAUPT: No objection, Your
15 Honor.

16 THE COURT: Admitted.

17 Now, my sheet runs out. Is that the
18 last number?

19 MS. HARTNETT: 52 is the diagram.

20 That was also Defendant's Exhibit H.

21 THE COURT: Well, move to admit?

22 MR. BAUMOEL: Move to admit.

23 THE COURT: Any objection?

24 MR. KEITH: No.

25 THE COURT: I'll admit it.

1 MR. BAUMOEL: 53 is a copy of
2 Rose Mohr's time card. Move to admit.

3 MR. KEITH: No objection.

4 THE COURT: Admitted.

5 MR. BAUMOEL: 54A through G are
6 photos of the recovery of the knife.

7 THE COURT: I have that the Court
8 admits to admit 54A, 54B, 54C -- oh, well,
9 you know what? I'll take 54C out.

10 C is withdrawn -- is not admitted.

11 54D is admitted, 54E is admitted,
12 54F is admitted, and 54G is admitted.

13 54C is a photo just of a guy of --
14 nothing, deputy looking in the hole -- not
15 deputy, I'm sorry, Alliance PD.

16 MR. KEITH: No objection.

17 MR. BAUMOEL: 55 we would move to
18 admit. That is the card with Joe Wilkes'
19 name on the back.

20 THE COURT: Do you have that?

21 MR. HAUPT: We're objecting.

22 THE COURT: Overruled, admitted.

23 MR. KEITH: Or what is that, 52?

24 MR. BAUMOEL: That was 55.

25 MS. HARTNETT: Then we go to 56A

1 and B are the records from the Comfort Inn.

2 MR. HAUPT: No objection.

3 THE COURT: Admitted.

4 MS. HARTNETT: 57A and 57B and
5 57C, D, E and F are all Ameritech records.

6 MR. HAUPT: No objection.

7 THE COURT: Admitted.

8 MR. BAUMOEL: Okay. 58A, 58B,
9 58C and 58D are larger printouts specifying
10 certain of the phone records that we just
11 talked about that are contained within the
12 57 exhibits.

13 MR. KEITH: And you're moving to
14 admit?

15 MR. BAUMOEL: Moving to admit
16 them.

17 MR. KEITH: I would object to
18 them. They are placed on the board, placed
19 so the Jury could see them. That guy from
20 Ameritech, I don't think, ever saw them
21 while the Jury was in the box, and
22 therefore, he had the records. That's the
23 best evidence.

24 These summaries were created by the
25 Prosecutor's Office and we object.

1 THE COURT: State.

2 MR. BAUMOEL: These records are
3 contained within the actual records
4 identified by the witness. These just are
5 helpful tools to help the Jury decipher
6 those records in regard to relevant phone
7 calls.

8 MR. KEITH: They can put them up
9 and argue with them in closing argument as I
10 guess as any other visual aid.

11 THE COURT: I'm letting in the
12 diagram. I'm not going to let those in.
13 You can pull that stuff out of the paper.
14 You can use them in argument.

15 MR. HAUPT: I would like to also.

16 MR. BAUMOEL: You may.

17 THE COURT: Next.

18 MS. HARTNETT: 59A through G are
19 photos of the recovery of the pants.

20 THE COURT: The Court is going to
21 admit A through G.

22 MR. KEITH: No objection, Your
23 Honor.

24 THE COURT: Admitted.

25 MS. HARTNETT: 60 is the Polaroid

1 of the jacket.

2 MR. KEITH: No objection.

3 THE COURT: Admitted.

4 MS. HARTNETT: 61 is the receipt
5 from K-Mart for the purchase of the knife by
6 Detective Sampson.

7 MR. KEITH: We object to the
8 receipt for the knife that the detective
9 bought and the knife that he bought. Those
10 things are not elements of anything other
11 than some example of his investigation.

12 THE COURT: State.

13 MR. BAUMOEL: Your Honor, I think
14 in with regards to these two items, the
15 knife being 62, that through the testimony
16 of not only Detective Sampson, but the
17 K-Mart representative, Connie Harmon,
18 indicating that the knife purchased on
19 March 31 at 8:10 p.m., the type and serial
20 number matched exactly with the knife
21 purchased by Detective Sampson.

22 And therefore, for comparison value
23 to decide what knife was purchased at
24 K-Mart, this shows us exactly what it looks
25 like, and they also had the ability during

1 the trial to compare State's Exhibit 1,
2 which is the alleged murder weapon to
3 State's Exhibit 62, and according to the
4 K-Mart lady, they look exactly identical,
5 and I think to the layman's eye they appear
6 identical.

7 MR. KEITH: If I may, Your Honor,
8 I think it invites a conclusion based on the
9 credibility of others as to what Joe Wilkes,
10 that only Joe Wilkes knows if he did or not.

11 MR. BAUMOEL: Judge, that knife
12 matches exactly the knife recovered from the
13 storm sewer Joe Wilkes pointed out to the
14 police which Joe Wilkes said he purchased at
15 K-Mart at 8 o'clock.

16 And K-Mart can now tell us that
17 these two knives that were purchased, one by
18 the detective and purchased at K-Mart when
19 Joe Wilkes said he purchased it is one in
20 the same type because of the UPC number.

21 THE COURT: Well, there is no
22 question it's the same knife as the murder
23 weapon, but there is no mystery that he
24 purchased it. He claimed that he purchased
25 it. You have the receipt of him purchasing

1 it. You have the knife that he purchased.

2 I don't see any evidentiary value to
3 be honest with you, and if there is, looking
4 at this knife clean and looking at some of
5 the writing on the box gives me concern,
6 dual purpose serrated edges, super sharp. I
7 don't think the prejudicial value outweighs,
8 and I'm going to sustain the objection to
9 both 61 and 62.

10 MR. BAUMOEL: Judge, I would
11 request to renew in after the Defense case
12 based on witnesses we -- or testimony that
13 we expect.

14 THE COURT: Well, I'm always
15 open.

16 MR. KEITH: That's 61 and 62.

17 THE COURT: 61 and 62.

18 MS. HARTNETT: So neither right
19 now.

20 THE COURT: Right, the receipt
21 and the knife itself.

22 MS. HARTNETT: Yes.

23 THE COURT: Sustain the
24 objection.

25 MS. HARTNETT: 63 is the letter

1 to Dale's Cuda Shop for child support
2 enforcement.

3 MR. KEITH: No objection.

4 THE COURT: Admitted.

5 MS. HARTNETT: 64A and B are
6 payroll records from Dale's Cuda Shop.

7 THE COURT: Admitted.

8 MR. HAUPT: No objection.

9 MS. HARTNETT: 65A, B and C are
10 bank records.

11 MR. HAUPT: Your Honor, we would
12 object for the reason that there is a \$500
13 payment to Attorney William Lentz.

14 THE COURT: We took that
15 out. I got it right here.

16 MR. HAUPT: And you took that one
17 out, but in the list of going through the
18 records it's listed here and you'll see
19 \$500.

20 THE COURT: Cross it out.

21 MR. HAUPT: And anyway, you look
22 at it, if you start crossing things out,
23 does that -- I believe that gives the
24 impression to the Jury that we're hiding
25 something from them.

1 THE COURT: This is how you do
2 it. You give it to them, you white it out
3 you re-xerox it. It doesn't look as
4 hideous.

5 So this is out and the line item
6 will be out.

7 MR. BAUMOEL: Well, maybe I can
8 make this easier because that still might
9 cause some confusion. We would withdraw 65C
10 based on that controversy which then would
11 be all the checks, and you have 65A and 65B.

12 MR. HAUPT: And again, the only
13 issue that I have got here is where it makes
14 a check 4/13 minus \$500.

15 THE COURT: Can't you delete that
16 somehow?

17 MR. BAUMOEL: They have no idea
18 what the \$500 is for. In regards to all
19 those checks, they don't know what those
20 checks are written for, and they were
21 specifically told Joe Wilkes was not the
22 recipient of any of those.

23 MR. KEITH: There is no
24 testimony --

25 THE COURT: Okay. I'm going to

1 admit it subject to that change or subject
2 to the withdrawal, and I have handed back
3 the State the copy of the check made out to
4 Bill Lentz.

5 MR. HAUPT: So 65A will be
6 adjusted to take out that \$500. Is that
7 what the Court --

8 MR. BAUMOEL: If you want but
9 still if anyone were to add up the numbers,
10 they are going to realize that there is \$500
11 missing.

12 THE COURT: Well, I think it
13 probably would be wiser just to leave that
14 in there. No one is going to pick that up
15 and if you drop it off and somebody started
16 adding it -- let's leave it in. A comes in
17 undoctored. Take out any reference, all
18 they will see is a \$500 deduction, and I
19 don't think they can draw anything from it.

20 MR. BAUMOEL: And 65B is a copy
21 of the checks written to David Thorne and
22 his transaction activity.

23 THE COURT: All right. Those
24 will be admitted.

25 Lentz is taken out of there.

1 MR. HAUPT: And we would voice
2 our objection just for the same reasons as
3 previously stated 65A.

4 MS. HARTNETT: 66A through H are
5 photographs of the Defendant.

6 THE COURT: Well, of David Thorne
7 on April the 2nd.

8 MR. KEITH: We don't have an
9 objection.

10 THE COURT: All right. They will
11 go in, admitted.

12 THE COURT: 67.

13 MR. BAUMOEL: 67 is a preapproval
14 of a mortgage loan for David Thorne and Amy
15 Davis for, in the search of the vehicle on
16 April the 5th.

17 Seeking to admit.

18 MR. HAUPT: Yeah, no objection.

19 THE COURT: 68 is three
20 photographs of, is something out of David
21 Thorne's car, appears to me to be.

22 MS. HARTNETT: It was actually
23 30.

24 THE COURT: I have selected three,
25 68K, 68S and 68J. Do you want to look at

1 these?

2 MR. HAUPT: We would move for
3 their admission.

4 THE COURT: They are admitted.

5 MR. BAUMOEL: 69 is the second
6 page of a 4-page bill from Ameritech to
7 Arnold Kirkbride.

8 MR. HAUPT: No objection.

9 THE COURT: Admitted.

10 MS. HARTNETT: 70 is the receipt
11 from Kohl's Department Store for a purchase
12 of a pair of sneakers on April 6.

13 MR. HAUPT: Would object. The
14 testimony from the witness stand said that
15 it came from her daughter. Her daughter
16 never testified.

17 THE COURT: Overruled, admitted.

18 MS. HARTNETT: 71 is Chris
19 Campbell's time card. Is that not in the
20 papers that --

21 MR. KEITH: If you're moving to
22 admit it whenever you find it, we have no
23 objection.

24 MR. BAUMOEL: We're moving to
25 admit it.

1 THE COURT: Can you have Joe
2 Wilkes brought in on Monday morning? Is he
3 still around?

4 MS. HARTNETT: He'll be in
5 Portage County because --

6 MR. KEITH: Does he need to be
7 here at 8:30 or Monday at noon?

8 THE COURT: Monday morning.

9 MR. HAUPT: Yeah. I'm just
10 saying David has Kenny Williams, Stan
11 Jackson, Tom Bennett and Robert Jones that I
12 will have to interview, and they would have
13 to be brought in from the jail.

14 Apparently, these are people that
15 David has met while staying at the Stark
16 County Jail, and that they potentially have
17 information that I'll need to discuss with
18 them, and if they do, I am sure the
19 Prosecutor would want to interview them as
20 well.

21 Now, while I may go out this
22 weekend, I certainly don't have expectation
23 that I can speak at the Prosecutor --

24 THE COURT: All these guys are
25 people at the county jail?

1 MR. HAUPT: No.

2 THE COURT: List them down, their
3 names.

4 MR. HAUPT: Kenny Williams, Stan
5 Jackson is out. Rob -- but Kenny Williams
6 is at the jail. He is the only person,
7 Kenny Williams at the jail.

8 THE COURT: You want him brought
9 in Monday?

10 MR. HAUPT: And I guess Kenny
11 Williams is an inmate at the county jail.
12 We will need Kenny Williams in Monday
13 morning, along with Joe Wilkes.

14 THE COURT: What time you want
15 them in the morning? Bring them in when
16 they get them here?

17 MR. KEITH: Yeah, here are the
18 exhibits that have been reviewed.

19 Is there anything further you wish
20 of us?

21 THE COURT: No.

22 (Attorneys looking at drafted Jury charge.)

23 THE COURT: What do you see?

24 MS. HARTNETT: Nothing right now.
25 Don't know about that, it's fine. Nothing

1 that we have, that I have anything to say
2 about right now, nothing concrete enough.

3 THE COURT: What are you
4 thinking?

5 MS. HARTNETT: Just, I'm sure
6 that you pulled every possible thing about
7 testimony of a police --

8 THE COURT: There is two. So I
9 took alternative two.

10 MS. HARTNETT: I'll look and see
11 what I got.

12 THE COURT: You got the
13 originals?

14 MS. HARTNETT: Uh-huh.
15 Just about the date, but I guess
16 we're stuck with that.

17 THE COURT: What date?

18 MS. HARTNETT: It says on or
19 about 31st of March he did solicit or
20 whatever, and I just wondered about -- Jon
21 and I talked about that.

22 THE COURT: Oh, about that not
23 being the day.

24 Yeah, you can say.

25 Counsel, I recognize they raise an

1 on or about the 31st of March he did commit
2 aggravated murder or solicited hired, et
3 cetera, and obviously the solicitation and
4 procurement was not the 31st. I think
5 probably the remedy is to give me a between
6 the dates of X to 31.

7 MS. HARTNETT: Or just the
8 general instruction about date, that it's
9 not necessary that he prove it or that it be
10 on a date reasonably close or I don't know.
11 I mean we can talk about it.

12 THE COURT: It's almost better if
13 you give some kind of -- I mean you can do
14 prior to dates unknown but prior to
15 March 31, some dates like that.

16 MS. HARTNETT: Okay.

17 THE COURT: But do that Monday so
18 that I'll have time to get that changed,
19 okay.

20 MR. BAUMOEL: I do think that in
21 OJI there is a specific instruction about
22 the date.

23 THE COURT: If you want me to,
24 I'll look that up.

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(Court recessed at 4:15 p.m.
Friday, January 21, 2000.)

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C-E-R-T-I-F-I-C-A-T-E,

I, Tina C. Masters, a Registered Diplomate Reporter, Certified Realtime Reporter and Notary Public in and for the State of Ohio, do hereby certify that I reported in Stenotypy the testimony had; and I do further certify that the foregoing is a true and accurate transcription of said testimony.

Tina C. Masters

Tina C. Masters, RDR, CRR

All exhibits are being maintained by the Evidence Administrator's Office and are available upon request.

1656 G. GAVAGLI
CLERK OF COURTS
STARK COUNTY, OHIO

60 MAY 15 PM 3:07

1 IN THE COURT OF COMMON PLEAS

2 STARK COUNTY, OHIO

3 CASE NO. 1999-CR-0873

4 2000-CA-0067

5 STATE OF OHIO,)
6)
7 Plaintiff,) TRANSCRIPT OF
8) PROCEEDINGS
9 versus)
10)
11 DAVID G. THORNE,) VOLUME NO. VIII
12)
13 Defendant.)

14 BE IT REMEMBERED, That upon the hearing
15 of the above entitled matter in the Court of
16 Common Pleas, Stark County, Ohio, before the
17 Honorable Richard Reinbold, Jr., Judge, and
18 commencing on Monday, January 24, and
19 Tuesday, January 25, 2000, the following
20 proceedings were had:

21
22
23 TINA C. MASTERS, RDR, CRR
24 OFFICIAL COURT REPORTER
25 STARK COUNTY COURTHOUSE

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APPEARANCES:

On Behalf of the Plaintiff:

Jonathan Baumel, Assistant Prosecutor
and

Chryssa Hartnett, Assistant Prosecutor

On Behalf of the Defendant:

George Keith, Attorney at Law

and

Jeffrey Haupt, Attorney at Law

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I N D E X

DEFENSE WITNESSES

	<u>DX</u>	<u>CX</u>	<u>RDX</u>	<u>RCX</u>
Richard Webb	1669	1674	1675	--
DEFENSE RESTS	1677			

CLOSING ARGUMENTS:

Ms. Hartnett	Page 1697
Mr. Baumoel	Page 1780
Mr. Keith	Page 1755
Mr. Haupt	Page 1732

CHARGE OF THE COURT Page 1617

VERDICT Page 1808

- - - - -

DEFENSE EXHIBITS

(marked by attorneys)

RECEIVED

A & B (none marked)	
C- Support Order	*REMARKED
D-Deft's Answer (St. Ex.15E)	*REMARKED
E- paper found in home (St. Ex. 49)	*REMARKED
F- Crime lab letter to BCI	1664
G- BCI response to crime lab	out
H- diagram (State's Exhibit 52)	*REMARKED
(*REMARKED- see Joint Exhibits)	

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I N D E X cont.'d

RECEIVED

I- Joe's recorded statement 7-14	WD
J- Joe's recorded statement 7-15	WD
K- Joe's plea agreement	WD
L- Complaint for theft against Joe	out
M-conviction for M-1 theft	out
N- St. Supplement to Discovery	out
O- Joe's school record	1665
P & Q (not marked)	
R- Transcript of C. Campbell's statement	WD
S- Letter from Wal-Mart	out
T- app for fishing license of R. Webb	1676

(Judge revised ruling to Exclude
State's Exhibit 9F- photo Page 1661

(Judge revised ruling to admit Page 1660
into Evidence 65C- Bank records)

JOINT EXHIBITS*REMARKED

MARKED

A- (St. Ex. 15E & Deft. Ex. D)	1801
B- (St. Ex. 15F)	1801
C- (St. Ex. 49 & Deft. D)	1802
D- St. Ex. 52 & Deft. H)	1802

P R O C E E D I N G S

1
2
3 (The following proceedings were had
4 outside the hearing of the jury.)

5
6 THE COURT: The State of Ohio has
7 moved now to introduce Exhibit 65C.
8 Defense.

9 MR. KEITH: Your Honor, we object
10 to it, we believe that it does not offer any
11 proof of any fact in evidence. They offered
12 his payroll deposits in such a way that the
13 Jury certainly aware of the funds available
14 to them.

15 THE COURT: I'll overrule that.
16 I'll admit 65C.

17 MR. KEITH: Your Honor, I -- for
18 the record, I am not sure where physically
19 the one check to Attorney Wayne --

20 MR. BAUMOEL: I got it.

21 THE COURT: It's right there. I
22 had it sitting in there. Did you pick it
23 up?

24 MR. BAUMOEL: Right. I had it
25 unless you want to keep it. I just wanted

1 to prevent any confusion.

2 MR. KEITH: I just want to make
3 sure that it's not missed in confusion where
4 it is not inadvertently handed to the Jury.

5 THE COURT: The Court further on
6 reflection is withdrawing on its own motion,
7 photograph 9F. And that's a photograph of
8 Yvonne Layne after they removed, turned her
9 body over, and the Court is going to take
10 that out.

11 So there would be one picture of the
12 coroner's report and one picture of Yvonne
13 Layne when she was rolled over.

14 This is 65C. I'll give that back to
15 the State of Ohio.

16 MR. HAUPT: We started out with C
17 and D.

18 THE COURT: Okay. Defendant's
19 Exhibit C is the magistrate's decision. Any
20 objection, State of Ohio?

21 MR. BAUMOEL: It's already in
22 evidence as a State's Exhibit.

23 THE COURT: Oh, it is.

24 MR. BAUMOEL: So it's
25 duplicative.

1 THE COURT: Oh, okay. Let's -- I
2 ran that out. Defendant's Exhibit D is the
3 answer, is that it?

4 MS. HARTNETT: That's State's
5 Exhibit 15E.

6 THE COURT: I'll turn these all
7 into Joint exhibits so we will make that
8 change before it goes back.

9 Defendant's Exhibit E is a page of
10 miscellaneous paper.

11 MR. BAUMOEL: Once again, the
12 original of that copy is in evidence.

13 THE COURT: Okay.

14 MR. BAUMOEL: As an item that was
15 found.

16 THE COURT: Then we will turn
17 this into a Joint Exhibit and we will
18 transfer the number.

19 MS. HARTNETT: For the record,
20 that was part of State's Exhibit 49.

21 THE COURT: E is State's
22 Exhibit --

23 MS. HARTNETT: Part of State's
24 Exhibit 49.

25 THE COURT: I'm going to keep

1 these three together.

2 MR. HAUPT: What's the diagram?

3 MS. HARTNETT: You labeled it H,
4 Joint.

5 MR. KEITH: I and J are the first
6 and second conversation with Wilkes on the
7 14th and 15 of July. We do not intend to
8 offer those.

9 THE COURT: F is a cover letter
10 from Dennis Florea to BCI. Any objection?

11 MR. BAUMOEL: We object.

12 THE COURT: The question is asked
13 is, in fact, you put down with a few city
14 blocks of Yvonne Layne's residence and he
15 said yes, it is. So I don't believe that
16 this piece of paper -- I'll sustain the
17 objection.

18 MR. HAUPT: Your Honor, I would
19 request for you to revisit that.

20 THE COURT: Just tell me why.

21 MR. HAUPT: Because it makes the
22 effort on July 14 that's critical for us.
23 He makes the effort by saying on July 14,
24 that's a key piece of evidence. It's
25 admitted for further assistance. It's

1 further matched to two steak knives.

2 THE COURT: I'll reverse myself.

3 MR. HAUPT: G is the finding.

4 THE COURT: Well, lab reports.

5 MR. BAUMOEL: Objection.

6 THE COURT: I'll sustain the
7 objection. You want to proffer.

8 MR. KEITH: I and J.

9 THE COURT: Were the transcripts
10 of the 14th and 15th.

11 MR. KEITH: K was the plea
12 agreement and we would not offer that.

13 THE COURT: Right.

14 MR. KEITH: And so then K.

15 L is the complaint against Joe
16 Wilkes for the petty theft.

17 THE COURT: Well, he admitted to
18 that, right?

19 MR. HAUPT: That is correct.

20 THE COURT: Any objection?

21 MR. BAUMOEL: Yeah, we object.

22 MR. HAUPT: It's important for
23 us, Your Honor, because he left the store
24 stealing tennis shoes. He's got this thing
25 with tennis shoes.

1 THE COURT: Well, he admitted to
2 that. That's in testimony. I'll sustain
3 the objection. It's not admissible.

4 MR. HAUPT: M is the conviction.

5 THE COURT: And he's admitted the
6 conviction. I'll sustain the objection to
7 that, because you bring those in for
8 impeachment, and once I said I have, in
9 fact, committed those acts, then there is no
10 need to impeach him.

11 MR. KEITH: N is the supplemental
12 response for discovery filed on December 30,
13 summarizing John Cody Marsh's conversation.

14 THE COURT: Court will not admit
15 that into evidence.

16 MR. KEITH: And then O is a
17 progress report for parents from J.V.S. for
18 Joseph Wilkes.

19 THE COURT: Any objection?

20 MR. BAUMOEL: No objection.

21 THE COURT: All right. I'll
22 admit that.

23 MS. HARTNETT: And N, did you
24 address that? That was proffered for the
25 record.

1 THE COURT: And then you don't
2 have a P and Q, at least I missed it if you
3 did.

4 MR. KEITH: I did too, if we did,
5 but then R is the transcript of Chris
6 Campbell's statement. We don't plan to mark
7 it.

8 MR. HAUPT: And S and T are those
9 documents that I showed you which are --
10 Judge, these, S is what the witness, Richard
11 Webb is going to testify to.

12 THE COURT: Well, I don't
13 understand why you put this in.

14 MR. HAUPT: Just so it verifies
15 that it was Wal-Mart and the date and the
16 location and Alliance.

17 THE COURT: For example,
18 Exhibit S is from a Cheryl Allen who is not
19 testifying here today. Is she testifying?

20 MR. HAUPT: No.

21 THE COURT: How does this letter
22 come in? Any objection, State of Ohio?

23 MR. BAUMOEL: At this point,
24 yeah.

25 THE COURT: I'll sustain the

1 objection at this point. I mean if it gets
2 better, let me know.

3 MR. HAUPT: This is his permit.

4 THE COURT: Whose permit?

5 MR. HAUPT: Point of sale
6 licensing.

7 THE COURT: Is he testifying?

8 MR. HAUPT: Yes. S, I'm just
9 going to leave -- I'm just going to leave S
10 here as a proffer.

11 - - - - -

12 (the Defendant was brought up
13 at side bar.)

14 THE COURT: Go ahead.

15 MR. KEITH: Your Honor, if it
16 please the Court, we are here on Monday,
17 January 24. We anticipate that we will
18 finish the presentation of the Defense
19 evidence this afternoon. We have discussed,
20 Mr. Haupt and I with David Thorne his choice
21 to testify or not to testify.

22 We have reviewed the risks and
23 benefits of him testifying. We have talked
24 about the potential of cross-examination and
25 what it might mean.

1 At this point in time he is going to
2 indicate on the record that he understands
3 he has the right to testify and also
4 understands he has the right not to, and
5 that the State of Ohio may not comment on
6 his choice not to do so, and he was going to
7 acknowledge that he chooses not to testify
8 in this trial.

9 THE COURT: Mr. Thorne, you have
10 heard the representations of your counsel.
11 Is that a correct representation?

12 THE DEFENDANT: Yes, it is.

13 THE COURT: Is it your choice not
14 to testify today?

15 THE DEFENDANT: Yes.

16 THE COURT: All right. Record
17 will so reflect.

18 MR. KEITH: Thank you, Your
19 Honor.

20 THE COURT: You may sit down,
21 Mr. Thorne.

22 Anything else, Gentleman?

23 MR. BAUMOEL: No, Your Honor.

24 MR. HAUPT: No, Your Honor.

25 - - - - -

1 (The Jury was brought back in the
2 courtroom at 12:30 p.m., and
3 the following proceedings
4 were had.)

5 - - - - -

6 THE COURT: Good afternoon.
7 Thank you again for a little bit of your
8 patience. We appreciate that.

9 Mr. Haupt, you may call your next
10 witness.

11 MR. HAUPT: Thank you, Your
12 Honor. At this time we would call Richard
13 Webb.

14 - - - - -

15 RICHARD WEBB
16 who, after being first duly sworn, testified
17 as follows:

18 DIRECT EXAMINATION

19 BY MR. HAUPT:

20 Q. Sir, would you state your full name and
21 spell your last name for the Court Reporter.

22 A. Yes. It's Richard Webb, W-e-b-b.

23 Q. And where do you reside? Where do you
24 live?

25 A. Atwater, Ohio.

1 Q. And who do you live at that address with?

2 A. My wife and my son.

3 Q. Mr. Webb, have you ever talked to the police
4 department concerning the questions about
5 which I am going to ask you now --

6 A. No, sir.

7 Q. -- that we -- our conversation.

8 Certainly you and I met last night
9 on the phone?

10 A. Yes.

11 Q. But you had talked with our investigator
12 sometime previous to this?

13 A. Yes.

14 Q. With regard to the nature and extent of your
15 testimony, I'm going to ask you to relate to
16 the Jury if you know who Joe Wilkes is?

17 A. Yes.

18 Q. And who is Joe Wilkes?

19 A. Just a neighbor kid.

20 Q. Just for a little background, what do you do
21 for a living and what do you do you with
22 your volunteer work in your free time?

23 A. Okay. My free time I work at the skating
24 rink.

25 Q. And what did you do before that?

1 A. I worked in the factory.

2 Q. How long have you worked in the factory?

3 A. Last eight years.

4 Q. And your free time you say you're at the
5 skating rink?

6 A. Yes.

7 Q. Is this the occasion that you meet young
8 people that are skating and whatnot?

9 A. Yes.

10 Q. Outside of seeing at the skating rink, would
11 you have any reason to know who Joe Wilkes
12 is?

13 A. No, not really.

14 Q. Just people, young kids?

15 A. Yes.

16 Q. Did there come a time that you had an
17 occasion to see Joe Wilkes in Alliance?

18 A. Yes.

19 Q. Please relate to the Jury when that was,
20 where that was and what were the events
21 surrounding that sighting.

22 A. Okay. It was May the 13th of '99. It was
23 at Wal-Mart. I was issuing my fishing
24 license and I seen him purchase a knife.

25 Q. Now, you understand, Mr. Webb, that your

1 name was listed by Joe Wilkes as having seen
2 him in line?

3 MR. BAUMOEL: Objection, Your
4 Honor.

5 THE COURT: Caution.

6 MR. HAUPT: Okay.

7 BY MR. HAUPT:

8 Q. Do you understand that?

9 A. Yes.

10 Q. And you, in fact, did?

11 A. Yes.

12 Q. But the store you saw him at was what store?
13 A. Wal-Mart.

14 Q. Any question in your mind?

15 A. No.

16 Q. In fact, the document that we have marked as
17 Defendant's Exhibit T, would you look at
18 that?

19 A. Okay.

20 Q. Do you know what that is?

21 A. It's my fishing license.

22 Q. And the date of issue of that fishing
23 license, shows your deer purchase date was
24 10/23?

25 A. Right.

1 Q. Shows your fishing license was purchased
2 what, May the 13th right under that?

3 A. That's not the right date. My fishing
4 license was the 5th, the 13th of '99.

5 Q. Right, 5th, I'm sorry. That would have been
6 May?

7 A. Right.

8 Q. January, February, March, April, May,
9 5/13/99, right?

10 A. Yes.

11 Q. Would you have bought that at K-Mart?

12 A. No, sir.

13 Q. And your license was issued to you
14 immediately. It wasn't like you bought it
15 March 31 and then it was issued to you May
16 the 13th?

17 A. No, sir. It was May 13.

18 Q. And outside of the specifics with regard to
19 the knife, you didn't specifically notice a
20 style, what type of knife or anything along
21 those lines, did you?

22 A. No.

23 Q. With regard to the name brand of the knife,
24 do you recall the name brand?

25 A. Yes.

1 Q. And what was that?

2 A. Schrade.

3 Q. And you're a hunter and fisherman obviously?

4 A. Yes.

5 Q. Obviously by your permits and registration
6 marks here?

7 A. Yes.

8 Q. Is that a fair statement?

9 A. (Witness nods head up and down.)

10 Q. And you said to Joe what when you were in
11 line?

12 A. I says Joe, what do you need a knife like
13 that for? You just get your ass in trouble
14 with it. I said, You don't need a knife
15 like that. And that was all I said, and he
16 said, No, I won't and left at that.

17 MR. HAUPT: If I could have one
18 minute, Your Honor.

19 THE COURT: You may.

20 MR. BAUMOEL: Just quickly, sir.

21

22

CROSS-EXAMINATION

23

BY MR. BAUMOEL:

24

Q. Why didn't you go to the police with this
25 information?

1 A. Why didn't I? I didn't think nothing of
2 it. That was a year ago.

3 Q. And you were aware of the allegations
4 against Joe Wilkes?

5 A. Not at the time, no.

6 Q. Did you become aware of them though?

7 A. Yes.

8 Q. And at that time did you go to the police?

9 A. No.

10 Q. Once again, it was because you didn't think
11 it was important; is that correct?

12 A. Yes.

13 MR. BAUMOEL: No further
14 questions.

15 THE COURT: Anything further?

16 - - - - -

17 REDIRECT EXAMINATION

18 BY MR. HAUPT:

19 Q. The police never interviewed you ever?

20 A. No.

21 Q. But you knew that Joe Wilkes gave them your
22 name?

23 A. Through the neighborhood, yes.

24 MR. HAUPT: Nothing further, Your
25 Honor.

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MR. BAUMOEL: Nothing further.

THE COURT: You may step down.

Thank you.

Counsel approach.

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(A conference was held at the bench
outside the hearing of the jury.)

THE COURT: Do you move to admit
that piece of evidence?

MR. HAUPT: Yes.

THE COURT: Any objection.

MR. BAUMOEL: No.

THE COURT: It will be numbered?

MR. KEITH: T.

THE COURT: Defense T will be
admitted.

Any rebuttal, State of Ohio?

MR. BAUMOEL: No.

THE COURT: All right. Anything
further?

MR. KEITH: Nothing further.

MR. HAUPT: No.

THE COURT: Anything further from
the State?

MR. BAUMOEL: No.



Bob Taft • Governor

Samuel W. Speck • Director

Division of Wildlife

January 21, 2000

Dear Mr. Durkin:

This letter is in regards to the information you requested for Richard W Webb. Our records verify that Mr. Webb purchased a fishing license #076036119990513183556 on May 13, 1999 (18:35:56) at Wal-Mart 2700 West State St.; Alliance, Ohio 44601. If you need any additional information please contact the Division of Wildlife, Revenue Section (614) 265-7040.

Sincerely,

Cheryl Allen
Revenue Supervisor

Mission: To ensure a balance between wise use and protection of our natural resources for the benefit of all.

1 THE COURT: Thank you,
2 Mr. Baumoel.

3 Ladies and Gentlemen of the Jury,
4 you're going to have two verdict forms with
5 you when you retire to deliberate this case.

6 The first verdict form reads:

7 In the Court of Common Pleas, Stark
8 County, Ohio, Case No. 1999-CR-0873, State
9 of Ohio versus David G. Thorne. Jury
10 verdict form. It states, We, the Jury in
11 this case, duly impaneled and sworn, do
12 hereby find the Defendant, David G. Thorne,
13 and there is a line with an asterisk. The
14 asterisk directs your attention to mid page
15 where you see the word, guilty and the
16 phrase not guilty. You would then insert
17 the appropriate word and/or phrase in that
18 spot. And it would read, of complicity to
19 aggravated murder as charged in count -- as
20 charged in the indictment.

21 And then there is a place for you to
22 date your decision, and the place for all 12
23 of to you sign your names.

24 The second jury verdict form deals
25 with the specification that I have mentioned

1 throughout. And it reads the same, and it
2 says, We, the Jury in this case, being duly
3 impaneled and sworn, do find the Defendant,
4 David G. Thorne, and the asterisk will
5 direct your attention to the word, did or
6 the phrase did not, and then impose the word
7 did or did not, commit the offense of
8 complicity to aggravated murder for hire as
9 charged in the specification in Count 1 of
10 the indictment.

11 I have also left a note there that
12 reflects the same advice and instructions I
13 gave you that if you found the Defendant,
14 David G. Thorne not guilty of complicity to
15 aggravated murder, then your service has
16 been concluded and you need not fill out
17 this verdict form.

18 If during your deliberations a
19 question should arise and you are unable to
20 resolve the question among yourselves, you
21 may reduce the question to writing and
22 submit it to one of the Bailiffs who will
23 submit it to me. If the rules permit, I'll
24 answer the question. If the rules prohibit,
25 then I will not answer the question. So I

1 advise you may not discuss or consider the
2 subject of punishment at this phase of the
3 trial. Your duty is confined to the
4 determination of the guilt or innocence of
5 this Defendant.

6 You must not be influenced by any
7 consideration of sympathy or prejudice. It
8 is your duty to carefully weigh the
9 evidence, to decide all the disputed
10 questions of fact, to apply the instructions
11 of the Court to your findings and to render
12 your verdict accordingly.

13 In fulfilling your duty your efforts
14 must be to arrive at a just verdict.
15 Consider all of the evidence and make your
16 findings with intelligence and impartiality
17 and without bias or sympathy so that the
18 State of Ohio and David Thorne will feel
19 that their case was fairly and impartially
20 tried.

21 If during the course of the trial
22 the Court said or did anything that you
23 consider an indication of the Court's view
24 on the facts, it was purely unintentional
25 and you are instructed to disregard it.

1 Your initial conduct upon entering
2 the Jury room is a matter of importance. It
3 is not wise to immediately express a
4 determination or to insist upon a certain
5 verdict, because if your sense of pride is
6 aroused, you may later hesitate to change
7 your position even if you decide you are
8 wrong.

9 Consult with one another. Consider
10 each other's views and deliberate with an
11 objective of reaching an agreement if you
12 can do so without disturbing your individual
13 judgment.

14 Each of you must decide this case
15 for yourselves, but you should do so only
16 after a discussion with your fellow jurors.
17 Do not hesitate to change an opinion if
18 convinced that it is wrong. However, you
19 should not surrender honest convictions in
20 order to be congenial or to reach a verdict
21 solely because of the opinion of other
22 jurors.

23 You will from this time on be
24 sequestered on the conditions that the Court
25 has set forth to you. The alternate jurors

1 will also be sequestered separately from the
2 regular jurors under conditions that I will
3 explain in a few moments.

4 There should be no oral
5 communication between the regular panel of
6 jurors and the alternates during your
7 deliberations.

8 The Court will place in your
9 possession the exhibits and the verdict
10 forms. The foreperson will retain
11 possession of these records, including the
12 verdict and return them to the courtroom.

13 The foreperson will see that your
14 discussions are orderly and that each juror
15 has the opportunity to discuss the case and
16 to cast their vote. Otherwise, the
17 authority of the foreperson is the same as
18 any other juror.

19 Until your verdict is announced in
20 open court, you are not to disclose to
21 anyone the status of your deliberations or
22 the nature of your verdict.

23 Counsel, do you desire anything
24 further at this time?

25 MR. BAUMOEL: No, Your Honor.

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THE COURT: Defense.

MR. HAUPT: No thank you, Your Honor.

THE COURT: It appears that the instructions are complete and we are going to take you downstairs. After you retire, your first order of business is to select a foreperson to be in charge of your deliberations.

After that you will begin to deliberate, and then whenever all 12, I repeat, all 12 jurors agree upon a verdict, you will sign that verdict form in ink and advise the Bailiff by knocking on the door, and you will then be returned to court for your announcement.

If you give me two seconds, let me confer.

- - - - -
(A conference was held at the bench outside the hearing of the jury and the Court Reporter.)

THE COURT: Ladies and Gentlemen, we're going to take you downstairs and you're going to deliberate in the Jury room

1 on the first floor.

2 There is a mechanism that has been
3 set up and has been tested where the three
4 alternates will physically be in
5 Mr. Purses's office. There is a microphone
6 and you will be able to hear the
7 deliberations of the regular 12 panel.

8 As I indicated to you, you are to
9 have no discussion with this group
10 whatsoever. Your space is confined to that
11 office and you will have to sit and listen
12 to the deliberations. You are not permitted
13 to have any input in that deliberation.

14 We will have forms for all of you to
15 fill out to get some information for you
16 about medical leave and those type of things
17 and emergency numbers. If you have a
18 question on sequestration, after you filled
19 out the one form that gives us the
20 information, just turn it over and write
21 your question out as to what concerns you
22 may have, and I, along with counsel and the
23 Bailiffs, then will review those to see if
24 you can answer the concerns that you have.

25 One thing we aired in a way before

1 you got out of here is the parking
2 situation. How many of you drove and how
3 many of you parked in the Bliss Tower?

4 Okay. 1, 2, 3, 4, 5, 6.

5 Is your car, had you planned on
6 leaving your car in the Bliss Tower
7 overnight if you were going to spend the
8 night; is that what your plans were?

9 If on your information sheet if you
10 put big block letters my car is in the Bliss
11 Tower, at the time you conclude your
12 deliberations today, which will be around
13 6:30 or so, I will call a halt, let us know
14 that, and we will have people ready to go
15 with you to get your car and move it to the
16 New Market. That's right across from the
17 Hilton, and we want your car there and not
18 here, but we will have to take each of you
19 with a Bailiff or a deputy, and they will
20 have to ride with you while you move your
21 car. So that may take just a few minutes
22 for us to get that organized.

23 We have made reservations for you at
24 7:30 for dinner, so I'll release you here
25 about 6:30. That will give you time to go

1 back and get prepared, and that will
2 conclude your deliberations for today. We
3 have marked all your bags. Your bags have
4 all been taken to the Hilton and put in your
5 rooms so your suitcases should be there
6 waiting for you. If it's not, talk to
7 Mr. Purses. He was in charge of that, and
8 you'll have to track your suitcase down.

9 So we're going to take you down,
10 have you fill out those two forms. Indicate
11 to us if your car is in the Bliss Tower, and
12 then write on the back any questions you may
13 have, and we will try to resolve those
14 questions.

15 Anything further from counsel?

16 MR. BAUMOEL: No, Your Honor.

17 THE COURT: If you follow
18 Ms. Cady and Mr. Purses, they will take you
19 downstairs.

20
21 (At 3:00 p.m. on Monday, January 24,
22 2000, the Jury went out to deliberate.)

23
24 (Defendant's Exhibits C and D were
25 remarked to Joint Exhibits A and B.)

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(Defendant's Exhibit E was
remarked as Joint Exhibit C.)

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(Defendant's Exhibit H was remarked
as Joint Exhibit D.)

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(Clerk of Court, Phil Giavasis,
swore all of the bailiffs and
deputies in.)

TIME: 6:25 P.M.

THE COURT: It is 6:26 on the
24th of January. All counsel have been
advised by the Court that I was going to
send the Jury home at 6:30. Neither counsel
indicated a desire to be present, and they
are not.

So at this time I am calling a halt
to further deliberations.

- - - - -

TIME: 6:30 P.M.

(The Judge in the jury room with
all the jurors.)

THE COURT: Ladies and Gentlemen,
we're going to conclude deliberations at

1 this time. So I'm going to ask that you
2 leave everything here. Both of these doors
3 will be locked, and obviously nobody will be
4 permitted to come in until tomorrow morning.

5 Your alternates are now with you.
6 They have been listening to you. I'm
7 telling you the obvious but it's important
8 that I underscore, from this point in time
9 on you are not to talk about the case under
10 any circumstances whatsoever. Even if
11 you're late at night and somebody -- you're
12 playing canasta or something, you got to
13 guard against talking about the case,
14 especially during this period of time. Only
15 in this room are you permitted to talk about
16 it.

17 So when you leave here tonight, we
18 will let you get your coats, and I see you
19 have some -- do you want to leave those
20 things?

21 THE BAILIFF: No, I think they
22 are going to take them with them.

23 THE COURT: If you want to take
24 all of that with you. We will take you over
25 to the room. The six of you who left your

1 car in the Bliss Tower, if you stay seated
2 here, we have an escort for each of you and
3 you will do the driving but the escort will
4 go with you.

5 Those of you who are going to go in
6 the van, we are all going to meet on the
7 second floor of the parking deck. So park
8 on the second floor of the parking deck, and
9 then we will meet across the walk, what do
10 you call it, the sky walk, tunnel meets, and
11 then we will all go. You all will go across
12 to your rooms and we'll give you time to
13 hang up all your things and dinner at seven.

14 Thank you for a good day's work. We
15 will go ahead and stand in recess at this
16 time from deliberations and walk out this
17 way, grab what you need.

18 I tell you what. Why don't you sit
19 here until we're here. The deputies, we
20 will tell you to come out and get your
21 things and then the six of you lag behind.

22 UNIDENTIFIED JUROR: We had one
23 question regarding whether or not we could
24 be provided with a map of the areas in
25 question to give us a better frame of

1 reference.

2 THE COURT: A map of the other?

3 UNIDENTIFIED JUROR: Portage and
4 Stark, the areas that are discussed in the
5 case.

6 THE COURT: That wasn't
7 introduced in evidence, and you are
8 restricted to what has been introduced into
9 evidence.

10 UNIDENTIFIED JUROR: Are we able
11 to draw diagrams?

12 THE COURT: You may draw
13 diagrams, yes.

14 UNIDENTIFIED JUROR: Can we have
15 something to do that?

16 THE COURT: Tomorrow morning I
17 will bring that up to them and then we
18 will -- I don't think that's going to be a
19 problem. You have a right to have some
20 bigger tablets than that. I'll permit that.

21 - - - - -
22 (Court adjourned at 6:35 p.m.
23 on Monday, January 24, 2000.)

24 - - - - -
25 TUESDAY, JANUARY 25, 2000:

1820
PAUL G. CIANAGIS
CLERK OF COURTS
STARK COUNTY, OHIO

MAY 15 PM 3:07

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IN THE COURT OF COMMON PLEAS

STARK COUNTY, OHIO

CASE NO. 1999-CR-0873

2000-CA-0067

STATE OF OHIO,)	
)	
Plaintiff,)	TRANSCRIPT OF
)	PROCEEDINGS
versus)	
)	
DAVID G. THORNE,)	VOLUME NO. IX
)	
Defendant.)	

BE IT REMEMBERED, That upon the hearing of the above entitled matter in the Court of Common Pleas, Stark County, Ohio, before the Honorable Richard Reinbold, Jr., Judge, and commencing on Thursday, January 27, and Friday, January 28, 2000, the following proceedings were had:

- - - - -

TINA C. MASTERS, RDR, CRR
OFFICIAL COURT REPORTER
STARK COUNTY COURTHOUSE

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APPEARANCES:

On Behalf of the Plaintiff:

Jonathan Baumuel, Assistant Prosecutor

and

Chryssa Hartnett, Assistant Prosecutor

On Behalf of the Defendant:

George Keith, Attorney at Law

and

Jeffrey Haupt, Attorney at Law

I N D E X

MITIGATION PHASE

STATE RESTS Page 1833

OPENING STATEMENTS:

By Ms. Hartnett Page 1828

By Mr. Keith Page 1830

DEFENSE WITNESSES

	<u>DX</u>	<u>CX</u>	<u>RDX</u>	<u>RCX</u>
Sandra McPherson,	1833	1861	1870	--
Crystal Thorne	1872	--	--	--
Esther Kosisko	1876	--	--	--
Sister Regina Zaleznik	1881	--	--	--
David Kosisko	1886	--	--	--
David Thorne	1895	--	--	--

DEFENSE RESTS 1896

CLOSING ARGUMENTS:

By Baumoel Page 1920,1944

By Mr. Haupt Page 1928

By Mr. Keith Page 1935

CHARGE OF THE COURT Page 1906

VERDICT Hung Jury

SENTENCING Page 1989

- - - - -

STATE'S EXHIBITS

(Received during Mitigation Phase)

RECEIVED

3B, C, D, G, H, I, J, (photos)	1902
L, N, P, W, CC, DD	
4A, B, L, O, P, R, S,	1903
T, W, Z, BB (photos)	
5A, B, C, E, G, J, K,	1903
L, M, T, U, W (photos)	
15A through G- child support orders	1903
44A, B, D, I, N, P, Q, R, T (Photos)	1904
45C through L- (photos)	1904
48A through C- time cards	1904
53- Rose Mohr's time card	1904
55- card w/Joe Wilkes name & number	1904
57A through F- Ameritech records	1905
63- letter Dales Cuda from CSEA	1905
64A, B- payrolls records Dale's Cuda	1905
65A through C- bank records	1905
67- letter in Deft.'s car	1905
70- Kohl's Receipt	1906
71- C. Campbell's time card	1906

DEFENSE EXHIBITS

(Received during Mitigation phase)

MARKEDRECEIVED

U- blown-up pict. Deft. & cougar	1889	1899
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COURT EXHIBITSMARKED

1- letter	1994
2- letter	1994

P R O C E E D I N G S

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(The Jury was brought in the courtroom at 9:05 p.m., and the following proceedings were had.)

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THE COURT: Good morning, Ladies and Gentlemen. Nice to see you all back. I'm going to -- I'm going to ask one question, and then I'm going to ask each juror just to give me a yes or no.

We have just a couple of things we have to do before we get started today, and of course, the question I'm going to ask to each of you is, after leaving on Tuesday, has there been any incident or occurrence or has there been any conversation that anybody initiated with you?

Has there been any event that has caused you to, has influenced your position or has changed anything that has gone -- I guess has there been any violation of the rules? I know not by you but unintended by other people that in any of the admonitions that I gave to you that you think is

1 significant enough that you should advise
2 myself and counsel?

3 So that's the question just to
4 ensure that we maintained our integrity
5 throughout the last two days.

6 So Juror Number 356, is there
7 anything that I should know about?

8 JUROR NO. 356: No.

9 THE COURT: Juror 415.

10 JUROR NO. 415: No.

11 THE COURT: Three hundred
12 thirty-two.

13 JUROR NO. 332: No.

14 THE COURT: Three hundred
15 ninety-nine.

16 JUROR NO. 399: No.

17 THE COURT: Three hundred eighty.

18 JUROR NO. 380: No.

19 THE COURT: Three hundred
20 thirty-nine.

21 JUROR NO. 339: This is what I
22 have a question on. My mom called and left
23 a message on the answering machine saying
24 that Channel 5 was on and showed some of the
25 jurors while we were in sequestration but

1 that's all she said.

2 THE COURT: Does that have any
3 effect on anything since you left here?

4 JUROR NO. 339: No, but that's
5 why I didn't know.

6 THE COURT: I hope they didn't
7 show any identification. I did not see it
8 so I don't know what they showed.

9 JUROR NO. 339: She said it was
10 like on Monday night so we were --

11 THE COURT: You were away?

12 JUROR NO. 339: Well, my husband
13 didn't see it either. So there is no
14 problem with that, no.

15 THE COURT: Okay, Juror 370.

16 JUROR NO. 370: No.

17 THE COURT: Three hundred
18 eighty-six.

19 JUROR NO. 386: No.

20 THE COURT: Three hundred
21 ninety-seven.

22 JUROR NO. 397: (Juror shakes head
23 from side to side.)

24 THE COURT: Three hundred
25 ninety-one.

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JUROR NO. 391: No.

THE COURT: Three hundred
forty-five.

JUROR NO. 345: No.

THE COURT: Three hundred
forty-nine.

JUROR NO. 349: No.

THE COURT: You know, I have the
old one, 421.

JUROR NO. 421: No.

THE COURT: Four hundred
twenty-four.

JUROR NO. 424: No, Your Honor.

THE COURT: And 425.

JUROR NO. 425: No.

THE COURT: Thank you very much.
Because this is a second independent
proceeding, I'm going to ask that you all be
resworn in for the sentencing phase of this
particular case, so if you will please
rise, Ms. Cady.

THE BAILIFF: And raise your
right hands, please.

(Thereupon, the jury panel was

1 sworn in by the Bailiff.)

2 - - - - -

3 THE COURT: Ladies and Gentlemen,
4 this phase of the trial is what I refer to
5 in my opening remarks as the sentencing
6 phase or the sentencing hearing, and you
7 will now hear evidence regarding this
8 particular issue.

9 It is run fairly much the same
10 procedure. The State of Ohio will go
11 first. Then the Defense will present their
12 argument or present their case, and then the
13 arguments will go to the State first and
14 then the counsel for the Defense last.

15 So it's the same procedure as
16 before, and with that then the State of Ohio
17 may make any opening remarks they feel
18 appropriate.

19 MS. HARTNETT: May it please the
20 Court, Mr. Haupt, Mr. Keith, Ladies and
21 Gentlemen of the Jury. My comments to you
22 at this stage in the proceedings will be
23 very brief. You are here at this point to
24 determine one thing, and that is: Does the
25 aggravating circumstances that this

1 aggravated murder was committed for hire
2 outweigh by proof beyond a reasonable doubt
3 the mitigating factors that the Defense will
4 soon put before you?

5 Very soon you will be retiring to
6 deliberate upon that sole issue.

7 Now, you heard the evidence of the
8 aggravating circumstances in this case.
9 It's the same evidence that the 12 of you
10 decided -- the same evidence that you used
11 to decide that David G. Thorne did, in fact,
12 hire Joseph Wilkes to commit the aggravated
13 murder of Yvonne Layne.

14 We don't intend to call any
15 witnesses at this stage of the proceedings
16 but we may cross-examine those witnesses
17 called by the Defense.

18 Now, those witnesses will likely
19 paint a picture for you of David G. Thorne.
20 They might paint a picture different from
21 that which you already have in your minds,
22 and they may attempt to get you to even
23 question your verdict.

24 What we are asking is that you take
25 into account the individual perspectives of

1 those witnesses. Think about that and take
2 that into account when you are assessing --
3 when you are assessing whether or not the
4 picture that they are painting for you is,
5 in fact, the truest picture of David G.
6 Thorne.

7 I submit to you, Ladies and
8 Gentlemen, that you will find that it is
9 not, and that you will also find that those
10 mitigating factors presented are
11 substantially outweighed.

12 And having determined that, the
13 State of Ohio will ask that you return the
14 only verdict that is consistent with the
15 evidence in this case, the evidence that
16 convinced you beyond a reasonable doubt of
17 this man's guilt.

18 And that verdict is the maximum
19 sentence allowed by law in the State of
20 Ohio, and that is the sentence of death.

21 Thank you.

22 THE COURT: Thank you,
23 Ms. Hartnett.

24 Mr. Keith.

25 MR. KEITH: Thank you, Your

1 Honor, Ms. Hartnett, Mr. Baumoel.

2 Ladies and Gentlemen, no person that
3 we know is all good or all bad. Each person
4 expresses a lot of different things and how
5 they react to the world and interact with
6 them.

7 You have decided that David Thorne
8 is guilty of murder under the circumstances
9 that were presented by the State of Ohio.

10 This is our opportunity to present
11 to you some of the other parts of his life.
12 The Judge will later instruct you on what
13 mitigating factors are.

14 Essentially, you are going to hear
15 from a Dr. Sandra McPherson. You will hear
16 from David's mother. You are going to hear
17 from his grandmother who essentially raised
18 him and his grandfather and his Sister
19 Regina from the church where he attends.

20 And the Prosecutor is right. You
21 are going to hear from these people what
22 they like about him, the fact that they care
23 about him, the fact that they think he is a
24 good person.

25 You are going to hear about those

1 other parts of his life that are not part of
2 the act that you have found him guilty of.

3 At the end we are going to come back
4 and you are going to have four choices. You
5 are going to have the choice to give him
6 death, his way of leaving prison.

7 You are going to have a chance to
8 give him life without parole where he would
9 spend the rest of his life in prison and
10 then leave after he would die.

11 Life with the possibility of parole
12 after 30 years. That doesn't mean that at
13 the end of 30 years somebody opens the door
14 and says go ahead and go out. It just means
15 that he can then try and convince the parole
16 board that he has somehow rehabilitated
17 himself to the point where they are going to
18 send him home.

19 Or life with the possibility of
20 parole after 25 years.

21 And we're going to present to you,
22 Ladies and Gentlemen, these people who care
23 about him and who love him and who think
24 well of him and have them share with you
25 that side of his life.

1 That is the purpose of this, is to
2 have the opportunity to share those things
3 that would not have come in the trial.

4 And at the end we are going to come
5 back and ask you to spare his life and to
6 sentence him to life in prison.

7 Thank you.

8 THE COURT: Thank you, Mr. Keith.
9 State of Ohio.

10 MR. BAUMOEL: Your Honor, subject
11 to admission of specific exhibits which are
12 relevant to this phase of the proceedings,
13 the State would rest.

14 THE COURT: Defense.

15 MR. KEITH: Your Honor, if it
16 please the Court, we would call Dr. Sandra
17 McPherson.

18 - - - - -
19 SANDRA McPHERSON, Ph.D.

20 Who, after being first duly sworn, testified
21 as follows:

22 DIRECT EXAMINATION

23 BY MR. KEITH:

24 Q. Doctor, would you state your full name and
25 spell your last name for the record, please?

1 A. Sandra B. McPherson, M C P H E R S O N;
2 12434 Cedar Road, Suite 15, Cleveland
3 Heights, 44106.

4 Q. And Doctor, would you tell us what your
5 occupation or profession is, please?

6 A. I am a clinical and forensic psychologist.

7 Q. And what is your highest level of education?

8 A. I hold a Ph.D. from Case Western Reserve
9 University.

10 Q. And can you tell us briefly about your
11 educational background?

12 A. I have a Bachelor's degree with honors in
13 psychology from Kent State in 1963, a
14 Master's Degree from Case Western Reserve
15 and Ph.D. in 1967.

16 I did my internships at the
17 Brecksville VA and at the Child Guidance
18 Center. Subsequently, I sat for my national
19 boards in both clinical and forensic
20 psychology respectively and sequentially.

21 Q. When you saw say the "national boards,"
22 you're both a diplomate as a clinical
23 psychologist as a Ph.D. and as a forensic
24 psychologist as a Ph.D.; is that correct?

25 A. That's correct.

1 Q. And can you tell us are you licensed as a
2 psychologist in the State of Ohio?

3 A. I am.

4 Q. And when were you so licensed?

5 A. I was licensed in 1972. I hold license
6 number 02.

7 Q. And Ohio, that you're telling us that you
8 were one of the first people that was
9 licensed when the State of Ohio required a
10 license; is that correct?

11 A. That is correct. I was appointed to the
12 licensure board and the licensure board was
13 licensed first in order to be able by
14 statute to license the rest of the state.

15 Q. Can you tell us, Doctor, the areas in which
16 you conduct your practice?

17 A. I have what is primarily a forensic
18 practice, which means that most of what I do
19 pertains to questions that have a legal
20 aspect. A lot of work is done in the
21 domestic relations court, and a fair amount
22 in the criminal court.

23 I have also done a little bit of
24 civic work. I have a small clinical
25 practice, and I teach with the Fielding

1 Institute which is a graduate program in
2 psychology, Ph.D. program.

3 Q. Have you been called as an expert witness in
4 the past?

5 A. Yes, I have.

6 Q. Can you tell us briefly how many different
7 courts, approximately, have recognized you
8 as an expert?

9 A. Around eight courts in the State of Ohio,
10 one in Florida.

11 Q. Do you currently hold any position within
12 the judicial system or within the court
13 system? Do you work for a public entity?

14 A. I am currently the supervising psychologist
15 for the Lake County Forensic Court, the
16 Court Clinic.

17 Q. And as such do you work for the judges in
18 that county?

19 A. Yes, I do.

20 Q. And how long have you done that?

21 A. Just since September.

22 Q. Are you familiar with what is known as
23 mitigation in a death penalty case?

24 A. I am.

25 Q. And have you testified as an expert in such

1 a case before?

2 A. Yes, I have.

3 Q. Have you also published extensively about
4 your feelings about this matter or your
5 research, I'm sorry?

6 A. Yes.

7 Q. Is it also true that you are opposed as a
8 person to the death penalty?

9 A. That is also true.

10 MR. KEITH: Your Honor, I would
11 ask that she be recognized by the Court as
12 an expert witness.

13 THE COURT: State.

14 MR. BAUMOEL: No objection, Your
15 Honor.

16 THE COURT: Shall be admitted.

17 BY MR. KEITH:

18 Q. Doctor, when you are asked to participate in
19 the preparation of what we call mitigation
20 in a death penalty case, what areas or what
21 general things do you begin to do, if you
22 can tell us?

23 A. I want to get to know the Defendant through
24 interviews and testing as appropriate in
25 order to establish psychological status and

1 some sense of the dependent as a person.

2 I work both independently and
3 sometimes with my husband, which was the
4 case here, since we are in practice
5 together; sometimes with other persons
6 appointed to work with me to develop the
7 psychosocial aspects.

8 We talk with friends, family,
9 employers, whomever might know the Defendant
10 that would be able to give us additional
11 perspectives on the Defendant. We look for
12 and to records, which we are able to find,
13 specifically any records of contact with the
14 justice system, such as prison records or
15 juvenile records, school records.

16 And we look at whatever the Defense
17 Counsel can make available in the way of
18 preparations or information about the crime,
19 the situation which has brought the
20 Defendant to the Court.

21 Q. So to summarize, you meet and interview the
22 Defendant; is that correct?

23 A. That's correct.

24 Q. You do a certain amount of testing within
25 your field; is that correct?

1 A. That's correct.

2 Q. You do some field work with family, friends
3 and relatives?

4 A. Correct.

5 Q. And you examine whatever documents or
6 records are available that reveal this
7 person's history?

8 A. Correct.

9 Q. In this particular case when did you first
10 come to meet David Thorne?

11 A. May I consult my notes so as to be
12 accurate?

13 Q. Yes.

14 A. I actually first interviewed and had
15 contact with David on 10/29/99, although I
16 had contact with counsel and with his
17 grandmother and step grandfather prior to
18 that time.

19 Q. In terms of your investigation, can you go
20 through the areas that you have gone through
21 and tell us what you found, if you will --
22 or well, let me ask a little less broad
23 question.

24 The first thing you did was
25 investigate about his family history and

1 that background; is that correct?

2 A. That's correct.

3 Q. Can you tell us who you interviewed and what
4 that entailed?

5 A. We interviewed his mother, his sister, his
6 grandfather -- step grandfather and
7 grandmother. We also talked with some
8 friends and a girlfriend from when he was a
9 teenager and her father; men that had known
10 him as an adult; a couple, one of whom the
11 wife, I believe, watches his youngster a
12 time or has watched his youngster.

13 That's probably -- that
14 characterizes the scope of people that we
15 talked to regarding him.

16 Q. And what can you tell us about him based on
17 those interviews, Doctor?

18 A. Based on those interviews and also his, the
19 material that he, himself, provided in the
20 course of an interview with him, what we
21 found out was that David was born in 1972 in
22 Cleveland. His mother had been married
23 prior to that time when she was rather
24 young, about age 15 and had had a child, his
25 older sister, Gina, who is actually ten

1 years older than he. Gina was premature but
2 David, there were no particular
3 complications with the pregnancy or with the
4 birth. It was fine, healthy.

5 His mother and father were married.
6 Father, however, was in the service and in
7 Vietnam. He re-opted a couple of times;
8 once with the army, was in the army and was
9 in the U.S. Marine Corps. He received
10 several commendations but returned from
11 those experiences in the eyes of the mother
12 as a somewhat changed man. People said he
13 was prone to depression. He was much more
14 depressed. He was hard to live with. She
15 was concerned for her safety and for David's
16 sister and they divorced.

17 She did not tell David until he was
18 12 that there had actually been a divorce
19 because shortly after that divorce his
20 father committed suicide using a gun.

21 David remembers the funeral, though
22 he really didn't understand what was going
23 on. He was about five or six at the time.
24 He also has some hazy memories or fleeting
25 memories of his father, of his contacts with

1 his father when he was younger; little
2 things they did together when the father
3 would come in.

4 However, for the most part he did
5 not have father contact. The father was
6 away.

7 Mother's employment was as a
8 long-distance truck driver, which meant that
9 when she went back to work after he was six,
10 she also was in and out of his life on a
11 periodic basis.

12 He had always had contact with his
13 maternal grandmother and step grandfather
14 with whom he is very close, and I'll refer
15 to him as a grandfather from now on because
16 that's how he sees him and how he acted.

17 He went to live with them and went
18 to school from their place up to the sixth
19 grade. He was in a parochial school at that
20 time.

21 At that point his mother came back
22 and retook custody of him. There had been
23 some dissension around his grandparents
24 assuming full responsibilities. She decided
25 to take full responsibility at that point.

1 She remarried. The marriage did not
2 last long. There were other children in
3 that marriage. David remembers being the,
4 sort of the odd man out, if you would,
5 because the other boys were favored perhaps
6 understandably by their father, but it was
7 not a totally happy union.

8 He describes being respectful of the
9 man and doing what he was told, but he never
10 felt warm and close to him.

11 In the 7th grade he was still in
12 parochial school, and sometime when he was
13 around 14, he decided to return to live with
14 his grandparents. They had actually moved
15 to be closer to him and to support him and
16 be available, and he was accustomed to going
17 to their place so that he liked it there.
18 He decided that he wanted to actually return
19 and live there. That again precipitated
20 some difficulties. There was a court
21 involvement, and they obtained custody of
22 him, and he stayed with them for the
23 duration of his growing-up years.

24 He had contact with his mother but
25 again not substantial, not substantial of a

1 type that is usually the case. Mother is
2 driving.

3 At some point when he is a late
4 adolescent she goes to live in Seattle for
5 three years. She had in the meantime had
6 another marriage. It lasted only six
7 months. There was an intervening period,
8 and then she went to Seattle and she
9 remarried during that period.

10 David recalls that in 1994 when he
11 would have been about 21 or 22, probably 21,
12 he and his mother actually sat down and kind
13 of hashed out some of the feelings that he
14 had about his experiences with her and with
15 the life situation he had been through, and
16 he felt that they resolved a lot of things.

17 He felt that was kind of a landmark
18 event in his life, that he was able to work
19 through some things that had been bothering
20 him and probably her as well.

21 They retain an affectionate
22 relationship and she has great concern for
23 him.

24 David's grades in school once he
25 reached adolescence and was in middle school

1 and on into early high school were not
2 particularly good, and he's rather candid
3 that he did not invest -- he did not find
4 school -- he did not find that he was not
5 able to understand things, but he knew that
6 he was not going do the work, and as a
7 result of that, his grades reflected that.

8 When he got in the joint vocational
9 school and the printing school, his grades
10 went up and performance was quite good. He
11 went immediately to work and has enjoyed his
12 work and apparently been well regarded for
13 what he did.

14 His relational history, his first
15 girl friends were in high school, and the
16 second and perhaps real girlfriend that he
17 remembers was Shannon Simmons, I believe her
18 last name was, and she was interviewed, she
19 and her father, who confirmed that he had
20 been a very pleasant boyfriend. He had
21 treated her well. He had been respectful of
22 the father. He was welcome in the home.

23 They went together for some part of
24 a year, as 16-year-olds want and then the
25 relationship ended, apparently on a positive

1 note after they got over their sadness about
2 the ending of it.

3 In the 12th grade he had a
4 girlfriend with whom he spent
5 actually five years of a relationship and
6 thought of it as a very permanent thing but
7 it ended and she is now remarried. He
8 indicated that he is friends with her and
9 her husband.

10 He also had a woman friend with whom
11 he did not have a romantic relationship but
12 where he served as kind of a big brother or
13 confidant. He had obviously an important
14 relationship with the victim, Yvonne, and
15 that produced his son Brandon, and he's had
16 a current girlfriend named Amy where he saw
17 himself as ultimately establishing a
18 marriage and family.

19 Relationally, from everything that
20 friends and family could tell, he was a --
21 he did not have problems. He was attracted
22 to women. He did not get into any kind of
23 negative interactions with them involving
24 violence or improper behavior that was
25 rejected.

1 His family, I have already mentioned
2 his mother, had some periodic problems with
3 her own relationships. His grandmother, her
4 mother also had a couple of marriages before
5 she married David Kosisko, and those
6 marriages involved people who mistreated
7 her. Her marriage to David Kosisko has been
8 a committed one, and she has been happy in
9 that union as has he. They live together to
10 this day and care for each other. Her
11 health is poor at this point.

12 His sister, ten years older, had a
13 baby somewhat late in her, in the life cycle
14 for having babies. That baby has severe
15 problems. It's an infant requiring a series
16 of heart operations, and she has to do
17 fairly heroic monitoring and care taking
18 because of the needs of that youngster.
19 They have a monitor at their house that
20 tells them the status of that child at all
21 times.

22 His father was a twin. The brother,
23 the twin brother is described as having some
24 intellectual limitations, though that's not
25 confirmed.

1 The father was considered to be a
2 somewhat, a person who avoided difficulties,
3 avoided altercations or problems with
4 others. He obviously was in the military
5 during the difficult time but he was not a
6 person prone to get into trouble during the,
7 when in civilian society and was not in
8 trouble in the military for that matter, was
9 well regarded. So he followed the rules
10 there as well.

11 Q. Doctor, let me change your focus for a
12 moment.

13 How was David's relationship with
14 his grandparents? How would you describe
15 that?

16 A. His grandparents in many respects were his
17 primary parents. They were in and out of
18 his life when he was very young, and then
19 became his caretakers essentially from the
20 time that he was in the first grade onward
21 with the brief period already mentioned when
22 he was with his mother.

23 He loves them. He responds to them.

24 He has always worked for them, done things
25 for them if they needed it. They, they are

1 devoted to him. I would say that is --
2 they are probably the strongest people in
3 his life.

4 Q. Can you describe for us his ability to
5 function within that relationship or how
6 well he does in terms of being part of their
7 family?

8 A. They see him as a part of their family.
9 They describe him as a son, in effect. They
10 don't use those words but their description
11 of him is the boy they care about, the boy
12 who they could call up to do something if it
13 needed to be done. They describe that he
14 was -- you know, all kids have to be
15 redirected at times, but David was easy. He
16 was not hard to raise. He was not hard to
17 deal with.

18 Q. Is there anything else that you felt was
19 significant about his family relationships
20 or his history that was revealed by your
21 investigation?

22 A. I think that's essentially -- those are
23 essentially the pivotal factors I consider
24 of substantial importance. The loss of the
25 father coming as it did in what we know to

1 be a, at a crucial developmental point when
2 children are forming their gender identity,
3 their sense of themselves as young men or
4 young women, getting ready to go out in the
5 real world where school and peers will start
6 to take over. The loss of a parent at that
7 time leaves a lot of unfinished business.

8 Q. Thank you.

9 Doctor, as part of your
10 understanding of this process one of the
11 potential factors in mitigation is whether
12 or not a person suffers from a serious
13 mental illness or defect; is that correct?

14 A. That's correct.

15 Q. Did you test David Thorne for those things?

16 A. Yes.

17 Q. Did you find any of them to be present?

18 A. No.

19 Q. To move on a little to some area we covered.

20 In your investigation does he have a
21 lot of contact with the criminal justice
22 system?

23 A. No. The only, the only contact that we
24 could determine took place revolved around
25 some argument that he got into one time and

1 he damaged the windshield of the car of a
2 person with whom he got into the argument
3 and had to pay a fine. It was a misdemeanor
4 offense and he had to pay a fine, I believe
5 as part of that. He has no felony record,
6 no juvenile record to our knowledge.

7 Q. What's his work record like?

8 A. He was a good worker. He reported for work
9 on a regular basis. He liked his work. We
10 don't have any indications that he was ever
11 fired or disciplined for poor work, for poor
12 work habits.

13 Q. And you talked about school in terms of his
14 application of himself. Did you have any
15 evidence that he was a behavior problem in
16 school?

17 A. There are no indications of any behavioral
18 problems during the school period.

19 Q. What do these things that you have talked
20 about in terms of family, work, school, what
21 do they say about him?

22 A. Well, they say that at least in all of this,
23 as suspected of the data that we collected,
24 that he has conformed to reasonable
25 expectations and he hasn't had any serious

1 difficulties with authority or limits.

2 Q. What were the quality of the relationships
3 he had with the people who were close to
4 him?

5 A. They were very close. People were prone to
6 be very surprised that he would be involved
7 in this type of situation. They did not
8 anticipate that he would ever have contact
9 with the criminal justice system as a
10 Defendant. They indicated that David would
11 do things for them that they didn't even ask
12 for.

13 One, a couple had a son that went
14 into the hospital. David hadn't known the
15 mother of this son particularly but he
16 called up and said what can I do. It was
17 that kind of story that we would get.

18 Very often when I do this kind of
19 work I get, you know, stories along the
20 lines well, he's a good boy but, but I
21 didn't get the but with David at all. I got
22 He's always been fine with us.

23 The most people would say is we
24 don't know about this case. We can't say
25 anything about that, but everything we know

1 about David he was our friend. We liked
2 him. We could count on him. We could leave
3 our kids with him. He was good with our
4 animals, that kind of thing. I had very
5 good reports on David.

6 Q. If he is sentenced to a very long term in
7 prison, how do you feel he's going to be
8 able to deal with the other prisoners in
9 that environment?

10 A. I would expect that he would be able to
11 manage perhaps at a somewhat better level
12 than many. The adage past behavior predicts
13 future behavior does hold up pretty well.

14 He does not have a record for
15 interpersonal violence. He does have a
16 record for getting along with authority and
17 for getting along with structure. I would
18 expect that those traits would come into
19 service.

20 He will be in a high structured
21 setting. There will be a lot of authority.
22 He has a record for being able to be a
23 friend. I would assume that he would try to
24 extend himself to others in the setting as
25 he has done on the outside.

1 It's a tough life but he appears to
2 have some resilience. Perhaps, he will
3 manage it reasonably well.

4 Q. Thank you.

5 Doctor, we start with our
6 understanding that you do not believe in the
7 death penalty and believe that every life is
8 worth saving; is that correct?

9 A. That's correct.

10 Q. But you through the course of your work have
11 had the opportunity to spend time or know a
12 number of people who are facing what David
13 Thorne is facing; is that right?

14 A. That's correct.

15 Q. In terms of the balance of his life
16 because -- well, let me withdraw that.

17 Nobody arrives at this point,
18 Doctor, unless they have been convicted of
19 something horrible; is that correct?

20 A. That is correct.

21 Q. In terms of your experience, would you tell
22 us that the balance of his life is more
23 towards the positive than most of these
24 people or less towards it?

25 MR. BAUMOEL: Objection.

1 THE COURT: Overruled.

2 THE WITNESS: The investigations
3 that we made into David's life turned up far
4 less in the way of prior records, prior
5 misbehavior, prior problems, and obviously,
6 I already stated a lack of mental health
7 issues than I usually see in death penalty
8 investigations.

9 BY MR. KEITH:

10 Q. And what about the quality of his positive
11 relationships?

12 A. Certainly he -- I see him -- I see more
13 positive relationships than I have seen with
14 others. Though I'm constrained to say that
15 whenever I do this kind of work, since I am
16 going to talk with family and friends, I
17 usually pick up on positive statements about
18 the Defendant, whatever the balance of their
19 behavior may have been.

20 MR. KEITH: Thank you very much,
21 Doctor. The prosecution may wish to ask.

22 MR. BAUMOEL: May we approach,
23 Your Honor?

24 THE COURT: You may.

25 - - - - -

1 (A conference was held at the bench
2 outside the hearing of the jury.)

3 MR. BAUMOEL: Your Honor, I don't
4 want the Jury to hear.

5 What I have here is a transcript of
6 a taped statement with Angela Cunningham,
7 which according to the transcript is the
8 police interviewed which occurred on July 23
9 in regards to the investigation in this
10 case.

11 And inside the transcript Angela
12 Cunningham states that she was a girlfriend
13 of David Thorne for four or five years, and
14 she specifically points out two incidents of
15 violence in regards to David Thorne.

16 This witness testified in regards to
17 his relationship with girl friends. She did
18 not mention a name separately so I'm not
19 sure if she was referring to an Angie
20 Cunningham or not, but the State is seeking
21 to give her this information and see if that
22 is contradict or contradicts information she
23 has which was the basis for some of her
24 opinions.

25 MR. KEITH: Your Honor, we

1 object. First of all, this now calls
2 into -- I don't know if they want to use it
3 to dispute this lady's credibility or if
4 they are going to call Angie Cunningham to
5 say that she didn't say certain things or
6 did say certain things to this witness, but
7 unless that is the issue, I believe that
8 whatever she said to the cops is irrelevant.

9 This witness has testified as to her
10 interviews and what was said. I suppose you
11 could cross-examine and say did you ask any
12 of his girl friends or about ugly incidents
13 or something, but other than that, you know,
14 that interview is entirely outside of this
15 woman's purview, and to cross-examine her
16 about and to give her information is total
17 hearsay with regard to anything with her --

18 MR. BAUMOEL: All the information
19 she has is hearsay. It's from these other
20 people, other people that she's had contact
21 with, and these are the basis of her
22 opinion. This is just another bit of
23 hearsay.

24 THE COURT: I'm trying to figure
25 out a rule here. I think you can ask her if

1 she, in fact, talked with this particular
2 witness, and I think you can ask her. If
3 she says no, I did not, I suppose you could
4 say if you were to discover that that
5 particular girlfriend had a negative
6 experience with this Defendant, how would
7 that affect your ultimate opinion, and
8 aren't you basing it just on the people you
9 talked to.

10 But I don't believe that there is
11 any, really any evidence that I can think of
12 that I can look at under character. If a
13 person gets on the stand and -- let me
14 finish a thought, that under moral character
15 where you can impeach him.

16 But if you put a character witness
17 on the stand and he said, I think he's a
18 good guy, can't you impeach that with saying
19 well, didn't you know that he shot his dog
20 when he was 12 years old.

21 Hold on, Ms. Hartnett.

22 MS. HARTNETT: I was going to say
23 she specifically testified with reference to
24 his relationships, that she used the word
25 nonviolence. I'll go get my notes but she

1 said he didn't have any problems with any
2 violent type of situations. I don't recall
3 the exact words but I have them written
4 down.

5 It wasn't just the opinion that he
6 was good. I mean she specifically said that
7 he didn't have those types of situations in
8 his relationships.

9 (End of conference at the bench.)

10 - - - - -

11 THE COURT: Folks, we're going to
12 stand in recess for a few moments. If you
13 want to relax, stand and stretch, we can do
14 that.

15 - - - - -

16 (A short recess was taken.)

17 - - - - -

18 (A conference was held at the bench
19 outside the hearing of the jury.)

20 TIME 9:52 A.M.:

21 THE COURT: The Court is going to
22 permit the State of Ohio to ask this witness
23 if she interviewed a certain individual. If
24 her answer is that she did interview her,
25 then they can ask whether or not that

1 individual advised her of how many negative
2 relationships she had with the Defendant.

3 If the answer is no, she did not so
4 advise, then the matter ends.

5 If she indicates that she did advise
6 her of that, then they can inquire.

7 If this witness testifies that she
8 did not interview this individual person,
9 then the State will be permitted to ask if I
10 told you that this individual had a negative
11 relationship with this Defendant, would that
12 affect your opinion you're announcing here
13 in court today.

14 They are not permitted to get into
15 what the facts of that relationship were,
16 and they are not to get into the words,
17 violent relationship. Just negative.
18 That's splitting of the hair.

19 Okay. Everybody understand?

20 MS. HARTNETT: Yes.

21 (End of conference at the bench.)

22 - - - - -

23 THE COURT: Just give me one more
24 second.

25 - - - - -

1 (A conference was held at the bench
2 outside the hearing of the jury
3 and the attorneys.)

4 THE COURT: The Court is basing
5 its decision on a review of Criminal
6 Evidentiary Rule 405A and B.

7 (End of conference at the bench.)

8 - - - - -

9 THE COURT: Okay. State you may
10 proceed.

11 CROSS-EXAMINATION

12 BY MR. BAUMOEL:

13 Q. Good morning, Doctor.

14 Doctor, in regards to some of your
15 direct testimony in this phase of these
16 proceedings, you indicated that you have
17 testified before in this phase as a
18 mitigation expert; is that correct?

19 A. That's correct.

20 Q. Approximately how many times have you done
21 that?

22 A. I have handled about 90 mitigation cases,
23 but I haven't had to testify in all of those
24 because many of them resolved through
25 various means. I don't have an actual count

1 on the actual number that I testified in;
2 perhaps 20, I'm not sure.

3 Q. Okay, thank you.

4 And you described one of your goals
5 in regards to your responsibilities is to
6 get to know the Defendant as a person; is
7 that correct?

8 A. That's correct.

9 Q. And in this case you had an opportunity to
10 speak with David Thorne?

11 A. I did.

12 Q. And could you tell me how many times you
13 talked to him and at what length? Do you
14 have that information?

15 A. I spent probably two or three hours speaking
16 with him directly.

17 Q. On one occasion you spoke to him for
18 approximately two to three hours?

19 A. No, I think in total, I think the totality
20 of times directly with David and in
21 interview.

22 Q. So that was over multiple visits?

23 A. Over a couple visits, yes.

24 Q. You also testified that in carrying out your
25 responsibilities you try to get contact and

1 talk with people who may know the Defendant?

2 A. That is correct.

3 Q. On a usual basis what type of people do you
4 try to contact?

5 A. Obviously family who would know him best,
6 but also friends that may have known him in
7 different roles, and those resources are
8 usually obtained from the family, from the
9 Defendant and/or from defense counsel who
10 may know of people as well.

11 Q. I believe on direct you mentioned that one
12 of the types of people that you like to get
13 in contact with may be employers or fellow
14 employees that would have been involved in
15 the life of a Defendant; is that correct?

16 A. That certainly is one source of information,
17 yes.

18 Q. And in this case you even -- from some of
19 the people you talked to you indicated you
20 had positive information about David
21 Thorne's work record and his reputation as a
22 worker; is that correct?

23 A. Yes.

24 Q. Did you have an opportunity to speak with
25 any of the employees there at Dale's Cuda

1 Shop where he worked?

2 A. Actually no. We went to two employment
3 places. One promised -- apparently changed
4 hands and promised to send us records and
5 did not do so. The person there made no
6 negative statements but we did not get
7 direct characterizations.

8 The place he worked the most, at the
9 time we went there, the gentleman who would
10 have known him was in jail and so was not
11 available.

12 Q. Is that at the Dale's Cuda Shop?

13 A. Yes, that's correct.

14 Q. And that would have been a fellow employee?

15 A. No. It was the owner of the shop, I
16 believe. I think he had some difficulty
17 with alcohol.

18 Q. A Dale Cuda?

19 A. If you like, I'll try and go through my
20 records and see who it was. I'm not sure I
21 have that here though but I'll see.

22 Q. I don't know if it's relevant but I hate to
23 cast light on somebody if it's not true.

24 A. I think what occurred, I did not -- I did
25 not conduct that noninterview, if you will.

1 Q. I understand.

2 A. But I know that the attempt was made and the
3 person there indicated that the individual
4 who knew him and would be able to speak to
5 this was unfortunately not available.

6 Q. So it could have been anybody that worked at
7 that particular place, you do not have a
8 name?

9 A. I'm looking. I'm sorry, if you like, I'll
10 just continue.

11 THE COURT: Is it significant?

12 THE WITNESS: Maybe if you need
13 that information, I can get it.

14 MR. BAUMOEL: That's fine. I'll
15 continue on with my questions.

16 BY MR. BAUMOEL:

17 Q. You then -- and tell me if I'm being
18 inaccurate and correct me if I am, please.

19 People that you spoke with were
20 relatives and friends, a girlfriend from
21 David Thorne's teenage years as well her
22 father, and I have down a baby-sitter,
23 someone you described would watch Brandon?

24 A. It was a friend who is also a, functioning
25 as a sitter.

1 Q. Anybody else besides those individuals?

2 A. No. Those were the people with whom we
3 spoke and the relatives that I mentioned.

4 Q. And when you interviewed those individuals,
5 is it clear to them who you are, what your
6 purpose of questioning them is?

7 A. Yes.

8 Q. So they know, they know your position and
9 what the future of your job holds in regards
10 to this particular case?

11 A. Yes, they do. That's true.

12 Q. Did any of these people give you anything
13 negative about David Thorne?

14 A. Not specifically -- not what I would call a
15 negative. There were no unusual or abnormal
16 or excessive behaviors presented.

17 As I say, in some ways the results
18 of these interviews were almost surprisingly
19 positive across the board.

20 Q. You say surprising, but these are the
21 friends and families of David Thorne who
22 know that their information may be used in
23 regards to a sentencing phase in a capital
24 case.

25 Would you still categorize that as

1 surprising?

2 A. Based on the other work that I have done,
3 yes, this is at the far end of that
4 spectrum.

5 Q. Did you search out and try to find anybody
6 who may have something negative to say about
7 David Thorne?

8 A. We did ask whether there were people who had
9 difficulty or places he had difficulty. We
10 would have gone if we had learned of them.
11 Frankly, we didn't get to any indications of
12 areas of problems that we could then
13 research.

14 Q. Did you speak with any family members or
15 friends of the victim in this case, Yvonne
16 Layne?

17 A. No, I did not.

18 Q. Would you not agree with me that that would
19 have been a source of people that may have
20 some negative information about the life of
21 David Thorne?

22 A. I would agree with that.

23 Q. Did you receive any information from people
24 who were involved in what we have learned to
25 be a hobby of David Thorne's being shoot

1 fighting?

2 A. I knew about the shoot fighting and that it
3 was a particularly aggressive form of
4 marshal art. There was, I believe, one
5 individual who has been involved with him in
6 that pursuit and several of the men knew
7 about it. I didn't -- again, I didn't hear
8 anything except that this was something that
9 they did. It was particularly aggressive.
10 People could get hurt doing it. That was
11 all that I learned about that.

12 Q. You testified during direct examination that
13 the evidence or the information that, data
14 that you had obtained indicated that David
15 Thorne got along with authority; is that
16 correct?

17 A. Again, from the information I had, yes.

18 Q. And you had information about a criminal
19 damaging offense in David Thorne's past.
20 Did you attempt to talk with the police or
21 any authority figures that may have been
22 involved in that specific situation?

23 A. No, I did not.

24 Q. Did you speak with any of the authority
25 figures that were involved in the present

1 case, the investigation into the homicide of
2 Yvonne Layne?

3 A. Speak with, no. I did read the reports made
4 available to Defense.

5 Q. You mentioned at least one or two prior girl
6 friends. Did you speak with or did you have
7 any reference to the name of an Angie
8 Cunningham?

9 A. No.

10 Q. Were you aware of an Angie Cunningham being
11 a prior girlfriend of David Thorne?

12 A. I did not have that name. I did not know
13 her as one of the girl friends.

14 Q. And so obviously you did not speak with
15 Angie Cunningham?

16 A. Also correct.

17 Q. If you had learned from Angie Cunningham of
18 a negative type of relationship during the
19 four-year relationship with David Thorne,
20 would that have in any way impacted or
21 affected the opinions that you have given
22 here today?

23 A. Did you say four-year?

24 Q. Four-year relationship.

25 A. Four-year relationship with Angie

1 Cunningham, it could.

2 Q. And when you gave your opinions, you
3 prefaced it on based on the data that you
4 had?

5 A. Absolutely, that's correct.

6 Q. And maybe this is an obvious question or
7 statement, but your opinions once again are
8 only as good as the information that you
9 have?

10 A. That's also true.

11 Q. And would you agree with me that to give a
12 complete picture of any individual, it would
13 be helpful to have information from not only
14 the people who like or love David Thorne,
15 but maybe the people who disliked him and
16 had negative experiences from him?

17 A. That's true.

18 MR. BAUMOEL: No further
19 questions.

20 THE COURT: Anything further?

21 - - - - -

22 REDIRECT EXAMINATION

23 BY MR. KEITH:

24 Q. Doctor, you are aware that the victim's name
25 in this case was Yvonne Layne; is that

1 correct?

2 A. That's correct.

3 Q. You are aware that the Defendant had asked
4 through their lawyers to speak to the family
5 and it was rejected?

6 A. I believe I am aware of that, yes.

7 Q. What you had said was that within the
8 interviews you have done in the
9 investigation, the people you talked to,
10 present the individual you're investigating
11 along the spectrum essentially; is that
12 correct?

13 A. Correct.

14 Q. And but you are trained as a listener, are
15 you not?

16 A. Yes.

17 Q. And you're trained to make people
18 comfortable and to get them to share with
19 you their feelings in as open a fashion as
20 possible; is that correct?

21 A. Certainly strive to do that, yes.

22 Q. And many of the family and friends, people
23 who love the Defendant that you interview in
24 the typical mitigation investigation, you
25 give them the opportunity in an open

1 setting, I guess you would say or a
2 nonjudgmental setting to share things about
3 that person; is that correct?

4 A. That's correct.

5 MR. KEITH: You invite them.
6 Thank you. No further questions.

7 MR. BAUMOEL: No further
8 questions.

9 THE COURT: Thank you, ma'am.
10 You may step down, Doctor.

11 - - - - -

12 CRYSTAL THORNE,

13 who, after being first duly sworn, testified
14 as follows:

15 DIRECT EXAMINATION

16 BY MR. HAUPT:

17 Q. Ma'am, would you please state your full name
18 and spell your last name to the Ladies and
19 Gentlemen of this Jury.

20 A. Crystal A. Thorne, T H O R N E.

21 Q. And ma'am, how old are you today?

22 A. Fifty-three.

23 Q. And David is your son?

24 A. Yes, he is.

25 Q. And ma'am, with regard to your employment

1 occupation, what type of work do you do?

2 A. I own a trucking company and I do expedited
3 freight over the road.

4 Q. And how long have you been an over-the-road
5 driver?

6 A. Since 1980.

7 Q. And now, you have been in the courtroom
8 present when Dr. McPherson has testified,
9 and she obviously has said some things that
10 are very personal of nature, but it
11 basically boiled down to the fact, ma'am,
12 that you have had how many children in your
13 life?

14 A. Two.

15 Q. And that's Gina, she's how old?

16 A. She is 38.

17 Q. And David?

18 A. Yes.

19 Q. And Gina's father is a gentleman who is
20 different from David's father?

21 A. Yes.

22 Q. And you have been married how many times?

23 A. Five.

24 Q. During your term of raising David do you
25 have incidents that you recall about David

1 that you could relate to the Ladies and
2 Gentlemen of the Jury that are of a nature
3 that you would like to share with them?

4 A. Yes. David was an active child. (Witness
5 crying.) And one time when we were -- the
6 toilet in the bathroom was running, and he
7 come in to help me and investigate and had
8 the top off, and he helped me adjust the
9 plunger and water shot in the air, and him
10 and I ran down to the place to find the
11 shutoff, which I did not know where it was
12 at. He was always curious and doing things
13 to investigate.

14 And then when he got older, I told
15 him, I said that I was going to get my
16 G.E.D., and he was about 14 and I said I
17 don't want to study. I don't remember how,
18 and he says, I'll help you.

19 And he said, he explained algebra
20 and things I didn't learn, and I said God,
21 if teachers were like this, maybe a lot of
22 people would go to school and learn
23 something. And then I passed my G.E.D. and
24 he says, Wow. He says, Well, I guess you
25 can give that to me and I can go to college

1 now.

2 And I'd always want to call him or
3 if he picks up my medicine and bring it to
4 me and anything that I asked him, he would
5 be there.

6 Q. And I know that this is a very difficult
7 time for you, and what we're doing is
8 talking about David, and of course,
9 ultimately we have the loss of Yvonne that
10 is out there, but this is about David today,
11 you know that?

12 A. Certainly.

13 Q. This hearing is about David and with regard
14 to explaining your recollection of David.

15 Do you find that through the years
16 of your travels and your occupation you have
17 had an opportunity to see David interact
18 with his son Brandon?

19 A. Yes.

20 Q. And how would you describe that interaction?

21 A. He's very proud of him, and when he brought
22 him over to the house, he had the diaper bag
23 and he said Look, he looks just like me.
24 This is my boy.

25 And he said, You want to change his

1 diaper? I says, No, that's your job. And
2 he did everything himself.

3 Q. At this time, as you're seated here today
4 and while this is a hearing about David, do
5 you have feelings toward David that you
6 publicly would like to share with this Jury?

7 A. Well, I am pleading for his life and I love
8 him and I just want everybody to know that
9 he is a human being too.

10 MR. HAUPT: Thank you. No
11 further questions, Your Honor.

12 THE COURT: State,
13 Cross-examination.

14 MS. HARTNETT: Nothing, Your
15 Honor.

16 THE COURT: You may step down,
17 ma'am. Thank you, ma'am.

18 - - - - -

19 ETHEL KOSISKO,

20 who, after being first duly sworn, testified
21 as follows:

22 DIRECT EXAMINATION

23 BY MR. HAUPT:

24 Q. Ma'am, would you please state your full name
25 to the Ladies and Gentlemen of the Jury, if

1 you would, and speak up. I know this is an
2 emotional.

3 A. I'm Ethel Kosisko.

4 Q. And Ethel, I'm going to ask you where you
5 worked throughout your life?

6 A. I worked in the machine shop.

7 Q. And how long did you work during your
8 career?

9 A. Twenty-two-and-a-half years.

10 Q. And throughout that time you came to raise
11 along with your husband, David, you came to
12 raise David?

13 A. Yes, we did.

14 Q. And you have known David throughout his life
15 at all phases of his life, haven't you?

16 A. Yes, I have.

17 Q. And when we talked yesterday, I asked you to
18 relate to the Jury what you recall about
19 David and David's growing up, what you could
20 share about that?

21 A. Well, I'll tell you, David was the type that
22 he went to a Catholic school. He always
23 would get up in the morning and go to work,
24 go to school. I never have to scold him to
25 go to bed. He went to bed, did his

1 homework. He always, always had something
2 nice to say about anybody that would do
3 anything to David. He wouldn't get angry at
4 them. He would say, Well, they got their
5 opinion and that's it.

6 And he was the type that he didn't
7 like violence. He didn't like to fight, but
8 like his first Christmas that we had that he
9 could really say it's a Christmas, I said
10 Santa Claus is coming. And he said, Well,
11 does he know that it's God's birthday?
12 Jesus was born today, Jesus. And I said,
13 Well, he knows that.

14 Then he said, Well, why is Santa
15 coming when all we're doing is celebrating
16 the birth of Jesus? I said well, Santa is
17 supposed to take, gives gifts to everybody
18 who may got missed. And he said, Well, I'll
19 give him my gifts.

20 He never was the type to be selfish,
21 and he always looked for good in people
22 before he even formed an opinion of them.
23 And I do love him. He's been with me all
24 these years. He's never done anything that
25 I could say I could be ashamed of him.

1 He always would do things for
2 people, always, everybody. No matter who
3 they were, he would go and do for them.

4 At school he gave his money away for
5 lunch because somebody forgot theirs, and he
6 isn't the type that they have him made out
7 of now, and I want you to spare his life. I
8 beg of you don't, don't let --

9 Q. Mrs. Kosisko, let me take a minute, if you
10 would. I'm going to ask you a specific
11 question, Mrs. Kosisko. You're respectful
12 and at times you said yes, I know how hard a
13 job the Ladies and Gentlemen of the Jury
14 have. You understand that this is just a
15 little bit for you to reflect to them your
16 appreciation of David's life as you know
17 him?

18 A. Yes.

19 Q. And certainly you have come in here today
20 and you have been the primary caregiver
21 along with your husband, David?

22 A. Yes. Both of us together, we raised him and
23 we had good times and David, my husband,
24 loves children.

25 Q. And that's evidenced by the time that you

1 spent with David and now with Brandon, but
2 your health is in what condition today?

3 A. It's a little poor. I am a diabetic. I
4 have high blood pressure.

5 Q. You had some colon removed?

6 A. Yes.

7 Q. As well as just recently a --

8 A. A heart catheterization.

9 Q. And surgery is going to be required and that
10 has been put off due to these proceedings;
11 is that a fair statement?

12 A. Yes.

13 Q. In closure, Ethel, you will continue despite
14 what this Jury decides, you will continue to
15 show the love and support to both Brandon
16 and David?

17 A. Yes, I will.

18 Q. And is there anything that you would like to
19 say? I know you said these words, but this
20 is your opportunity to address them.

21 A. I know that a lot of you'ns must be mothers
22 and grandmothers, and if you can find it
23 that you would spare his life, I beg of you,
24 you know, please.

25 MR. HAUPT: Thank you. No

1 further questions.

2 MS. HARTNETT: No questions, Your
3 Honor.

4 THE COURT: Thank you, ma'am.
5 You may step down.

6 - - - - -

7 SISTER REGINA ZELEZNIK,

8 who, after being first duly sworn, testified
9 as follows:

10 DIRECT EXAMINATION

11 BY MR. HAUPT:

12 Q. Sister, would you please state your full
13 name to the Ladies and Gentlemen of the
14 Jury?

15 A. Sister Regina Zeleznik.

16 Q. And Sister, what order are you affiliated?

17 A. The Sister of Notre Dame.

18 Q. And how long have you been so devoted in
19 your personal career?

20 A. In my life you mean?

21 Q. Yes.

22 A. For about 45 years.

23 Q. And Sister, have you come to know David and
24 Ethel Kosisko?

25 A. Yes, I have.

1 Q. And of course, have you come to know David
2 Thorne --

3 A. Yes, I have.

4 Q. -- whom we are talking about here today?

5 And Sister, with regard to the brief
6 time that I have talked with you, you have
7 been at what parish are you working with?

8 A. Saint Peter of the Fields.

9 Q. And Saint Peter of the Fields have you been
10 there two terms; is that my understanding of
11 talking with you?

12 A. Yes. For four years we did not have someone
13 that was in charge of the parish, and
14 presently I am just there part time. I was
15 in charge of the parish.

16 Q. Sister, with regard to David, you, of
17 course, participated in the celebration of
18 the baptism of his son, Brandon; is that
19 correct?

20 A. Yes.

21 Q. Sister, in your terms understanding that
22 it's very difficult in my role as David's
23 attorney to be talking about sparing his
24 life when the life, the tragic life of
25 Yvonne Layne has been taken, and she is

1 certainly in our hearts and prayers, and but
2 that's not the issue today, Sister. It's
3 about talking about the life as David Thorne
4 would know it if he were to be put to death
5 or given a life sentence.

6 Can you address the volume of
7 sparing David's life?

8 MR. BAUMOEL: Object.

9 THE COURT: Sustained.

10 THE WITNESS: Perhaps --

11 THE COURT: Sister, just a
12 moment, please. Formed -- well, don't
13 rephrase it. You asked it. Just don't
14 phrase it again that way.

15 Go ahead, Sister. You may answer.
16 Answer the question as you know it.

17 THE WITNESS: Perhaps I would
18 like to shout from the mountaintop that we
19 need to choose life, and in choosing life I
20 think under those circumstances do not snuff
21 the hope from anyone's heart that we, as a
22 society, particularly as a civilized
23 society, would indeed take anyone's life to
24 make it more personal.

25 I know that Ethel and David, I have

1 known them as a couple, the grandparents of
2 David, as a couple who love life and enjoy
3 life. I knew them early on when I came to
4 Saint Peters.

5 They spoke often of young David.
6 They spoke positively of him. They spoke
7 positively of their grandson who they were
8 of -- great grandson who they were caring
9 for. And I always walked away thinking to
10 myself what love they have and what love
11 they generated for Dave who himself lost his
12 father at an early age.

13 I see in the life that has been
14 shown to me much compassion, much mercy. To
15 snuff out anyone's life is to say that there
16 is no hope for anyone of us of
17 reconciliation, forgiveness, of growth, of
18 change.

19 So at this time I plead for mercy
20 for Dave. When his child was baptized, I
21 had an opportunity to talk with him at that
22 time, an opportunity to talk with him at
23 that time and felt myself the goodness that
24 was there as well as the love that his child
25 had for him.

1 It's something to say that this
2 child does not have a mother, and for
3 another life to be snuffed out, another
4 parent's life to be taken away, there is no
5 need for that.

6 David, I know that he has indeed
7 made efforts in his own life. He certainly
8 has great love for his child. And for
9 Brandon to not have David in his life would
10 certainly say something for all of us in a
11 sense that we participate in our own way,
12 even though we're not the members of our
13 Jury, but just being present in our society
14 today that we know that we all suffer from
15 the murder of any person, the death of any
16 person.

17 And certainly taking one's life,
18 hiring for kill as the person, we, as the
19 State of Ohio would hire to kill is a
20 dreadful thought. And it then puts us in
21 the same position for what we have accused
22 of another.

23 MR. HAUPT: Sister, thank you for
24 coming. Your Honor, I have no further
25 questions.

1 THE COURT: Questions?
2 MS. HARTNETT: No, Your Honor.
3 THE COURT: You may step down,
4 Sister. Thank you.

5 - - - - -

6 DAVID KOS
7 who, after being first
8 as follows:

9 DIRECT EXAM

10 BY MR. HAUPT:

11 Q. Would you please state you
12 your last name, sir.

13 A. David Kosisko, K O S I S I

14 Q. And David, where do you live today?

15 A. 2554 Porter Road, Atwater, Ohio.

16 Q. And David, you spent most of your working
17 career working for the City of Cleveland?

18 A. Right.

19 Q. And how many years was that, David?

20 A. Thirty years.

21 Q. And outside of that any military or any
22 service outside of that?

23 A. I was in the army and I worked as a
24 consultant for Seymour D. Waste & Associates
25 after I retired in 1984 up until two years

DAVE

1 ago.

2 Q. With regard to David, your grandson,
3 yesterday we had a talk about relating to
4 the Jury your knowledge and what comes to
5 mind and tried to relate these last comments
6 to this Jury.

7 Would you please state what you can
8 recall about David specifically growing up
9 and as you know him?

10 A. David's been a good child, boy all of his
11 life, good person all of his life. He was
12 an alter boy. He went to Barnabas Church.
13 He has a great life or love for animals. He
14 does not like to see anything or anybody
15 hurt.

16 Q. With regard to Saint Barnabas, you
17 specifically recall Father from Saint
18 Barnabas talking to you about David's
19 ability as an alter boy?

20 A. Right. Father Bradel who passed away now,
21 he drowned on a fishing accident in Canada,
22 said when they went to school, they had to
23 serve mass at 7 o'clock in the morning, and
24 when David's name was on the list, he said,
25 I knew I had an alter boy there for the

1 whole week, and then from there they went to
2 school.

3 Q. And then going to relate to the Jury some of
4 the incidents. Did David participate in
5 athletics, in extracurricular activities
6 while he was in high school?

7 A. He played soccer. He was a great soccer
8 player and he run track and done long jump
9 for the school.

10 Q. With regard to David, you have made
11 reference and we have heard some reference
12 to his love for animals. Could you relate
13 to the Ladies and Gentlemen of the Jury what
14 type of life David has enjoyed prior to this
15 incident as it relates to his animals?

16 A. Well, we always had dogs. We raised
17 beagles. He trained them for hunting. Him
18 and I went fishing a lot together. He had a
19 cougar cub that came from Pittsburgh,
20 Pennsylvania.

21 He got this little cougar when he
22 had his spots, and the police took it from a
23 girl that used him, used this cat in her
24 show to dance. She named him Harley because
25 she danced in motorcycle clothes and she

1 didn't have the cat caged in the car. So
2 the police took him and they were going to
3 kill it.

4 First thing comes to their mind it's
5 not in the cage, we're going to shoot it.
6 And the animal rights group got involved in
7 it, and then the police said, We will turn
8 him loose in the woods. Here they are going
9 to turn a baby cougar loose in the woods
10 with no claws. All four paws were
11 declawed. So the animal was brought into
12 Ravenna at this animal farm.

13 The guy called David. David went
14 up. He helped this man take care of animals
15 there. And David brought the cougar home
16 and we had it for four years.

17 Q. And I'm going to stop you right there. I am
18 going to hand you what we marked --

19 - - - - -
20 (Defendant's Exhibit U, poster
21 board with picture of Deft. &
22 cougar, was marked for
23 identification.)

24 - - - - -

25 BY MR. HAUPT:

1 Q. -- as Defendant's Exhibit U, and while the
2 Ladies and Gentlemen of the Jury will see
3 this, can you tell us what U is, what this
4 depicts?

5 A. This is a picture of David. This is Harley,
6 the cougar. Everybody says Harley was a
7 vicious, mean, wild animal that would eat
8 anybody that looked at him. Here is
9 Harley's leash going down this side not
10 hooked to anything. The leash is not
11 fastened to nothing. Here is David
12 scratching Harley's neck so that he would
13 pure. Here's two children behind Harley.
14 One is two years old, and the other one is
15 four years old, and this was at a charity
16 put on by Long John Silvers, and the money
17 from this charity went to Children's Miracle
18 Network.

19 That's David. He could have charged
20 these people for this cat, every picture.
21 They washed four or five cars. This was
22 supposed to be a carwash. They made 200
23 fold on pictures from the cat than they did
24 on washing automobiles. They washed four or
25 five cars.

1 The cat is now living on an animal
2 farm out in Mentor, on the other side of
3 Mentor, B & B Animals. The cat never done
4 no harm to anyone, and the cat never will do
5 any harm to anyone.

6 Q. With regard to this --

7 A. That cat and David swam in our pond. That
8 cat and David and some of these guys that
9 are in the audience swam in our pond with
10 Harley while Harley was trying to catch fish
11 with no claws on his front paws.

12 Q. In addition to Harley there was also another
13 cat?

14 A. A lion cub.

15 Q. And that was Asia?

16 A. Yes. David used to bring these cubs home
17 for a week at a time to baby-sit them to
18 give the guy and the people at the animal
19 farm a little break from them. He didn't
20 have enough cages. So the man kept them in
21 his house some of them.

22 David brought Asia home and that cub
23 had the run of our house; that lion cub, he
24 had the run of our house. It played with
25 you. It was not declawed at the time we had

1 it. It was too young to be declawed. So
2 this cat scratched my arms up, scratched my
3 chest up, scratched my legs, and it come
4 up -- I holler his name, it come up out the
5 basement if the door was open and come over,
6 jump on the couch and play with us.

7 Q. And that cat weighed about how much?

8 A. Oh, 25, 30 pounds or so.

9 Q. And with regard to these animals, David's
10 relationship and as far as showing these
11 animals to people and going around and
12 displaying these animals, was that part of
13 David's life?

14 A. He took these cats everywhere. We took
15 these cats to Bank One in Randolph. They
16 wanted the cats to come in so that they
17 could see them. They wanted to come in to
18 draw people to the bank. They took them
19 there on more than one occasion.

20 We took big Harley there. Harley
21 weighed over 100 pounds, and we took him
22 down and go in and wagging his tail, and the
23 people just congregated there. The cubs we
24 took down, the cubs we took everywhere.

25 Q. And with regard to David's love for these

1 animals, he incorporated that with other
2 people?

3 A. With all people.

4 Q. Now, many of David's friends are here today
5 that will not give testimony. Mr. Kosisko,
6 listen to my question.

7 A. I'm listening.

8 Q. Okay. We talked and many of them are here
9 today.

10 Mr. Kosisko, you know what this Jury
11 is confronted here today with?

12 A. Yes, I do.

13 Q. And with regard to your experiences with
14 David, they are personal and they are of a
15 nature that I have asked you to share some
16 of those relationships and some of those
17 moments that you have had.

18 Is there anything that you would
19 like to say to this Jury as it relates to
20 their difficult decision today?

21 A. There isn't one of David's friends in the
22 audience -- his mother is out there. My
23 wife is out there. There isn't a person
24 that's a friend of David's in this audience
25 that he has not repaired their automobile,

1 went out on the road and got them and took
2 them home if their car was broke down, towed
3 them home with my truck.

4 He would say, I'm going to get
5 so-and-so. They are stuck in the ditch.
6 They are broke down. There is the chain, go
7 and get them.

8 I never had any problems with David.

9 He's a great person. There has been an
10 injustice done to him here.

11 MR. HAUPT: With regard to,
12 Mr. Kosisko, your testimony, I thank you and
13 no further questions.

14 MR. BAUMOEL: No questions, Your
15 Honor.

16 THE COURT: You may step down,
17 sir. Thank you.

18 Counsel approach a minute.

19 - - - - -

20 (A conference was held at the bench
21 outside the hearing of the jury.)

22 THE COURT: They've been sitting
23 here for awhile. Take --

24 MR. HAUPT: Break.

25 THE COURT: We have two options.

1 instruct you on the law. Then there will be
2 closing arguments, and then I'll have a few
3 follow-up pieces of instruction for you.
4 And we will then take you downstairs and
5 have you deliberate.

6 Mr. Purses and Ms. Cady are going to
7 be downstairs with you and please tell them
8 what your pleasure may be as far as your
9 noon meal. If you wish for us to order
10 something in, we will do that. If you wish
11 to go out, we have reservations for you at
12 Bender's Restaurant so we will leave it up
13 to you. You tell us what you want to do and
14 we will accede to your wishes. So we will
15 stand in recess.

16 Please remember the admonitions that
17 I gave to you. We will -- what I'm going to
18 ask you to do is go back down into the, in
19 my courtroom and we're going to give you
20 that whole courtroom to stay in, and if
21 Mr. Purses and Ms. Cady will clear the
22 courtroom. If you need to get something to
23 eat or drink, we will allow that to happen,
24 but let's go to the courtroom first. Stay
25 in there until we make sure the lobby is

1 secure, and then we will have you go there.
2 Court will stand in recess.

3 - - - - -

4 (The Jury recessed at 10:47 a.m.
5 and the following proceedings
6 were had outside the hearing
7 of the Jury.)

8 - - - - -

9 MR. HAUPT: Can we approach, Your
10 Honor.

11 THE COURT: Ladies and Gentlemen,
12 I'm going to release you from the courtroom,
13 but if you go downstairs and the Bailiff
14 asks you move out the lobby area, I'm going
15 to expect you to do what they tell you to
16 do. We will stand recess. You can leave
17 the courtroom.

18 - - - - -

19 (A conference was held at
20 the bench.)

21 - - - - -

22 MR. HAUPT: Just at this time,
23 Your Honor, we would move to introduce as
24 Defendant's Exhibit U.

25 THE COURT: State of Ohio.

1 MR. BAUMOEL: No objection.

2 THE COURT: It will be admitted.

3 MS. HARTNETT: At some point we
4 need to put on the record the exhibits that
5 we intend to offer also, Your Honor.

6 THE COURT: Well, let's go over
7 that now.

8 MR. KEITH: Your Honor, for
9 purposes of brevity, perhaps the prosecution
10 can read in their list. There is only one
11 that we intend to object to.

12 THE COURT: And that is?

13 MR. KEITH: They intend to offer
14 their Exhibit or 2A through EE. Those are
15 pictures that I guess they are described as
16 the earliest photos of the scene. We would
17 like to get them and go through them. We're
18 going to object to anything with blood in
19 it.

20 THE COURT: Why don't you get
21 them and look at it.

22 MS. HARTNETT: 2A.

23 MR. KEITH: We object to 2A.
24 It's a picture of her lying there with blood
25 on it. That's the crime, not the hiring.

1 MS. HARTNETT: 2C.

2 MR. KEITH: Same objection. It's
3 the crime, not the hiring. The aggravating
4 circumstances is --

5 THE COURT: All right, all right,
6 all right.

7 MR. BAUMOEL: It is murder for
8 hire.

9 MS. HARTNETT: 2E.

10 MR. KEITH: So far we object to
11 all of them, Your Honor.

12 MS. HARTNETT: 2K, 2L.

13 MR. KEITH: I don't think we
14 object to 2L.

15 MS. HARTNETT: That's D, 2L. It
16 is 2P.

17 MR. KEITH: We don't object to
18 2P.

19 THE COURT: What's that? That's
20 a nothing.

21 MS. HARTNETT: 2T.

22 MR. KEITH: We object to 2T.

23 MR. BAUMOEL: 2U, 2W.

24 MR. KEITH: Object to 2W.

25 MS. HARTNETT: 2Y, 2X, 2Z.

1 MR. KEITH: All those last ones
2 we object.

3 MS. HARTNETT: 2AA.

4 MR. KEITH: Objection to all of
5 them.

6 MR. BAUMOEL: AA, BB, CC.

7 MR. KEITH: Objection.

8 THE COURT: Sustained.

9 MR. KEITH: Thank you.

10 MS. HARTNETT: State's
11 Exhibits -- and again, this was already on
12 the record which of these were admitted. It
13 was 3A through GG, I believe that
14 includes --

15 THE COURT: What are you saying?

16 MS. HARTNETT: I guess I can list
17 the letters, if you like.

18 MR. BAUMOEL: It was the pictures
19 that were marked 3 that were admitted in the
20 trial phrase.

21 THE COURT: What, going to all of
22 those?

23 MS. HARTNETT: They are pictures
24 of the outside of her home.

25 THE COURT: Okay. You don't

1 object.

2 MS. HARTNETT: I'm asking do you
3 want me to read into the record which
4 letters were admitted?

5 THE COURT: Yes.

6 MS. HARTNETT: I have it the
7 opposite way. Bear with me. This is P, B,
8 C, D, G, H, I, J, L, N, P, W, CC, DD, and I
9 think that is it.

10 THE COURT: No objection?

11 MR. KEITH: (Counsel shakes head
12 from side to side.)

13 THE COURT: They will be
14 admitted.

15 MS. HARTNETT: And we also have
16 photos of the kitchen area which are marked
17 State's Exhibits 4A through J. There is 4L,
18 4(O), 4P, 4R, 4S, 4T, 4W, 4Y, 4Z, 4BB, 4DD,
19 4EE.

20 MR. HAUPT: Objection. They are
21 cumulative and prejudicial. They are
22 inflammatory.

23 THE COURT: Well, let me see
24 them.

25 MR. BAUMOEL: The purpose, Your

1 Honor, that this is a murder for hire; that
2 pictures of the scene are indicative that
3 nothing of value was taken. There was no --
4 there is no forced entry and that some
5 motivation behind this event was to
6 eliminate Yvonne Layne based on the hiring
7 by the Defendant.

8 THE COURT: The Court is going to
9 admit 4A, 4BB, 4Z, 4W, 4P, 4(0), 4L, 4B, 4R,
10 4S, 4T.

11 MS. HARTNETT: This is the next
12 group which would be 5A, B, C, E, G, J, K,
13 L, M, T, U and W.

14 THE COURT: Defense.

15 MR. HAUPT: No objection.

16 THE COURT: All right. Those
17 will go in.

18 MS. HARTNETT: We would next
19 offer State's Exhibits 15A through G which
20 are the child support court orders and
21 related documents.

22 MR. KEITH: No objection.

23 THE COURT: Admitted.

24 MS. HARTNETT: Next would be
25 State's Exhibit 44, series of photographs of

1 the Randolph Route 44 area. That would be
2 44A, P, R, T, N, Q, I, B and D.

3 MR. KEITH: No objection.

4 THE COURT: Admitted.

5 MS. HARTNETT: Next would be 45.
6 Those would be photographs of the Carnation
7 Mall and Comfort Inn, 45F, E, D, C, L, K,
8 J, I, H, and G.

9 MR. KEITH: No objection.

10 THE COURT: Admitted.

11 MS. HARTNETT: Next would be
12 State's Exhibits 48A, 48B and 48C which are
13 all timecards for David Thorne.

14 MR. KEITH: No objection.

15 THE COURT: Admitted.

16 MS. HARTNETT: Next would be
17 State's Exhibit 53 which is a copy of Rose
18 Mohr's timecard.

19 MR. KEITH: No objection.

20 THE COURT: Admitted.

21 MS. HARTNETT: Next would be
22 State's Exhibit 55 which is the card with
23 Joe Wilkes' name and number on the back.

24 MR. KEITH: No objection.

25 THE COURT: Admitted.

1 MS. HARTNETT: And we have
2 State's Exhibits 57A, 57B and 57C which
3 are -- excuse me, 57D, 57E and 57F which are
4 all phone records.

5 MR. KEITH: No objection.

6 THE COURT: Admitted.

7 MS. HARTNETT: State's Exhibit 63
8 which is a letter to Dale's Cuda Shop from
9 Child Support Enforcement Agency.

10 MR. KEITH: No objection.

11 THE COURT: Admitted.

12 MS. HARTNETT: State's
13 Exhibits 64A and B which are copies of
14 payroll records from Dale's Cuda Shop.

15 MR. KEITH: No objection.

16 THE COURT: Admitted.

17 MS. HARTNETT: State's
18 Exhibits 65A, B and C which are bank
19 records.

20 THE COURT: Admitted.

21 MS. HARTNETT: State's Exhibit 67
22 which is a letter found in the Defendant's
23 car.

24 MR. KEITH: No objection.

25 THE COURT: Admitted.

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MS. HARTNETT: State's Exhibit 70
which is a receipt from Kohl's in Stow.

MR. KEITH: No objection.

THE COURT: Admitted.

MS. HARTNETT: And 71 which is
Chris Campbell's time card.

MR. KEITH: No objection.

THE COURT: Admitted.

MR. KEITH: We would move to
admit?

THE COURT: You did.

MR. KEITH: Never mind.

- - - - -
(Court recessed at 11:00 a.m.
and reconvened at 11:13 a.m.,
and the following proceedings
were had.)

- - - - -
THE COURT: Members of the Jury,
you have heard the evidence and you will
soon hear the arguments of counsel. And it
is now my duty to instruct you on the law
that is applicable to these proceedings.

As you know, you and I have separate
and distinct functions to perform in this

1 proceedings. It is your function to decide
2 the disputed questions of fact and to
3 determine what sentence should be imposed
4 upon David G. Thorne, and it is my function
5 to provide the instructions of law.

6 It is your sworn duty to accept
7 these instructions and to apply the law as
8 it is given to you. You are not permitted
9 to change the law nor to apply your own
10 conception of what you think the law should
11 be.

12 As with the trial phase of this
13 case, I will provide each of you with the
14 copy of these instructions when you
15 deliberate so you need not take notes as I
16 read them to you.

17 During your deliberations you will
18 decide which sentence will be imposed upon
19 David G. Thorne. You will decide whether
20 David G. Thorne will be sentenced to life
21 imprisonment without parole eligibility for
22 25 full years or life imprisonment without
23 parole eligibility for 30 full years or to
24 life imprisonment without the possibility of
25 parole or to death.

1 Verdict forms for these four options
2 will be furnished to you and you will sign
3 only one of the verdict forms.

4 In order for you to recommend that
5 the sentence of death be imposed upon David
6 G. Thorne, the State of Ohio has the burden
7 to prove to each member of this Jury beyond
8 a reasonable doubt that the aggravated
9 circumstance of which he was found guilty is
10 sufficient to outweigh the factors in
11 mitigation of imposing the death sentence.

12 David G. Thorne does not have any
13 burden of proof.

14 Reasonable doubt is present when
15 after you have carefully and considered and
16 compared all the evidence, you cannot say
17 that you are firmly convinced that the
18 aggravating circumstances outweighs the
19 factors in mitigation.

20 Reasonable doubt is present when you
21 are not firmly convinced that death is the
22 appropriate punishment.

23 Reasonable doubt is based on reason
24 and common sense. Reasonable doubt is not
25 mere possible doubt because everything

1 relating to human affairs or depending on
2 moral evidence is open to some possible or
3 imaginary doubt.

4 Proof beyond a reasonable doubt is
5 proof of such character that an ordinary
6 person would be willing to rely and act upon
7 it in the most important of their own
8 affairs.

9 The opening statements of counsel
10 and the final arguments of counsel are not
11 evidence. The opening statements and the
12 final arguments are designed to assist you
13 but they are not evidence.

14 While the arguments of counsel are
15 not evidence in this case, the law does
16 permit you to consider the arguments of
17 counsel to the extent that they are relevant
18 to the penalty that should be imposed upon
19 David Thorne.

20 Some of the evidence and testimony,
21 which you considered in the first phase of
22 this case, is no longer relevant at this
23 sentencing proceeding. For purposes of this
24 proceeding only, that testimony and evidence
25 which was presented in the first phase that

1 is relevant to the aggravating circumstance
2 the Defendant was found guilty of
3 committing, and/or to any of the mitigating
4 factors that will be described below is to
5 be considered by you.

6 Only the exhibits which this Court
7 has determined are relevant to the
8 aggravated circumstances or the mitigating
9 factors will be with you again when you
10 deliberate on this proceeding.

11 You will also consider all of the
12 testimony received from the witnesses who
13 testified during this second proceeding and
14 any additional exhibits admitted in this
15 proceeding together with David Thorne's own
16 statement.

17 You are again instructed further
18 that you must not speculate as to why I
19 sustained any objection to a question or
20 what the answer might have been, and you may
21 not draw any inference or speculate on the
22 truth of any suggestion included in a
23 question that was not answered.

24 You are the sole judges of the
25 facts, the credibility of the witnesses and

1 the weight to give to the evidence. To
2 weigh the evidence, you must consider the
3 credibility of the witnesses and you are to
4 apply the tests of truthfulness that you
5 apply in your daily lives.

6 These tests include the appearance
7 of each witness on the stand, their manner
8 of testifying, the reasonableness of their
9 testimony, the opportunity each witness had
10 to see, hear and know the things concerning
11 which they testified, their accuracy of
12 memory, frankness or lack of it,
13 intelligence, interest and bias, if any,
14 together with all the facts and
15 circumstances surrounding the testimony of
16 each witness.

17 Applying these tests you will assign
18 to the testimony of each witness such weight
19 as you deem proper.

20 You are not required to believe the
21 testimony of any witness simply because the
22 witness was under oath. You may believe or
23 disbelieve all or any part of the testimony
24 of any witness. It is your province to
25 determine what testimony is worthy of belief

1 and what testimony is not worthy of belief.

2 The statement of the Defendant is to
3 be weighed by the same rules that apply to
4 any other witness.

5 Generally, a witness may not express
6 an opinion. However, one who follows a
7 profession may express their opinion because
8 of education, knowledge and experience.
9 Such testimony is admitted for whatever
10 assistance it may provide to help you to
11 arrive at a just verdict.

12 However, as with other witnesses,
13 upon you alone rests the duty of deciding
14 what weight should be given to the testimony
15 of the expert.

16 In determining its weight, you may
17 take into consideration their skill,
18 experience, knowledge, veracity, familiarity
19 with the facts of this case and the usual
20 rules for testing credibility and
21 determining the weight to be given to
22 testimony.

23 Certain exhibits have been
24 introduced into evidence. You will again
25 determine what weight, if any, the exhibits

1 should receive in light of all the evidence.

2 In this case the aggravated
3 circumstance is precisely set out in your
4 verdict on the specification to the
5 complicity to aggravated murder count of the
6 indictment. It is as follows: The
7 Defendant, David G. Thorne, did commit the
8 offense of complicity to aggravated murder
9 for hire.

10 Ladies and Gentlemen, the complicity
11 to aggravated murder and the aggravated
12 murder itself are not aggravating
13 circumstances. Rather, the aggravating
14 circumstance which accompanied the
15 aggravated murder, and which was just listed
16 for you, is all that you will consider on
17 the aggravation side of the scale.

18 Mitigating factors are factors that
19 lessen the moral culpability of the offender
20 or diminish the appropriateness of a death
21 sentence. Mitigating factors are factors
22 about an individual or an offense which
23 weigh in favor of the decision that a life
24 sentence is the appropriate sentence.

25 You are bound by law under your oath

1 as jurors to consider the mitigating factors
2 in this case. You shall consider and weigh
3 against the aggravating circumstance proof
4 beyond a reasonable doubt the nature and
5 circumstance of the offense, the history,
6 character, and background of the offender
7 and all of the following factors:

8 1. Whether it is unlikely the
9 offense would have been committed but for
10 the fact that the offender was under duress,
11 coercion or strong provocation.

12 2. The youth of the Defendant.

13 3. The Defendant's lack of
14 significant history or prior criminal
15 conviction and delinquency adjudications.

16 If the Defendant was a participant
17 in the offense but not the principal
18 offender, the degree of the Defendant's
19 participation in the offense and the degree
20 of the Defendant's participation in the acts
21 that led to the death of the victim.

22 5. Any other factors that are
23 relevant to the issue of whether the
24 Defendant should be sentenced to death.

25 This means you are not limited in mitigation

1 to the specific factors which have been
2 provided to you, but you should consider any
3 other mitigating factors that are relevant
4 to the issue of whether the Defendant should
5 be sentenced to death.

6 You shall also consider the
7 statement of David G. Thorne. Whether you
8 consider the nature and circumstances of the
9 event, you may only consider them if they
10 have any mitigating value. You may not
11 consider the nature and circumstances of the
12 crime as an aggravating circumstance.

13 Anyone of these mitigating factors
14 standing alone may be sufficient to support
15 a sentence of life imprisonment if the
16 aggravating circumstance is not sufficient
17 to weigh out -- to outweigh the mitigating
18 factors beyond a reasonable doubt, or the
19 cumulative effect of the mitigating factors
20 may support a sentence of life imprisonment
21 if the aggravating circumstances is not
22 sufficient to outweigh these mitigating
23 factors beyond a reasonable doubt.

24 It is not necessary that you, the
25 Jury, unanimously agree on the existence of

1 a mitigating factor before that factor can
2 be weighed against the aggravated
3 circumstance.

4 The procedure which you must follow
5 in arriving at your verdict in this phase of
6 the trial is prescribed by statute, and in
7 this regard you, the trial Jury, shall
8 consider all the testimony and evidence
9 relevant to the aggravating circumstance and
10 mitigating factors raised at both phases of
11 the trial, the statement of David G. Thorne
12 and the final arguments of counsel.

13 You shall then determine whether the
14 State of Ohio proved beyond a reasonable
15 doubt that the aggravating circumstance
16 David G. Thorne was found guilty to have
17 committed is sufficient to outweigh the
18 mitigating factors present in this case
19 beyond a reasonable doubt.

20 It is the quality of the evidence
21 that must be given primary consideration by
22 you. The quality of evidence may or may not
23 be the same as the quantity of evidence;
24 that is, the number of witnesses or exhibits
25 presented in this case.

1 It is the quality of the aggravating
2 circumstances and the quality of the
3 mitigating factors that you must consider.

4 If all 12 members of this Jury find
5 that the State of Ohio proved beyond a
6 reasonable doubt that the aggravated
7 circumstance the Defendant was found guilty
8 of committing is sufficient to outweigh the
9 mitigating factors in this case beyond a
10 reasonable doubt, then it will be your duty
11 to find that the sentence of death shall be
12 recommended to this court upon David G.
13 Thorne.

14 If you make such a determination,
15 you should do so as if your decision is
16 absolute and that it will be carried out.

17 If you find that the State of Ohio
18 has failed to prove beyond a reasonable
19 doubt that the aggravating circumstance he
20 was guilty of committing is sufficient to
21 outweigh the mitigating factors present in
22 this case, then it will be your duty to
23 determine which of the life sentence
24 alternatives should be imposed:

25 The sentence of life imprisonment

1 with no parole eligibility until 25 years of
2 years of imprisonment, the sentence of life
3 imprisonment with no parole eligibility
4 until 30 years of imprisonment have been
5 served, or life imprisonment without the
6 possibility of parole.

7 To outweigh means to weigh more
8 than, to be more important than. If the
9 weight of the aggravating circumstances and
10 the mitigating factors are equal, then you
11 must proceed to consider the life sentence
12 options.

13 You are not required to unanimously
14 find that the State failed to prove that the
15 aggravating circumstance outweighs the
16 mitigating factors before considering one of
17 the life options; in other words, you should
18 proceed to consider and choose one of the
19 life sentence options if any one or more of
20 you conclude that the State has failed to
21 prove beyond a reasonable doubt that the
22 aggravating circumstance outweighs the
23 mitigating factors.

24 A solitary juror may prevent a death
25 penalty recommendation by finding that the

1 aggravating circumstance in this case did
2 not outweigh the mitigating factors.

3 The particular determination of a
4 life imprisonment term which you make is
5 binding upon the Court, and I, the Judge,
6 must impose the specific life sentence which
7 you choose.

8 You must be unanimous on one of the
9 life sentence options before you can render
10 that verdict to the Court. If you cannot
11 unanimously agree on a specific life
12 sentence, you would then inform the Court by
13 written note that you are unable to render a
14 sentencing verdict after full and complete
15 deliberations on this issue.

16 Ladies and Gentlemen, I'm going to
17 interrupt my instructions to you, and I will
18 permit each side, again, to give a closing
19 argument. The same caution that I advised
20 you about during this trial phrase applies
21 here.

22 The State will go first and allowed
23 to permit -- is permitted to give a rebuttal
24 argument. If you disagree as to their
25 recollection of the facts, remember that you

1 don't do this intentionally, and again, you
2 will have to go back and rely upon your
3 individual and collective memories.

4 With that, State of Ohio may
5 proceed.

6 MR. BAUMOEL: Thank you, Your
7 Honor.

8 May it please the Court, Mr. Haupt,
9 Mr. Keith, Ladies and Gentlemen of the Jury,
10 before I begin with my closing argument and
11 sentencing phase of these proceedings, I
12 want to truly thank you on behalf of myself,
13 Ms. Hartnett, our boss, Robert Horowitz; the
14 entire Stark County Prosecutor's Office and
15 the family of Yvonne Layne.

16 Your duties or obligations as jurors
17 in this case have not been an easy job. You
18 still have work to do. You have been here
19 for over two weeks now, but you have
20 fulfilled your duty as jurors. You have
21 fairly considered all the evidence, and for
22 all of that, we thank you.

23 Your obligation now is not to
24 reconsider your verdict in this case for you
25 have found the Defendant, David Thorne,

1 guilty beyond a reasonable doubt of
2 complicity to aggravated murder as well as
3 finding that this was, in fact, a complicity
4 to aggravated murder for hire.

5 Your job now is to weigh the
6 aggravating circumstance, and I want to be
7 clear now through my argument that there is
8 one and only one aggravating circumstance in
9 this case that there was a murder for hire,
10 and you are to weigh that circumstance and
11 decide whether it outweighs the mitigating
12 circumstances that you heard today by proof
13 beyond a reasonable doubt.

14 If you find that it does, in fact,
15 outweigh it by proof beyond a reasonable
16 doubt, then it is your duty to make a
17 recommendation of death in this case.

18 However, if you find that the State
19 has failed to meet its burden, you have one
20 of three life options that I just told you
21 about; life without the eligibility of
22 parole, life without the eligibility of
23 parole until 30 full years, and life without
24 the eligibility of parole for 25 full years.

25 During the trial phrase we argued in

1 closing argument going over all the evidence
2 and how it applied to the elements of the
3 offense and also how it applied to the
4 specification of murder for hire, and now I
5 just want to, in my closing argument, focus
6 on the murder for hire.

7 As you know, on the evening of
8 March 31st of 1999, Yvonne Layne was home
9 with her four children at 916 Devine Street.
10 She felt safe, felt secure so much so that
11 she left the front door of her residence
12 unlocked. For she did not know that her
13 life was in danger. She did not know that
14 she had a \$200 amount placed on her head.

15 But she was in danger, and as you
16 heard, 18-year-old Joe Wilkes after being
17 promised a better life, after being promised
18 that he would be taken care of by the
19 Defendant, David Thorne, and after being
20 promised \$200, he went into that residence
21 that evening and ended the life of Yvonne
22 Layne.

23 As part of this murder for hire
24 scheme what was David Thorne doing? David
25 Thorne had placed his order for the services

1 that he wanted. He had promised
2 compensation or payment for these services,
3 and that he sat back and let it all happen.
4 And when you break down murder for hire to
5 basic elements, it is actually that cold.
6 Making an order, promising payment for those
7 services, and then sitting back and then
8 letting it all happen.

9 David Thorne did not face any of the
10 dangers involved in committing the murder;
11 having the victim fight back, having
12 somebody unexpectedly show up and confront
13 him. Rather, David Thorne as part of this
14 murder for hire when Yvonne Layne was losing
15 her life was spending time, having fun and
16 showing off his lion cub. He went to his
17 beloved shoot fighting class where he
18 trained in the art of tapping out and other
19 physical assaultive holds, and then he
20 returned home. Before going to sleep, he
21 talked to his girlfriend.

22 Why was this murder for hire
23 performed? Well, you heard the evidence,
24 Ladies and Gentlemen, and there was little,
25 if no evidence of extreme hatred between

1 Yvonne Layne and David Thorne. I mean the
2 sole motivation for this murder for hire was
3 selfish reasons, and that David Thorne
4 wanted his life to be easier and more
5 enjoyable, not worried about money, worried
6 about the custody of his son and worried
7 about his relationships.

8 I think also to give you a proper
9 perspective on this particular murder for
10 hire, I ask you to compare this murder for
11 hire, David Thorne's conduct with that of
12 Karen Enoch.

13 During the time period which we
14 examined in the trial two people came into
15 the life of Joseph Wilkes and had a great
16 effect on his life.

17 First was Karen Enoch and her
18 husband who tried to provide some structure
19 in Joe Wilkes's life, took him in as a stray
20 cat. Took him into her house -- their
21 house, tried to get him a job, have him obey
22 the rules, tried to keep him hanging around
23 the right people, trying to improve his
24 quality of life.

25 For as Mr. Keith told you in the

1 closing argument of the trial phrase, Joe
2 Wilkes had nothing. And the fact that Joe
3 Wilkes had nothing else worked perfectly
4 into David Thorne's scheme of murder for
5 hire. By contrast, the conduct of Karen
6 Enoch and her husband, David Thorne used the
7 fact that Joe Wilkes had nothing else. He
8 used Joe Wilkes' ignorance and his devotion
9 to David Thorne to commit this act.

10 When you compare David Thorne's
11 conduct to Karen Enoch, and when you compare
12 the results that those two were looking for
13 in their contact and relationship with Joe
14 Wilkes, and when you really examine the
15 results of those relationships and those
16 goals, you get a unique perspective about
17 this particular murder for hire.

18 Make no mistake about it, Ladies and
19 Gentlemen, but for the actions of David
20 Thorne, Yvonne Layne would be alive. Much
21 like a puppeteer. David Thorne was pulling
22 the strings and Joe Wilkes was his puppet.

23 When you think about the murder
24 weapon in this case, you will undoubtedly
25 think about that knife, the knife which was

1 purchased at K-Mart which was used there at
2 916 Devine Street, and which was discarded
3 in that storm sewer.

4 But in reality, Ladies and
5 Gentlemen, the weapon in this case, the tool
6 used to murder Yvonne Layne was Joseph
7 Wilkes, and the murderer using that tool was
8 David Thorne.

9 You heard evidence today, very
10 emotional evidence from those who lived with
11 David Thorne and love him as we sit here
12 today. You heard from a mitigation
13 specialist. You have only spoke with those
14 who love David Thorne, who met with him
15 about two to three hours to tell you what
16 type of person he was.

17 Ladies and Gentlemen, the Judge will
18 give you further instructions at the close
19 of these arguments, and he will tell you
20 that you must not be influenced by any
21 consideration of sympathy or prejudice.

22 And I know at a time like this in
23 this sentencing phase, and after having
24 heard the testimony from the relatives of
25 David Thorne, it may be very difficult, if

1 not impossible, to keep emotion out of it,
2 but that is what you are asked to do, and
3 that is what you are instructed to do by the
4 Court.

5 For I submit to you, Ladies and
6 Gentlemen, that if you keep your emotions
7 out of this, once again, you decide this
8 part of the trial based solely on the facts
9 and evidence, I submit to you that that
10 aggravating circumstance does outweigh the
11 mitigating circumstances by proof beyond a
12 reasonable doubt.

13 But what I believe and what we
14 believe the evidence has shown or what the
15 Defense Attorney believed the evidence has
16 shown is not important at this point, it's
17 not relevant. For it is your job to
18 evaluate the evidence.

19 And we have the utmost confidence
20 and faith in all of you in your ability to
21 evaluate evidence, in your ability to follow
22 the law, and to come to a decision that is
23 both fair and just in accordance with the
24 laws of the State of Ohio.

25 Thank you very much.

1 THE COURT: Thank you,
2 Mr. Baumoel. Mr. Haupt.

3 MR. HAUPT: Thank you, Your
4 Honor. May it please the Court, Attorneys
5 Baumoel and Hartnett, Attorney Keith, Ladies
6 and Gentlemen. I really have a difficult
7 time addressing you. I hope that throughout
8 the proceedings that I have displayed my
9 conduct as being honorable, appropriate,
10 that I have been within the rules and bounds
11 of your expectations for an attorney who is
12 representing the interests and the rights of
13 those who are accused. That is my role.

14 I am but a servant, and I am here at
15 this time talking at this phase, a phase
16 that I really never planned on talking at.

17 I don't know Joe Wilkes. Joe Wilkes
18 from the evidence that has been presented is
19 an enigma. He's an unknown. He's someone
20 who is indescribable.

21 Yes, Joe Wilkes was a deprived young
22 man as far as when he chose to ignore the
23 truth. When he chose not to live his life
24 in accordance with the standards that we
25 have come to expect within our community.

1 I certainly don't stand before you
2 to say that I know when he does and when he
3 doesn't. That is your decision. I have no
4 clue who he is.

5 As far as David Thorne's rights,
6 responsibilities, that rests with you.
7 Collectively 12 of you will go back in and
8 look at this case and apply the facts to the
9 law, and I am going to live with your
10 decision for the rest of my life.

11 I believe in the system. I will be
12 back arguing, defending the rights of those
13 who have been accused with the same zeal,
14 same enthusiasm and the same hope as I did
15 here with an individual.

16 Not all of the cases go to trial.
17 The close ones do. This was a close case.
18 Obviously you have chosen otherwise.

19 The mitigating factors in the laws
20 of the State of Ohio provide through the
21 legislators that we have elected that death
22 is a penalty that is appropriate and death
23 is appropriate only when the aggravating
24 circumstance outweighs beyond a reasonable
25 doubt any of the mitigating factors.

1 I want to point out to you
2 specifically a mitigating factor that states
3 that you will read that the Defendant was a
4 participant in the offense but not the
5 principal offender, the degree of the
6 Defendant's participation in the acts that
7 led to the death of the victim.

8 I find it very, very difficult to
9 remain credible with you. In fact, I stand
10 here and I am not sure how you view me, and
11 it's really not important other than I would
12 want to share with you how sorrowful I am to
13 the Layne family and to the loss of their
14 daughter, their sister, their neighbor,
15 their friend.

16 Cases are not, unfortunately, about
17 resolving the loss and putting closure on it
18 as one would think. It's a time for
19 closure? No. It's a time for determining
20 whether the prosecution's burden has been
21 met. I am going to confidently state to you
22 it's not about Yvonne Layne and her life.
23 It's about David Thorne and the evidence
24 that has been presented.

25 Issues of resolution are for another

1 court, maybe for a civil court, maybe at
2 another hearing in some other type of
3 fashion, but today we know that Joe Wilkes
4 took the life of Yvonne Layne, and that
5 while the question is David Thorne's life,
6 and as we know him about this circumstance
7 such that he is at the most extreme end of
8 the spectrum, the most extreme.

9 The legislators have provided that
10 he should be released after a life sentence
11 and 25 full years. They obviously have
12 determined that there are degrees of
13 culpability to be considered in cases
14 charged of this nature.

15 I believe all of us would agree that
16 death is the most extreme form of punishment
17 and death is there for the most extreme
18 forms of behavior. For his life has no
19 value, no meaning, nothing, and there are
20 those at the other end of the spectrum.

21 David Thorne's participation from
22 your view has been instrumental in Joe
23 Wilkes taking cocaine and LSD, walking
24 3.5 miles and walking into a home and up a
25 set of steps and sitting down and having a

1 conversation with a woman with apparently he
2 had met only three times according to the
3 testimony. At the last moments of Yvonne
4 Layne's life did Joe Wilkes have the
5 opportunity to prevent that loss of life?

6 Do you have any evidence that David
7 was in that room holding her head back?
8 Would that have a stronger provocation for
9 you to want to put him to death if you had
10 the evidence that David was standing there
11 holding her hair back and pulling her neck
12 so that Joseph Wilkes could do the
13 indescribable of which you have seen
14 photographs just are such that would make
15 you sick?

16 During the 3.5 miles that Joe Wilkes
17 walked from the Carnation Mall to Yvonne
18 Layne's life did he have a chance to divert
19 and walk the other way?

20 Yes, I'm an advocate. Yes, I want
21 to tell you the good things about David
22 Thorne's life. Yes, I am sorrowful for
23 Yvonne Layne's loss. And yes, I can talk
24 about the person that we didn't get to hear
25 from today was Yvonne Layne's family and

1 what that loss meant to her, but that's not
2 the issue.

3 Are there mitigating factors? Yes,
4 there are. The law has provided that among
5 the mitigating factors are his lack of
6 significant history of prior criminal
7 convictions and delinquency adjudications.

8 If you had a worker come in here and
9 say to you he had a history of juvenile
10 delinquency adjudications, he had a history
11 of skirmishes with the law; would you feel
12 that would be of greater influence for you
13 to choose death over a life sentence? Or
14 would that not matter, because what matters
15 is that Yvonne Layne's life is lost and she
16 is an innocent woman who leaves five
17 children.

18 Your emotions are not to be
19 forgotten. I'm sensitive to them because
20 I'm sure all of those pictures were of great
21 impact for you, and I can't change your view
22 of the evidence even though I disagree.

23 To be respectful, I don't know how
24 the legislature chose to put the youth of
25 the Defendant. So if the Defendant is a

1 younger person, they should be considered
2 younger people have a tendency to be
3 polite? I don't know. I don't know how to
4 read the youth of the Defendant, but David
5 is a young man and he will spend, if you so
6 choose, 25 years here. He still will be a
7 person of age, if you choose to say he
8 should not live in that institution until he
9 dies. That's your decision, and all of you
10 will collectively discuss it and make that
11 final decision, but are there mitigating
12 factors? Yes, there are.

13 Are you going to follow the law? I
14 pray to God that you do.

15 In looking at the general terms of
16 David Thorne's life, is it a throwaway?
17 No, it's not. I'm asking for you to
18 consider the life sentences. It's not a
19 throwaway. We can't reconcile Yvonne
20 Layne's life by saying take David Thorne's.

21 The testimony from the people today
22 show far more clearly that the loss of
23 David's father in his life has contributed
24 to for some reason him to be in this
25 courtroom here today. Brandon gets a death

1 sentence with regard to the impact of this
2 if you sentence David's life to death. He
3 will not know his father, but that's your
4 choice. You must weigh that and make that
5 decision, and again, you decided that Joe
6 Wilkes was somebody that you could rely
7 upon. So it's your judgment that will be
8 the final say in this case.

9 Mr. Keith will address you.

10 THE COURT: Thank you, Mr. Haupt.

11 MR. KEITH: Your Honor, if it
12 please the Court, Ms. Hartnett, Mr. Baumel,
13 Mr. Thorne, Ladies and Gentlemen. The only
14 time in the State of Ohio the Jury considers
15 penalty or is even permitted to know what
16 the penalty might be is in this case, and
17 it's -- I don't know, but it's an odd sort
18 of a thing that you folks are going to
19 decide the penalty.

20 You're going to hear the
21 instructions of law. I am sure the Judge,
22 we all know that you're going to follow him
23 as best you can, but you're human beings.
24 Nobody gets here to this phase in their
25 life, to a mitigation hearing because they

1 have not been convicted of something
2 terrible. Nobody gets here because they
3 stole a candy bar.

4 In Ohio we don't have any of that
5 nonsense, and in order to end up here, not
6 only did you have to be involved in a
7 murder, not only did you have to be involved
8 in the death of someone, but there had to be
9 a circumstance that made it worse than
10 usual.

11 You have decided that David Thorne
12 was, in fact, involved in that and you know,
13 as Jeff has struggled with, certainly we, as
14 his lawyers, had some problems with Joe
15 Wilkes. You know that. We accept that you
16 have made your decision.

17 The question is what is your next
18 decision?

19 I became a lawyer -- and I'll take a
20 moment. I became a lawyer not because my
21 father was a lawyer or I even so much
22 admired the law, but for some very selfish,
23 basically motives is I started out in life
24 swinging a hammer as a railroad track
25 laborer at Republic Steel, and at some point

1 I was given the gift of education, and I
2 became a lawyer because I saw it as a place
3 where I would never be unemployed.

4 As I have come to be a lawyer and as
5 I have come to understand the law, I have
6 come to appreciate how much it means to our
7 relationships with each other, how much it
8 reflects us as a society, and what it means
9 about us as a society.

10 And I became a defense lawyer, and
11 many of the people who cared about me or
12 liked me in some way said to me How do you
13 represent people like that? How do you do
14 that?

15 And as the experience went on and I
16 thought about it, I considered it, and my
17 answer to them was, Often we represent the
18 best of the people who we are there to
19 represent. The State of Ohio presents a
20 specific act which is the worst of him and
21 seeks to prove that specific act. We so
22 often have to represent the best of them as
23 somebody there with the skills and knowledge
24 and the opportunity to stand for that person
25 in the most difficult of situations.

1 The prosecution suggested during the
2 trial phase that we attempted to distract
3 you somehow. Today they have suggested
4 through their statements and their questions
5 that we have brought to you the best of
6 David Thorne, and hopefully we have done
7 that. That is absolutely our intention is
8 to bring to you both sides of this person's
9 life.

10 We accept that you found that he
11 committed this act. The question becomes
12 the State of Ohio through its laws has given
13 you 12 folks the right and the burden of
14 deciding what the punishment or the penalty
15 should be.

16 And it is almost bizarre or absurd
17 to stand up here and try to talk about
18 whether one murder for hire or another
19 deserves one penalty or not. It is hard to
20 stand here with credibility and say, Ladies
21 and Gentlemen.

22 You know, some years ago I was
23 struggling with a rape case to say how was
24 this not so bad as other rapes, and I
25 finally just gave up. I said, You know, it

1 doesn't matter. It's a horrible violation
2 of life, and so is this.

3 Yvonne Layne is dead. I suspect the
4 prosecution at some point will invite you to
5 consider the agony and the passion of her
6 death and what she went through and the
7 agony of the people that she leaves behind.

8 This event does not occur in our
9 life without those things being there.
10 That's why this is a death penalty case.

11 Question becomes is you have to
12 decide what should happen to David Thorne.
13 I will offer to you the things that I
14 believe, the things that I can to beg for
15 his life, and that's our job.

16 And I suspect the prosecution is
17 going to say that he got up and begged for
18 his life and how dare they?

19 Well, it is a human life. It is not
20 all bad. This is not a person as you know
21 who is so cold, so evil, so tormented that
22 there is simply nothing there.

23 And so the question for you to
24 decide is what is the penalty? Is it about
25 revenge? For if it is about revenge, then

1 there is no one penalty. There is only an
2 eye for an eye.

3 If it is about punishment, then the
4 law permits us in this phase to talk about
5 the best of this person and to talk about
6 the circumstances surrounding him.

7 Murder for hire. You're going to
8 have a copy of the Judge's instructions in
9 your hand, and the instructions make clear
10 to you that if this weren't an aggravated
11 murder or complicity to aggravated murder,
12 that you would not be deciding the penalty.
13 It is the situation that it was presented
14 for hire that puts the penalty part of this
15 in your hands, that says that before that
16 penalty can be brought, people from the
17 community must decide.

18 In essence, they take the power away
19 from the Judge. For if you decide there is
20 to be no death penalty, then it is no longer
21 an issue.

22 Murder for hire. Prosecution has
23 reviewed the horror of this event. You have
24 no question about it. You found that in
25 your original verdict. And as I said, it is

1 almost absurd to talk about, and as I say,
2 we don't get here unless that happened.

3 In this particular situation, folks,
4 Joe Wilkes testified. I think he told us
5 three different times that essentially he
6 did this because he wanted David Thorne to
7 like him.

8 We have long struggled with the
9 issue of human life and \$200. Once again,
10 it demeans all of us to discuss that issue.
11 The only point that I am trying to make is
12 that without money, without a contract, as
13 has been described, there may well have been
14 the same event based on what you believe
15 that Joe Wilkes has said.

16 And as such, when you think about
17 the circumstances surrounding it, that it
18 may take some of the sting away from this
19 situation. Is it personal? Is it
20 horrible? Are you offended? Are you
21 frightened? Are you angry? Are you
22 outraged? I would be surprised if anybody
23 said they weren't. You have to be.

24 Joe Wilkes who can sit here and say
25 he grabbed somebody's hair and cut their

1 throat is doing 30 years before he can ask
2 somebody else to decide whether or not he is
3 then permitted some time in his life back
4 out in the community.

5 Joe Wilkes who in one sense the
6 prosecution ascribes to David Thorne is
7 somebody who is colder, worse, more
8 difficult. This is the individual who is
9 cold enough to describe for you how he did
10 these things and made those choices, and
11 he's doing 30 years.

12 And the question becomes, you know,
13 with regard to David Thorne, is he any
14 better or any worse? And you have to
15 answer that.

16 There may be some issue of doubt
17 that remains with you residually about Joe
18 Wilkes, and if there is, then to pronounce
19 the death penalty may remove, not only as
20 the sister has said, any opportunity for
21 redemption, but also any opportunity to
22 correct what we may not have been able to
23 deal with here.

24 You heard from the people that care
25 about David Thorne. You have heard from the

1 people who love him. Prosecution may get
2 back up and suggest to you, well, we're
3 trying to distract you from that. You're
4 absolutely right. The law requires that you
5 both look at this person's bad act and also
6 this sum and quality of the other parts of
7 their life.

8 There are many victims here, and in
9 one sense Yvonne Layne is the least of them.
10 She has lost the most but she is at peace.
11 The people who love her and care about her
12 do not have that peace. Sometimes
13 Prosecutor invites a Jury to give them peace
14 in honoring a person's death in killing
15 somebody else.

16 The issue is what is the
17 punishment? Not what will somehow justify
18 this horrible act. You folks have to weigh
19 David Thorne's life against this set of
20 choices you have found he has made and
21 decide what the punishment ought to be.

22 The Judge has told you that any one
23 of you, if you believe that the death
24 penalty or the aggravating circumstances is
25 not outweighed by the rest of his life; in

1 other words, you can impose horrible
2 punishments here. You can leave a person to
3 face off. You can say to them, Well, you're
4 going to leave prison when you die, but it
5 is because the State of Ohio killed you.
6 It's because you died naturally.

7 You can impose that future on this
8 person, but if any one of you solitarily and
9 singly decides that the death penalty is not
10 appropriate, then it will not be imposed,
11 and I implore you to stand on your
12 conscience and not to be collegial to make a
13 decision against him. And I know it's not
14 an easy one.

15 Now, so often we say somebody ought
16 to do something, and this is a Jury where, I
17 guess, gets to do something, and I guess the
18 question is what, Ladies and Gentlemen. And
19 I respect the burden.

20 Certainly I would ask you to spare
21 David Thorne's life.

22 I have nothing else. Thank you.

23 THE COURT: Thank you, Mr. Keith.

24 Mr. Baumael.

25 MR. BAUMOEL: Thank you, Your

1 Honor.

2 Ladies and Gentlemen, just briefly,
3 the course of their closing argument
4 referred several times to the Prosecutor may
5 come up here and do or not do. To some
6 extent, we resent that, some kind of canned
7 responses on these circumstances.

8 It does not need to be said that
9 agony and pain of the Layne family is gone.
10 It does not need to be attacked that the
11 Defense attorneys have stood up here and
12 asked and begged you for David Thorne's
13 life. That is their job.

14 What I ask of you is to decide this
15 case based on the evidence and the facts and
16 not what the attorneys think or ask you to
17 do, and not based on emotion.

18 We don't want you to ignore the
19 relatives of David Thorne, but we want you
20 to be able to decipher what is fact and what
21 is just plain love and affection for
22 somebody that he was a member of their
23 family.

24 When you talk about David Thorne and
25 when you talk about Joe Wilkes, you compare

1 the two. David Thorne does have a family
2 who loved him, does have a support system,
3 constant roof over his head where he did not
4 have to worry about where he was getting his
5 next meal. He had a good job. And once
6 again, in the words of Mr. Keith, Joe Wilkes
7 had nothing, and yet despite the fact that
8 David Thorne had all of those things going
9 for him, he still committed this crime.

10 Once again, Ladies and Gentlemen, I
11 thank you and I trust and respect the job
12 that you are about to undertake, and you
13 will be fair and consider the evidence and
14 come to a fair and just decision.

15 Thank you.

16 THE COURT: Thank you,
17 Mr. Baumoel.

18 Ladies and Gentlemen, you're going
19 to have four verdict forms in your
20 possession during your deliberation in the
21 Jury room, and I will take up these four
22 verdict forms in precisely the same order as
23 my previous instructions to you.

24 First one reads, In the Court of
25 Common Pleas, Stark County, Ohio, Case

1 No. 99-CR-0873, State of Ohio versus David
2 G. Thorne.

3 It reads, We, the Jury, being duly
4 impaneled and sworn, do hereby find that the
5 aggravating circumstance that the Defendant
6 was found guilty of committing does not
7 outweigh the mitigating factors presented in
8 this case by proof beyond a reasonable
9 doubt.

10 We therefore unanimously find that
11 the sentence of life imprisonment without
12 the possibility of parole for 25 full years
13 should be imposed upon the Defendant, David
14 G. Thorne.

15 Each of us Jurors concurring in said
16 verdict signs his or her name this blank day
17 of January, the year 2000.

18 The second verdict form reads the
19 same. However, in the paragraph it states,
20 We therefore unanimously find that the
21 sentence of life imprisonment without the
22 possibility of parole for 30 full years
23 should be imposed upon the Defendant, David
24 G. Thorne, and then again, there is a place
25 for you to sign your name.

1 The third verdict form reads the
2 same as the first two in finding that the
3 aggravated circumstances that he was found
4 guilty of committing does not outweigh the
5 mitigating factors.

6 Then your third life sentence option
7 would be that you, the Jury, find that the
8 sentence of life imprisonment without the
9 possibility of parole should be imposed upon
10 the Defendant, David G. Thorne.

11 Final verdict form reads, We, the
12 Jury, being duly impaneled and sworn, do
13 hereby find that the aggravating
14 circumstances in this case that the
15 Defendant was found guilty of committing
16 outweighs the mitigating factors by proof
17 beyond a reasonable doubt.

18 We therefore unanimously recommend
19 that the sentence of death be imposed on the
20 Defendant, David G. Thorne.

21 Each us Jurors concurring in said
22 verdict signs his or her name to this
23 verdict form.

24 Should the Jury be unable to reach a
25 verdict after full and complete

1 deliberations, you shall advise the Court
2 accordingly in writing and provide this note
3 to the Bailiff. The Bailiff will then
4 provide your note to the Court, and I will
5 then receive it and give you further
6 instructions.

7 If you have a question that you are
8 unable to resolve among yourselves, again,
9 it may be reduced to writing and submitted
10 to me. If I am permitted to answer the
11 question, I will do so. If I am prohibiting
12 from answering it, I will so advise.

13 You must not be influenced by any
14 consideration of sympathy or prejudice. It
15 is your duty to carefully weigh the
16 evidence, to decide all the disputed
17 questions of fact, and then to apply the
18 instructions of this court to your findings
19 and render your verdict accordingly.

20 In fulfilling your duty your efforts
21 must be to arrive at a just verdict.
22 Consider all the evidence and make your
23 findings with intelligence and impartiality
24 and without bias, sympathy or prejudice so
25 that the State of Ohio and David Thorne will

1 feel that their case was fairly and
2 impartially tried.

3 If during the course of this part of
4 the proceeding the Court said or did
5 anything that you consider an indication of
6 the Court's view on the facts, you are
7 instructed to disregard it.

8 Your initial conduct upon entering
9 the Jury room is a matter of importance. It
10 is not wise immediately to express a
11 determination or to insist upon a certain
12 sentence because if your sense of pride is
13 aroused, you may later hesitate to change an
14 opinion even if convinced that you are
15 wrong.

16 Consult with one another. Consider
17 each other's views and deliberate with the
18 objective of reaching an agreement if you
19 can do so without disturbing your individual
20 judgment.

21 Each of you must decide the
22 appropriate sentence for yourself but you
23 should do so only after a discussion and
24 consideration of the case with your fellow
25 jurors. Do not hesitate to change an

1 opinion if convinced that it is wrong.
2 However, you should not surrender honest
3 convictions in order to be congenial or to
4 reach a decision solely because of the
5 opinion of other jurors.

6 Again, the three alternate jurors
7 were selected to serve. It will be
8 necessary again for you to remain with us
9 until the Jury composed of the 12 has
10 returned its verdict here in open court.

11 Again, you are not to discuss this
12 case with anyone or with each other or tell
13 anyone how you would have voted until this
14 Jury has returned its verdict.

15 The foreperson whom you previously
16 selected as foreperson may continue in that
17 capacity or you may elect someone entirely
18 different for this phase of the proceedings.

19 The foreperson's function, again,
20 will be to expedite the handling of your
21 deliberations, see that your discussions are
22 orderly, and that each juror has an
23 opportunity to discuss this matter and cast
24 their vote. Otherwise, again, the authority
25 of the foreperson is the same as any other

1 juror.

2 I will place in your possession the
3 exhibits that I have admitted and the
4 verdict forms. Again, the foreperson will
5 retain possession of these records including
6 the verdicts and return them to the
7 courtroom.

8 Until your verdict is announced in
9 open court, you are not to disclose to
10 anyone the status of your deliberation or
11 the nature of your verdict.

12 Counsel desire anything further?

13 MR. BAUMOEL: No, Your Honor.

14 MR. HAUPT: No, Your Honor.

15 THE COURT: Ladies and Gentlemen,
16 you will be sequestered during the
17 deliberations and sentencing phase of this
18 case. It is, again, impossible for the
19 Court to determine the length of time your
20 deliberations should take.

21 You should take the time which you
22 believe, as a Jury, to be appropriate to
23 thoroughly and carefully review all of the
24 evidence and information provided to you as
25 permitted by these instructions. The rules

1 to be followed during sequestration will be
2 identical to the rules that we followed
3 during the trial phase of the case, and we
4 will, of course, attempt to accommodate you
5 during your deliberations.

6 It appearing that the instructions
7 are complete, we will now escort you back
8 downstairs. My understanding is that you
9 are going to stay inside. We will give you
10 the entire courtroom in which to have lunch,
11 but if you wish to deliberate, then advise
12 and we will have you go into the separate
13 room in which to deliberate.

14 So if you don't wish to deliberate
15 and you wish to eat, feel free to do that,
16 but if you decide to talk about the case,
17 the 12 jurors will be placed in the Jury
18 room, the three alternates in Mr. Purses'
19 office, and then you may eat if you wish and
20 discuss the case, but please advise.

21 Whenever all 12, I repeat all 12
22 jurors agree upon a sentence, you will sign
23 the verdict in ink, advise the Bailiff by
24 knocking on the door, and we will bring you
25 back into the courtroom.

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This case stands in adjournment.

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(At 12:10 p.m. the Jury went out for deliberations on Thursday, January 28, 2000.)

THE COURT: Ladies and Gentlemen, nobody is permitted close to the door of my courtroom, so do not go there and we stand in recess.

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(At 2:15 p.m. the Jury sent out a note and it read as follows: "What guidelines, if any, do we have to determine these levels of punishment

1. Life-parole 25 years.
2. Life-parole 30 years.
3. Life-no parole? "

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(The answer from Judge Reinbold was as follows: "Consider all the evidence, arguments of counsel and the instructions I provided.

Judge Reinbold.")

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(The following proceedings were had at 3:30 p.m. outside the hearing of the Jury with the Judge and Jury Commission present.)

THE COURT: This is in regards to the State of Ohio versus David Thorne, and the record should reflect the Court is taking information regarding jurors who failed to appear for the Jury on 1/12.

On 11/29/99 there was an initial mailing in which all potential jurors were requested to fill out certain documents and then follow their reporting instructions posted on the back of this r

The instruction advi were to call in on January 7 after 5 p.m., and pursuant t call, they would have been t again on January 10, 2000. being needed then, they were call back on January 11 to f. instructions.

On January 11 all jurors were ordered to report to the Court of Common Pleas on January 12, 2000.

no-show jurors

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The following failed to appear, and the Court is going to issue a show cause as to why they should not be held in contempt.

It's Juror 324, the Court and Jury Commission feel was of a legitimate excuse and will excuse 324.

Juror 342, Sean Edwards.

COMMISSIONER TRIPP: I spoke with him and he said he would return his paper work and he would be reporting, and he never did.

THE COURT: I'll issue a show cause on Sean.

Juror 346, Michael Alan Kennedy. His excuse was denied on the 14th. Told him he needed to report. Any further word from him?

COMMISSIONER TRIPP: No.

THE COURT: I'll issue.

Juror 352, Barbara Kohr, Ridge Electric, office manager. Had she notified us at all that she was going to have a problem?

COMMISSIONER VANCE: No.

THE COURT: She failed to

1 appear?

2 COMMISSIONER TRIPP: Yes.

3 THE COURT: Juror 360, Jane
4 Petcavage, Massillon Cable, account rep.
5 Said she was not reporting. Excuse denied.

6 She called at 2:08 on 1/12, said she
7 tried to call four times between 7:30 but
8 ill but not treating with a doctor. I have
9 no time.

10 She will come in. Failed to report,
11 so I'll issue a show cause on Jane
12 Petcavage.

13 Juror 363, Gregory Kennedy. He is a
14 Texas Pride sales rep, and what's the story
15 on him?

16 COMMISSIONER TRIPP: I heard
17 nothing from him. He never showed up.

18 THE COURT: I'll issue a show
19 cause on 363.

20 Gregory Burns, we know Gregory
21 Burns. I'll issue a failure to appear.
22 Gregory Burns, the record should reflect,
23 had numerous conversations with the Jury
24 Commissioners and at all times indicated --
25 first, I don't think he ever actually spoke

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1 to you. He went through his brother.

2 COMMISSIONER TRIPP: Said it was
3 his brother.

4 THE COURT: We'll find out who it
5 was.

6 Juror 394, Thomas Menches, Massillon
7 City School Teacher. Anything I should know
8 about him?

9 COMMISSIONER VANCE: Nothing.

10 THE COURT: We will issue a show
11 cause on him.

12 Juror 398, Juanita Lindsey. Mailed
13 in her second questionnaire and then we
14 never heard from her again?

15 COMMISSIONER TRIPP: No.

16 THE COURT: We will issue a show
17 cause on her.

18 408, Eric Bentley. Called in at
19 2:20 on the 12th. He forget to call. We
20 will issue a show cause on him.

21 Juror 418, some person said he does
22 not live there but he has the paper work,
23 sent follow-up letters and left a message
24 for him with Local 550, employer.

25 Anything from him at all?

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COMMISSIONER TRIPP: Nothing.

THE COURT: I'll issue on him, and then we will deal with him when he gets here.

Steven Green, 427, works at Hendrickson as a painter. Nothing at all?

COMMISSIONER TRIPP: No.

THE COURT: I'll issue a show cause on him.

Paul Harper, Juror 446; Grand Central Auto, shipping and receiving. Anything from him?

COMMISSIONER TRIPP: (Commissioner shakes head from side to side.)

THE COURT: I'll issue a show cause on him.

George Berbari, the Alibi owner. Doesn't he own the Gadsby or Barry's Bar, Berbari, Gadsby. George is probably down at Barry's. Anything from him?

COMMISSIONER TRIPP: No.

COMMISSIONER VANCE: No.

THE COURT: Can't wait to get the calls on him. I'll have 12 lawyers calling me. Issue a show cause.

1960

1 Marylou Brunner, husband called.
2 She is ill and cannot talk.

3 COMMISSIONER TRIPP: I didn't
4 speak with him.

5 COMMISSIONER VANCE: I believed
6 him. I talked to him.

7 THE COURT: Excused.

8 469, Matthew Dale Giltz, G I L T Z
9 from Greif Brothers. Any word on him?

10 COMMISSIONER VANCE: (Commissioner
11 shook head from side to side.)

12 COMMISSIONER TRIPP: (Commissioner
13 shook head from side to side.)

14 THE COURT: We will issue a show
15 cause.

16 Justin James Miller, left message at
17 this number. It was the Miller answering
18 machine and no one has returned calls. Sent
19 follow-up letters.

20 We will issue a show cause.

21 Jon Burness, retired. I wonder how
22 old he is?

23 COMMISSIONER VANCE: He's 71. He
24 was born in 1928.

25 THE COURT: I'll excuse him.

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Ora Mae, Thea, do you remember her?
Ora Mae, I'll excuse her.

- - - - -
(This Juror excuse session
ended at 3:45 p.m.)
- - - - -

TIME: 4:30 P.M.

(The following proceedings were had
with the Jury, the Judge, Bailiff
and Court Reporter present.)
- - - - -

THE COURT: Folks, let me just
give you the admonitions before I leave.
And then I'll leave and when you're done
ordering, you can kind of come out and sit
in the courtroom.

Again, it's a very significant part
of the trial. I ask you to remember all the
admonitions that I have given you
throughout. They certainly apply. You have
had one night already in sequestration. It
is the same exact rules. I ask that you
follow those same rules.

If you have new reading material,
make sure you let Peggy and the gentleman

1962

1 know what you so they can look it over.

2 For those of you parked in the Bliss
3 Tower, we're going to leave your car there
4 if that's okay with you. They pull the door
5 down to lock it up. They have a high gate
6 so your car is safe. Nobody can get in
7 there and they know that you're there, and
8 they are going to make sure and go by and
9 check your cars before they leave and then
10 they will leave them there.

11 It will take us then probably two
12 trips to get to the Hilton so we will take
13 you down through the basement. We will take
14 half of you with your bags, get you over
15 there, come back, pick up the other half.

16 And then tomorrow morning I think
17 what we will do is have you check out and
18 bring all your stuff with you in the same
19 procedure. So when you get up in the
20 morning, pack and if you need to go back
21 tomorrow night, we have the rooms reserved.
22 We will just impose upon you to truck all
23 the way back, but we will have you start
24 again at 8:30 as near as you can, same
25 routine.

1963

1 So tomorrow morning when you get up,
2 pack as if you're leaving. We will get you
3 back here the same way, and then if
4 necessary, you need to go back tomorrow
5 night, we will just reverse the process.

6 Okay. Thank you all for a good
7 day's work and I will see you tomorrow
8 morning.

9 UNIDENTIFIED JUROR: Judge, my
10 suitcase is in my van.

11 THE COURT: So you're going to
12 have a long night sleep in those clothes,
13 aren't you?

14 Do you know where your car is?

15 UNIDENTIFIED JUROR: If you wanted
16 to send somebody over to get it, that would
17 be fine.

18 THE COURT: Would you tell us?

19 UNIDENTIFIED JUROR: I am on the
20 fifth floor and I am the only one up there.
21 I am a Mercury Villager with a van.

22 THE COURT: Why don't you give
23 the keys to Jim so he'll make sure your
24 suitcase gets over there.

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(Court recessed at 4:33 p.m. on
Thursday, January 27, 2000.)

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FRIDAY, JANUARY 28, 2000:

(Deliberations started at 8:30 a.m.)

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(The following notes were sent
out by the Jury: The first one was
at 9:01 a.m. and reads as
follows: "After four votes with
subsequent discussion, we are
unable to unanimously agree on a
life sentence option.")

- - - - -

(The second note sent was out at
10:00 a.m. and reads as
follows: "We have decided against
the death penalty. We have
discussed over and over our other
options, and we have people very
definite on one decision, and
others very definite and set on
another sentence. This is not
going to change (after multiple
votes.) No further deliberation is

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going to change this."

TIME: 10:45 P.M.

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(The Jury was brought in the
courtroom and the following
proceedings were had.)

- - - - -

THE COURT: Ladies and Gentlemen,
in a large portion of cases absolute
certainty cannot be attained or expected.
Although the selection must reflect the
decision of each individual juror, and not
mere acquiescence in the conclusion of other
jurors, each question submitted to you
should be examined with proper regard and
deference to the opinions of others.

It is desirable that this case be
decided. There is no reason to believe that
this case would ever have been submitted to
a Jury more capable, more impartial or more
intelligent than this one. Likewise, there
is no reason to believe that more or clearer
evidence would ever be produced by either
side.

It is your duty to decide this case

1 if you can conscientiously do so. You
2 should listen to one another's opinions with
3 a disposition to be persuaded. Do not
4 hesitate to re-examine your views and change
5 your position if you are convinced it is
6 erroneous.

7 If there is disagreement, all jurors
8 should re-examine their position, given that
9 a unanimous decision as to a life sentence
10 alternative has not been reached.

11 Jurors for one life sentence
12 alternative should consider whether their
13 position is reasonable, considering that it
14 is not shared by others equally honest who
15 have heard the same evidence with the same
16 desire to arrive at the truth and under the
17 same oath.

18 Likewise, jurors for another life
19 sentence alternative should ask themselves
20 whether they might not reasonably doubt the
21 correctness of a judgment not concurred in
22 by all other jurors.

23 Ladies and Gentlemen, I want you to
24 go back in and continue your deliberations
25 with these instructions that I have given to

1 you. I would ask that you think them over
2 and continue your deliberations.

3 With that I will return you to the
4 Jury room for further deliberation.

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6 (At 10:54 a.m. the Jury went back
7 into for deliberations.)

8 - - - - -

9 (The following proceedings were had
10 outside the hearing of the jury.)

11 - - - - -

12 THE COURT: I'm going to go up
13 and dictate this and I'm going to make 15
14 copies and I'm going to bring it down and
15 give them each a copy of this, so I'm going
16 to do that now.

17 MR. BAUMOEL: Judge, I would just
18 ask that we read into the record the
19 specific notes we have got from the Jury and
20 indicate that the Defendant was present
21 during these proceedings.

22 THE COURT: First note the Court
23 was sent was at 9:01 on January 28, 2000.

24 "After four votes with subsequent
25 discussion, we are unable to unanimously

1968

1 agree on a life sentence option."

2 At that time the Court advised
3 Ms. Cady to advise the Jury that I had
4 received the note and they were to continue
5 their deliberations as all counsel were not
6 present in the courthouse.

7 While waiting for all counsel to be
8 present, a second note was delivered to the
9 Court that states, "We have decided against
10 the death penalty. We have discussed over
11 and over our other options, and we have
12 people very definite on one decision and
13 others very definite and set on another
14 sentence. This is not going to change after
15 multiple votes. No further deliberations is
16 going to change this." That was at 10:00.

17 The Court has brought the Jury into
18 the courtroom from the Jury room and read
19 them a modified Howard charge.

20 I will give you those two notes, and
21 Court has ordered them back into
22 deliberation, and I am going to go up and
23 prepare another instruction, and I will give
24 copies to each of the jurors, and we will go
25 from there.

1969

1 I made a mistake, and for the people
2 that are in this courtroom now I'm going to
3 ask that if you overheard what I said as I
4 read it in the record, that you not disclose
5 to anybody else what I read into the record
6 and to the press, I would ask and I can only
7 ask that you not divulge to anybody until
8 this Jury has resolved their decision-making
9 process in this case.

10 Okay, all right. That will be all.

11
12 - - - - -
13 TIME 1:15 P.M.:

14 THE COURT: The Court has been
15 advised and has shared with counsel for the
16 Defense the most recent note which I will
17 bring down and put on the record here
18 momentarily.

19 And it indicated in that note that
20 the Jury is focused on two of the life
21 alternatives. And while there was a second
22 part to that question, asking this court as
23 to who would decide and they were unable to.

24 That's not material to this
25 discussion here, but because of that note
and because of the other ones, the Court had

1970

1 proposed a draft instruction explaining a
2 little bit the alternatives available to the
3 Jury.

4 The Court met with counsel for the
5 State and counsel for the Defense, and they
6 reviewed the Court's proposal, had an
7 opportunity to object to part and they did
8 and to modify part, and they did, and we
9 then went over this proposed supplemental
10 instruction, and I have made copies.

11 I'm going to give a copy of this to
12 each counsel and just make sure you read it
13 over and see if the wording is fine but give
14 it back. These are not yours. These are
15 copies for the Jury, and I'll let them read
16 it and see if they have any objections to
17 it, so let's read it. The one change said
18 one of two.

19 Any other changes? Counsel for the
20 Defense?

21 MR. KEITH: No other changes.

22 MR. BAUMOEL: No, Your Honor.

23 THE COURT: Both sides now having
24 reviewed the proposed instructions, there is
25 no objection from either side.

1 The purpose of this instruction is
2 to attempt to break what appears to be
3 growing evidence that the Jury is
4 deadlocked, and that it is of critical
5 importance in this Court's opinion that this
6 Jury make the ultimate decision as to the
7 appropriate sentence.

8 So that the Court is taking this
9 extraordinary step to attempt to have the
10 Jury render a verdict in this matter rather
11 than have the Court render -- and that's the
12 reason for the Court going this extra step.

13 Anything the State wants to add?

14 MR. BAUMOEL: No, Your Honor. We
15 have discussed it amongst ourselves as well
16 as with our office, and this version, we are
17 in agreement with.

18 We would also indicate the Defendant
19 is present at this time in the courtroom,
20 and it's our understanding that the Court is
21 going to answer their question in regards to
22 what happens.

23 THE COURT: I did. I sent the
24 note back already. I forgot I did, and I
25 said, The law prohibits answering this

1972

1 question.

2 MR. KEITH: On behalf of the
3 Defense, Your Honor, Mr. Thorne has had an
4 opportunity to review in rough what the
5 Court intends to do. We have no objection
6 to the Court reading that and then providing
7 it to the Jury.

8 THE COURT: Mr. Haupt, anything?

9 MR. HAUPT: I'm in agreement with
10 that and I would indicate that we discussed
11 it with our client and he's been fully
12 informed.

13 THE COURT: Ms. Hartnett,
14 anything you want to add?

15 MS. HARTNETT: I have nothing to
16 add.

17
18 (The Jury's note at 12:30 p.m. was
19 the following: "After further
20 deliberation, we remain deadlocked
21 over two of the life sentence
22 options. We are not clear about
23 the ultimate outcome of this case.

24 If after further deliberation
25 we are still deadlocked, who would

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decide the life sentence option if we are unable to do so?"

The Judge's answer back to the Jury was "The law prohibits my answering this question."

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(At 1:22 p.m. the Jury was brought in the courtroom and the following proceedings were had.)

THE COURT: Ladies and Gentlemen of the Jury, you have advised through notes that your deliberations are now focused on selecting one of two life sentence alternatives.

To assist in your achieving that end, the Court will give the following explanation: All three life alternatives or life imprisonment sentences, the life without parole alternative is the most direct and understandable. That sentence means that if you select life without parole as a life sentence alternative, David G. Thorne will never be released from prison. He will remain in prison until he dies of natural causes.

1974

1 The life imprisonment with parole
2 eligibility after 30 years or the life
3 imprisonment with parole eligibility after
4 25 years is not so direct nor
5 understandable.

6 First, either of these alternatives
7 means that the Court will sentence David G.
8 Thorne to life in prison. The Defendant
9 will absolutely serve 30 years or the 25
10 years in a state institution.

11 Then after the Defendant has served
12 either 30 or the 25 full years, he will by
13 statute become eligible to go before the
14 parole board in regards to whether he should
15 or should not receive parole. This meeting
16 is scheduled by law. The fact that it is
17 scheduled does not mean that David G. Thorne
18 will be paroled.

19 First, that decision is within the
20 full discretion of the parole board after a
21 public hearing wherein all interested
22 parties are notified and given the
23 opportunity to attend and speak.

24 The parole board may grant parole at
25 the first hearing or it may deny parole. If

1975

1 it denies parole, it will most likely set
2 another hearing date in the future. That
3 hearing date can range from one year to ten
4 years or more after the first hearing date.
5 That decision, again, is within the full
6 discretion of the parole board, and again,
7 the setting of a future date does not mean
8 at that future date David G. Thorne will
9 receive parole. The parole board will again
10 conduct a hearing as described above.

11 Ladies and Gentlemen, it is equally
12 important to both sides of this case that
13 you, this Jury, after having been selected
14 by the method in which we selected you,
15 makes the decision as to the appropriate
16 sentence.

17 I now charge you to return to your
18 Jury room in light of the supplemental
19 instructions, in light of these
20 instructions, and ask that you deliberate
21 and reach an agreement if you can do so
22 without disturbing your individual judgment.

23 You are now ordered to go back to
24 the Jury room. We are going to send in and
25 ask about what you desire as far as lunch.

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So I will ask you to go back in, begin your deliberations, and within a few minutes we will inquire as to that aspect.

We will stand in recess.

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(At 1:26 p.m. the Jury went back into deliberation on Friday, January 28, 2000.)

- - - - -

(At 4:20 p.m. the Jury was brought in Courtroom No. 2, and the following proceedings were had.)

THE COURT: Juror Number 356, sir, are you still the foreperson of this Jury?

JUROR NO. 356: Yes.

THE COURT: Sir, it is customary after the Court has received the notes that you have sent out to the Court for its review to now inquire if there is a possibility of reaching an agreement within a reasonable amount of time.

I'm therefore going to submit this question to you, sir, and you are the only person who shall answer it. If you feel

1 that you are unable to answer, and you wish
2 time to consult with the other members of
3 the 12, then ask me that and I'll allow you
4 to go back in the Jury room and to consult
5 and come out and give me an answer.

6 But the answer to the question will
7 be yes or it will be no. I don't want you
8 to disclose any other information to me. I
9 don't want you to tell me what the status of
10 the deliberations is. I don't want to know
11 any numbers between the groups. I want a
12 yes or no, and the question is:

13 Is there a possibility that with
14 further deliberations that you, the Jury,
15 could reach a verdict as to the appropriate
16 sentence in this case if you were given more
17 time to deliberate today?

18 JUROR NO. 356: No.

19 THE COURT: If I ask that you end
20 your deliberations and retire for the
21 evening at the Hilton through sequestration
22 and then return tomorrow morning to again
23 begin your deliberations, do you feel that
24 with that time that you would be able to
25 render a unanimous decision as to the

1 appropriate sentence?

2 JUROR NO. 356: I would like to
3 confer with the other jurors.

4 THE COURT: You may do so. I
5 would ask that you go into this Jury room
6 here and we will give you whatever time you
7 need. Once you have resolved it, just knock
8 on the door and we will return you to this
9 courtroom, sir.

10 - - - - -

11 (At 4:23 p.m. the Jury went in to
12 deliberate to answer the one
13 question.)

14 - - - - -

15 (At 4:30 p.m. the Jury came back in
16 the courtroom.)

17 THE COURT: Mr. Foreperson, you
18 have been asked. Sir, you were asked to go
19 back in the Jury room and discuss whether or
20 not if you retired tonight back to the
21 Hilton in sequestration and came back
22 tomorrow, whether or not you feel that you
23 would be able to reach a unanimous decision.

24 And have you had that discussion,
25 sir?

1 JUROR NO. 356: Yes.

2 THE COURT: And what is your
3 answer?

4 JUROR NO. 356: The answer is no.

5 THE COURT: Ladies and Gentlemen,
6 I'm going to again impose upon you to go
7 back in the Jury room for just a few
8 moments, and we will be with you forthwith.

9 Let me speak to counsel, please.

10 - - - - -

11 (The Jury went back in the Jury
12 room and a short recess was taken.)

13 - - - - -

14 (At 4:34 p.m. The Jury was brought
15 back in the courtroom and
16 the following proceedings
17 were had.)

18 THE COURT: The penalty phase of
19 this trial concluded on January 27 at
20 12:10 p.m. The Jury was then taken
21 downstairs and entered into deliberations,
22 and at 4:38 p.m. advised that they had
23 concluded for the day and they were
24 sequestered in the appropriate facility in
25 Canton.

1 On January 28 the Jury began its
2 deliberations at approximately 8:30 a.m.
3 At 9:01 a.m. the Jury sent the first note,
4 which has been read into the record
5 indicating that they were at that time
6 experiencing difficulty in arriving at a
7 unanimous decision as to one of the
8 penalties.

9 The Court while waiting for all
10 counsel to appear at the courthouse at
11 10:00 a.m., the Jury sent a second note to
12 the judge, to the Court again indicating
13 that they were having difficulty in arriving
14 at a unanimous decision as to the
15 appropriate penalty or sentence.

16 Pursuant to those two notes, at
17 10:45 the Court brought the Jury back in and
18 read to them a modified Howard charge asking
19 them to reconsider their opinions and to
20 open up negotiations anew and to see if, in
21 fact, they could not arrive at a decision.

22 The Jury went back in at 10:54 to
23 commence its deliberations.

24 At 1:15 the Jury sent another note
25 again expressing their inability to arrive

1 at a consensus, a unanimous consensus as to
2 the appropriate sentencing. And at 1:22
3 p.m. pursuant to that note, the Court in
4 conjunction with counsel for the State and
5 counsel for the Defense read a second
6 supplemental instructions in a restricted
7 attempt to advise this Jury as to what the
8 sentencing options meant as far as their
9 application if handed down.

10 The Jury then went back in to
11 continue to deliberate at 1:26. I believe
12 they also had a break prior to that and then
13 ate lunch sometime around the 3:00 hour and
14 continued to deliberate until they were
15 brought up to this courtroom at
16 approximately ten minutes after four.

17 At ten minutes after four the Court
18 then asked this Jury whether or not if they
19 had more time this afternoon or this evening
20 to deliberate, whether with a yes or no
21 answer they would arrive at a unanimous
22 decision.

23 The foreperson of the Jury, Juror
24 Number 356, who has been the foreperson from
25 the beginning, indicated that they would not

1 be able to reach a decision.

2 I then asked if they were ordered
3 back in sequestration and came back tomorrow
4 morning if, in fact, they would -- if he
5 felt that would give them time to arrive at
6 a unanimous decision.

7 The foreperson asked if he could
8 inquire and deliberate or question the other
9 members of the Jury. He did that. They
10 were gone for approximately three to four
11 minutes and came back into the courtroom,
12 and the foreperson has advised this court
13 that if they were sequestered this evening,
14 in his opinion they would not be able to
15 reach a decision based upon this particular
16 case as to the unanimous -- as to a
17 sentencing in this case.

18 The Court then looking at the
19 approximately four hours plus or minus this
20 Jury deliberated on January 27 and
21 approximately eight hours that this Jury has
22 deliberated on January 28, the three notes
23 that this Jury has sent to this court, each
24 one being more definite as to your inability
25 to reach a unanimous decision, and your

1 answers to the final two questions that I
2 have asked, the Court is going to find that
3 this Jury is deadlocked, that this Jury will
4 not be able to render a unanimous decision
5 as to the appropriate sentence in this case.

6 And therefore, the Court is going to
7 declare a mistrial as to the sentencing
8 phase only of this particular case.

9 The Court is going to at this time
10 discharge this Jury under the following
11 conditions: I'm going to ask that you go
12 back downstairs, that you remain in my
13 courtroom. We will permit you to begin to
14 make the necessary telephone calls for
15 someone to come and to pick you up. We will
16 get the your baggage brought up from
17 downstairs up into the courtroom, and we
18 will begin to make those arrangements for
19 you to leave this courthouse.

20 Prior to your leaving, after this
21 procedure up here, the Court will come down
22 and with an invitation to counsel and will
23 answer questions that you may have, and that
24 would be at your discretion, and you need
25 not discuss this matter with anybody. If

1 you do not wish to, then all you need to do
2 would be to advise us at that time.

3 So this matter is so declared. I'm
4 going to ask the Jury then be taken
5 downstairs with Ms. Cady under her control,
6 and she will make the necessary arrangements
7 to dispatch you.

8 Thank you.

9 - - - - -
10 (At 4:41 p.m. on Friday, January 28,
11 2000, the Jury left the courtroom
12 and the following proceedings
13 were had.)

14 THE COURT: Court will be in
15 recess for approximately five minutes.

16 - - - - -
17 (A short recess was taken.)

18 TIME: 4:50 P.M.

19 THE COURT: The Court has
20 reviewed the existing case law and the
21 existing statutes on this matter concerning
22 when a Jury in the sentencing phase is
23 unable to reach a decision, and I will note
24 that the legislature has failed to provide
25 any statutory scheme in which to guide the

1 Court in resolving the issue as to the
2 appropriate punishment.

3 One Ohio Supreme Court case has
4 addressed this issue, that being the State
5 versus Springer, 63 Ohio State 3d at 167,
6 and pursuant to that or pursuant to that
7 case, the Supreme Court has indicated that
8 the trial court is required to sentence the
9 offender when a Jury is in deadlock, and
10 that my options, in my opinion, are limited
11 to the three life sentence alternatives;
12 that is, life imprisonment without
13 eligibility for parole until 30 full years
14 has been served, life imprisonment without
15 eligibility of parole until 25 years has
16 been served, and life imprisonment without
17 the eligibility for parole.

18 The Court further finds that no
19 further hearing is appropriate or necessary.
20 The sentencing hearing under R.C. 292919 is
21 in my opinion inappropriate as it would
22 allow additional information to be presented
23 to this court which would have been outside
24 the sentencing phase trial which we have had
25 over the, on last Thursday.

1 Further, the Court reviewing
2 2929.03(F) finds that in situations where
3 the Court or panel imposes a life sentence,
4 that it is to make a separate opinion of its
5 findings in which it finds that the
6 mitigating factors set forth are found to
7 exist and what other mitigating factors is
8 found to exist and what aggravating
9 circumstance the Defendant was found guilty
10 of committing and why it, the Court, could
11 not find that the aggravating circumstances
12 were sufficient to outweigh the mitigating
13 factor.

14 But that section assumes that the
15 Court had the option of imposing a sentence
16 of death, that the Court chose not to impose
17 the sentence of death, and the statute then
18 therefore requires the Court to list out its
19 reasonings why the aggravated circumstances
20 did not outweigh the mitigating factors.
21 Again, I don't find that to be appropriate
22 in this hearing.

23 Further, under 2929.03(D) there is a
24 provision that a request that the Court
25 could consider or the Jury could consider

1 request for a PSI and a written mental exam.

2 We have discussed that earlier, but
3 again, that presumes that the issue and the
4 possible sentence of death is an alternative
5 to which the Court can select.

6 This Jury having answered that
7 question, the Court finds that that
8 provision regarding the review of the
9 presentence investigation or a mental
10 examination is inappropriate at this time.

11 Further, the Court finds that to
12 permit either the State of Ohio or counsel
13 for the Defendant to make further argument
14 to this court would be inappropriate; again,
15 for the same reason that if this Jury had
16 unanimously found for a certain sentence,
17 that it would have come out and announced
18 that sentence without further argument by
19 counsel for either side.

20 And therefore, it is of the Court's
21 opinion that neither the State nor the
22 Defense should be permitted to make any
23 further statement based upon my reading of
24 the statute.

25 But the record should reflect that

1 the Court has reviewed in its mind the
2 relevant evidence from the trial phase of
3 this case. That would be applicable solely
4 to the aggravating circumstance of which the
5 Defendant was found guilty and any
6 mitigating factors that were raised in the
7 trial phase in this matter.

8 The Court has listened and weighed
9 in its mind the aggravating circumstance of
10 this particular case and all of the
11 mitigating factors that were submitted by
12 the counsel for the Defendant to include
13 their arguments of counsel and the statement
14 of Mr. David Thorne.

15 Based upon a review of that
16 evidence, the Court is now prepared to
17 impose a sentence, and I would ask that the
18 Defendant stand with counsel by his side.

19 I will advise you, Mr. Thorne, that
20 you have an automatic right to appeal the
21 conviction of your case to the Fifth
22 District Court of Appeals in my opinion
23 because the imposition of the death penalty
24 was not made. Therefore, I believe the
25 appropriate appeal procedure is through the