

IN THE SUPREME COURT OF THE STATE OF NEVADA

DALE EDWARD FLANAGAN,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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Docket No. 63703

Appeal from the Denial of a Post-Conviction Petition
District Court, Clark County
The Honorable Michelle Leavitt, District Judge
District Court No. 85-C069269-1

**APPELLANT'S APPENDIX
Volume 1**

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FILED

CASE NO. *CL 9269*

MAR 27 1985 8:15 AM.

LORETTA BOWMAN, CLERK

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

-000-

THE STATE OF NEVADA,

Plaintiff,

vs.

RANDOLPH MOORE, THOMAS AKERS,
JOHNNY RAY LUCKETT, MICHAEL WALSH
and ROY McDOWELL,

Defendants.

CASE NO. 4783

DOCKET NO. 84-F

THE STATE OF NEVADA,

Plaintiff,

vs.

DALE EDWARD FLANAGAN,

Defendant.

CASE NO. 4687

DOCKET NO. 84-F

THE STATE OF NEVADA,

Plaintiff,

vs.

JOHN RAY LUCKETT,

Defendant.

CASE NO. 0313

DOCKET NO. 85F

REPORTER'S TRANSCRIPT

OF

PRELIMINARY HEARING

BEFORE THE HONORABLE KELLY O. SLADE, JUSTICE OF THE PEACE

Monday, February 11, 1985

9:00 o'clock A.M.

Reported by:
LISA DUPREE, C.S.R. No. 186

1337

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1 A Have known him about six, seven months.
2 Q How would you characterize your relationship with him?
3 A He is a good friend.
4 Q Very good friend?
5 A Yeah.
6 MR. POSIN: I have nothing further.
7 MR. HARMON: Nothing further.
8 THE COURT: You may step down, Mr. Lucas.
9 MR. HARMON: Your Honor, may this witness be excused?
10 THE COURT: As far as I am concerned.
11 You are excused. You are free to leave. If you
12 do remain, remember you are not to discuss your testimony with
13 anyone who is out in the hall, but you can go home if you would
14 like and not return.
15 Let's go off the record here.
16
17 (At this time, an off-the-record
18 discussion was held.)
19
20 THE COURT: Let's continue with the preliminary
21 hearing.
22 Call your next witness.
23 MR. SEATON: Angela Saldana.
24 THE CLERK: Raise your right hand, please.
25
26 ANGELA SALDANA,
27 having been first duly sworn to testify to the truth, the whole
28 truth and nothing but the truth, was examined and testified as
29 follows:
30
31 THE CLERK: Please be seated.
32 State your name and spell your last name for

1 the record, please.

2 THE WITNESS: Angela Saldana, S-a-l-d-a-n-a.

3

4

DIRECT EXAMINATION

5 BY MR. SEATON:

6 Q Is it Miss or Mrs.?

7 A Miss.

8 Q How old are you, Miss Saldana?

9 A Twenty.

10 Q What is your birth date?

11 A 12-4-64.

12 Q Do you live in Las Vegas?

13 A Yes, I do.

14 Q Are you acquainted with Dale Flanagan?

15 A Yes, I am.

16 Q Is he present in the courtroom today?

17 A Yes, he is.

18 Q Would you point him out and describe an article of
19 clothing that he is wearing.

20 A He is over there behind the bar with the white striped
21 shirt, blonde hair.

22 Q When you say, "behind the bar," is it in this row, the
23 first row behind the bar?

24 A Yes, he is second from the Bailiff.

25 MR. SEATON: May the record reflect the identification
26 of the defendant?

27 THE COURT: It shall.

28 BY MR. SEATON:

29 Q Do you also know an individual by the name of Randy
30 Moore?

31 A Yes, I do.

32 Q Is he present in the courtroom today?

1 A . . . He is sitting next to Da .
2 Q Mr. Flanagan's left or his right?
3 A His left.
4 MR. SEATON: May the record reflect the identification
5 of Randy Moore, your Honor?
6 THE COURT: It shall.
7 BY MR. SEATON:
8 Q Do you know an individual by the name of Thomas Akers?
9 A Yes, I do.
10 Q Is he present in court today?
11 A Yes, he is. He is in the front row.
12 Q In front of the row you were just referring to?
13 A Yes.
14 Q And to my left, how many people over is he?
15 A Two.
16 MR. SEATON: May the record reflect the identification
17 of Thomas Akers?
18 THE COURT: It shall.
19 BY MR. SEATON:
20 Q Are you familiar with an individual by the name of
21 Johnny Ray Luckett?
22 A Yes, I am.
23 Q Is he present in court?
24 A Yes.
25 Q Where is he seated, please?
26 A To the left of Randy Moore.
27 MR. SEATON: May the record reflect the identification
28 of John Ray Luckett?
29 THE COURT: It shall.
30 BY MR. SEATON:
31 Q And do you know Michael Walsh?
32 A Yes, I do.

1 Q he present in court today?
2 A Yes, he is.
3 Q Where is he seated?
4 A To the left of Johnny Ray.
5 MR. SEATON: May the record reflect the identification
6 of Michael Walsh?
7 THE COURT: It shall.
8 BY MR. SEATON:
9 Q And a Roy McDowell, are you familiar with that man?
10 A Yes, I am.
11 Q Is he present here today?
12 A Yes, he is.
13 Q Where is he seated, please?
14 A To the right of Dale Flanagan.
15 MR. SEATON: May the record reflect the identification
16 of Defendant Roy McDowell?
17 THE COURT: It shall.
18 BY MR. SEATON:
19 Q In December of 1984 what was your relationship with
20 the defendant, Dale Flanagan?
21 A We were boyfriend and girlfriend.
22 Q Did there come a time when you lived together?
23 A Yes, we did.
24 Q When did you begin that relationship?
25 A In the first week of November, I think.
26 Q Do you remember the date?
27 A I think November 5th.
28 Q Are you familiar with the deaths of Carl and Colleen
29 Gordon?
30 A Yes, I am.
31 Q When was it in relationship to that occurrence?
32 A Could you rephrase that.

1 Q , soon before or after the deaths of Colleen and
2 Carl Gordon did you begin living with Dale Flanagan?
3 A I think the next day.
4 Q Did you continue to live with Mr. Flanagan until
5 through December?
6 A Yes, I did.
7 Q On December the 5th specifically, did you still live
8 with him?
9 A Yes, I was.
10 Q At that time on the 5th of December were you aware of
11 the deaths of Carl and Colleen Gordon?
12 A Yes, I was.
13 Q Did there come a time on that day, December the 5th,
14 1984, when you had a conversation with Dale Flanagan regarding
15 those deaths?
16 A Yes, I did.
17 Q Where did that conversation take place?
18 A In his trailer on the property.
19 Q On the same property in which Carl and Colleen Gordon
20 had lived?
21 A Yes.
22 Q Approximately what time did the conversation take
23 place?
24 A About 10:00 o'clock at night.
25 Q Who was present at that time?
26 A Just Dale and I.
27 Q Was there a conversation directly related to the
28 deaths of his grandparents?
29 A Yes, it was, basically.
30 Q Did you know Carl and Colleen Gordon to be the
31 grandparents of Dale Flanagan?
32 A Yes, but I have never met them.

1 Q Did you know that was the relationship?

2 A Uh-huh.

3 THE COURT: Miss Saldana, when you answer yes, you
4 need to answer yes or no audibly.

5 THE WITNESS: Okay.

6 BY MR. SEATON:

7 Q How long did this conversation between yourself and
8 Dale Flanagan last?

9 A About an hour.

10 Q Did he tell you about his involvement in those deaths?

11 A Yes, he did.

12 Q What did he say? How did the conversation start out?

13 A We were arguing about a previous boyfriend. He said
14 that he didn't care what I did or where I was and he was tired of
15 running from the problem, and then he said, "Well, how do you like
16 this? I did it. I killed my grandparents."

17 Q Did he indicate to you whether or not there had been
18 a plan to kill the grandparents?

19 A Yes, he did.

20 Q Did he say where that plan had originated, where he
21 was when that plan originated?

22 A He said that he was over at Randy Moore's house.

23 Q When did he say he was over at Randy Moore's house?

24 A I am not sure. He said it the day before, I think.

25 Q The day before the killings?

26 A Uh-huh.

27 Q Did he say --

28 THE COURT: Hold it.

29 What was your answer?

30 THE WITNESS: Yes.

31 MR. SEATON: Thank you, your Honor.

32 Q Did he say who else was present during that planning?

1 A Yes. Randy Moore, Tom Akers, an Lockett, Mike
2 Walsh and Roy I forget Roy's last name.

3 MR. SMITH: Your Honor, at this point I would like to
4 ask a point of clarification of whether or not the State is
5 offering this testimony solely against Mr. Flanagan or whether
6 they are offering this testimony against Mr. Lockett. If they
7 are offering it against Mr. Lockett, I would object in that it is
8 hearsay.

9 MR. WATERMAN: Same objection.

10 MR. SEATON: Your Honor, we are offering this against
11 all of the defendants for continuity sake. If there is going to
12 be a legal argument, at this time Mr. Harmon is going to continue
13 and argue the co-conspirator rule as it applies to this testimony.

14 MR. SMITH: I intended to raise this objection with
15 respect to previous testimony and I also intend to make a legal
16 argument. If you want to defer that until the close of the
17 proceedings, that is fine with me. I want particularly the record
18 to reflect that we do object to this particular line of testimony
19 and we can argue it later if you would like.

20 It is clearly admissible against Mr. Flanagan and
21 I have no objection if we proceed on that basis at this time.

22 THE COURT: All right.

23 MR. SEATON: I think subject to a motion to strike
24 would be a proper way to do that.

25 MR. SMITH: I have no objection to that.

26 THE COURT: We will do it that way. I assume
27 everybody joins in that motion except for Mr. Creel.

28 MR. CREEL: That is correct.

29 THE COURT: Unfortunately Mr. Creel cannot join in
30 that motion.

31 Why don't we just trail the motion subject to a
32 motion to strike regarding admissions or testimony regarding

1 everybody.

2 SEATON: Thank you, your honor.

3 THE COURT: We will sort it out at the end of this
4 testimony or prior to the bindover.

5 BY MR. SEATON:

6 Q So is it your testimony, Miss Saldana, that at Randy's
7 apartment there were Dale Flanagan, Randy Moore, Tom Akers, John
8 Ray Lockett, Mike Walsh and Roy McDowell; is that correct?

9 A Yes.

10 Q Did Mr. Flanagan tell you at that time what the plan
11 was, what they had discussed at Randy Moore's apartment?

12 A Yes.

13 Q What did he say in that regard?

14 A He said that they were going to go there, break into
15 the house, make it look like a robbery and kill the grandparents
16 and that way Dale could get the will, the insurance money.

17 Q You mentioned a will. Did Dale Flanagan say to you
18 what the purpose of killing his grandparents was?

19 A He had heard the will was either all of his or half
20 of his.

21 Q Did he say anything to you about an insurance policy
22 in that regard?

23 A Yes, he did.

24 Q What did he say?

25 A He had only told me that there was an insurance
26 policy for the grandchildren and that he would get that.

27 Q Did he say how much that insurance policy was worth?

28 A I think it was 200,000.

29 Q Did he indicate to you what role at the planning stage
30 that he was going to take, what he was going to do when he
31 arrived at the grandparents' house?

32 A Only that he had shot his grandmother.

1 Q No. Not what he later told you that he did. Did he
2 tell you what he was planning on doing in the planning stage?
3 A Rephrase it.
4 Q Let me ask it of you this way: You testified that
5 when you had this conversation with Dale Flanagan, he related to
6 you that all of the defendants were at Randy Moore's apartment
7 planning the ultimate killing. During that part of the
8 conversation, did he tell you what the roles were going to be that
9 everyone discussed at that planning stage?
10 A He only said that he was going into the house and --
11 do you want to know the rest of who did what?
12 Q Not what he told you later. What he told you he had
13 planned.
14 A He only said that he was going in the house.
15 Q Did he indicate how they got over to the grandparents'
16 house from Randy Moore's apartment?
17 A Yes, he did.
18 Q What did he say about that?
19 A He said that Tom Akers would be driving.
20 Q Whose car were they using?
21 A Tom Akers'.
22 THE COURT: I am sorry. I did not hear the answer.
23 Would you repeat that.
24 THE WITNESS: He said that Tom Akers was the driver.
25 BY MR. SEATON:
26 Q And that they went in Tom Akers' car?
27 A Yes.
28 Q What kind of an automobile is that?
29 A A yellow El Camino.
30 Q Did he say whether or not all six of the defendants
31 drove over in that El Camino with Tom Akers?
32 A No. He said that -- he only had mentioned everyone

1 else's name except for Roy's. He didn't say Roy at the time.
2 Q Did he say what they did once they all got into the
3 grandparents' house?
4 A Yes, he did.
5 Q What did he say about that?
6 A He said that he gave Randy his knife to open the
7 screen, that wasn't working --
8 Q Excuse me. Let me interrupt you for just a second.
9 He gave Randy his own knife?
10 A Dale's knife, yes.
11 Q What did Randy do with it?
12 A Randy tried to cut open the screen and it wasn't
13 working.
14 Q What did they do with the knife?
15 A Threw it down.
16 Q What happened then?
17 A Dale told me that he had broken the window.
18 Q Did Dale say he broke the window himself?
19 A Yes.
20 Q Then what happened?
21 A Dale had told me that he went in the house, wrestled
22 his grandmother to the bed and shot her.
23 Q Did he indicate to you what window it was that they
24 went through?
25 A Yes. It was a window on the side of the house next
26 to his grandmother's bedroom.
27 Q Would you describe again what he told you about
28 going into the house and -- did he say he himself went into the
29 house?
30 A Yes, he did.
31 Q He went into his grandmother's bedroom?
32 A Yes.

1 Q What happened in there?
2 A He wrestled -- he put his hand on her mouth or on her
3 jaw, wrestled her to the bed and shot her.
4 Q Did he say how many times that he had shot her?
5 A He told me once.
6 Q Did he indicate who else had gone to the house with
7 him?
8 A Yes, he did.
9 Q What did he say about that?
10 A Into the house or just to the house?
11 Q To the house.
12 A Randy Moore, Johnny Ray and Mike.
13 Q Johnny Ray Lockett?
14 A Yeah.
15 Q And Mike Walsh?
16 A Yes.
17 Q Did he say at this time what Tom Akers had done other
18 than to drive the car over?
19 A He had only said that he was waiting outside on the
20 road in the car.
21 Q Did he tell you what Roy McDowell was doing?
22 A No. I had no idea at this time that Roy was there.
23 Q Did he mention anything about his grandfather?
24 A He said that Johnny Ray and Randy were throwing shots
25 at him while Dale was shooting his grandmother.
26 Q When you say, "throwing shots," do you mean shooting
27 at them?
28 A Yes.
29 Q Where were Randy Moore and John Ray Lockett when they
30 were shooting at the grandfather?
31 A I am not sure if they were in the house or still
32 standing outside the window.

1 Q Did he indicate to you where the grandfather was when
2 he was being shot at?
3 A He was coming down the stairs.
4 Q Did he say how many times Randy Moore and John Ray
5 Lockett hit the grandfather with shots?
6 A I think seven or eight times.
7 Q In this discussion with you, did he mention anything
8 about a purse?
9 A Yes.
10 Q What did he say in regard to the purse?
11 A He said that he went into the living room closet and
12 got the purse and left.
13 Q Dale Flanagan went into the living room closet and got
14 the purse?
15 A Yes.
16 Q And then left?
17 A Yes.
18 Q Did he say if they all went back to the automobile
19 with Tom Akers?
20 A Yes.
21 Q Where did they go in the automobile?
22 A Dale had said that they went to Randy Moore's place
23 afterwards.
24 Q Now, Miss Saldana, let me take you to the third week
25 in December, approximately that time. Do you know at that time
26 whether or not Tom Akers was in jail?
27 A Yes, he was.
28 Q Did you receive a telephone call from him?
29 A Yes, I did.
30 Q Where were you when you received that telephone call?
31 A I was at my aunt's house, 4308 Snead.
32 Q When you received the telephone call, how did the

1 individual on the phone identify himself?
2 A As Tom Akers.
3 Q Did you recognize his voice?
4 A Yes, I did.
5 Q Did you have an occasion at that time to talk about
6 the case?
7 A Yes, I did.
8 Q Did he indicate to you at that time his participation
9 in the case?
10 A Yes, he did.
11 Q Did Mr. Akers at that time say anything to you about
12 having been at Randy Moore's apartment the evening before the
13 killings?
14 A Yes, he did.
15 Q What did he say?
16 A He said that he heard them talking, but he did not
17 make any suggestion in the conversation.
18 Q When you say he told you that he heard them talking,
19 who is the "them"? Who are the "them" that he was referring to?
20 A Dale Flanagan, Johnny Ray Luckett, Mike Walsh, Randy
21 Moore.
22 Q Did he mention Roy McDowell's name?
23 A Yes.
24 Q All other five defendants?
25 A Yes.
26 Q What did he say that he heard them talking about?
27 A Planning to go into the house.
28 Q Into the grandparents' house, the grandparents of
29 Dale Flanagan?
30 A Yes.
31 THE COURT: Excuse me a moment, Mr. Seaton.
32 In regards to this conversation with Mr. Luckett,

1 I will assume everyone is objecting on hearsay grounds pending --

2 MR. SEATON: This is Mr. Akers.

3 THE COURT: Excuse me.

4 Mr. Akers, pending a disposition on the
5 co-conspirator ruling, and I will handle it in the future; is
6 that correct?

7 MR. SMITH: Yes.

8 MR. HANDFUSS: Yes.

9 MR. CREEL: Yes.

10 MR. POSIN: Yes.

11 MR. WAITE: Yes.

12 MR. SEATON: Everyone but Mr. Waterman joins in that
13 objection.

14 MR. WATERMAN: I would like to.

15 THE COURT: He would like to, I am sure.

16 MR. SEATON: We understand.

17 THE COURT: You may continue, Mr. Seaton.

18 BY MR. SEATON:

19 Q What did he indicate they were talking about?

20 A Just going in to rob the house.

21 Q Did he say anything about --

22 MR. WATERMAN: Objection, your Honor, as to who "he"
23 is.

24 BY MR. SEATON:

25 Q I will withdraw my last question and ask it this
26 way, Miss Saldana: Did Tom Akers indicate to you who the
27 speakers were, who said these things?

28 A Yes, he did.

29 Q Who did he say?

30 A Randy Moore and Dale Flanagan, Mike Walsh and Roy
31 McDowell and Johnny Ray.

32 Q Did he say they were all engaging in the conversation?

1 A Yes, he did.

2 Q Was he able to tell you with any degree of specificity
3 as to which one of those people said which sentences?

4 A No.

5 Q They were all talking and now you are just giving us
6 the general nature of that conversation?

7 A Excuse me?

8 Q Is it accurate to say that he told you that they were
9 all talking and now you are just relating to us the general nature
10 of that conversation?

11 MR. WATERMAN: The use of the pronoun is confusing.
12 I do not know if he means Mr. Akers was talking or the other
13 people or which one of the other people were doing the talking.
14 Improper foundation.

15 MR. SEATON: We have tried to lay it and it cannot be
16 laid.

17 THE COURT: As I understand the conversation, Mr.
18 Akers said that there was a conversation involving the other five
19 defendants in which he did not participate?

20 MR. WATERMAN: That is fine.

21 MR. SEATON: We will clarify his role in it a little
22 further.

23 THE COURT: The witness cannot testify as to who said
24 what.

25 MR. WATERMAN: That is fine.

26 BY MR. SEATON:

27 Q What did these individuals talk about in terms of
28 what they were preparing to do, according to Tom Akers?

29 A Rephrase it, please.

30 Q When Tom Akers told you that he heard them talking
31 about going over to the grandparents' house, what did he say that
32 they were going to do?

1 A Just that they were going to go over and rob the
2 house as far as he knew -- as far as Tom Akers knew.
3 Q Did he hear them say anything else that they were
4 going to do?
5 A That they were going to bring guns just in case they
6 might have to scare someone.
7 Q Did he indicate to you how they got from Randy Moore's
8 apartment to the grandparents' house?
9 A Yes, he did.
10 Q How did he say that they got there?
11 A He said that he had to drive -- Tom Akers said he had
12 to drive.
13 Q Did he say in whose car he drove them?
14 A He said his car.
15 Q The El Camino?
16 A Yes.
17 Q Did he indicate that all five of those other
18 individuals whom you have named, Dale Flanagan, Randolph Moore,
19 John Ray Lockett, Mike Walsh and Roy McDowell, went with him?
20 A Yes.
21 Q Did he tell you what kind of guns that they took with
22 them?
23 A No, he didn't.
24 Q Did he tell you what he did, what Tom Akers did, once
25 they arrived at the grandparents' house?
26 A Yes, he did.
27 Q What did he say about that?
28 A He said while the others were going in, he went into
29 Dale's trailer.
30 Q Dale's trailer is adjacent to the grandparents' house?
31 A Yes.
32 Q On the same property?

1 A Yes.
2 Q When he said he went into the trailer, did he also
3 indicate to you who, if anyone, went to the grandparents' house?
4 A Yes.
5 Q Who did he say went there?
6 A Dale Flanagan, Randy Moore, Roy McDowell, Johnny Ray
7 and Mike Walsh.
8 Q All of the other five defendants he said at that time
9 went to the house?
10 A Yes.
11 Q Did he say if he heard anything that surprised him?
12 A Yes, he did.
13 Q What did he hear?
14 A He said he heard the shots.
15 Q Where did he go after he heard the shots?
16 A He went to the car.
17 Q After he got to the car, did the others return to the
18 car?
19 A Yes, they did.
20 Q All five of the other defendants?
21 A Yes.
22 Q Did he indicate whether or not he drove them anyplace?
23 A Yes, he did.
24 Q What did he say in that regard?
25 A He said that he dropped them off at Randy Moore's
26 apartment.
27 Q And he was the driver going back there?
28 A Yes.
29 MR. SEATON: That concludes direct examination, your
30 Honor.
31 THE COURT: Mr. Smith, do you want to start cross?
32 MR. SMITH: Yes, I will. Thank you, your Honor.

CROSS-EXAMINATION

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BY MR. SMITH:

Q Miss Saldana, I would like to direct your attention to the conversation that you had with Dale Flanagan. You indicated this conversation lasted approximately an hour; is that correct?

A Yes.

Q I take it this conversation was strictly from a boyfriend/girlfriend standpoint; is that correct?

A Yes.

Q He was not asking you to render him any assistance or to participate in any type of cover-up or anything like that at that point; is that correct?

A No.

Q The sole purpose of this conversation was to essentially sort out how you two stood as boyfriend and girlfriend; is that right?

A Yes.

Q Now, in remembering back on that conversation, can you remember specific things that Dale told you that Johnny Ray Luckett did? I want you to think back. I know it has been a while and I know you are trying to be as open and forthright as you can, but I want you to think back. Can you tell us any specifics, and quote his words, if you can, that he told you that Johnny Ray Luckett did?

A Yes. He did say that Johnny Ray was shooting. That was it.

Q And you are sure of that?

A Yes.

Q Now, did he tell you in any way how he knew that Johnny Ray Luckett shot him? He did not tell you that he saw it, did he?

A No.

1 Q In fact, he told you that he was in the bedroom with
2 his grandmother while the shooting was going on; isn't that
3 correct?

4 A Yes.

5 Q Would it be a fair statement that at least insofar as
6 what he told you about the shooting of the grandfather was done,
7 did you understand it to mean that he was speculating about that
8 or he based his comments to you on what he had heard after the
9 fact?

10 A Could you rephrase that?

11 Q What Dale told you about the shooting of the
12 grandfather, were you under the impression that he was testifying
13 based on his own knowledge of having seen this or just he was
14 giving you sort of a general overview of what occurred? In other
15 words, did he have any basis of knowledge that he imparted to you
16 as to how the grandfather was shot?

17 MR. SEATON: Your Honor, I would like to interpose an
18 objection. If he is asking her does she know what Dale said in
19 that regard, I do not mind that, but if he is asking for her
20 opinion, then it is just that. It is her opinion only.

21 MR. SMITH: I am asking for more than an opinion and
22 the objection is well-founded. I will rephrase my question.

23 Q Did Dale Flanagan tell you what his basis of knowledge
24 was for asserting that Johnny Ray Lockett did any of the shooting?

25 A Yes. All he told me was that John Ray was shooting.

26 Q He did not say if he saw it?

27 A No, he didn't.

28 Q Or if he heard about it a week later or three days
29 later?

30 A That was all he told me.

31 Q Did he tell you that when the shooting of the
32 grandfather occurred, he was in the bedroom?

1 A He did say that it was happening while he was in the
2 bedroom.
3 Q Now, the conversation you had on the telephone with
4 Tom Akers, how long did that occur? How long was the conversation?
5 A The conversation itself was approximately 15 minutes
6 to half an hour. I am not sure.
7 Q Start from the beginning and tell us what he said
8 when he called you.
9 THE COURT: Would you be a little more specific, Mr.
10 Smith. I do not want to hear the conversation again. That
11 question has been asked and answered.
12 BY MR. SMITH:
13 Q Was Tom specific in his comment to you in describing
14 the role that each person had during the commission of this
15 homicide? In other words, did he tell you, "Mike did this," and
16 then give you a litany of what occurred, and, "Johnny did this,"
17 or did he just kind of give you a general overview?
18 A He just gave me a general overlook.
19 Q So in looking back, you cannot really say that he
20 specifically pointed out individual members of that group and
21 specified what each one of them did?
22 A No.
23 Q Did Tom tell you that he saw all five of the other
24 people in that group go into the house? He did not tell you that,
25 did he?
26 A No, he didn't.
27 Q But he did tell you that he went into the trailer and
28 stayed for some period of time; is that correct?
29 A Yes.
30 MR. SMITH: Pass the witness.
31 THE COURT: Mr. Waterman?
32 MR. WATERMAN: Thank you, Judge.

CROSS-EXAMINATION

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BY MR. WATERMAN:

Q You testified on direct examination, Miss Saldana, that Mr. Flanagan told you that certain people planned an event?

A Yes.

Q Do you recall where he said the people were when the event was planned?

A Yes.

Q What did he say?

A At Randy Moore's apartment.

Q He did not say they were all in the same room when this happened, did he?

A No, he didn't.

Q He did not say which part each one of them played in the planning, did he?

A Yes, he did.

Q I mean in the planning itself, not in carrying out the plan, but in the planning itself. He did not tell you which part each one of them played in the plan?

A No.

Q Do you recall giving a voluntary statement to the police in this matter?

A Excuse me?

Q Do you recall giving a voluntary statement to the police?

A Yes.

Q Was that on the 7th of December, 1984?

A Yes.

Q Now, when Mr. Flanagan told you that they were all there, he did not elaborate on that, did he?

A Excuse me?

Q When the planning went down, when Mr. Flanagan told

1 you about that, when he told you that they were all there, he did
2 not elaborate any further on that, did he?

3 A One more time, please.

4 Q Let me just show you page 6 of that statement. It
5 would be commencing with the first question on the page.

6 May I approach the witness, your Honor?

7 THE COURT: You may.

8 BY MR. WATERMAN:

9 Q Would you read from there to there. Would you read
10 that, please.

11 A Out loud?

12 Q No. Just read it to yourself.

13 MR. SEATON: How far down?

14 MR. WATERMAN: The first question and the first
15 answer is all.

16 Q Does that refresh your recollection as to what he
17 told you?

18 A Yes.

19 Q He told you that he planned it, didn't he? Isn't that
20 what he told you?

21 A He had said that himself and Randy Moore had planned
22 it.

23 Q And all he said was that the others were there?

24 A Yes.

25 Q So what I am saying to you is he did not tell you that
26 the others joined in the planning with him, did he?

27 A Not in a straight-out sentence like that, no.

28 Q Now, you used the phrase in the answer to a question
29 on direct examination that Tom Akers was the driver.

30 A Yes.

31 Q Now, is that your phrase that he was the driver?

32 A What do you mean?

1 Q Well, what do you mean by the "driver"? Just that he
2 drove the vehicle?
3 A Yes.
4 Q So it is your phrase to use the word "He was the
5 driver"?
6 A I was told that he was the driver.
7 Q You were not told under what circumstances he was
8 driving the vehicle, were you?
9 A Excuse me?
10 Q You were not told under what circumstances he was
11 driving the vehicle, were you?
12 A For doing the act, yes. I was told that he was the
13 driver for doing that --
14 Q He was the driver of the vehicle?
15 A Yes.
16 Q Now, in this conversation that you had with Mr. Akers
17 on the telephone, you have used a phrase here today, Miss Saldana,
18 and I wonder if you use it interchangeably. When you use the
19 word "Rob the house," did you mean burglarize the house?
20 A Yes.
21 Q So the word rob is not to be used in the sense that
22 the planning was that someone would go and be held up? At least
23 that is what you were told by Mr. Akers, that the plan would be a
24 burglary, wasn't it?
25 A Yes.
26 Q Mr. Akers did not tell you that the plan was to go in
27 and hold up anybody, did he?
28 A No.
29 Q Now, also in that conversation you asked Mr. Akers
30 some questions relative to his involvement; isn't that true?
31 A Yes, I did.
32 Q Isn't it true that you asked him whether or not he was

1 a victim of circumstances?

2 A Yes, I did.

3 Q What did he answer?

4 A He said that he was a victim of circumstance.

5 Q Now, there was a reference in your conversation, Miss
6 Saldana, to Tom telling you that guns were brought to the
7 residence?

8 A Yes.

9 Q Do you recall from your interview with the police on
10 the 7th of December, 1984, of whether you ever told the police
11 that fact previously?

12 A If I told the police that I was told there were guns?

13 Q Yes.

14 A Yes.

15 Q Did you tell the police that Tom Akers told you they
16 brought guns in?

17 A No.

18 Q You did not tell them that, did you?

19 A No.

20 Q The first reference you have made to Tom Akers telling
21 you anything about guns there is today; isn't that true?

22 A Not today. On the phone. The phone call that I
23 received.

24 Q You talked to the Detective previously about that
25 phone call, didn't you, Miss Saldana?

26 A No.

27 Q Didn't you talk to them about your phone call with
28 Mr. Akers?

29 A Not shortly after, no.

30 Q Am I to understand that you have never discussed Mr.
31 Akers' phone call with you with the Detectives?

32 A I did, but not recently after the phone call.

1 Q When did you first discuss the phone call with the
2 Detective?
3 A I think a week after I was approached.
4 Q Would that be about two and a half weeks after the
5 incident or maybe two weeks after the incident?
6 A Somewhere around two weeks.
7 Q Somewhere around two weeks after the incident?
8 A Yes.
9 Q I am going to ask you then to again look at page 9 of
10 your statement to the police and ask you to read --
11 May I approach the witness, your Honor?
12 THE COURT: Yes.
13 BY MR. WATERMAN:
14 Q -- from where I have just marked the word "Question"
15 which is the second question from the bottom of the page, Miss
16 Saldana, to the end of the statement.
17 Have you read it?
18 A Yes.
19 Q Now, at the time that those questions were asked to
20 you, Miss Saldana, you knew that you were talking to a Detective
21 from the Las Vegas Metropolitan Police Department, didn't you?
22 A With that statement right there, that was not the
23 phone call.
24 Q But you knew at the time that you answered these
25 questions, you were talking to a Detective; is that true?
26 A With the phone call, yes. With that statement, no.
27 Q What I just showed you, Miss Saldana, is a copy of a
28 transcribed statement that you gave to the Las Vegas Metropolitan
29 Police Department?
30 A Right.
31 Q You knew at the time you gave that statement that the
32 person that you were talking to was a Detective of the Las Vegas

1 Metropolitan Police Department; isn't that true?

2 A Yes.

3 Q Now, the part of the statement that I just showed you,
4 which was on pages 9 and 10 of the statement which goes to the end
5 of the statement, do those questions and those answers refer to
6 the telephone conversation that you had with Mr. Akers?

7 A Yes, but they are --

8 Q They do refer to the telephone conversation that you
9 had with Mr. Akers; isn't that true?

10 A Yes.

11 Q Now, when you were asked the questions about that
12 telephone conversation, you knew that the person that was asking
13 you the questions was a Las Vegas Metropolitan Police Detective?

14 A Yes.

15 Q Now that we have that straightened out, at the time
16 that you talked to him about that telephone conversation, you
17 were trying to be as complete as you possibly could in your
18 recollection of what was said; isn't that true?

19 A Yes.

20 Q Now, Miss Saldana, the point is that you did not tell
21 the Detective that Tom Akers said anything to you about taking
22 guns to that residence, did you, in that statement?

23 A No.

24 MR. WATERMAN: That is all.

25 THE COURT: Mr. Creel?

26 MR. CREEL: Thank you, Judge.

27

28 CROSS-EXAMINATION

29 BY MR. CREEL:

30 Q Miss Saldana, do you remember the specific date you
31 moved in with Mr. Flanagan into the trailer in which he was living
32 back in November?

1 A November 5th I think is the da. .
2 Q How long had you known Mr. Flanagan prior to that
3 time?
4 A Two weeks.
5 Q How long did you reside with Mr. Flanagan?
6 A One month.
7 Q Now, this same voluntary statement to which Mr.
8 Waterman referred, directing your attention again to your comments
9 on page 9, you indicated to Detective Livos that Mr. Akers said
10 to you it was dangerous for you to stay there with Dale; is that
11 right?
12 A Yes.
13 Q And that was some two and a half weeks prior to your
14 moving out of Mr. Flanagan's residence; is that right?
15 A Yes.
16 Q Did you notify the police immediately after the
17 phone call from Mr. Akers of that particular conversation?
18 A May I state something without a yes or no?
19 THE COURT: No. You just answer questions.
20 THE WITNESS: Could you ask that again, please.
21 BY MR. CREEL:
22 Q Did you notify the police immediately after you spoke
23 to Mr. Akers with reference to what he told you?
24 A No.
25 Q You waited an additional two and a half weeks to
26 notify the police; is that right?
27 A One week.
28 Q Just one week?
29 A After the phone call, but that was not a phone call on
30 that last statement on that page.
31 Q What was that?
32 A That was a conversation that we had face to face in

1 Dale's trailer. That was not the phone call.

2 Q Subsequent to moving out of Mr. Flanagan's residence,
3 did you and Mr. Akers become boyfriend and girlfriend, so to speak?

4 A No.

5 Q No?

6 A No.

7 Q Was there ever any discussion of you perhaps recovering
8 a potential reward leading to the arrests and apprehension of the
9 suspected killers of Mr. and Mrs. Gordon?

10 A Could you rephrase that.

11 Q Did you ever discuss with Mr. Akers or anyone else the
12 possibility of receiving a \$2,000 reward for information you might
13 have with respect to the killing of Mr. and Mrs. Gordon?

14 A Yes. After they were arrested. After the boys were
15 arrested, yes.

16 Q So you were aware of the \$2,000 reward; is that right?

17 A Not until after I made my statement. I wasn't aware
18 of it.

19 Q The reason I ask that question, Miss Saldana, is
20 because you have indicated that everyone in here allegedly
21 entered the Gordon residence except for Mr. Akers; is that right?

22 A Yes.

23 Q That is what Mr. Flanagan told you on one occasion;
24 is that right?

25 A Yes.

26 Q And that is what Mr. Akers told you on one occasion;
27 is that right?

28 A Yes.

29 Q Did you ever see any .22 caliber pistol in the
30 possession of Mr. Flanagan in his trailer at any time during your
31 one-month residency with him?

32 A No.

1 Q I do not believe I heard the District Attorney ask
2 you one of the common questions, which is what was your occupation
3 at this time?
4 A I didn't have one.
5 Q You were not making money of any sort during that time,
6 doing anything?
7 A No.
8 Q You were not a prostitute at that time?
9 A No.
10 Q No?
11 A No.
12 Q Prior to the argument that you had with Mr. Flanagan
13 about a boyfriend, did Mr. Flanagan at any time during this one-
14 month stay that you had with him ever indicate any knowledge or
15 ever indicate to you that he in any way participated in the
16 killing of the grandparents?
17 A Could you rephrase that, please.
18 Q From the time you moved in with Mr. Flanagan on
19 November 5th, 1984, until you moved out of his trailer some one
20 month later, did he ever indicate to you any participation in the
21 killing of the Gordons until you had this argument about a
22 boyfriend?
23 A No.
24 Q And you were living with him during that entire one-
25 month period; is that right?
26 A Yes.
27 Q Twenty-four hours a day?
28 A Yes.
29 Q Do you and Mr. Akers have any intention of getting
30 married in the future?
31 A Yes.
32 Q You do?

1 A Not now. We did then. No.

2 Q When was that decision made? When did you decide not

3 to marry Mr. Akers?

4 A Oh, you said Akers?

5 Q Yes. Mr. Akers.

6 A I thought you said Flanagan.

7 Q Have you and Mr. Akers ever talked about getting

8 married?

9 A Yes, we did.

10 Q When was that?

11 A During the last phone call. I think the third week

12 of December.

13 Q You and Mr. Flanagan had also talked about being

14 married also; is that right?

15 A Yes.

16 Q Did you ever move in with Mr. Akers?

17 A No, I didn't.

18 Q Was the first time you heard about the existence of

19 this alleged will that same night when you had the argument with

20 Mr. Flanagan? Was that the first time you heard about the

21 existence of any will?

22 A No.

23 Q When was the first time you heard about the existence

24 of a will?

25 A A week after the murder happened.

26 Q From whom did you receive that information?

27 A Dale Flanagan.

28 Q Not Mr. Akers?

29 A No.

30 Q How long had you known Mr. Akers prior to moving in

31 with Mr. Flanagan?

32 A A week. I think a week.

1 Q So you moved in with Mr. Flanagan on the 5th day of
2 November, 1984, and he did not have a .22 caliber weapon in his
3 possession the day you moved in with him; is that right -- or you
4 never saw it, if he did?

5 A I never saw it.

6 Q And you never heard him tell anyone else about his
7 participation or alleged participation in the killings of Mr. and
8 Mrs. Gordon between November 5th and November 6th, 1984, did you?
9 Did you ever hear Mr. Flanagan discuss with Randy Moore --

10 A No.

11 Q -- the deaths of Mr. and Mrs. Gordon?

12 A No. They would never discuss it.

13 MR. CREEL: I have nothing further.

14 THE COURT: Mr. Handfuss?

15

16 CROSS-EXAMINATION

17 BY MR. HANDFUSS:

18 Q You moved in with Dale Flanagan the day before this
19 murder took place?

20 A The day after.

21 Q That would be November 6th?

22 A Yes.

23 Q And how long before November 6th did you know Tom
24 Akers?

25 A A week.

26 Q When did Tom Akers call you from the jail?

27 A The third week of December.

28 Q Are you related in any way to Tom Akers?

29 A No, I am not.

30 Q You stated that you and Mr. Flanagan had an argument
31 about another boyfriend. Did this have to do with Tom Akers?

32 A No.

1 Q Were you ever in any type of a boyfriend/girlfriend
2 relationship with Tom Akers?

3 A Yes.

4 Q Could you tell me when that was? Is it still going
5 on?

6 A No, it is not.

7 Q When was this period?

8 A During the month of December.

9 Q Is this at the time that he called you from the jail?

10 A Yes.

11 Q You made a few statements. I am a little confused
12 that there were, I guess, two meetings or two conversations
13 between yourself and Mr. Flanagan, one was before this murder and
14 one was after the murder; is that correct?

15 A There was one after I am sure of. I am not sure of
16 the first one you speak of.

17 Q You stated something that Mr. Flanagan informed you
18 about the plans to murder the grandparents or something like that;
19 is that correct?

20 A After. He had discussed it with me after he told me.
21 After.

22 Q But never before?

23 A Never before.

24 Q You also said that at one point --

25 MR. SEATON: Your Honor, for a point of clarification,
26 I see counsel may be reading from the statement. I do not know
27 if he is referring to her testimony here today or from the
28 statement that we all know she has made, if that could be
29 clarified.

30 MR. HANDFUSS: I am referring to her testimony here.
31 I believe she stated two meetings, one before and one after.

32 THE COURT: I did not understand that from her

1 testimony.

2 MR. SEATON: I think the testimony showed only one
3 conversation that we brought up.

4 MR. HANDFUSS: That is why I was asking.

5 THE COURT: That is right.

6 BY MR. HANDFUSS:

7 Q At one point you said it was either Mr. Flanagan
8 informed you who was there and the District Attorney stated the
9 names of the defendants and he also stated Roy McDowell's name,
10 and you said that you had not heard Roy McDowell named at that
11 point in time. Was there a time that somebody explained to you
12 what had happened and you had not heard Roy McDowell's name?

13 A Yes.

14 Q Who stated that to you that they did not mention Roy's
15 name?

16 A Dale did not mention Roy's name.

17 Q So as far as you know up until that time, Roy McDowell
18 had nothing to do with any of these circumstances that had been
19 gone into?

20 A That is right.

21 Q And nobody had told you that they actually saw Roy
22 McDowell shoot anybody, did they?

23 A No.

24 MR. HANDFUSS: I have no further questions.

25 THE COURT: Mr. Posin?

26

27 CROSS-EXAMINATION

28 BY MR. POSIN:

29 Q Do you know the defendant, Randolph Moore?

30 A Yes.

31 Q How long have you known him?

32 A I'm not ve

1 Q Well, did you know him before the time that you moved
2 in with Dale Flanagan?

3 A No.

4 Q But you did get to know him thereafter; is that right?

5 A Yes.

6 Q Did you have occasion to be in his company on occasion
7 from the time you met him to today's date?

8 A Yes.

9 Q During any of this time did you have any conversation
10 or did he say anything which may have related to the killing of
11 the Gordons?

12 A No.

13 Q Never at any time; is that right?

14 A They would never mention it.

15 Q Now, you testified that you had a conversation with
16 Dale Flanagan and in that conversation he indicated that he and
17 Randy Moore had planned the killing of the Gordons; is that right?

18 A Yes.

19 Q Is that your testimony?

20 A Yes.

21 Q Did he tell you where that conversation took place?

22 A At Randy's apartment.

23 Q Did he tell you when that conversation had taken place?

24 A The day before the murder.

25 Q Did he tell you who participated in the conversation,
26 if anyone, beside he and Randy Moore?

27 A Johnny Ray Luckett, Roy McDowell and Mike Walsh.

28 Q Did he place them physically? Did he say where they
29 were when this conversation was being held, in what part of the
30 apartment?

31 A No.

32 Q Did he tell you specifically what any of the

1 participants in this conversation said to each other?

2 A No.

3 Excuse me. Tom Akers was also there. I forgot
4 to mention.

5 Q But he did not relate what each of the people there
6 may have said during the course of the conversation?

7 A No, he didn't.

8 Q He certainly did not indicate what Randy Moore had
9 said during the course of the conversation?

10 A No.

11 MR. POSIN: I will pass this witness.

12 THE COURT: Mr. Waite?

13 MR. WAITE: Thank you, your Honor.

14

15 CROSS-EXAMINATION

16 BY MR. WAITE:

17 Q Miss Saldana, you have indicated in earlier testimony
18 that you are familiar with or know Mike Walsh; is that correct?

19 A Yes.

20 Q How long have you known him?

21 A Not very long.

22 Q Can you give us an idea? Is it more than a year?

23 Less than a year?

24 A Less than a year.

25 Q How about six months?

26 A Not even that.

27 Q Less than six months?

28 A Yes.

29 Q How did you meet Mr. Walsh?

30 A Dale had introduced me to him.

31 Q Was that during the time that you and Mr. Flanagan

32 were boyfriend and girlfriend?

1 A Yes.

2 Q You indicate in your testimony that Dale Flanagan
3 told you that he was involved in the planning of the killing of
4 the Gordons; is that correct?

5 A Excuse me?

6 Q Dale Flanagan told you that he was involved in
7 planning the death of his grandparents, the Gordons; is that
8 correct?

9 A Yes.

10 Q And he also told you who was present during the time
11 that was planned?

12 A Yes.

13 Q You indicated that Mike Walsh was present?

14 A Yes.

15 Q Did he indicate to you what, if any, participation
16 Mike Walsh had in that plan? Did he tell you how he participated
17 in the planning?

18 A He had only stated that he was there.

19 Q Did he indicate anything that Mike Walsh had said
20 during that planning?

21 A No.

22 Q In your conversations with Mr. Akers -- and if I
23 understand correctly, you had two conversations with Mr. Akers
24 about what happened?

25 A Yes.

26 Q One was in person and one was on the phone; is that
27 correct?

28 A Yes.

29 Q When was the one that took place in person?

30 A Two weeks, two and a half weeks after the murder.

31 Q Were you living with Mr. Flanagan at that time?

32 A Yes.

1 Q Is that the one you are referring to in your statement,
2 that conversation you are referring to in the statement?
3 A Yes.
4 Q Prior to that conversation had you heard any
5 discussion from anyone concerning the death of the Gordons?
6 A No.
7 Q Now, how long after that conversation did Dale
8 Flanagan tell you specifically what took place that night?
9 MR. WATERMAN: Objection. Which conversation are we
10 talking about?
11 BY MR. WAITE:
12 Q The first conversation in person with Mr. Akers, how
13 long after that did Dale Flanagan tell you what happened?
14 A Two weeks after.
15 Q Another two weeks?
16 A Right.
17 Q This was still before the telephone conversation with
18 Mr. Akers; is that correct?
19 A Yes.
20 MR. WAITE: Pass the witness.
21 THE COURT: Redirect?
22 MR. SEATON: We don't have any redirect.
23 THE COURT: Let's keep it brief or we could circle
24 forever.
25 MR. SMITH: I will.
26
27 FURTHER CROSS-EXAMINATION
28 BY MR. SMITH:
29 Q There is something I forgot to cover, Miss Saldana.
30 In your first conversation you had with Mr. Akers
31 when he mentioned something about the murder, that was about two
32 and a half weeks after the murder occurred, right?

1 A Yes.
2 Q And you are saying the first time you talked with Mr.
3 Flanagan about this murder was on the 5th of December; is that
4 right?
5 A Yes.
6 Q Well, after you had the conversation with Mr. Akers,
7 is it your testimony that there was a period of two weeks or more
8 that passed without you having a conversation with Flanagan about
9 what had occurred?
10 A Yes.
11 Q That is the truth?
12 A He wouldn't talk about it.
13 Q Did you ask him about it?
14 A No.
15 Q Just never brought it up?
16 A No.
17 Q Your curiosity was not raised --
18 A My curiosity was raised, but I was a little afraid to
19 bring it up. I would let him bring it up.
20 Q Why were you afraid to bring it up if you had never
21 brought it up in the past?
22 A What would I say? Did you kill your grandparents?
23 I couldn't ask a question like that.
24 Q So it is your testimony under oath you said nothing
25 about it until the 5th of December; is that right?
26 A Yes. Nothing.
27 MR. SMITH: I will pass the witness.
28 MR. WATERMAN: I have a few questions.
29
30 FURTHER CROSS-EXAMINATION
31 BY MR. WATERMAN:
32 Q Mr. Posin asked you some questions about conversations

1 that Mr. Flanagan told you that there were relative to the
2 planning. Now, you have never testified previously that there
3 were any conversations about that, did you?

4 A One more time.

5 Q Well, you have never testified that there were
6 conversations relative to the planning of these incidents, did you?

7 MR. SEATON: I object to the form of the question.
8 She has never testified before.

9 BY MR. WATERMAN:

10 Q Do you remember when I was clarifying with you
11 precisely what Mr. Flanagan did tell you relative to the planning
12 of this incident and I showed you what you had said to the
13 Detective?

14 A Yes.

15 Q Isn't it a fact that you said that he told you that he
16 planned it and that the other people were just there?

17 A Yes.

18 Q That has not changed, has it, Miss Saldana?

19 A No.

20 Q I am glad we got the situation clarified as to the
21 phone conversations. I was confused.

22 When was the phone conversation?

23 A The third week of December.

24 Q Did you tell anybody about that phone conversation?

25 A My aunt and uncle a week after the Detective.

26 Q Did you tell the police about it?

27 A Yes. A week after.

28 Q Now, in the first conversation, the face to face
29 conversation, it did not go down that Mr. Akers simply started
30 telling you about an incident, you were asking him questions,
31 weren't you?

32 A Yes, I was.

1 Q Isn't it a fact that you asked him whether or not Mr.
2 Flanagan had anything to do with killing his grandparents?

3 A Yes, I did.

4 Q And isn't it a fact that Mr. Akers told you that he
5 could not tell you anything about that, but that you should not
6 stay there?

7 A Yes.

8 Q And as far as his participation was concerned, he told
9 you that definitely at that time that he was a victim of
10 circumstances; isn't that true?

11 A Yes.

12 MR. WATERMAN: That is all. Thank you.

13 THE COURT: Anyone else?

14 MR. POSIN: One question, if I may, your Honor.

15 THE COURT: All right, Mr. Posin.

16

17 FURTHER CROSS-EXAMINATION

18 BY MR. POSIN:

19 Q You testified earlier that in a conversation that you
20 had with Tom Akers he had said something about bringing guns in
21 case they had to scare someone. Was that the telephone
22 conversation or was that the meeting that you had with him --

23 A That was the telephone conversation.

24 Q In other words, did he tell you who, if anyone, had
25 said that they would bring guns in case they had to scare someone?

26 A He didn't say who.

27 MR. POSIN: Nothing further.

28 THE COURT: Redirect?

29 MR. SEATON: No redirect.

30 THE COURT: Is Miss Saldana free to leave?

31 MR. SEATON: By the State.

32 MR. POSIN: Yes, your Honor.

1 THE COURT: Miss Saldana, you are free to leave. If
2 you remain, you have to remain out in the hall and remember not
3 to discuss your testimony, but there is no reason for you to wait
4 unless you want to for your own purposes.

5 You may step down.

6 MR. SEATON: We are going to call Mehliia Moore.

7 THE COURT: Would you step up here and raise your
8 right hand.

9
10 MEHLIA MOORE,
11 having been first duly sworn to testify to the truth, the whole
12 truth and nothing but the truth, was examined and testified as
13 follows:

14
15 THE CLERK: Please be seated.

16 State your full name and spell your last name
17 for the record, please.

18 THE WITNESS: Mehliia Moore, M-o-o-r-e, M-e-h-l-i-a.

19 THE COURT: You may proceed.

20
21 DIRECT EXAMINATION

22 BY MR. SEATON:

23 Q Is it Miss or Mrs.?

24 A Miss.

25 Q Miss Moore, what is your age?

26 A Eighteen.

27 Q What is your birth date?

28 A 7-13-66.

29 Q Do you reside here in Las Vegas, Nevada?

30 A Yes.

31 Q Do you know Randy Moore?

32 A Yes.

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—FILED IN OPEN COURT—
SEP 26 1985 19
ORIGINAL

CASE NO. C69269
DEPARTMENT FOURTEEN

LORETTA BOWMAN, CLERK
By Lois Boyer Deputy

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

| | | |
|--------------------------------|---|-----------------------|
| THE STATE OF NEVADA, |) | |
| |) | |
| PLAINTIFF, |) | REPORTER'S TRANSCRIPT |
| |) | |
| VS. |) | OF |
| |) | |
| DALE EDWARD FLANAGAN, RANDOLPH |) | EVIDENTIARY HEARING |
| MOORE, JOHNNY RAY LUCKETT AND |) | |
| ROY MCDOWELL, |) | |
| DEFENDANTS. |) | |

BEFORE THE HONORABLE DONALD M. MOSLEY, DISTRICT JUDGE
TUESDAY, SEPTEMBER 24, 1985

APPEARANCES:

| | |
|-------------------------|-----------------------------|
| FOR THE STATE: | MELVYN T. HARMON, ESQUIRE |
| | & |
| | DANIEL M. SEATON, ESQUIRE |
| | DEPUTIES DISTRICT ATTORNEY |
| FOR DEFENDANT FLANAGAN: | RANDALL PIKE, ESQUIRE |
| FOR DEFENDANT MOORE: | MURRAY POSIN, ESQUIRE |
| FOR DEFENDANT LUCKETT: | WILLIAM H. SMITH, ESQUIRE |
| FOR DEFENDANT MCDOWELL: | ROBERT J. HANDFUSS, ESQUIRE |

Reported by: Sharon J. Thielman, Official Court Reporter

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NOT REPORTED.)

THE COURT: ALL RIGHT. WE WILL RESUME AT
APPROXIMATELY 1:45. COURT IS IN RECESS.

(RECESS TAKEN.)

THE COURT: THE CONTINUATION OF CASE C69269,
STATE OF NEVADA VERSUS DALE FLANAGAN, RANDOLPH MOORE, JOHN
LUCKETT AND ROY MCDOWELL.

THE RECORD WILL REFLECT THE PRESENCE OF EACH OF
DEFENDANTS, MR. FLANAGAN REPRESENTED BY MR. PIKE, MR. MOORE
REPRESENTED BY MR. POSIN, MR. LUCKETT REPRESENTED BY MR.
SMITH, MR. MCDOWELL REPRESENTED BY MR. HANDFUSS.

THE RECORD WILL ALSO REFLECT THE PRESENCE OF MR.
HARMON AND MR. SEATON REPRESENTING THE STATE.

MR. BAILIFF, WILL YOU ARRANGE OUR PRISONERS THE
WAY THEY WERE ARRANGED THIS MORNING? THE STATE MAY PROCEED.

MR. SEATON: ANGELA SALDANA.

ANGELA SALDANA,
WAS CALLED AS A WITNESS ON BEHALF OF THE STATE AND, HAVING
BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. SEATON:

Q WOULD YOU STATE YOUR NAME AND SPELL IT FOR THE
COURT REPORTER, PLEASE?

1 A ANGELA SALDANA, S-A-L-D-A-N-A.
2 Q ARE YOU FAMILIAR WITH RANDY MOORE, DALE FLANAGAN,
3 ROY MCDOWELL AND JOHNNY RAY LUCKETT?
4 A YES, I AM.
5 Q ARE THEY PRESENT IN COURT?
6 A YES, THEY ARE.
7 Q WOULD YOU POINT TO THEM AND DESCRIBE EACH PERSON,
8 WHERE HE IS SITTING IN RELATIONSHIP TO THE OTHERS?
9 A JOHN RAY LUCKETT, FIRST FROM THE LEFT.
10 Q HE IS THE FURTHEST FROM YOU?
11 A YES.
12 Q OKAY.
13 A ROY MCDOWELL, SECOND FROM THE LEFT, DALE FLANAGAN,
14 THIRD FROM THE LEFT AND RANDY MOORE, TO MY RIGHT.
15 MR. SEATON: MAY THE RECORD REFLECT THE
16 IDENTIFICATION OF THE FOUR DEFENDANTS, YOUR HONOR?
17 THE COURT: IT MAY.
18 MR. SEATON: THANK YOU.
19 BY MR. SEATON:
20 Q ARE YOU FAMILIAR WITH THE DEATHS OF CARL AND
21 COLLEEN GORDON ON NOVEMBER THE 5TH, 1984?
22 A YES, I AM.
23 Q WHERE DID YOU LIVE ON THAT PARTICULAR DAY?
24 A I WAS LIVING WITH MY AUNT AND UNCLE THAT
25 PARTICULAR DAY.

1 Q ON THE NEXT DAY, NOVEMBER THE 6TH, 1984, WHERE DID
2 YOU LIVE?
3 A WITH DALE FLANAGAN.
4 Q AND WHERE WOULD THAT HAVE BEEN?
5 A WASHBURN ROAD ON HIS GRANDPARENTS' PROPERTY IN HIS
6 TRAILER.
7 Q IN HIS TRAILER ON HIS GRANDPARENTS' PROPERTY ON
8 WASHBURN?
9 A YES.
10 Q THAT WAS ADJACENT TO THE HOUSE IN WHICH THE
11 GRANDPARENTS LIVED?
12 A YES.
13 Q WHAT WAS YOUR RELATIONSHIP WITH DALE FLANAGAN AT
14 THAT TIME?
15 A BOYFRIEND AND GIRLFRIEND.
16 Q DID HE LIVE IN THE TRAILER WITH YOU AT THE TIME
17 YOU LIVED THERE?
18 A YES, HE DID.
19 Q FOR ABOUT HOW LONG A PERIOD OF TIME DID YOU LIVE
20 IN THAT TRAILER?
21 A APPROXIMATELY A MONTH.
22 Q AND WOULD THAT HAVE BEEN, THEN, FROM ABOUT THE 6TH
23 OF NOVEMBER UNTIL THE FIRST WEEK OR SO OF DECEMBER?
24 A YES.
25 Q 1984. WHOSE IDEA WAS IT TO HAVE YOU MOVE INTO THE

1 TRAILER?
2 A DALE'S.
3 Q DID HE ASK YOU TO MOVE THERE?
4 A YES, HE DID.
5 Q ARE YOU FAMILIAR WITH THE DETECTIVE BY THE NAME OF
6 BURT LEVOS?
7 A YES, I AM.
8 Q SOMETIME IN THE MIDDLE OF NOVEMBER, DID HE HAVE AN
9 OCCASION TO COME TO THE TRAILER ON WASHBURN ROAD AT A TIME
10 WHEN BOTH YOU AND DALE FLANAGAN WERE PRESENT?
11 A YES, HE DID.
12 Q AND WHEN HE CAME THERE, DID HE HAVE A CONVERSATION
13 WITH EITHER YOURSELF OR DALE?
14 A HE HAD A CONVERSATION WITH DALE.
15 Q WHERE DID THAT CONVERSATION TAKE PLACE?
16 A AT HIS GRANDPARENTS' PROPERTY ON THEIR SIDE OF THE
17 FENCE.
18 Q OVER BY THE HOUSE?
19 A YES.
20 Q AND WHERE WERE YOU AT THAT TIME?
21 A I WAS ON THE SAME SIDE. BUT I WAS ASKED TO GO TO
22 THE TRAILER, WHILE THEY DISCUSSED SOMETHING.
23 Q AND DID YOU GO TO THE TRAILER?
24 A YES, I DID.
25 Q WERE YOU OUT OF THEIR PRESENCE WHEN THE DISCUSSION

1 WAS HAD BETWEEN DALE FLANAGAN AND BURT LEVOS?
2 A YES.
3 Q HOW LONG DID THE DISCUSSION TAKE PLACE BETWEEN
4 BURT LEVOS AND DALE FLANAGAN?
5 A I'D HAVE TO SAY APPROXIMATELY TEN MINUTES.
6 Q AFTER THAT TEN-MINUTE PERIOD OF TIME, WERE YOU
7 STILL IN THE TRAILER?
8 A YES.
9 Q DID DALE COME BACK TO THE TRAILER?
10 A YES, HE DID.
11 Q WHAT SORT OF A MOOD WAS HE IN WHEN HE ENTERED THE
12 TRAILER?
13 A A LITTLE DISTURBED.
14 Q DID HE SAY ANYTHING TO YOU?
15 A YES, HE DID.
16 Q WHAT DID HE TELL YOU?
17 A HE SAID -- THAT IS, I ASKED HIM WHAT WAS WRONG.
18 HE SAID THAT "THEY FOUND SOMETHING OF MINE THAT WASN'T SUPPOSED
19 TO BE THERE." I SAID, "WHICH WAS?"
20 MR. POSIN: THE WITNESS, I CAN HARDLY UNDERSTAND
21 HER RESPONSES.
22 THE COURT: A LITTLE SLOWER AND A LITTLE LOUDER,
23 PLEASE.
24 THE WITNESS: I AM SORRY.
25 MR. SEATON: IS THE MICROPHONE WORKING? WOULD YOU

1 PULL IT TOWARDS YOURSELF A LITTLE BIT?
2 BY MR. SEATON:
3 Q WOULD YOU TELL US AGAIN, A LITTLE MORE SLOWLY,
4 WHAT DALE FLANAGAN SAID TO YOU IN RESPONSE TO YOUR QUESTION OF
5 HIM OF WHAT WAS WRONG?
6 A HE SAID THAT HE HAD FOUND SOMETHING -- I MEAN, THAT
7 DETECTIVE LEVOS HAD FOUND SOMETHING OF HIS THAT WASN'T
8 SUPPOSED TO BE THERE. AND I SAID, "WHICH WAS?" AND HE SAID,
9 "MY KNIFE."
10 Q SO DALE FLANAGAN SAID DETECTIVE LEVOS HAD FOUND
11 DALE FLANAGAN'S KNIFE?
12 A YES.
13 Q DID HE SAY WHERE THAT KNIFE HAD BEEN FOUND?
14 A LATER ON, HE HAD SAID THAT IT WAS BY THE WINDOW.
15 Q THE WINDOW OF THE GORDONS' RESIDENCE?
16 A YES, THE BROKEN WINDOW.
17 Q WERE YOU FAMILIAR WITH THE KNIFE THAT HE WAS
18 REFERRING TO?
19 A YES.
20 Q WHAT KIND OF A KNIFE WAS IT?
21 A THE BASIC DAGGER.
22 Q HOW LONG?
23 A ABOUT SIX INCHES.
24 Q WHERE HAD YOU SEEN THAT KNIFE BEFORE?
25 A WITH DALE. HE HAD CARRIED IT WITH HIM.

1 Q DID HE CARRY IT WITH HIM OFTEN?
2 A YES.
3 Q DID HE HAVE A SHEATH OR A CARRYING CONTAINER FOR IT
4 OR ANYTHING LIKE THAT?
5 A YES, HE DID.
6 Q WOULD HE CARRY IT ON HIS BELT?
7 A YES, I THINK SO.
8 Q DID DALE EVER AT A LATER TIME SHOW YOU ANOTHER
9 KNIFE?
10 A YES, HE DID.
11 Q WHEN WAS THAT?
12 A I'D HAVE TO SAY APPROXIMATELY TWO WEEKS AFTER.
13 Q WAS IT A KNIFE ANYTHING SIMILAR TO THE KNIFE THAT
14 YOU WERE FAMILIAR WITH, THAT HE SAID THAT DETECTIVE LEVOS HAD
15 FOUND?
16 A YES. IT WAS IDENTICAL.
17 Q WHERE WERE YOU WHEN YOU SAW THAT KNIFE?
18 A IN THE TRAILER.
19 Q HOW DID IT COME ABOUT THAT DALE SHOWED YOU THAT
20 KNIFE?
21 A I AM NOT SURE HOW THE CONVERSATION STARTED. BUT
22 HE HAD SAID THAT -- HE HAD IT OUT IN FRONT OF HIM.
23 HE SAID, "LOOK, I FOUND MY KNIFE." AND I SAID,
24 "THAT DOESN'T LOOK LIKE THE OTHER KNIFE. THAT ONE LOOKS NEW."
25 AND HE SAID, "NO ONE ELSE KNOWS THAT. SO NOW THE COPS DON'T

1 HAVE --"

2 MR. POSIN: YOUR HONOR, LAST PORTION OF THE ANSWER
3 WAS SWALLOWED.

4 THE COURT: GO AHEAD, TRY AGAIN.

5 BY MR. SEATON:

6 Q REPEAT AGAIN WHAT DALE FLANAGAN SAID TO YOU ABOUT
7 THAT KNIFE.

8 A HE SAID, "YES, BUT NO ONE ELSE WILL KNOW THAT. AND
9 NOW THE COPS DON'T HAVE ANYTHING ON ME."

10 Q HE SAID THAT NO ONE ELSE WILL KNOW THAT THE KNIFE
11 LOOKS NEW?

12 A NO ONE ELSE WOULD KNOW THAT THE KNIFE IS NEW.

13 Q AND IS DIFFERENT THAN HIS ORIGINAL KNIFE?

14 A RIGHT.

15 Q I'D LIKE TO CALL YOUR ATTENTION NOW TO
16 APPROXIMATELY THE 5TH OF DECEMBER, 1985. ON OR ABOUT THAT
17 DATE, DID YOU HAVE ANOTHER CONVERSATION WITH DALE FLANAGAN?

18 A YES, I DID.

19 Q WHERE WERE YOU WITH DALE FLANAGAN AT THAT TIME?

20 A IN HIS TRAILER.

21 Q WAS ANYONE ELSE PRESENT DURING THAT CONVERSATION?

22 A NO, JUST DALE AND I.

23 Q HOW DID THAT PARTICULAR -- THIS CONVERSATION YOU
24 ARE GOING TO RELATE TO US NOW, HOW DID IT COME UP?

25 A WE HAD AN ARGUMENT ABOUT THE PREVIOUS BOYFRIEND OF

1 MINE. AND THEN, HE STATED HE DIDN'T CARE WHAT I DID ANYMORE.
2 HE WAS TIRED OF RUNNING FROM THE PROBLEM.

3 Q IS THAT HOW HE EXPRESSED IT, TIRED OF RUNNING FROM
4 THE PROBLEM?

5 A HE JUST SAID HE WAS TIRED OF RUNNING FROM THE
6 PROBLEM. HE DIDN'T REALLY HAVE ANY EMOTION OR ANYTHING IN HIS
7 VOICE. HE JUST -- HE WAS MORE UPSET AT ME THAN WHAT HE WAS
8 TALKING ABOUT, I SUPPOSE.

9 Q WHAT ELSE DID HE SAY? DID HE SAY ANYTHING TO YOU
10 ABOUT HIS GRANDPARENTS?

11 A YES, HE DID. HE BASICALLY KEPT SAYING AT FIRST
12 THAT HE WAS JUST TIRED OF ALL OF THIS. HE WAS GETTING SICK,
13 AND THIS AND THAT. AND HE STATED, "HOW DO YOU LIKE THIS IDEA,
14 I KILLED MY GRANDPARENTS?"

15 Q HE STATED, "HOW DO YOU LIKE THIS IDEA, I KILLED MY
16 GRANDPARENTS"?

17 A YES.

18 Q DID HE GO INTO ANY DETAIL ABOUT HOW THE KILLING
19 TOOK PLACE?

20 A YES, HE DID.

21 Q DID HE INDICATE TO YOU WHEN THE KILLING HAD TAKEN
22 PLACE?

23 A HE STATED EARLY IN THE MORNING OF THE 6TH.

24 Q OF THE 6TH OF NOVEMBER?

25 A YES.

1 Q SHORTLY AFTER MIDNIGHT?

2 A YES.

3 Q DID HE INDICATE TO YOU WHERE HE HAD BEEN EARLIER

4 IN THE EVENING ON THE EVENING OF THE 5TH OF NOVEMBER, 1984?

5 A I AM PRETTY SURE HE STATED HE WAS AT RANDY

6 MOORE'S.

7 Q DID HE SAY WHO ELSE WAS WITH HIM AT RANDY MOORE'S?

8 A AT THE TIME, HE STATED THAT TOM AKERS, RANDY

9 MOORE, MIKE WALSH, AND JOHN LUCKETT, I THINK. I THINK HE SAID

10 JOHN LUCKETT.

11 Q ARE THOSE ALL OF THE NAMES WHICH HE SAID TO YOU

12 WERE AT RANDY MOORE'S THE NIGHT BEFORE?

13 A YES. HE DIDN'T STATE ANY OTHERS.

14 Q YOU HAVE IDENTIFIED ROY MCDOWELL IN THESE

15 PROCEEDINGS. DID HE NOT MENTION ROY MCDOWELL'S NAME?

16 A NO.

17 MR. HANDFUSS: OBJECTION, LEADING.

18 MR. SEATON: I KNOW WHAT THE ANSWER IS GOING TO

19 BE. I AM CLARIFYING FOR YOUR BENEFIT.

20 THE COURT: I WILL ALLOW IT. IF SHE IS NOT GOING

21 TO ACQUIESE IN THAT AND IT IS NOT TRUE, SHE WILL LET US KNOW.

22 BY MR. SEATON:

23 Q HE DID NOT MENTION ROY MCDOWELL'S NAME?

24 A NO, HE DIDN'T.

25 Q DID HE INDICATE TO YOU WHAT WAS BEING TALKED ABOUT

1 AT RANDY MOORE'S APARTMENT THE EVENING OF NOVEMBER THE 5TH?

2 A ONLY THAT THEY WERE CONSPIRING, WHAT TO DO AND WHO
3 WAS GOING TO DO IT. HE DIDN'T GET IN ANY SPECIFICS ABOUT
4 THAT.

5 Q IN GENERAL TERMS, TELL US WHAT THEY WERE PLANNING
6 ON DOING?

7 A IN GENERAL TERMS, THEY WERE PLANNING ON MAKING IT
8 LOOK LIKE A ROBBERY. THIS IS WHAT DALE HAD TOLD ME. AND THEY
9 WERE GOING TO BREAK IN. HE DIDN'T STATE THEY WERE GOING TO
10 STEAL ANYTHING, EXCEPT REMOVE THE PURSE.

11 AND THAT WAS IT. HE DIDN'T SAY ANY OTHER THINGS.
12 THAT WAS IT. AND THAT THEY HAD KILLED HIS GRANDPARENTS. THAT
13 WAS ALL. ANY OTHER ITEMS WEREN'T MENTIONED.

14 Q LET'S TALK SPECIFICALLY ABOUT WHAT HE SAID THEY
15 DID THAT NIGHT, AS OPPOSED TO WHAT THEY SAID THEY WERE
16 PLANNING ON DOING.

17 DID HE INDICATE IF THEY LEFT RANDY MOORE'S
18 APARTMENT THAT EVENING?

19 A YES.

20 Q AND WHERE DID THEY GO FROM RANDY MOORE'S
21 APARTMENT?

22 A HE SAID -- DALE STATED THEY WENT DIRECTLY TO THE
23 HOUSE.

24 Q TO THE HOUSE OF CARL AND COLLEEN GORDON?

25 A YES.

1 Q DID HE SAY IN WHOSE CAR THEY DROVE?
2 A TOM AKERS.
3 Q DID HE SAY WHO WAS PRESENT ON THE TRIP FROM RANDY
4 MOORE'S APARTMENT TO THE HOUSE OF CARL AND COLLEEN GORDON?
5 A TOM AKERS, JOHN LUCKETT, RANDY MOORE AND MIKE
6 WALSH.
7 Q AS WELL AS DALE FLANAGAN?
8 A AS WELL AS DALE.
9 Q WHEN THEY GOT TO THE HOME OF CARL AND COLLEEN
10 GORDON, DID HE INDICATE TO YOU WHERE THE GROUP OF INDIVIDUALS
11 WENT?
12 A EXCUSE ME?
13 Q DID HE INDICATE TO YOU ONCE THEY GOT TO THE HOME
14 OF CARL AND COLLEEN GORDON, WHERE THEY WENT? DID THEY GO TO
15 THE HOUSE? DID THEY STAY IN THE CAR? DID THEY GO TO THE
16 TRAILER? WHERE DID THEY GO?
17 A TOM AKERS WAS TO STAY IN THE CAR, AND THE OTHERS
18 HAD WENT TO THE HOUSE. LATER ON IN THAT SHORT TIME, TOM HAD
19 WENT TO THE TRAILER TO GET SOMETHING.
20 Q DALE FLANAGAN TOLD YOU THAT TOM AKERS WAS TO STAY
21 IN THE CAR, AND LATER HE WENT TO THE TRAILER?
22 A YES.
23 Q THE OTHER INDIVIDUALS THAT WERE -- THAT HAD DRIVEN
24 OVER THERE WENT WITH DALE FLANAGAN TO THE HOUSE?
25 A YES. THEY WENT TO THE HOUSE.

1 Q DID THEY TELL YOU TO WHAT PART OF THE HOUSE THEY
2 WENT?

3 A TO THE SIDE OF THE HOUSE WHERE THE BROKEN WINDOW
4 IS, THE RIGHT OF THE HOUSE.

5 Q DID HE SAY HOW THE WINDOW BECAME BROKEN?

6 A YES. HE STATED THAT HE GAVE RANDY THE KNIFE TO
7 CUT OPEN THE SCREEN. IT WASN'T WORKING WELL, SO DALE HAD
8 BROKEN OPEN THE WINDOW.

9 Q IS THAT THE SAME KNIFE THAT HE INDICATED TO YOU
10 THAT DETECTIVE LEVOS HAD TOLD HIM THAT DETECTIVE LEVOS HAD
11 FOUND?

12 A YES.

13 Q AND HE HAD GIVEN THAT KNIFE TO RANDY?

14 A TO CUT OPEN THE SCREEN, YES.

15 Q WHAT HAPPENED?

16 A IT WASN'T WORKING WELL, AND SO, DALE HAD BROKEN
17 THE WINDOW.

18 Q DALE FLANAGAN BROKE THE WINDOW?

19 A THAT'S WHAT HE STATED TO ME.

20 Q DID HE SAY HOW DALE FLANAGAN BROKE THE WINDOW?

21 A NO, NOT AT THAT TIME. I DON'T THINK, NO.

22 Q DID HE INDICATE TO YOU IF THERE WERE ANY WEAPONS
23 THERE?

24 A HE INDICATED TO ME THAT THERE WAS A GUN, A HANDGUN
25 AND I THINK TWO RIFLES OF SOME SORT. I DON'T KNOW.

1 Q DID HE TELL YOU ANYTHING MORE ABOUT THE NATURE OF
2 THE RIFLES?
3 A NO.
4 Q DID YOU KNOW THE CALIBER OF ANY OF THOSE WEAPONS?
5 DID HE TELL YOU THAT?
6 A AS FAR AS I KNOW, I THINK IT WAS A .22. I AM NOT
7 SURE.
8 Q YOU SAID IT WAS A .22. DO YOU MEAN ALL OF THEM
9 WERE .22 OR ONE OF THEM?
10 A JUST THE HANDGUN, AS FAR AS I KNOW.
11 Q AND IS IT YOUR TESTIMONY THAT YOU DON'T KNOW WHAT
12 THE OTHER TWO RIFLES' CALIBERS WERE?
13 A I HAVE NO IDEA.
14 Q DID HE INDICATE TO YOU WHO HAD THE THREE WEAPONS?
15 A HE HAD SAID THAT RANDY HAD ONE RIFLE AND JOHN
16 LUCKETT HAD ANOTHER, AND THAT HE, HIMSELF, HAD THE HANDGUN.
17 Q THAT DALE PLANAGAN HAD THE HANDGUN?
18 A YES, EXCUSE ME.
19 Q WHEN THE WINDOW WAS BROKEN, DID HE TELL YOU WHAT
20 HAPPENED NEXT?
21 A HE HAD STATED THAT HIMSELF HAD WENT INTO HIS
22 GRANDMOTHER'S BEDROOM.
23 Q DID HE GO IN THROUGH THE WINDOW?
24 A YES.
25 Q AND WHAT DID HE DO WHEN HE WENT INTO HIS

1 GRANDMOTHER'S WINDOW?

2 A HE SAID HE WRESTLED HER TO THE BED, PUT HIS HAND
3 OVER HER MOUTH AND SHOT ONCE.

4 MR. POSIN: WE ARE HAVING THE SAME PROBLEM.

5 THE COURT: AGAIN, SLOWER.

6 THE WITNESS: HE HAD WRESTLED HIS GRANDMOTHER TO
7 THE BED, PUT HIS HAND OVER HER MOUTH AND SHOT HER ONE TIME.
8 BY MR. SEATON:

9 Q SHOT HER ONE TIME?

10 A YES. THAT IS WHAT HE STATED TO ME.

11 Q AND DID HE SAY WHAT HAPPENED TO MR. GORDON, THE
12 GRANDFATHER?

13 A HE SAID THAT AS HIS GRANDFATHER -- DALE SAID AS
14 HIS GRANDFATHER WAS COMING DOWN THE STAIRS, THAT JOHN LUCKETT
15 AND RANDY MOORE WERE SHOOTING AT HIM.

16 Q WITH THE RIFLES THAT THEY HAD?

17 A WITH THE RIFLES.

18 Q AND DID HE SAY WHETHER OR NOT EITHER OF THEM HIT
19 HIM, HIT THE GRANDFATHER?

20 A YES. HE SAID THEY HIT HIM.

21 Q DID HE, DURING THIS CONVERSATION, INDICATE TO YOU
22 WHETHER OR NOT THEY HAD GONE, ANY OF THEM HAD GONE INTO THE
23 HOUSE AND DONE OTHER THINGS?

24 A HE DIDN'T SAY THAT LUCKETT AND MOORE WENT INTO THE
25 HOUSE. HE JUST STATED THAT THEY HAD SHOT HIM. AND ANYONE

1 ELSE, I DON'T THINK HE SAID ANYONE ELSE WENT IN THE HOUSE.

2 Q DID HE INDICATE WHETHER OR NOT RANDY MOORE WENT
3 INTO THE HOUSE?

4 A NO, HE DIDN'T.

5 Q IS IT YOUR TESTIMONY, THEN, THAT THE ONLY PERSON
6 HE SAID WHO WENT INTO THE HOUSE WAS HIMSELF?

7 A YES.

8 Q DID HE INDICATE WHETHER OR NOT ANYTHING WAS TAKEN
9 FROM THE HOUSE?

10 A ONLY HIS GRANDMOTHER'S PURSE. THAT WAS THE ONLY
11 THING HE SAID WAS MISSING THAT HE TOOK HIMSELF.

12 Q HE HAD TAKEN THAT HIMSELF. DID HE SAY WHERE HE
13 GOT THE PURSE FROM?

14 A FROM THE LIVING ROOM CLOSET.

15 Q DID HE TELL YOU ANYTHING ELSE ABOUT THE LIVING
16 ROOM CLOSET?

17 A NO, HE DIDN'T.

18 Q DID HE TELL YOU WHAT THE PURPOSE WAS OF TAKING THE
19 PURSE?

20 A ONLY TO MAKE IT LOOK LIKE IT WAS A ROBBERY.

21 Q DID HE TELL YOU HOW THEY GOT -- HOW THEY LEFT, HOW
22 THEY LEFT THE HOUSE?

23 A IN TOM AKERS' CAR TO THE FRONT DOOR.

24 Q WAS IT THE SAME GROUP OF PEOPLE WHO LEFT IN TOM
25 AKERS' CAR?

1 A YES.

2 Q WHERE DID THEY GO? DID HE TELL YOU THAT?

3 A BACK TO RANDY MOORE'S HOUSE.

4 Q DID THEY TAKE THE PURSE WITH THEM?

5 A I DON'T KNOW.

6 Q HE DIDN'T TELL YOU?

7 A HE DIDN'T TELL ME.

8 Q DID HE TELL YOU ANYTHING MORE AT ALL ABOUT THE

9 PURSE?

10 A NO, HE DIDN'T. HE DIDN'T SAY WHAT HE DID WITH IT.

11 HE DIDN'T SAY THAT HE TOOK IT WITH HIM. HE JUST SAID THAT HE

12 HAD TAKEN THE PURSE OUT OF THE CLOSET.

13 Q DID HE SAY ANYTHING TO YOU ABOUT A WILL OR AN

14 INHERITANCE?

15 A YES, HE DID.

16 Q WHAT DID HE SAY ABOUT THAT?

17 A HE SAID THAT THERE WAS AN INHERITANCE, THAT IT WAS

18 GOING TO BE EITHER HALF OF HIS OR ALL OF HIS. HE WASN'T SURE.

19 IT WAS RUMORED TO HIM. AND THAT THERE WAS AN INSURANCE POLICY

20 FOR THE GRANDCHILDREN.

21 Q DID HE INDICATE HOW LARGE THE INSURANCE POLICY

22 WAS?

23 A I AM NOT SURE, BUT I THINK HE SAID 200,000.

24 Q \$200,000?

25 A YES.

1 Q DID HE EVER INDICATE TO YOU WHAT WAS CONTAINED IN
2 THE WILL, WHAT SORT OF PROPERTY?
3 A NO, HE DIDN'T. ONLY THAT -- ONLY THAT IT WAS THE
4 PROPERTY OF THE HOUSE AND THE PROPERTY WITH THE TRAILER.
5 Q THE BELONGINGS OF CARL AND COLLEEN GORDON?
6 A YES.
7 Q DID HE SPECIFICALLY MENTION THE WILL TO YOU?
8 A YES.
9 Q DID YOU EVER LOOK FOR SUCH A WILL?
10 A YES.
11 Q WHEN DID THAT TAKE PLACE?
12 A I CAN'T RECALL, YOU KNOW, WHAT TIME OF THE MONTH
13 OR ANYTHING. I CAN'T RECALL. IT WAS BASICALLY EVERY DAY
14 BECAUSE HIS MOTHER AND AUNT WOULD COME OVER EVERY DAY OR STAY
15 THERE AND WE WOULD LOOK UNTIL THEY HAD LEFT.
16 Q DID YOU HELP DALE FLANAGAN LOOK FOR THE WILL?
17 A YES, I DID.
18 Q WAS THAT AT HIS REQUEST?
19 A YES.
20 Q DID YOU EVER FIND SUCH A WILL?
21 A NO, WE DIDN'T.
22 MR. SEATON: COURT'S INDULGENCE.
23 BY MR. SEATON:
24 Q DID DALE FLANAGAN INDICATE TO YOU THE NUMBER OF
25 SHOTS WHICH WERE FIRED BY RANDY MOORE AND JOHNNY RAY LUCKETT?

1 A AT THE TIME, HE STATED FIVE TO SEVEN. HE DIDN'T
2 SAY SPECIFIC. HE JUST SAID FIVE TO SEVEN.

3 Q IF I WERE TO SHOW YOU A VOLUNTARY STATEMENT THAT
4 YOU MADE TO DETECTIVE LEAVITT ON THE 7TH OF DECEMBER
5 CONTAINING THAT INFORMATION, WOULD THAT ASSIST YOU IN
6 REFRESHING YOUR MEMORY --

7 A YES.

8 Q -- AS TO THE NUMBER OF SHOTS.

9 MR. SEATON: MAY I APPROACH THE WITNESS, YOUR
10 HONOR?

11 THE COURT: YOU MAY.

12 BY MR. SEATON:

13 Q SHOWING YOU PAGE EIGHT OF THAT VOLUNTARY
14 STATEMENT, DO YOU RECOGNIZE THE STATEMENT, FIRST OF ALL, AND
15 IS THAT YOUR SIGNATURE AT THE BOTTOM?

16 A YES.

17 Q AND SHOWING YOU AN ANSWER DOWN NEAR THE BOTTOM OF
18 THE PAGE ABOUT SIX LINES FROM THE BOTTOM, IF YOU WOULD READ
19 THAT TO YOURSELF. JUST TELL ME, DOES THAT REFRESH YOUR MEMORY
20 AS TO THE NUMBER OF TIMES?

21 A YES, IT DOES.

22 Q HOW MANY TIMES DID HE TELL YOU THAT RANDY AND
23 JOHNNY RAY HAD FIRED AT HIS GRANDDAD?

24 A SEVEN OR EIGHT. THAT IS WHAT HE STATED TO ME AT
25 THE TIME.

1 Q DID HE DISTINGUISH FOR YOU THE NUMBER OF TIMES
2 THAT RANDY MOORE HAD SHOT AS OPPOSED TO THE NUMBER OF TIMES
3 THAT JOHN RAY LUCKETT HAD SHOT?
4 A NO, HE DIDN'T.
5 Q DID HE TELL YOU ANYTHING ABOUT A PLAN THAT HE HAD
6 FOR DISCOVERING THE BODIES?
7 A YES, HE DID.
8 Q WHAT DID HE SAY TO YOU IN THAT REGARD?
9 A HE STATED THAT HE WAS GOING TO GO BACK TO RANDY
10 MOORE'S APARTMENT AND THAT HE WOULD BE REGISTERING TO VOTE
11 WITH HIS MOTHER. AND THAT BY THE TIME HE WAS FINISHED, HE
12 WOULD GO BACK AND HE WOULD FIND HIS GRANDPARENTS.
13 Q GO BACK TO THE HOUSE OF CARL AND COLLEEN GORDON?
14 A YES.
15 Q HE WAS GOING TO BE THE ONE WHO DISCOVERED THEIR
16 BODIES?
17 A YES.
18 Q DID HE TELL YOU WHETHER OR NOT HE WAS ABLE TO
19 ACCOMPLISH THAT?
20 A YES, HE DID. HE TOLD ME THAT HE WAS A LITTLE TOO
21 LATE. THAT LISA HAD GOTTEN THERE BEFORE HIM.
22 Q THAT IS LISA LICATA?
23 A YES.
24 Q AND SO THEN DID HE TELL YOU THAT HE DIDN'T TRY TO
25 CARRY THROUGH WITH THAT PLAN?

1 A YES. HE SAID HE COULDN'T. THERE WASN'T ANYTHING
2 HE COULD DO.

3 Q YOU INDICATED BEFORE THAT HE HAD MENTIONED TOM
4 AKERS' NAME. DO YOU KNOW TOM AKERS?

5 A YES, I DO.

6 Q DID YOU HAVE AN OCCASION AFTER THE DEATHS OF CARL
7 AND COLLEEN GORDON TO HAVE A CONVERSATION WITH TOM AKERS IN
8 DALE FLANAGAN'S TRAILER?

9 A YES, I DID.

10 Q APPROXIMATELY HOW SOON AFTER THE DEATHS OF CARL
11 AND COLLEEN GORDON DID YOU HAVE THAT CONVERSATION?

12 A APPROXIMATELY TWO WEEKS AFTER.

13 Q AND WHO ELSE WAS PRESENT DURING THAT CONVERSATION?

14 A NO ONE ELSE.

15 Q WHERE WAS DALE FLANAGAN AT THE TIME, IF YOU KNOW?

16 A I THINK HE WAS AT WORK.

17 Q SO IT WAS JUST YOU AND TOM AKERS IN THE TRAILER
18 ALONE?

19 A YES.

20 Q WOULD YOU TELL US THE CONVERSATION THAT OCCURRED
21 BETWEEN THE TWO OF YOU REGARDING THE DEATHS OF CARL AND
22 COLLEEN GORDON?

23 A WELL, I ASKED TOM IF HE HAD ANY -- IF DALE HAD HAD
24 ANY WAY, SHAPE OR FORM HAVING TO DO WITH THIS MURDER. AND HE
25 SAID HE COULDN'T TALK ABOUT IT. AND THAT HE COULD TELL ME

1 THIS MUCH, IT WASN'T SAFE FOR ME TO BE THERE AND I SHOULD
2 LEAVE.

3 AND I HAD STATED IF -- I ASKED HIM IF HE WAS A
4 VICTIM OF CIRCUMSTANCE OR IF HE KNEW WHAT WAS GOING ON. YOU
5 KNOW, IF HE WAS GOING TO DO THIS HIMSELF, I MEAN. HE SAID,
6 YES, HE WAS A VICTIM OF CIRCUMSTANCE.

7 Q DID HE SAY ANYTHING ELSE AT THAT TIME?

8 A IN THAT CONVERSATION, NO.

9 Q DID YOU HAVE AN OPPORTUNITY TO HAVE ANOTHER
10 CONVERSATION WITH TOM AKERS?

11 A YES, I DID. IT WAS AFTER THEY HAD ALL BEEN
12 ARRESTED ON THE PHONE.

13 Q WHEN DID THIS OCCUR?

14 A ABOUT MID-DECEMBER, I THINK.

15 Q AND YOU SAY YOU RECEIVED A PHONE CALL?

16 A YES.

17 Q DID TOM AKERS CALL YOU?

18 A YES, HE DID.

19 Q WHERE WERE YOU WHEN YOU RECEIVED THAT PHONE CALL?

20 A I WAS AT MY AUNT AND UNCLE'S AGAIN.

21 Q DID HE IDENTIFY HIMSELF AS TOM AKERS?

22 A YES.

23 Q DID YOU RECOGNIZE HIS VOICE?

24 A YES.

25 Q DID HE INDICATE TO YOU WHERE HE WAS CALLING FROM?

1 A FROM JAIL.

2 Q TELL US WHAT HE SAID TO YOU AT THAT TIME?

3 A I HAD ASKED HIM IF HE HAD KNOWN WHAT WOULD HAPPEN
4 TO THE GUNS. AND HE SAID HE THINK THAT THEY PUT THEM IN THE
5 LAKE OR A POND OR SOMETHING. THAT WAS BASICALLY ALL THAT WAS
6 SAID. THAT WAS THE WHOLE REASON FOR -- I ASKED HIM TO GET
7 THAT INFORMATION.

8 Q DID HE TELL YOU IN SOME DETAIL WHAT HAD OCCURRED
9 ON THE EVENING OF NOVEMBER THE 5TH AND THE MORNING OF NOVEMBER
10 THE 6TH?

11 A SMALL DETAIL. HE SAID THEY WENT BACK -- AFTER
12 THEY LEFT THE GRANDPARENTS' HOUSE, THEY WENT BACK TO RANDY
13 MOORE'S HOUSE.

14 Q LET ME STOP YOU IF I MIGHT. DID TOM AKERS IN THIS
15 PARTICULAR CONVERSATION IN MID-DECEMBER FROM THE TELEPHONE IN
16 JAIL, DID HE SAY ANYTHING TO YOU ABOUT THE GROUP OF DEFENDANTS
17 BEING TOGETHER THE NIGHT BEFORE AT RANDY MOORE'S APARTMENT?

18 A I CAN'T REMEMBER IF IT WAS ON THE PHONE CALL OR
19 NOT.

20 Q WAS THERE ANOTHER CONVERSATION THAT YOU HAD WITH
21 HIM?

22 A NO. I CAN'T REMEMBER IF IT WAS ON THE PHONE CALL
23 OR IN THE FIRST CONVERSATION. I REALLY CAN'T REMEMBER.

24 Q OKAY. DID HE SAY SOMETHING ABOUT THEM, ALL OF
25 THEM, BEING TOGETHER AT RANDY MOORE'S APARTMENT IN ONE OR THE

1 OTHER OF THOSE CONVERSATIONS?

2 A OH, WAIT, EXCUSE ME. IT WAS ON THE PHONE CALL,
3 YES. HE DID SAY THAT THE WHOLE GROUP OF THEM, THAT WERE
4 THERE, THEY DID GO, ALL OF THEM WENT BACK TO RANDY MOORE'S
5 APARTMENT.

6 Q EXCUSE ME FOR JUST A MOMENT, IF I MIGHT. FIRST OF
7 ALL, LET ME MAKE SURE I UNDERSTAND YOU. THE CONVERSATION THAT
8 YOU ARE NOW GOING TO RELATE TO US WAS THE CONVERSATION HAD BY
9 YOURSELF AND TOM AKERS WHEN HE CALLED YOU FROM JAIL ON THE
10 PHONE?

11 A YES. THIS WAS WHEN I ASKED HIM ABOUT THE GUNS.

12 Q OKAY. DID HE INDICATE TO YOU THAT THIS GROUP OF
13 DEFENDANTS HAD BEEN AT RANDY MOORE'S APARTMENT ON THE EVENING
14 OF NOVEMBER THE 5TH PRIOR TO THE KILLING?

15 A YES.

16 Q AND WHO DID HE SAY WAS AT RANDY MOORE'S APARTMENT?

17 A HE DIDN'T. HE JUST SAID THAT ALL OF THEM. THAT'S
18 ALL HE SAID.

19 Q DID HE MENTION ANY NAMES TO YOU AT ALL?

20 A NO. HE JUST SAID ALL OF THEM. WELL, HE SAID,
21 "ALL OF US." THAT WAS IT.

22 Q OKAY. DID HE SAY WHAT ALL OF THEM WERE DISCUSSING
23 OVER AT RANDY MOORE'S APARTMENT?

24 A NO. HE JUST SAID THAT THEY WERE FIGURING OUT WHO
25 WAS GOING TO DO WHAT.

1 Q OKAY. THAT IS WHAT I AM GETTING AT.
2 SPECIFICALLY, WHAT DID HE TELL YOU?
3 A ONLY THAT WHO WAS GOING TO DO WHAT. HE DIDN'T SAY
4 NAMES OR HE DIDN'T GO INTO DETAIL.
5 Q DID HE GIVE YOU THE -- DID HE MENTION TO YOU A
6 PLAN THAT THEY HAD IN A SIMILAR FASHION THE WAY YOU SAID DALE
7 FLANAGAN HAD TOLD YOU THAT THEY HAD A PLAN WHEN THEY WERE OVER
8 AT RANDY MOORE'S APARTMENT?
9 A ALL HE DID, ONLY THAT THEY WERE GOING TO GO OVER
10 THERE TO FIGURE OUT WHO WAS GOING TO DO WHAT. THAT IS ALL HE
11 SAID.
12 Q DID HE INDICATE TO YOU WHETHER OR NOT THEY HAD ANY
13 GUNS AT THAT TIME?
14 A HE DIDN'T SAY IF -- TOM DIDN'T SAY IF THEY HAD ANY
15 GUNS ON THE 5TH. SO I DON'T KNOW.
16 Q DID HE INDICATE TO YOU HOW THEY WENT FROM RANDY
17 MOORE'S APARTMENT TO CARL AND COLLEEN GORDON'S HOUSE?
18 A IN TOM AKERS' CAR.
19 Q DID HE INDICATE TO YOU WHERE HE, TOM AKERS, WENT
20 ONCE THEY ARRIVED AT THE WASHBURN RESIDENCE?
21 A YES. HE STATED THAT HE STAYED IN THE CAR AND,
22 SHORTLY AFTER, HE WENT TO THE TRAILER TO GET A TAPE.
23 Q DID HE SAY WHERE THE OTHER INDIVIDUALS WENT WHILE
24 HE WAS IN THE CAR OR AT THE TRAILER?
25 A HE STATED THAT THE OTHERS WENT TO THE

1 GRANDPARENTS' HOUSE.

2 Q HAD HE IN YOUR CONVERSATION WITH HIM OVER THE
3 PHONE BY THIS TIME NAMED THE OTHER PEOPLE WHO WERE INVOLVED
4 WITH HIM ON NOVEMBER THE 5TH?

5 A I CAN'T REMEMBER. I WOULD LIKE TO SAY YES BUT I
6 CAN'T REMEMBER.

7 Q DID HE INDICATE TO YOU WHILE HE WAS IN THE TRAILER
8 OF WHETHER OR NOT HE HEARD ANYTHING?

9 A HE SAID THAT HE HAD HEARD SHOTS FIRED AND HE KNEW
10 EVERYTHING WAS WRONG.

11 Q WHAT DID HE TELL YOU HE DID WHEN HE HEARD THE
12 SHOTS?

13 A HE SAID THAT HE WENT BACK TO THE CAR AND HE TRIED
14 TO START IT AND HE COULDN'T GET IT STARTED AND THAT THE OTHERS
15 HAD COME OUT RUNNING AFTER A FEW MINUTES AND THEY GOT INTO THE
16 CAR AND THEY DROVE AWAY.

17 Q DID HE TELL YOU WHERE THEY WENT?

18 A THAT THEY WENT BACK TO RANDY MOORE'S APARTMENT.

19 Q DID HE SAY WHETHER OR NOT HE SAW ANY GUNS?

20 A YES, HE DID.

21 Q WHERE DID HE SEE THE GUNS?

22 A HE JUST SEEN THEM CARRYING.

23 Q DID HE SAY WHO WAS CARRYING THE GUNS?

24 A NO.

25 Q DID HE SAY WHETHER OR NOT HE SAW A PURSE?

1 A NO.

2 Q HOW DID THIS PARTICULAR CONVERSATION START?

3 A HE CALLED -- WHICH ONE, THE PHONE?

4 Q THE PHONE CONVERSATION.

5 A HE HAD CALLED ME AND I BASICALLY STARTED THE

6 CONVERSATION ABOUT THE GUNS. I WAS ASKED TO BY MY AUNT AND

7 UNCLE.

8 Q SO YOU WERE CURIOUS AS TO WHAT HAD HAPPENED TO THE

9 GUNS?

10 A YES.

11 Q ASKED HIM AND THAT'S WHEN HE TOLD YOU THAT HE

12 THOUGHT THEY HAD BEEN PUT IN THE LAKE?

13 A YES.

14 MR. SEATON: THAT CONCLUDES DIRECT.

15 THE COURT: CROSS-EXAMINATION.

16

17 CROSS-EXAMINATION

18 BY MR. POSIN:

19 Q IF I RECALL YOUR TESTIMONY, YOU TOLD US THAT DALE

20 HAD SAID HE HAD GONE INTO THE GORDON HOME AND WENT INTO HIS

21 GRANDMOTHER'S BEDROOM?

22 A YES.

23 Q DID HE TELL YOU WHETHER HE WAS STILL IN THE

24 BEDROOM WHEN HE HEARD SHOTS BEING FIRED?

25 A YES.

1 Q DID HE TELL YOU THAT HE WAS NOT ABLE TO SEE WHO
2 WAS FIRING THE SHOTS?

3 DID HE TELL YOU ANYTHING ABOUT ACTUALLY SEEING WHO
4 FIRED THE SHOTS THAT WERE FIRED WHILE HE WAS IN THE BEDROOM?

5 A NO. HE STATED THAT RANDY AND JOHN LUCKETT WERE
6 THE ONES WHO WERE FIRING BUT HE DIDN'T SAY THAT HE SAW THEM.
7 HE SAID WHILE HE WAS WRESTLING HIS GRANDMOTHER TO THE BED --

8 Q HE SAID WHAT NOW, WELL?

9 A HE SAID THAT WHILE HE WAS WRESTLING HIS
10 GRANDMOTHER TO THE BED AND HE WAS DOING THAT, THAT HIS
11 GRANDFATHER WAS COMING DOWN THE STAIRS SCREAMING.

12 Q AND HE HEARD SOME SHOTS?

13 A AND HE HEARD THE SHOTS, RIGHT.

14 Q HE NEVER TOLD YOU THAT HE SAW THE SHOTS BEING
15 FIRED?

16 A HUH-UH.

17 Q DID HE TELL YOU WHETHER HE HEARD THE SHOTS BEING
18 FIRED BEFORE OR AFTER HE HAD SHOT HIS GRANDMOTHER?

19 A BEFORE.

20 Q DID HE TELL YOU HOW LONG BEFORE?

21 A NO.

22 Q SO THAT THE SHOTS THAT OSTENSIBLY KILLED MR.
23 GORDON WERE FIRED BEFORE THE SHOT WAS FIRED AT MRS. GORDON;
24 WAS THAT WHAT HE TOLD YOU?

25 A NO. YOU ASKED ME --

1 Q THE SHOT WAS FIRED IN THE BEDROOM FIRST?
2 A RIGHT.
3 Q AND THEN HE HEARD SHOTS FIRED IN THE OTHER PART,
4 THE FRONT OF THE HOUSE?
5 A GRANDMOTHER WAS SHOT FIRST, HIS GRANDFATHER CAME
6 DOWN AND WHILE HE WAS DOING THAT, I MEAN, WHILE HE WAS DOING
7 THAT, HIS GRANDFATHER CAME DOWN.
8 Q WOULD YOU SPEAK A LITTLE MORE SLOWLY SO THAT I CAN
9 HEAR. YOU REALLY DIDN'T WHAT?
10 A HE STATED THAT WHILE HE WAS DOING -- WHILE HE WAS
11 SHOOTING HIS GRANDMOTHER --
12 Q THERE WAS SOME SHOOTING GOING ON IN ANOTHER PART
13 OF THE HOUSE?
14 A AFTER DALE HAD SHOT HIS GRANDMOTHER.
15 Q YES, OKAY. YOU DON'T KNOW -- HE DIDN'T SAY
16 ANYTHING ABOUT HOW LONG THEREAFTER?
17 A DIRECTLY AFTER.
18 Q NOW, YOU TESTIFIED THAT DALE HAD GIVEN RANDY HIS
19 KNIFE TO CUT THE SCREEN DOOR OR CUT THE SCREEN?
20 A THE SCREEN WINDOW, YES.
21 Q AND HE TOLD YOU THERE WAS A PROBLEM IN TERMS OF
22 CUTTING THE SCREEN WINDOW?
23 A YES.
24 Q DID HE TELL YOU WHAT THAT PROBLEM WAS?
25 A IT JUST WASN'T CUTTING THROUGH.

1 Q IT WASN'T CUTTING?
2 A ALLS HE SAID IT WASN'T WORKING WELL SO RANDY HAD
3 THROWN IT DOWN AND DALE DIDN'T KNOW THAT HE HAD THROWN IT DOWN
4 AND THAT DALE HAD BROKEN THE WINDOW.
5 Q DID DALE TELL YOU WITH WHAT HE HAD BROKEN THE
6 WINDOW?
7 A I THINK HE STATED A STICK.
8 Q DID DALE TELL WHAT YOU KIND OF WEAPON HE HAD?
9 A HANDGUN.
10 Q YOU KNOW THE CALIBER? DID HE TELL YOU THE
11 CALIBER?
12 A I THINK IT WAS A .22 CALIBER. THIS IS A VERY LONG
13 TIME AGO SO I AM TRYING TO REMEMBER.
14 Q YOU NEVER HAD CONVERSATION WITH RANDY MOORE, DID
15 YOU?
16 A ABSOLUTELY NOT.
17 Q ABOUT WHAT HAPPENED?
18 A ABSOLUTELY NOT. THEY WOULD NEVER TALK ABOUT IT IN
19 FRONT OF ME.
20 MR. POSIN: I HAVE NO FURTHER QUESTIONS.
21 THE COURT: MR. SMITH.
22
23 CROSS-EXAMINATION
24 BY MR. SMITH:
25 Q THE ONLY TWO CODEFENDANTS THAT YOU SPOKE WITH

1 ABOUT THIS CASE WERE TOM AKERS AND DALE FLANAGAN; IS THAT
2 CORRECT?

3 A YES.

4 Q THE SECOND CONVERSATION THAT YOU HAD WITH DALE
5 FLANAGAN WHEREIN HE TOLD YOU WHAT HAD OCCURRED AROSE OUT OF
6 JUST A BOYFRIEND-GIRLFRIEND TALK ABOUT YOUR RELATIONSHIP; IS
7 THAT RIGHT?

8 A YEAH, THAT'S HOW THE CONVERSATION STARTED.

9 Q HE WASN'T ASKING YOU TO RENDER HIM ANY ASSISTANCE
10 IN COVERING UP THE CRIME OR ANYTHING LIKE THAT. HE WAS JUST
11 BASICALLY TELLING YOU WHAT HAD HAPPENED; ISN'T THAT CORRECT?

12 A I THINK HE EXPECTED ASSISTANCE OR BACKUP OR
13 WHATEVER, COVER UP.

14 Q DO YOU RECALL TESTIFYING AT THE PRELIMINARY
15 HEARING IN RESPONSE TO THE FOLLOWING QUESTION THAT I ASKED YOU
16 AND I AM AT PAGE 109 OF THE PRELIMINARY HEARING TRANSCRIPT.

17 "HE WAS NOT ASKING YOU TO RENDER HIM ANY
18 ASSISTANCE OR TO PARTICIPATE IN ANY TYPE OF COVER UP OR
19 ANYTHING LIKE THAT AT THAT POINT; IS THAT CORRECT?" AND DO YOU
20 RECALL ME ASKING YOU THAT QUESTION?

21 A I THINK SO.

22 Q AND YOU RECALL ANSWERING NO?

23 A HE DIDN'T ASK ME TO ASSIST HIM.

24 Q HE JUST ---

25 A HE JUST ASSUMED THAT I WOULD.

1 Q BASICALLY HE JUST TOLD YOU WHAT HAD HAPPENED; IS
2 THAT CORRECT?

3 A RIGHT.

4 Q AND DO YOU RECALL ALSO TESTIFYING AT THE
5 PRELIMINARY HEARING THAT THE SOLE PURPOSE OF THIS CONVERSATION
6 WAS TO ESSENTIALLY SORT OUT HOW YOU TWO STOOD AS BOYFRIEND AND
7 GIRLFRIEND?

8 A YES, THAT'S HOW IT STARTED OUT.

9 Q AND THAT WAS THE PURPOSE OF IT, CORRECT?

10 A YES.

11 Q HE NEVER TESTIFIED AS TO WHAT HIS BASIS OF
12 KNOWLEDGE WAS FOR REPRESENTING TO YOU THAT JOHNNY RAY LUCKETT
13 FIRED THE WEAPON, DID HE?

14 A REPHRASE THAT, PLEASE.

15 Q HE DIDN'T TELL YOU HOW HE KNEW OR LEARNED OR HEARD
16 THAT JOHN RAY LUCKETT HAD FIRED A WEAPON, DID HE?

17 A HE STATED THAT JOHNNY RAY LUCKETT AND RANDY MOORE
18 HAD THE GUNS.

19 Q RIGHT, BUT FROM THE CONTEXT OF THE CONVERSATION
20 FOR ALL YOU KNOW HE LEARNED ABOUT THAT AT SOME LATER POINT IN
21 TIME; ISN'T THAT CORRECT? IN OTHER WORDS, HE DIDN'T TELL YOU
22 THAT HE SAW EITHER RANDY OR DALE DO ANYTHING WITH EITHER ONE
23 OF THE WEAPONS, DID HE?

24 A NO.

25 THE COURT: COUNSEL, YOU MEAN RANDY OR JOHN.

1 MR. SMITH: JOHN.

2 THE COURT: YOU SAID RANDY OR DALE.

3 MR. SMITH: RANDY OR JOHN, EXCUSE ME.

4 BY MR. SMITH:

5 Q WITH RESPECT TO THE CONVERSATION YOU HAD WITH TOM
6 AKERS, HE DIDN'T GET INTO ANY SPECIFICS AS TO WHICH DEFENDANT
7 DID WHAT AT THE SCENE, DID HE?

8 A WHICH CONVERSATION?

9 Q THE SECOND CONVERSATION THAT YOU HAD WITH TOM
10 AKERS OR EITHER CONVERSATION YOU HAD WITH TOM AKERS?

11 A NO. HE DIDN'T STATE ANY NAMES OR SPECIFICS.

12 Q HE JUST BASICALLY GAVE YOU A GENERAL OVERVIEW AS
13 TO WHAT HAD OCCURRED, ISN'T THAT CORRECT?

14 A YES.

15 Q HE DIDN'T SAY SPECIFICALLY, "I SAW THIS OR I SAW
16 THAT," DID HE?

17 A ONLY THAT HE SAW ONLY ONE THING, THAT HE HAD SAW
18 THEM WITH THE GUNS. HE DIDN'T SAY ANYONE'S NAME.

19 Q NOW, MOVING ON TO ANOTHER MATTER. DID YOU EVER
20 HAVE A CONVERSATION WITH A NEWS REPORTER CONCERNING OCCULT
21 ACTIVITIES OR SATANIC OR BLACK MAGIC ACTIVITIES PURPORTEDLY
22 ENGAGED IN BY ANY OF THE CODEFENDANTS?

23 A YES.

24 Q AND DO YOU HAVE ANY PERSONAL KNOWLEDGE, THAT IS,
25 BASED ON YOUR OWN OBSERVATIONS THAT ANY OF THESE CODEFENDANTS

1 WERE INVOLVED IN ANY TYPE OF BLACK MAGIC OR SATANIC
2 ACTIVITIES?

3 A YES.

4 Q AND CAN YOU TELL US ABOUT WHAT YOU OBSERVED?

5 A PENTAGRAMS, THEY WERE INTO PENTAGRAMS.

6 MR. POSIN: I WILL ASK THE COURT AGAIN TO DIRECT
7 THE WITNESS TO SPEAK SUCCINCTLY.

8 THE COURT: LET HER REPEAT IT. WHAT DID YOU SAY?

9 THE WITNESS: PENTAGRAMS.

10 BY MR. SMITH:

11 Q IT'S TRUE, IS IT NOT, THAT YOU NEVER SAW YOURSELF
12 JOHN RAY LUCKETT EVER ENGAGE IN ANY TYPE OF BLACK MAGIC OR
13 OCCULT ACTIVITY; ISN'T THAT TRUE?

14 A I NEVER SEEN ANY OF THEM ENGAGE IN IT. I HAVE
15 ONLY SEEN WHAT THEY HAVE OWNED AMONG THEM, PERSONAL ITEMS.

16 Q YOU HAVE ONLY SEEN ESSENTIALLY PARAPHERNALIA AT
17 RANDY MOORE'S HOUSE AND AT DALE FLANAGAN'S HOUSE; ISN'T THAT
18 TRUE?

19 A YES, BECAUSE THEY WOULDN'T DISCUSS IT WITH ME, WHAT
20 THEY DO.

21 Q SO THEN YOU CANNOT SAY OF YOUR OWN PERSONAL
22 KNOWLEDGE THAT JOHN RAY LUCKETT HAS EVER BEEN PERSONALLY
23 INVOLVED IN ANY TYPE OF THAT ACTIVITY, CAN YOU?

24 A NO, I CAN'T.

25 Q HE CERTAINLY NEVER TOLD YOU THAT HE WAS, DID HE?

1 A NOPE.
2 Q NOW, DID RANDY EVER TELL YOU THAT HE WAS?
3 A DALE HAD TOLD ME THAT RANDY WAS.
4 Q DID RANDY EVER TELL YOU THAT HE WAS?
5 A NOT HIMSELF, NO.
6 MR. SMITH: I WILL PASS THE WITNESS.

7
8 CROSS-EXAMINATION

9 BY MR. PIKE:

10 Q MISS SALDANA, WHERE WERE YOU LIVING WHEN YOU FIRST
11 MET DALE FLANAGAN?
12 A WITH A GIRLFRIEND OF MINE.
13 Q WHAT IS HER NAME?
14 A DEBBIE SAMPLES.
15 Q WAS SHE LIVING WITH ANYBODY ELSE?
16 A WITH HER BOYFRIEND AND HER SISTER.
17 Q WAS HER BOYFRIEND'S NAME BLAKE?
18 A YES.
19 Q DID LISA LICATA EVER LIVE WITH YOU THERE?
20 A NOT WITH ME, NO.
21 Q AND HOW OLD WERE YOU WHEN YOU WERE RESIDING THERE?
22 A 19.
23 Q HOW WERE YOU SUPPORTING YOURSELF?
24 A I KNOW WHAT QUESTION YOU ARE GOING TO ASK. I WAS
25 STRIPPING.

1 Q WELL, THAT WASN'T THE QUESTION I WAS GOING TO ASK.
2 A BUT EVERYONE KEEPS THINKING I WAS A PROSTITUTE,
3 THIS AND THAT.
4 Q WHERE WAS THAT AT? WAS THAT HERE LOCALLY AT ONE
5 OF THE CLUBS?
6 A YES, BOGIE'S.
7 Q AND THEN YOU MET DALE APPROXIMATELY WHEN?
8 A I HAD MET DALE -- AFTER I HAD MOVED IN?
9 Q THE FIRST TIME YOU MET HIM.
10 A FIRST TIME I MET HIM, I WAS AT BOGIE'S STRIPPING.
11 Q AND THEN YOU MET HIM AGAIN. HOW LONG AFTER THAT
12 BEFORE YOU MET HIM AND YOU STARTED A RELATIONSHIP WITH HIM?
13 A REPHRASE THAT, PLEASE.
14 Q YOU FIRST MET DALE OVER AT BOGIE'S AND THEN WHEN
15 DID YOU STRIKE OFF A RELATIONSHIP; THEN, OR DID YOU MEET HIM
16 AGAIN LATER ON AND START A RELATIONSHIP? TELL ME HOW THE TWO
17 OF YOU GOT TOGETHER?
18 A THE FIRST NIGHT WE HAD DISCUSSED -- I SUPPOSE WE
19 STARTED, I GUESS, THAT NIGHT.
20 Q AND THEN YOU MOVED INTO HIS TRAILER ON WHAT DAY?
21 A NOVEMBER 6TH.
22 Q THE DAY AFTER THE DEATHS?
23 A YES.
24 Q ISN'T IT TRUE THERE WAS SOMETIME THAT THE
25 APARTMENT -- OR NOT THE APARTMENT BUT THE TRAILER WAS ROPED

1 OFF BY THE POLICE AND YOU HAD TO SPEND A FEW NIGHTS IN OTHER
2 PLACES?

3 A AFTER THE MURDER?

4 Q AFTER THE DEATH, YES.

5 A YES, I STAYED WITH MY AUNT AND UNCLE.

6 Q DID YOU STAY OVER AT THE HILTON WITH DALE AND HIS
7 FATHER?

8 A OH, YES. WE HAD SPENT THE NIGHT OVER THERE.

9 Q DID YOU SPEND THE NIGHT ANYWHERE ELSE?

10 A NOT THAT I CAN RECALL.

11 Q AND WHEN DID YOU BECOME INVOLVED WITH TOM AKERS?

12 A I'D HAVE TO SAY DURING THAT CONVERSATION IN THE
13 TRAILER WHICH WAS TWO WEEKS AFTER.

14 Q AND HAVE YOU EVER MADE ANY PLANS TO MARRY TOM
15 AKERS?

16 A YES. COULD I EXPLAIN THAT?

17 Q SURE, YOU CAN EXPLAIN THAT.

18 A HE HAD ASKED ME AND I BASICALLY SAID YES SO THAT
19 HE WOULD STILL TRUST ME AND I COULD GET MY INFORMATION. HE
20 HAD ASKED ME ON THE PHONE.

21 Q WAS THAT FROM THE JAIL?

22 A YES.

23 Q DID HE ALSO ASK YOU TO DESTROY ANY EVIDENCE?

24 A NO, NOT THAT I CAN REMEMBER.

25 Q DO YOU RECALL GIVING A STATEMENT TO DETECTIVE

1 GEARY IN JANUARY OF 1985 WHEREIN YOU CONTACTED MR. DAN SEATON
2 FROM THE DISTRICT ATTORNEY'S OFFICE INDICATING THAT YOU HAD
3 RECEIVED A TELEPHONE CALL ON CHRISTMAS FROM THOMAS AKERS IN
4 CLARK COUNTY JAIL?

5 A THAT I?

6 Q RECEIVED A TELEPHONE CALL.

7 A ASK THAT AGAIN, PLEASE, ONE MORE TIME.

8 Q DID YOU EVER RECEIVE -- LET ME TRY IT THIS WAY.
9 DID YOU EVER RECEIVE A TELEPHONE CALL FROM TOM AKERS WHEREIN
10 HE INSTRUCTED YOU TO GO GET ANY ITEM OF EVIDENCE AND DESTROY
11 IT?

12 A I DON'T THINK SO.

13 Q DID YOU EVER TAKE ANY PIECE OF EVIDENCE TO THE
14 DISTRICT ATTORNEY'S OFFICE?

15 A YES.

16 Q WHERE DID YOU FIND THAT?

17 A IN DALE'S TRAILER.

18 Q WHO TOLD YOU WHERE IT WAS AT?

19 A I KNEW WHERE IT WAS AT.

20 Q WHO TOLD YOU WHERE IT WAS AT?

21 A NO ONE. I HAD SEEN IT. I MEAN, IT WAS -- I HAD
22 BEEN THERE FOR A WHILE SO I HAD SEEN IT.

23 Q DO YOU RECALL TELLING MR. SEATON THAT YOU
24 INDICATED TO HIM THAT YOU RECEIVED A PHONE CALL ON CHRISTMAS
25 FROM THOMAS AKERS WHO TOLD YOU THAT THE WOODEN POLE WAS IN

1 DALE FLANAGAN'S TRAILER, THAT HE ADVISED YOU TO RETRIEVE THE
2 ITEM AND HIDE IT?

3 A I DON'T REMEMBER. THAT IS WHY I KEEP SAYING NO
4 BECAUSE I DON'T REMEMBER.

5 Q AND HOW MANY TIMES HAVE YOU SEEN TOM AKERS SINCE
6 HE HAS BEEN OUT OF CUSTODY?

7 A I HAD SEEN HIM ONE TIME AFTER ALL OF THIS.

8 Q WHEN WAS THAT?

9 A HE HAD WENT TO WORK FOR MY UNCLE, I THINK JANUARY
10 OR -- NO, JANUARY, FEBRUARY.

11 Q AND IS HE STILL EMPLOYED BY YOUR UNCLE?

12 A I HAVE NO IDEA. I DON'T KEEP IN CONTACT WITH HIM.

13 Q DID HE EVER INDICATE TO YOU THAT HE HAD THE FUNDS
14 AVAILABLE TO MARRY YOU?

15 A I CAN'T REMEMBER.

16 Q DO YOU RECALL HIM SAYING HOW HE WOULD SUPPORT YOU
17 ONCE YOU WERE MARRIED?

18 A NO.

19 MR. PIKE: I HAVE NO FURTHER QUESTIONS.

20 THE COURT: COUNSEL.

21

22 CROSS-EXAMINATION

23 BY MR. HANDFUSS:

24 Q YOU MOVED INTO MR. FLANAGAN'S TRAILER ON NOVEMBER
25 THE 6TH; IS THAT CORRECT?

1 A YES.
2 Q AND YOU KNEW WHO LISA LICATA IS?
3 A YES.
4 Q DO YOU KNOW IF SHE WAS ALSO A GIRLFRIEND OF MR.
5 FLANAGAN?
6 A YES.
7 Q DO YOU KNOW WHERE LISA LICATA WAS LIVING UP UNTIL
8 THE 6TH?
9 A SHE WAS LIVING WITH HER MOTHER, AS FAR AS I KNOW.
10 Q DO YOU KNOW OF YOUR OWN KNOWLEDGE WHETHER OR NOT
11 SHE WAS EVER LIVING WITH MR. FLANAGAN?
12 A YES.
13 Q DO YOU KNOW UP UNTIL WHEN TO THE BEST OF YOUR
14 KNOWLEDGE SHE WAS LIVING WITH MR. FLANAGAN?
15 A I CAN'T REMEMBER WHEN SHE HAD MOVED OUT. DALE
16 TOLD ME THEN BUT I CAN'T REMEMBER WHEN SHE MOVED OUT.
17 Q DO YOU KNOW UP UNTIL WHEN, APPROXIMATELY, LISA
18 LICATA WAS STILL MR. FLANAGAN'S GIRLFRIEND?
19 A APPROXIMATELY AFTER -- I GUESS THEY HAD BROKEN UP
20 RIGHT AFTER DALE AND I HAD MET.
21 Q AND ABOUT WHEN WOULD THAT HAVE BEEN?
22 A SOMETIME IN NOVEMBER, EARLY, I GUESS, THE EARLY
23 WEEK OF NOVEMBER.
24 Q IF THE DEATHS OCCURRED ON THE 5TH OF NOVEMBER, IT
25 WOULD EITHER HAVE BEEN THE 1ST, 2ND OR 3RD, SOMETHING LIKE

1 THAT?

2 A EXCUSE ME.

3 Q IF THE DEATHS OCCURRED ON THE 5TH OF NOVEMBER, IT
4 WOULD HAVE BEEN SOMETHING LIKE THE 1ST, 2ND OR 3RD OF
5 NOVEMBER?

6 A YES. I THINK. WE MET, I THINK, TWO WEEKS PRIOR TO
7 THIS.

8 Q DO YOU KNOW IF LISA LICATA WAS LIVING AT MR.
9 FLANAGAN'S TRAILER THE NIGHT BEFORE YOU MOVED IN?

10 A NO. SHE WASN'T. I DON'T THINK SHE WAS.

11 Q DO YOU KNOW WHO FOUND THE GORDONS' BODIES?

12 A LISA LICATA.

13 Q DO YOU KNOW WHY SHE WAS AT THE GORDONS' HOUSE?

14 A TO GET HER THINGS FROM DALE'S TRAILER.

15 Q AND TO THE BEST OF YOUR KNOWLEDGE SHE WAS LIVING
16 WITH HER MOTHER OR HER AUNT?

17 A HER MOTHER.

18 Q HER MOTHER. NOW, ON THE CONVERSATION THAT YOU HAD
19 WITH MR. AKERS FROM THE JAIL, WHEN HE CALLED YOU, YOU STATED
20 THAT HE STATED TO YOU THAT HE WAS IN MR. FLANAGAN'S TRAILER;
21 IS THAT CORRECT?

22 A THE NIGHT OF THE MURDER, YES.

23 Q THAT IS WHERE HE HEARD -- WHILE HE WAS IN THE
24 TRAILER, THAT IS WHERE HE HEARD THE GUNSHOT SOUNDS FROM?

25 A YES.

1 Q SO HE WAS ACTUALLY IN THE TRAILER WHEN THE GUN
2 WENT OFF, AS FAR AS YOU KNOW?

3 A YES, THAT'S WHAT I WAS TOLD.

4 Q SO IF HE WAS IN THE TRAILER, IT IS REASONABLE TO
5 ASSUME HE OBVIOUSLY DID NOT SEE WHO PULLED THE GUN, WHO SHOT
6 THE GUN?

7 MR. SEATON: OBJECTION, SPECULATION ON THAT.

8 THE COURT: REPHRASE THE QUESTION. WHEN YOU SAY
9 OBVIOUSLY, IT SUGGESTS THE ANSWER.
10 BY MR. HANDFUSS:

11 Q IF MR. AKERS TOLD YOU HE WAS IN THE TRAILER --
12 WHEN HE SAYS HE WAS IN THE TRAILER WHEN THE GUNSHOT WENT OFF,
13 HE NEVER TOLD YOU HE SAW WHO ACTUALLY SHOT THE GUN, DID HE?

14 A NO, HE DIDN'T.

15 Q AND WHEN HE TELLS YOU THAT SUCH AND SUCH A PERSON
16 SHOT THE GUN, SHOT A GUN AT THE GORDONS, ON THAT NIGHT, HE
17 NEVER ACTUALLY SAID TO YOU THAT HE SAW SOMEBODY SHOOT A GUN;
18 IS THAT CORRECT?

19 A YES.

20 Q THIS WAS BASICALLY FROM WHAT OTHER PEOPLE MIGHT
21 HAVE TOLD HIM THAT HE WAS RELATING TO YOU; IS THAT CORRECT?

22 A HE STATED THAT -- HE SAID ALL OF THEM. THAT'S
23 ALL. THAT'S ALL I CAN TELL YOU.

24 Q YOU MADE SOME STATEMENTS THAT ONE OF THE
25 DEFENDANTS MIGHT HAVE HELD A GUN AND ANOTHER DEFENDANT HELD

1 ANOTHER GUN BY NAME. IF MR. AKERS WAS IN THE TRAILER, HE
2 NEVER SAID TO YOU THAT HE ACTUALLY SAW WHO HAD THE GUN IN THE
3 HOUSE?

4 A NO. ONLY THAT THEY ALL -- HE JUST SAID THAT HE
5 HAD SEEN THEM COMING FROM THE HOUSE AFTER IT HAPPENED.

6 Q WHILE THEY WERE IN THE HOUSE WHEN HE HEARD THE
7 GUNSHOT?

8 A HE DIDN'T SEE, NO, HE DIDN'T SEE.

9 Q OKAY. NOW, ONE OF DEFENSE COUNSEL ASKED YOU IF
10 MR. AKERS ASKED YOU TO MARRY HIM AND YOU SAID YES; IS THAT
11 CORRECT?

12 A UH-HUH, YES.

13 Q YOU SAID YOU WANTED TO EXPLAIN, THAT WAS JUST
14 BECAUSE YOU WANTED HIM TO TRUST YOU TO GET MORE INFORMATION;
15 IS THAT RIGHT?

16 A YES.

17 Q AT THAT TIME, HAD YOU SPOKEN TO ANYBODY FROM THE
18 POLICE OR THE DISTRICT ATTORNEY'S OFFICE?

19 A I HAD SPOKE TO BEECHER AVANCE.

20 Q DID YOU CONTACT HIM OR DID HE CONTACT YOU?

21 A I CONTACTED HIM.

22 Q AND DO YOU RECALL WHEN YOU CONTACTED HIM?

23 A EXCUSE ME.

24 Q DO YOU RECALL APPROXIMATELY WHEN YOU CONTACTED MR.
25 AVANCE?

1 A RIGHT AFTER THE PHONE CALL. RIGHT AFTER I HAD
2 SPOKE WITH TOM AKERS.

3 Q OKAY. I AM CONFUSED. MY QUESTION WAS PRIOR TO
4 THE CONVERSATION WHERE MR. AKERS CALLED YOU FROM JAIL AND YOU
5 STATED TO MR. PIKE HERE THAT -- YOU STATED TO MR. PIKE THAT
6 WHEN HE ASKED YOU TO MARRY YOU -- HE ASKED YOU TO MARRY HIM,
7 MR. AKERS, YOU SAID THAT YOU ONLY SAID THAT SO HE WOULD TRUST
8 YOU AND YOU CAN GET MORE INFORMATION?

9 A RIGHT.

10 Q AND I ASKED YOU HAD YOU TALKED TO THE POLICE OR
11 THE DISTRICT ATTORNEY'S OFFICE PRIOR TO THAT TIME AND YOU SAID
12 YES, IS THAT RIGHT, PRIOR TO THAT PHONE CALL?

13 A OH, I HAD SPOKE TO A POLICE OFFICER AND I THINK
14 THIS WAS THE FIRST TIME THAT I HAD MET DAN SEATON, I THINK.

15 Q PRIOR TO THAT PHONE CALL, YOU HAD SPOKEN TO A
16 POLICE OFFICER AND MR. SEATON?

17 A YES, I THINK.

18 Q DID YOU --

19 A THE POLICE OFFICER DEFINITELY. MR. SEATON, I AM
20 NOT SURE. THIS IS ALL A YEAR AGO SO I AM REALLY TRYING TO PUT
21 THIS ALL TOGETHER FOR YOU.

22 Q I UNDERSTAND. I AM NOT ASKING FOR EXACTNESS. IF
23 YOU DON'T RECALL, ALL YOU HAVE TO DO IS SAY YOU DON'T RECALL.

24 A I DON'T RECALL.

25 Q AS FAR AS THE POLICE OFFICER, DO YOU RECALL IF YOU

1 CONTACTED THE POLICE OFFICER OR IF THAT POLICE OFFICER
2 CONTACTED YOU?

3 A I CONTACTED THE POLICE OFFICER.

4 Q DO YOU RECALL THIS OFFICER'S NAME?

5 A RAY BERNI.

6 Q IS THAT TWO NAMES?

7 A HUH?

8 Q IS IT RAY BERNI?

9 A MR. RAY BERNI.

10 Q AND DO YOU RECALL APPROXIMATELY WHEN YOU CONTACTED
11 OFFICER BERNI?

12 A IT WAS A SHORT TIME -- AFTER THE FIRST MEETING WAS
13 A SHORT TIME AFTER DALE BOUGHT THE SECOND KNIFE.

14 Q I AM SORRY. SAY THAT AGAIN?

15 A IT WAS A SHORT TIME AFTER DALE HAD BOUGHT THE
16 SECOND KNIFE.

17 Q AND DO YOU RECALL HOW LONG THAT WAS AFTER THE
18 DEATHS?

19 A I CAN'T RECALL.

20 Q DO YOU RECALL HOW LONG THAT WAS PRIOR TO YOUR
21 PHONE CONVERSATION WITH MR. AKERS FROM JAIL?

22 A AT LEAST THREE, FOUR WEEKS AFTER.

23 Q THREE TO FOUR WEEKS BEFORE THE CONVERSATION?

24 A EXCUSE ME, YES.

25 Q AND HAD YOU CONTACTED OFFICER BERNI OF YOUR OWN?

1 A YES.

2 Q DID YOU DO THAT FROM YOURSELF?

3 A YES.

4 Q WHAT DID YOU TELL OFFICER BERNI?

5 A I TOLD HIM WHAT WAS GOING ON AND THAT I WAS TRYING
6 TO FIGURE OUT WHAT WAS GOING ON AND I SHOWED HIM THE KNIFE AND
7 THE STATEMENT THAT DALE HAD MADE.

8 Q AND DID OFFICER BERNI ASK YOU BASICALLY TO PLAY
9 ALONG AND FIND OUT WHAT ELSE YOU COULD LEARN?

10 A NO. I TOLD HIM I WAS GOING TO. HE DIDN'T ASK ME
11 TO DO ANYTHING EXCEPT TO PUT THE KNIFE BACK.

12 Q HE ASKED YOU TO PUT THE KNIFE BACK?

13 A YES. SO THEN I WOULDN'T GET IN TROUBLE.

14 Q NOBODY WOULD KNOW IT WAS MISSING OR ANYBODY TOOK
15 IT?

16 A EXCUSE ME.

17 Q SO THAT NOBODY WOULD KNOW THE KNIFE WAS MISSING OR
18 ANYBODY HAD TAKEN IT, POSSIBLY SHOWN IT TO THE POLICE?

19 A RIGHT.

20 Q DID YOU SPECIFICALLY CALL UP FOR OFFICER BERNI OR
21 WERE YOU CALLING THE POLICE DEPARTMENT?

22 A I SPECIFICALLY CALLED FOR OFFICER BERNI BECAUSE I
23 HAD PREVIOUSLY KNOWN HIM.

24 Q HOW DO YOU KNOW OFFICER BERNI?

25 A HE USED TO BE MY BOYFRIEND.

1 Q AND AT THE TIME YOU INITIATED CONTACT WITH OFFICER
2 BERNI, DID YOU INFORM HIM OF ALL THESE THINGS YOU SAID THAT
3 MR. FLANAGAN TOLD YOU?

4 A YES.

5 Q AND DID HE THEN TELL YOU TO CONTACT BEECHER
6 AVANCE?

7 A YES.

8 Q AND YOU TOLD BEECHER AVANCE OF EVERYTHING YOU
9 KNEW?

10 A YES.

11 Q DID BEECHER AVANCE ASK YOU TO LET HIM KNOW OR LET
12 THE POLICE OR THE D.A.'S OFFICE KNOW ANYTHING ELSE YOU MIGHT
13 LEARN?

14 A YES.

15 Q AND BASED UPON THAT, WHEN YOU HAD THE CONVERSATION
16 WITH MR. AKERS AND HE ASKED YOU TO MARRY HIM, YOU BASICALLY
17 SAID YES JUST SO HE WOULD TRUST YOU, RIGHT?

18 A YES.

19 Q AND GET MORE INFORMATION; IS THAT CORRECT?

20 A YES.

21 Q AND THEN YOU WOULD GO -- IF YOU LEARNED ANY MORE
22 INFORMATION, YOU WOULD CALL, WOULD GO AND TELL METRO OR MR.
23 AVANCE, OFFICER BERNI OR PERHAPS EVEN MR. SEATON OR THE
24 DISTRICT ATTORNEY'S OFFICE; IS THAT CORRECT?

25 A YES. I WOULD HAVE ADDED TO MY STATEMENT WITH

1 DETECTIVE LEVOS.

2 MR. HANDFUSS: I HAVE NO FURTHER QUESTIONS.

3 THE COURT: ANYTHING FURTHER?

4 MR. SEATON: YES, YOUR HONOR.

5

6 REDIRECT EXAMINATION

7 BY MR. SEATON:

8 Q MISS SALDANA, YOU INDICATED IN RESPONSE TO A
9 QUESTION BY MR. SMITH, WHO IS TWO TO MY LEFT HERE, THAT YOU
10 FELT THAT DALE FLANAGAN EXPECTED YOUR ASSISTANCE?

11 A . YES.

12 Q THAT HE EXPECTED YOU TO COVER FOR HIM?

13 A HE WAS ASSUMING THAT I WOULD.

14 MR. SMITH: OBJECTION, YOUR HONOR, AS TO WHAT SHE
15 CAN SAY HE EXPECTS. I THINK THE PROPER QUESTION WOULD BE WHY
16 DO YOU THINK THAT.

17 THE COURT: WELL, THAT GOES --

18 MR. SMITH: IF THERE IS A PROPER QUESTION. I THINK
19 IT IS TOTALLY IN THE REALM OF SPECULATION AS TO WHAT WAS IN
20 FLANAGAN'S HEAD UNLESS HE EXHIBITED SPECIFIC MANIFESTATION
21 THAT IS WHAT HE WANTED HER TO DO.

22 THE COURT: THE RESPONSE GOES TO THE ISSUES WE ARE
23 TRYING TO RESOLVE HERE. I AM GOING TO ALLOW IT. IT WILL BE
24 STRICKEN IF THERE IS NO FURTHER INDICATION AS TO HOW OR AS TO
25 WHY SHE FEELS THAT.

1 MR. SEATON: YOUR HONOR, IT IS AN AREA THAT MR.
2 SMITH OPENED ON HIS CROSS-EXAMINATION AND IT IS REALLY THE
3 MAIN REASON FOR FEELING I AM ABLE TO GO INTO IT.

4 THE COURT: PROCEED.

5 BY MR. SEATON:

6 Q WHAT DO YOU FEEL HE EXPECTED OF YOU?

7 MR. SMITH: OBJECTION.

8 MR. PIKE: SPECULATION.

9 THE COURT: WHY DON'T YOU ASK THE QUESTION WHY SHE
10 FEELS THAT WAY AND LET'S GET TO THE CRUX.

11 MR. SEATON: THAT WAS GOING TO BE NEXT. I WILL DO
12 IT THAT WAY THEN IF THE COURT WOULD PREFER.

13 BY MR. SEATON:

14 Q WHY DID YOU FEEL THAT WAY?

15 A BECAUSE HE THOUGHT THAT I WAS HIS GIRLFRIEND AND
16 THAT I WOULD COVER UP FOR HIM. AND I CAN ONLY THINK OF TWO
17 REASONS WHY HE WOULD TELL ME, IS IF HE WANTED ME TO COVER UP
18 FOR HIM OR HE WANTED TO GET CAUGHT.

19 MR. HANDFUSS: COULD I ASK ONE VOIR DIRE QUESTION.
20 IT MIGHT CLEAR THIS WHOLE THING UP.

21 THE COURT: ALL RIGHT.

22

23 VOIR DIRE EXAMINATION

24 BY MR. HANDFUSS:

25 Q DID HE EVER TELL YOU OR ASK YOU TO COVER UP FOR

1 HIM OR BACK HIM UP IN A STORY?

2 A NO, HE DIDN'T.

3 MR. HANDFUSS: EVERYTHING ELSE IS SPECULATION,
4 YOUR HONOR.

5 MR. SEATON: I DON'T HAVE ANY OBJECTION TO THE
6 FACT THAT IT MAY BE SPECULATION. I AM SIMPLY COVERING WHAT
7 MR. SMITH OPENED UP AND I THINK WE ARE ENTITLED TO DO THAT.

8 THE COURT: HAVING HEARD THE RESPONSE TO THE LAST
9 QUESTION, PROCEED, IF THERE IS ANYTHING ELSE IN THAT AREA YOU
10 CARE TO ASK.

11

12 REDIRECT EXAMINATION (CONTINUED)

13 BY MR. SEATON:

14 Q MISS SALDANA, HAD YOU BEEN ASKING DALE FLANAGAN
15 QUESTIONS ABOUT THE KILLING. HAD YOU BEEN INQUISITIVE AT ALL
16 IN YOUR RELATIONSHIP WITH HIM?

17 A NOT TOO MUCH.

18 Q TO WHAT DEGREE HAD YOU BEEN?

19 A HE WOULD -- IF HE EVER STARTED A CONVERSATION, I
20 WOULD JUST SAY, "WHY?" OR "WHAT WAS YOUR REASON?" THAT WAS THE
21 ONLY THING THAT I JUST BASICALLY LET HIM GO ON HIS ROLL.

22 Q LET ME ASK YOU SOMETHING, MISS SALDANA, THAT I
23 THINK YOU ADDRESSED BEFORE BUT I WANT TO GET IT STRAIGHT IN MY
24 MIND.

25 THE DECEMBER 5TH CONVERSATION WITH DALE FLANAGAN

1 AT YOUR TRAILER, WOULD YOU TELL US THE CONTEXT IN WHICH THAT
2 AROSE?

3 A HE HAD FOUND OUT THAT I WENT TO A PREVIOUS
4 BOYFRIEND AND HE WAS UPSET ABOUT IT. AND WE WERE DISCUSSING
5 IT. HE STATED HE DIDN'T CARE WHAT I DID ANY MORE. HE WAS
6 TIRED OF RUNNING FROM THE PROBLEM. HE WAS JUST TIRED.

7 THE COURT: YOU HAVE TO SPEAK UP.

8 THE WITNESS: HE SAID HE WAS TIRED FROM RUNNING
9 FROM THE PROBLEM. HE WAS JUST TIRED.

10 BY MR. SEATON:

11 Q WHO WAS THE PREVIOUS BOYFRIEND?

12 A HIS NAME WAS PAUL.

13 Q IT WASN'T RAY BERNI?

14 A NO.

15 Q AT THIS TIME ON DECEMBER THE 5TH, HAD YOU HAD YOUR
16 CONVERSATION WITH RAY BERNI?

17 A EXCUSE ME.

18 Q BY DECEMBER THE 5TH, HAD YOU HAD YOUR CONVERSATION
19 WITH RAY BERNI?

20 A A COUPLE WEEKS PRIOR TO THAT.

21 Q ABOUT THE KNIFE?

22 A YES.

23 Q AND WAS IT WITH REGARD TO THE KNIFE THAT -- LET ME
24 ASK IT THIS WAY. WAS IT IN REGARD TO THINGS LIKE THE KNIFE,
25 THE FINDING OF THE KNIFE BY THE POLICE AND THE BUYING OF A NEW

1 KNIFE BY MR. FLANAGAN, THAT WAS THE REASON THAT YOU EXPECTED
2 HIM TO OR THAT HE EXPECTED YOU TO BACK HIM UP?

3 MR. SMITH: YOUR HONOR, IT IS LEADING AND
4 SUGGESTIVE AT THIS POINT.

5 THE COURT: SUSTAINED.

6 MR. SEATON: WELL, I DON'T WANT TO SUGGEST THE
7 ANSWER. I WANT TO GET HER INTO AN AREA SO WE HAVE SPECIFIC
8 SUBJECT MATTER WITH WHICH WE ARE DEALING IN THAT AREA. WE ARE
9 TRYING TO GET THE REASONS FROM MISS SALDANA AS TO WHY SHE
10 THOUGHT DALE FLANAGAN EXPECTED HER ASSISTANCE.

11 MR. SMITH: WHICH HAS BEEN COVERED. SHE TESTIFIED
12 HOW THE CONVERSATION AROSE OUT OF A DISCUSSION WITH THE
13 BOYFRIEND. IT HAS BEEN COVERED OVER AND OVER.

14 MR. SEATON: I UNDERSTAND WHAT MR. SMITH IS SAYING
15 ABOUT WHAT HASN'T BEEN COVERED IS. SHE ALLUDED BEFORE TO THE
16 FACT THAT HE EXPECTED HER ASSISTANCE WITH REGARD TO THINGS AND
17 I WANT TO FIND OUT FROM HER IF THE KNIFE WAS ONE OF THOSE
18 THINGS BECAUSE THAT IS HOW THAT PARTICULAR CONVERSATION CAME
19 UP.

20 MR. POSIN: IF YOUR HONOR PLEASE, SHE ANSWERED IN
21 RESPONSE TO THE QUESTION THAT SHE ANTICIPATED THAT HE EXPECTED
22 HER TO COVER BECAUSE SHE WAS HIS GIRLFRIEND. NOT BASED UPON
23 ANYTHING ELSE THAT HE HAD SAID.

24 THE COURT: ALL RIGHT. IF YOU CARE TO ASK THE
25 QUESTION CONCERNING THE KNIFE, SPECIFICALLY, IF IT IS

1 SOMETHING TO THE EFFECT THAT IF SHE THOUGHT MR. FLANAGAN
2 SHOWED THE KNIFE TO HER FOR ANY REASON SUCH AS TO COVER UP, I
3 WILL GO ALONG WITH THAT. THAT HAS NOT BEEN COVERED
4 SPECIFICALLY.

5 MR. SMITH: THAT WAS PRIOR CONVERSATION, HAS
6 NOTHING TO DO WITH THIS CONVERSATION. THAT WAS TWO WEEKS --

7 THE COURT: WHENEVER IT OCCURRED, IT WOULDN'T
8 MATTER.

9 MR. SEATON: YOUR HONOR, I WILL WITHDRAW THE
10 SUBJECT MATTER AND THAT WILL CONCLUDE MY REDIRECT.

11 THE COURT: RECROSS.

12 MR. PIKE: I HAVE SOME, YOUR HONOR.

13

14 RECROSS-EXAMINATION

15 BY MR. PIKE:

16 Q HOW SOON AFTER THE DEATHS DID YOU CONTACT OFFICER
17 BERNI?

18 A HOW SOON AFTER THE DEATHS?

19 Q UH-HUH. ABOUT A WEEK, WEEK AND A HALF?

20 A I'D HAVE TO SAY TWO WEEKS.

21 Q AND HOW SOON AFTER THAT, DID YOU TALK TO BEECHER
22 AVANCE UP AT THE D.A.'S OFFICE?

23 A I SPOKE TO BEECHER AVANCE --

24 Q THE NEXT DAY OR?

25 A AT THE TIME OF THE PHONE CALL WITH TOM AKERS.

1 Q SO COULD YOU PUT THAT IN PROSPECTIVE TO WHEN THE
2 DEATHS OCCURRED?

3 A EXCUSE ME.

4 Q COULD YOU PUT THAT IN TIME PERSPECTIVE FOR ME AS
5 TO WHEN THE DEATHS OCCURRED. IF WE ARE LOOKING AT TIME LINE,
6 THE DEATHS OCCURRED ON THIS DATE?

7 A CHRISTMAS. IT WAS -- TOM HAD CALLED ME ON
8 CHRISTMAS.

9 Q TOM CALLED YOU ON CHRISTMAS AND THEN THAT'S WHEN
10 TOM TOLD YOU WHERE THE STICK WAS?

11 A YEAH.

12 Q NOW, YOU CONTACTED OFFICER BERNI ABOUT A WEEK OR
13 ABOUT TWO WEEKS, EXCUSE ME, AFTER THE DEATHS OCCURRED?

14 A YES. A SHORT TIME AFTER DALE HAD BOUGHT THE
15 KNIFE, THE SECOND KNIFE.

16 Q BUT BEFORE YOU HAD THE CONVERSATION WHEN HE TALKED
17 WITH YOU ABOUT IT?

18 A EXCUSE ME.

19 Q BUT BEFORE HE HAD THE CONVERSATION WITH YOU ABOUT
20 HIS INVOLVEMENT WITH THE DEATHS; IS THAT CORRECT?

21 A WHO IS "HE?"

22 Q DALE.

23 A DALE DID NOT TELL ME THAT HE HAD DONE IT UNTIL THE
24 5TH.

25 Q OKAY. SOME THREE WEEKS AFTER YOU TALKED WITH

1 OFFICER BERNI?
2 A YES.
3 Q DID OFFICER BERNI EVER TELL YOU ANY QUESTIONS IN
4 PARTICULAR TO ASK DALE?
5 A NO. THE ONLY THING THAT HE HAD TOLD ME WAS TO BE
6 CAREFUL AND PUT THE KNIFE BACK. THAT WAS IT. AND THAT IF I
7 NEEDED HELP, I COULD GO TO A CERTAIN HOUSE BUT THAT WAS --
8 I MEAN, HE KNEW WHAT I WAS DOING. I WAS BASICALLY
9 TELLING HIM WHAT I WAS DOING. HE DIDN'T TELL ME TO DO
10 ANYTHING BUT TO PUT THE KNIFE BACK.
11 Q BUT THEN YOU INDICATED BEFORE THAT YOU WERE GOING
12 TO ASK SPECIFIC QUESTIONS OR JUST LISTEN TO HIM?
13 A JUST LISTEN TO HIM. I MEAN, WHEN HE STARTED
14 TALKING, HE WAS ON A ROLL SO I DIDN'T REALLY HAVE TO SAY
15 MUCH. I DIDN'T REALLY WANT TO THAT MUCH EITHER.
16 Q DID YOU EVER ADVISE HIM THAT YOU HAD MET WITH
17 OFFICER BERNI OR TALK WITH ANY POLICE OFFICERS?
18 A DID I ASK?
19 Q DID YOU EVER TELL DALE ABOUT THAT?
20 A NO.
21 MR. PIKE: NO FURTHER QUESTIONS.
22 THE COURT: ANYTHING FURTHER?
23 MR. HANDFUSS: JUST TWO QUESTIONS.
24 //
25 //

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Q AFTER YOU INITIALLY -- AFTER YOU FIRST SPOKE TO
BERNI, DID YOU TELL OFFICER BERNI OR BEECHER AVANCE OR
THAT YOU WOULD BASICALLY TELL HIM ANYTHING ELSE YOU
EARN?

Q YOU SPOKE TO RAY BERNI?

Q YOU TOLD HIM WHAT WAS GOING ON. HE SAID BE
.. YOU SAID THAT YOU WOULD TRY TO LEARN MORE
ATION FROM MR. AKERS. THAT IS WHY YOU TOLD HIM Y
MARRY HIM. YOU NEVER REALLY INTENDED TO MARRY HI

Q AT ALL TIMES WHATEVER YOU LEARNED, DID YOU INTEND
BACK TO OFFICER BERNI OR BEECHER AVANCE OR ANYBODY IN
A.'S OFFICE AND TELL THEM WHAT YOU LEARNED?

Q ONE OTHER QUESTION, IF I CAN RECALL IT. I
IZE.

IF THE DEATHS OCCURRED ON NOVEMBER 5TH, YOU SAID THAT YOU HELPED DALE OR HIS MOTHER LOOK FOR THE WILL. THAT WAS IN THE HOUSE; IS THAT RIGHT?

Q DO YOU KNOW HOW LONG AFTER THE DEATHS YOU HELPED

1 LOOK FOR THE WILL?

2 A I CANNOT RECALL BECAUSE IT WAS EVERY DAY. WE WENT
3 THERE EVERY DAY SO I CANNOT RECALL.

4 Q EVERY DAY IMMEDIATELY AFTER THE DEATHS; LIKE IT
5 WASN'T IN JANUARY?

6 A NO. IT WASN'T IMMEDIATELY BUT IT WAS --

7 Q WAS IT STILL IN NOVEMBER?

8 A YES, IT WAS STILL IN NOVEMBER BUT --

9 MR. HANDFUSS: I HAVE NO FURTHER QUESTIONS.

10 MR. POSIN: ONE QUESTION IF I MAY.

11

12 RECROSS-EXAMINATION

13 BY MR. POSIN:

14 Q WITH REGARD TO YOUR SEARCH FOR THE WILL, WHERE DID
15 YOU LOOK FOR THE WILL?

16 A IN THE HOUSE, IN THE R.V., IN THE GARAGE.

17 Q WAS DALE WITH YOU WHILE YOU WERE LOOKING FOR THE
18 WILL?

19 A YES.

20 Q WAS ANYONE ELSE WITH YOU?

21 A DALE'S MOTHER AND HER AUNT AND ANOTHER GENTLEMAN.
22 I DON'T RECALL HIS NAME. I DON'T EVEN KNOW IF HE WAS RELATED
23 TO THEM.

24 Q NONE OF THE DEFENDANTS WERE WITH YOU WHILE YOU
25 WERE LOOKING FOR THE WILL?

1 A ONLY DALE.
2 MR. POSIN: NOTHING FURTHER.
3 THE COURT: MISS SALDANA, YOU ARE EXCUSED. I ASK
4 YOU NOT TO DISCUSS YOUR TESTIMONY WITH THOSE OUTSIDE. YOU MAY
5 GO AT THIS TIME.
6 MR. SEATON, WHO IS YOUR NEXT WITNESS?
7 MR. SEATON: MEHLIA MOORE.
8 THE COURT: HOW LONG WOULD YOU ANTICIPATE?
9 MR. SEATON: ABOUT THE SAME AMOUNT OF TIME.
10 THE COURT: WE WILL TAKE A SHORT RECESS.
11 (RECESS TAKEN.)
12 THE COURT: THE CONTINUATION OF CASE C69269, STATE
13 OF NEVADA VERSUS DALE FLANAGAN, RANDOLPH MOORE, JOHN LUCKETT
14 AND ROY MCDOWELL. THE RECORD WILL REFLECT THE PRESENCE OF
15 EACH OF THE DEFENDANTS AND THEIR RESPECTIVE COUNSEL, MR.
16 SEATON AND MR. HARMON REPRESENTING THE STATE. THE STATE'S
17 NEXT WITNESS.
18 MR. SEATON: MEHLIA MOORE.
19
20 MEHLIA L. MOORE,
21 WAS CALLED AS A WITNESS ON BEHALF OF THE STATE AND, HAVING
22 BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:
23 DIRECT EXAMINATION
24 BY MR. SEATON:
25 Q PLEASE STATE YOUR NAME AND SPELL YOUR FIRST AND

ORIGINAL

FILED

CASE NO. C069269

FEB 14 1986

DEPARTMENT FOURTEEN

By *Indira M. ...*
DEPUTY

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,

PLAINTIFF,

vs.

DALE EDWARD FLANAGAN, RANDOLPH
MOORE AKA SMITH, JOHNNY RAY
LUCKETT AND ROY MCDOWELL,

DEFENDANTS.

REPORTER'S TRANSCRIPT

OF

JURY TRIAL

BEFORE THE HONORABLE DONALD M. MOSLEY, DISTRICT JUDGE

THURSDAY, SEPTEMBER 26, 1985

APPEARANCES:

FOR THE STATE:

MELVYN T. HARMON, ESQUIRE

&
DANIEL M. SEATON, ESQUIRE
DEPUTIES DISTRICT ATTORNEY

FOR DEFENDANT FLANAGAN: RANDALL PIKE, ESQUIRE

FOR DEFENDANT MOORE: MURRAY POSIN, ESQUIRE

FOR DEFENDANT LUCKETT: WILLIAM H. SMITH, ESQUIRE

FOR DEFENDANT MCDOWELL: ROBERT J. HANDFUSS, ESQUIRE

Reported by: Sharon J. Thielman, Official Court Reporter

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1 LAS VEGAS, NEVADA, THURSDAY, SEPTEMBER 26, 1985

2
3 THE COURT: C69269, STATE OF NEVADA VERSUS DALE
4 FLANAGAN, RANDOLPH MOORE, JOHN LUCKETT AND ROY MCDOWELL. THE
5 RECORD WILL REFLECT THE PRESENCE OF EACH OF THE DEFENDANTS,
6 MR. FLANAGAN REPRESENTED BY MR. PIKE, MR. MOORE BY MR. POSIN,
7 MR. LUCKETT BY MR. SMITH AND MR. MCDOWELL BY MR. HANDFUSS.

8 THE RECORD WILL ALSO REFLECT THE PRESENCE OF MR.
9 HARMON AND MR. SEATON REPRESENTING THE STATE AND THE ABSENCE
10 OF THE JURY.

11 WE ARE CONVENING THIS MORNING FOR THE PURPOSE OF
12 EXAMINING, CHARACTERIZING AND DETERMINING ADMISSIBILITY OF
13 VARIOUS ALLEGED CO-CONSPIRATOR STATEMENTS OR DECLARATIONS AND
14 FOR THE DETERMINATION OF VARIOUS MOTIONS.

15 GENTLEMEN, I TRUST THE ACCOMMODATIONS ARE
16 SATISFACTORY; SATISFACTORY IF NOT NOTHING MORE?

17 MR. PIKE: YES, YOUR HONOR.

18 THE COURT: WE ARE RATHER JAMMED IN THIS MORNING.
19 MY PREFERENCE, ALTHOUGH I WOULD HEAR REASON TO ALTER FROM
20 THIS PROCEDURE, WOULD BE TO EXAMINE THE LIST OF THE ALLEGED
21 DECLARATIONS FIRST AND DETERMINE THEIR CHARACTER AND
22 ADMISSIBILITY IF THAT IS AGREEABLE TO COUNSEL.

23 MR. HARMON: YES, YOUR HONOR.

24 MR. PIKE: YES, YOUR HONOR.

25 THE COURT: MR. HARMON, DOES EACH ATTORNEY HAVE A

1 LIST OF THE DECLARATIONS THAT THE STATE HAS PROPOUNDED?

2 MR. PIKE: I HAVE ONE ON BEHALF OF DALE FLANAGAN.

3 MR. POSIN: YES, I DO, YOUR HONOR.

4 THE COURT: MR. HANDFUSS AND MR. SMITH?

5 MR. HANDFUSS: YES, SIR.

6 MR. SMITH: YES, SIR.

7 THE COURT: WE WILL WORK ON THAT LIST. MR.
8 HARMON, WOULD YOU LIKE TO PROCEED?

9 MR. HARMON: YOUR HONOR, THANK YOU. PERHAPS IT
10 WOULD BE APPROPRIATE TO BEGIN BY REFERRING TO THE CASE THAT
11 WE CONSIDER TO BE THE WATERSHED CASE IN THIS JURISDICTION ON
12 THE SUBJECT OF CO-CONSPIRATOR DECLARATIONS, THAT BEING
13 GOLDSMITH VERSUS SHERIFF, WHICH IS REPORTED AT 85 NEVADA, PAGE
14 295. DECISION WAS RENDERED IN 1969.

15 I WANT TO POINT OUT, AS GOLDSMITH MENTIONS IN THE
16 OPINION, THAT SINCE CONSPIRACY CASES ARE MANY TIMES DIFFICULT
17 TO PROVE AND RARELY IS THERE A SITUATION WHERE THE
18 PROSECUTION IS IN A POSITION TO OFFER DIRECT EVIDENCE TO
19 SUPPORT ITS CHARGES, THAT GREAT LATITUDE SHOULD BE SHOWN IN
20 THE INTRODUCTION OF TESTIMONY.

21 THE OPINION STATES, "IT IS ENOUGH THAT THE
22 EVIDENCE OFFERED TENDS TO ELUCIDATE THE INQUIRY OR TO
23 ASSIST IN DETERMINING THE TRUTH."

24 THE COURT SAYS, "THE COURTS AS A GENERAL RULE DO
25 NOT REVERSE JUDGMENTS BECAUSE OF THE ORDER IN WHICH THE

1 TESTIMONY WAS RECEIVED."

2 THE DECISION GOES ON TO READ, "WHEN THE
3 CONSPIRACY IS ONCE SUFFICIENTLY ESTABLISHED, ACTS AND
4 STATEMENTS OF THE CONSPIRATOR MAY BE USED AGAINST ALL ENGAGED
5 IN THE CONSPIRACY. IN THE ADMISSION OF THIS TYPE OF
6 EVIDENCE, THE TRIAL COURT HAS A WIDE DISCRETION."

7 NOW, WITH THAT IN MIND, YOUR HONOR, AND ALSO
8 CITING AS OUR PRIMARY AUTHORITY THE STATUTE SECTION 51.035,
9 SUBHEADING 3(E), IT IS OUR CONTENTION THAT MOST OF THE
10 DECLARATIONS, WHICH WE HAVE SET OUT ON THE LIST WE FILED
11 YESTERDAY, ARE ADMISSIBLE IN THIS CASE.

12 THERE ARE TWO AREAS WHERE WE ARE WILLING TO
13 CONCEDE THAT THE COURT, AT LEAST DURING THE CASE IN CHIEF,
14 SHOULD NOT PERMIT INTRODUCTION.

15 AND, IN FACT, WILL ADVISE THE COURT AND COUNSEL
16 THAT REGARDING THE CONVERSATIONS WAYNE WITTIG HAD WITH THE
17 DEFENDANT FLANAGAN, WHICH APPARENTLY COMMENCED THE DAY AFTER
18 THE CRIMES AND CONTINUED IN BITS AND PIECES FOR SEVERAL WEEKS
19 AFTER THAT, IT SEEMED TO BE STRICTLY A NARRATIVE. I DON'T
20 THINK IN VIEW OF THE CASE LAW THAT WE ARE IN A POSITION TO
21 ARGUE.

22 THE COURT: YOU ARE ALLUDING TO NUMBER 17?

23 MR. HARMON: NUMBER 17, YOUR HONOR. IT'S NOT OUR
24 CONTENTION AT THIS POINT THAT THOSE CONVERSATIONS WERE IN THE
25 COURSE OF AND FURTHERED THE CONSPIRACY.

1 ALSO, PARAGRAPH 24, WHICH DEALS WITH MEHLIA MOORE,
2 THE TELEPHONE CONVERSATION OCCURRING, ACCORDING TO HER,
3 BETWEEN HERSELF AND HER BROTHER RANDY MOORE, WHICH EVIDENTLY
4 WAS A FEW DAYS AFTER DECEMBER THE 9TH, 1984.

5 AT THIS POINT, JUDGE, WE ARE NOT PURSUING THE
6 CLAIM THAT THOSE ARE CO-CONSPIRATOR DECLARATIONS.

7 THE COURT: SO THAT I UNDERSTAND, ARE YOU SEEKING
8 TO UTILIZE EITHER OF THOSE IN ANY FASHION AS AN ADMISSION
9 AGAINST INTEREST?

10 MR. HARMON: NOT AT THIS POINT, YOUR HONOR. IF
11 CERTAIN DEFENDANTS TAKE THE WITNESS STAND AND TESTIFY AND ARE
12 THEN SUBJECTED TO CROSS-EXAMINATION, THEN THAT PRESENTS AN
13 ENTIRELY DIFFERENT SITUATION.

14 BUT, IN TERMS OF ADMISSIONS AGAINST INTEREST OR
15 THE CO-CONSPIRATOR DECLARATION, WE WON'T BE OFFERING THE
16 WITTIG OR THE MEHLIA MOORE DECLARATIONS.

17 WITH THOSE EXCEPTIONS, YOUR HONOR, I WOULD STATE
18 THAT IN ALL OTHER PARAGRAPHS, IT'S THE POSITION OF THE STATE
19 THAT THE STATEMENTS ARE ADMISSIBLE UNDER 51.035, SUBHEADING
20 3(E).

21 THE COURT: VERY GOOD, THANK YOU.

22 MR. HARMON: I WOULD POINT OUT, AS THE COURT IS
23 AWARE, FROM THE CASE OF FISH VERSUS STATE, WHICH WE CITE IN
24 OUR BRIEF, THE PERSON THROUGH WHOM THE DECLARATIONS ARE
25 PRESENTED TO THE COURT NEED NOT BE A CONSPIRATOR.

1 IN THE FISH CASE, CONSTANCE MILLER, WHO WAS THE
2 WIFE OF DAVID MILLER, ONE OF THE CONSPIRATORS IN THAT CASE,
3 WAS A WITNESS WHO DESCRIBED MANY DECLARATIONS MADE TO HER.

4 AND THE SUPREME COURT IN FISH MADE IT VERY CLEAR
5 THAT IT DIDN'T AFFECT ADMISSIBILITY BECAUSE CONSTANCE MILLER,
6 LIKE ANGELA SALDANA AND JOHN LUCAS AND MICHELLE GRAY AND
7 OTHERS IN THE CASE BEFORE THE COURT, ALSO ARE NOT
8 CO-CONSPIRATORS BUT THAT DOES NOT AFFECT ADMISSIBILITY.

9 WE UNDERSTAND THAT THERE MUST BE INDEPENDENT
10 EVIDENCE OF A CONSPIRACY BEFORE THE COURT MAY GO TO THE
11 SECOND STAGE AND CONSIDER WHETHER THE STATEMENTS WERE IN
12 FURTHERANCE OF THE CONSPIRACY.

13 THE CASES OF FISH AND CRANFORD AND PETERSON AND
14 GOLDSMITH, ALL OF WHICH WE CITE IN OUR BRIEF, POINT OUT THAT
15 INDEPENDENT EVIDENCE OF A CONSPIRACY NEED ONLY BE SLIGHT
16 EVIDENCE.

17 AND NOT TO BELABOR THE POINT, IT SEEMS VERY
18 CLEAR TO US, YOUR HONOR, THAT AFTER THE COURT HAS CONSIDERED
19 THE TESTIMONY OF JOHN LUCAS, WHO PLACES BY HIS TESTIMONY FIVE
20 OF THE SIX CONSPIRATORS AT 337 NOK. 13TH STREET THE NIGHT OF
21 NOVEMBER THE 5TH, 1984 AND THEN TESTIFIES THAT ALL SIX
22 RETURNED TOGETHER THE FOLLOWING MORNING, PERHAPS BETWEEN ONE
23 O'CLOCK AND 1:30 A.M.

24 AND ALSO THE TESTIMONY OF TOM AKERS, WHO
25 TESTIFIES THAT HE AND THE OTHER FIVE CONSPIRATORS LEFT THE

1 MOORE RESIDENCE IN HIS EL CAMINO.

2 HE DESCRIBES HEARING A WINDOW BREAK AND SHOTS AND
3 SCREAMS. HE DESCRIBES THE LOCATION OF MR. LUCKETT, WHO HAD A
4 SAWED-OFF RIFLE IN HIS HAND. HE DESCRIBES THE OTHER FOUR
5 RUNNING FROM THE AREA OF THE FRONT DOOR OF THE GORDON
6 RESIDENCE.

7 IT SEEMS VERY CLEAR FROM THE EVIDENCE OFFERED BY
8 LUCAS AND AKERS THAT THERE IS EVIDENCE OF A CONSPIRACY. THAT
9 REALLY, I THINK, BRINGS US, SINCE I SUBMIT THE COURT IS
10 JUSTIFIED IN CONSIDERING NRS 51.035, SUBHEADING 3(E) IN VIEW
11 OF THAT, AS TO WHETHER THE CONSPIRACY WAS STILL PENDING AND
12 WHETHER THE STATEMENTS MADE FURTHERED THE CONSPIRACY.

13 IN GOLDSMITH AND THE CREW CASE AND THE FOSS CASE,
14 ALL OF WHICH WE HAVE CITED IN OUR BRIEF, IT IS POINTED OUT
15 THAT A CONSPIRACY DOESN'T NECESSARILY END WITH THE
16 PERPETRATION OF THE CRIMES. IT CONTINUES UNTIL ITS CENTRAL
17 AIM HAS BEEN ACHIEVED.

18 IN GOLDSMITH, THE CENTRAL AIM WAS OBTAINING
19 INSURANCE PROCEEDS. AND THAT CASE IS DIRECTLY ANALOGOUS TO
20 THIS ONE BECAUSE WE ARE CONTENDING, AND I THINK OUR
21 CONTENTION IS SUPPORTED BY THE RECORD, THAT THE PRIMARY
22 MOTIVATION IN THE KILLING OF THE GORDONS WAS INHERITANCE AND
23 INSURANCE.

24 AND SO OBVIOUSLY THE CONSPIRACY WAS STILL PENDING
25 EVEN AFTER THE GORDONS WERE KILLED, BECAUSE THE PARTIES HOPED

1 TO COLLECT ON EITHER INHERITANCE OR INSURANCE.

2 AND AS HAS BEEN POINTED OUT, THE REASON FOR THE
3 INVOLVEMENT OF OTHERS BESIDES MR. FLANAGAN WAS THAT THEY
4 HOPED TO RECEIVE PAYMENTS FROM HIM AFTER HE HAD COLLECTED.

5 GOLDSMITH IS ALSO VERY HELPFUL IN THE FINAL LEGAL
6 AREA AND THAT IS WHAT IS MEANT BY FURTHERING THE CONSPIRACY.
7 I DIRECT THE COURT'S ATTENTION TO PAGE 93 OF THAT OPINION.

8 AND ALSO CERTAINLY ENCOURAGE THE COURT, BEFORE
9 RULING ON THE MATTERS BEFORE IT, TO CONSIDER WHAT TYPES OF
10 DECLARATIONS WERE CONSIDERED BY THE COURT IN GOLDSMITH TO
11 FURTHER THE CONSPIRACY IN THAT CASE.

12 AT PAGE 93, THE COURT POINTS OUT, "THAT
13 CONSTRUING THE EXPRESSION IN FURTHERANCE OF THE CONSPIRACY
14 REFERENCES NOT TO THE ADMISSIONS AS SUCH, BUT RATHER TO THE
15 ACT CONCERNING WHICH THE ADMISSION IS MADE."

16 "THAT IS TO SAY, IF THE ACT OR DECLARATION
17 CONCERNING WHICH THE ADMISSION OR DECLARATION IS MADE BE IN
18 FURTHERANCE OF THE CONSPIRACY, THEN IT MAY BE SAID THAT THE
19 ADMISSION IS IN FURTHERANCE OF THE CONSPIRACY."

20 THERE ARE SOME GOOD EXAMPLES OF THAT IN THE
21 GOLDSMITH CASE. WHEN GERNOT MATTHEIS TESTIFIED THAT HE HAD A
22 CONVERSATION WITH CONSPIRATOR TED LINN ON AUGUST THE 27TH,
23 1967, THE CONVERSATION WAS AS FOLLOWS:

24 LINN SAID, "WELL, WE HAD TO KILL A COUPLE OF GUYS
25 AND BULLETS WERE FLYING AROUND THE CAR AND ONE CREASED GLENN

1 LUCAS IN THE BACK OF THE HEAD. AND ANOTHER ONE ALMOST HIT ME
2 AND WENT IN THE DASHBOARD OF THE CAR RIGHT NEXT TO THE
3 RADIO."

4 YOU KNOW, IT SEEMS TO ME ANYBODY WHO READ THAT
5 OPINION THINKS HOW COULD THAT FURTHER THE CONSPIRACY. IT
6 SEEMS TO BE SIMPLY LINN TELLING MATTHEIS, "WE HAD TO KILL A
7 COUPLE OF PEOPLE AND BULLETS WERE FLYING AROUND AND I ALMOST
8 GOT HIT."

9 WELL, IT MAKES SENSE IF WE REALIZE AS GOLDSMITH
10 ARTICULATES LATER THAT TO FURTHER, THAT DOESN'T MEAN THAT THE
11 STATEMENT ITSELF FURTHERS, BUT IT MEANS THAT THE STATEMENT
12 REFERS BACK TO ACTS OR STATEMENTS WHICH DID FURTHER THE
13 CONSPIRACY.

14 THAT'S FURTHER REITERATED BY THE VERY NEXT
15 DECLARATION THAT THE COURT RULED FURTHERED THE CONSPIRACY.
16 IT IS LINN AGAIN TO MATTHEIS. AND HE SAYS THAT THE TWO MEN
17 THEY HAD KILLED WERE LARRY OLINGER AND ROBERT STUCKER.

18 HE SAID, "WELL, DAVE GOLDSMITH ASKED ME TO FIND
19 SOMEBODY TO HAVE THEM KILLED. AND I FOUND LINN AND LUCAS TO
20 DO IT BUT THE WHOLE DEAL WAS A FAILURE FROM THE BEGINNING."

21 IN FACT, AS THE COURT GOES THROUGH THESE VARIOUS
22 STATEMENTS IN GOLDSMITH, IT SEEMS TO ME THAT THE LEAST THAT
23 CAN BE SAID WITH THE ALREADY STATED PARALLELS BETWEEN THE
24 CASES, ARE THAT IF THOSE STATEMENTS AND DECLARATIONS WERE
25 ADMISSIBLE, IF THE COURT COULD FIND USING THE PREMISE THAT

1 GREAT LATITUDE SHOULD BE SHOWN IN THE ADMISSION, THAT THEY
2 WERE ADMISSIBLE IN THAT CONSPIRACY CASE, THEN THE STATEMENTS
3 WE PROPOUND ARE CERTAINLY ADMISSIBLE IN THIS CASE.

4 AND VERY QUICKLY JUST TO RUN DOWN THE LIST.
5 RUSTY HAVENS HAS TESTIFIED TO TWO SEPARATE INCIDENTS WHERE
6 THERE WERE CONVERSATIONS. HE DESCRIBES AN OCTOBER MEETING.

7 IT'S APPARENT TO THE PROSECUTION THAT THE
8 CONVERSATION, WHICH HE SAID INVOLVED HIMSELF, AKERS, WALSH,
9 MOORE AND FLANAGAN, INVOLVED PLANNING AND DISCUSSION OF THE
10 MODUS OPERANDI OF THE GORDON KILLINGS.

11 THE COURT: MR. HARMON, IF I MAY, ARE YOU
12 CONTEMPLATING TO GO THROUGH YOUR LIST NOW IN SUBSTANCE?

13 MR. HARMON: ONLY IF THE COURT THINKS THAT WOULD
14 BE HELPFUL.

15 THE COURT: I THINK WE WILL HAVE TO DO THAT
16 ULTIMATELY. BUT WHAT I WAS GOING TO SUGGEST, PERHAPS WE
17 ALLOW COUNSEL TO RESPOND TO SOME OF THE LEGAL ARGUMENTS AND
18 WE WILL GO THROUGH THEM ONE AT A TIME.

19 COUNSEL, IS THERE ANY COMMENT YOU CARE TO MAKE IN
20 RESPONSE TO THOSE THINGS MR. HARMON SAID THUS FAR? AND I
21 THINK WE MIGHT ESTABLISH SOME SORT OF PROCEDURE AS TO WHO
22 WOULD LEAD OFF IN THESE MATTERS AT LEAST AT TRIAL.

23 IN BETWEEN NOW AND THE TIME WE ACTUALLY BEGIN OUR
24 TRIAL, YOU MIGHT WANT TO CONFER. I AM ADDRESSING DEFENSE
25 COUNSEL TO SEE WHAT ORDER YOU WOULD LIKE TO BE ADDRESSED WHEN

1 IT COMES TIME TO RESPOND.

2 AT THIS TIME, IT DOESN'T MATTER PARTICULARLY. I
3 SEE MR. SMITH START TO RISE. IF YOU CARE TO, MR. SMITH.

4 MR. SMITH: YOUR HONOR, AS THE COURT AND COUNSEL
5 ARE AWARE, I SUBMITTED RATHER EXHAUSTIVE POINTS AND
6 AUTHORITIES ON THE ISSUE OF THE CO-CONSPIRATOR EXCEPTION TO
7 THE HEARSAY RULE.

8 I HAVE INTERPRETED GOLDSMITH ANOTHER WAY. I
9 THINK IT IS SUBJECT TO A REASONABLE INTERPRETATION ANOTHER
10 WAY. BUT, IN ANY EVENT, I THINK WE ALL HAVE TO CONCEDE IN
11 LIGHT OF THE PLETHORA OF CASES WHICH HAVE BEEN HANDED DOWN
12 AFTER GOLDSMITH, THAT GOLDSMITH IS A LOUSY CASE AS FAR AS ITS
13 REASONING IS CONCERNED.

14 IT LEAPS QUANTUMLY TO CERTAIN CONCLUSIONS WITHOUT
15 ANY REAL HISTORIC BASIS IN THE LAW.

16 CERTAINLY, THE CRUCIAL BASIS FOR THE
17 CO-CONSPIRATOR EXCEPTION TO THE HEARSAY RULE IS STATEMENTS
18 MADE IN FURTHERANCE OF THE CONSPIRACY HAVE INHERENT
19 TRUSTWORTHINESS.

20 AND WITHOUT ACTUALLY FURTHERING A MAIN OBJECTIVE
21 OF THE CONSPIRACY BY THE STATEMENT ITSELF, THERE IS
22 ABSOLUTELY NO GUARANTEE THAT THE STATEMENT IS TRUSTWORTHY
23 AND, HENCE, NO BASIS FOR AN EXCEPTION TO THE HEARSAY RULE.

24 THERE CAN BE NO MORE DAMAGING TESTIMONY, I
25 SUBMIT, THAN TO HAVE ONE CO-CONSPIRATOR MAKE A STATEMENT TO A

1 THIRD PARTY AFTER THE FACT OF A CRIME IMPLICATING ANOTHER
2 DEFENDANT AND THAT DEFENDANT HAVE ABSOLUTELY NO BASIS TO
3 CONFRONT THAT STATEMENT WHICH IS MADE AGAINST HIM.

4 THE STATE APPARENTLY HAS CONCEDED THAT STATEMENTS
5 MADE BY RANDY MOORE ON THE TELEPHONE TO HIS SISTER ARE NOT IN
6 FURTHERANCE OF THE CONSPIRACY.

7 IF THAT IS CONCEDED, I CANNOT UNDERSTAND HOW IN
8 THE WORLD THE STATE CAN CONTINUE TO ASSERT THAT STATEMENTS
9 MADE AFTER THE CRIME BY CODEFENDANTS TO THIRD PARTIES ARE IN
10 FURTHERANCE OF THE CONSPIRACY.

11 IT SEEMS THAT IT'S IMPORTANT TO FOCUS ON WHAT IN
12 FURTHERANCE MEANS.. I HAVE CITED TO THE COURT THE CASE OF
13 GRUNWALD WHICH WAS NOT INCLUDED IN MY ORIGINAL MOTIONS. IT
14 IS A SUPREME COURT DECISION AT 353 U.S. 391, 77 SUPREME COURT
15 963.

16 AND AT PAGE 971 OF THE SUPREME COURT REPORTER
17 OPINION, AND THE PAGES WHICH FOLLOW, THE COURT POINTS OUT
18 THAT THERE IS A REAL DIFFERENCE BETWEEN FURTHERING A MAIN
19 OBJECTIVE OF THE CONSPIRACY AND MERELY SAYING SOMETHING TO
20 KEEP THE CONSPIRACY A SECRET.

21 THE COURT RECOGNIZES THAT IN ANY CONSPIRACY, AS A
22 MATTER OF COMMON SENSE, THE CO-CONSPIRATORS ARE NOT GOING TO
23 WANT TO BROADCAST IT TO THE WORLD, THAT THERE WILL BE SOME
24 EFFORT MADE TO KEEP THE MATTERS QUIET.

25 IN THIS CASE, THERE MAY BE CERTAIN STATEMENTS

1 WHICH THE STATE WOULD LIKE TO INTRODUCE WHICH WERE MADE TO
2 THIRD PARTIES THAT ONE COULD INFER WERE INTENDED TO HAVE A
3 PERSON KEEP THEIR MOUTH SHUT.

4 BUT THAT IS A WHOLE DIFFERENT BALL GAME THAN
5 FURTHERING THE MAIN OBJECTIVE OF THE CONSPIRACY WHICH, NUMBER
6 ONE, IS TO KILL PEOPLE AND, NUMBER TWO, IS TO COLLECT
7 INSURANCE MONEY.

8 IT IS EASY TO UNDERSTAND THE DISTINCTION. IF ONE
9 OF THE CODEFENDANTS HAD GONE TO THE INSURANCE COMPANY AND
10 FILLED OUT FORMS AND SAID -- OR GONE TO A THIRD PARTY AND
11 SAID, "GO TO THE INSURANCE COMPANY AND SEE IF WE CAN GET THE
12 PROCEEDS DIVVIED UP," THAT IS OBVIOUSLY FURTHERING OBJECTIVE
13 OF THE CONSPIRACY.

14 BUT IT IS ANOTHER THING ALTOGETHER FOR SOMEBODY
15 TO GO AND SAY, "IF YOU KNOW SOMETHING ABOUT THIS, PLEASE KEEP
16 YOUR MOUTH SHUT."

17 BECAUSE IT IS INHERENT IN ANY CONSPIRACY THERE IS
18 GOING TO BE SOME EFFORTS MADE TO KEEP THINGS QUIET. I THINK
19 THAT IS THE CASE IN A NUTSHELL.

20 AND THE STATE RELIES SOLELY ON GOLDSMITH WITHOUT
21 ANY EFFORT WHATSOEVER IN THE PLEADINGS OR OTHERWISE TO
22 DISTINGUISH A HOST OF CASES, RECENT CASES CITED PARTICULARLY
23 IN THE NINTH CIRCUIT WHICH HAVE DEALT WITH THIS QUESTION. AS
24 WELL AS COMMENTARIES BY SCHOLARS LIKE WEINSTEIN WHO HAVE
25 RECOGNIZED THIS PROBLEM.

1 AND I THINK FOR THE COURT TO ADMIT SOME OF THESE
2 STATEMENTS IN, WHICH TO ME APPEAR TO BE NOTHING EXCEPT
3 GRATUITOUS COMMENTS TO THIRD PARTIES, IS A CLEAR INDICATION
4 FOR ERROR IN THIS CASE.

5 ABOVE AND BEYOND THAT, WE HAVE A SEPARATE
6 CONCERN. THAT IS THE CONCERN OF THE SIXTH AMENDMENT
7 CONFRONTATION CLAUSE, WHICH AS I HAVE POINTED OUT,
8 PARTICULARLY WITH REFERENCE TO THE ORDONEZ CASE, IS MUCH
9 BROADER THAN MERELY THE CO-CONSPIRATOR EXCEPTION TO THE
10 HEARSAY RULE.

11 ORDONEZ RECOGNIZES THAT YOU CAN HAVE A STATEMENT
12 WHICH FALLS WITHIN THE FOUR CORNERS OF THE CO-CONSPIRATOR
13 EXCEPTION TO THE HEARSAY RULE BUT IT MIGHT NOT NECESSARILY
14 SATISFY SIXTH AMENDMENT CONCERNS.

15 I THINK THAT IS PARTICULARLY IMPORTANT IN THIS
16 CASE. DUTTON VERSUS EVANS, SUPREME COURT CASE AND ITS
17 PROGENY SET FORTH A TWO PRONG TEST FOR SIXTH AMENDMENT
18 ISSUES.

19 NUMBER ONE IS THE NECESSITY WHICH IS CLEARLY
20 ESTABLISHED IF CO-CONSPIRACY CODEFENDANTS DON'T TAKE THE
21 STAND. THE OTHER PRONG IS RELIABILITY. THERE ARE SEVERAL
22 SUBPARTS TO THAT PRONG.

23 WE HAVE PROBLEMS IN THIS CASE WITH CODEFENDANTS
24 MAKING STATEMENTS TO THIRD PARTIES WHICH ARE NOT BASED ON
25 THEIR CODEFENDANTS' PERSONAL KNOWLEDGE.

1 THAT IS PARTICULARLY TRUE WITH DALE FLANAGAN
2 BECAUSE HE HAS APPARENTLY MADE STATEMENTS TO OTHER PEOPLE
3 STATING WHAT OTHER PEOPLE HAVE DONE. THE TESTIMONY REVEALS
4 THAT HE WAS IN THE BEDROOM AND APPARENTLY HAD NO WAY TO KNOW
5 WHAT OTHER PEOPLE DID.

6 A SECOND CONCERN IS THERE A POTENTIAL FOR
7 FABRICATION OF TESTIMONY OR UNRELIABILITY. AND I THINK THE
8 EVIDENCE IS CLEAR IN THIS CASE THAT THERE IS A GANG
9 RELATIONSHIP, THAT THREATS HAVE BEEN MADE AND THERE IS A
10 STRONG POTENTIAL FOR PEOPLE TO FABRICATE EVIDENCE TO SHIFT
11 THE BLAME IN THIS CASE.

12 AS THE COURT KNOWS, I AM PARTICULARLY CONCERNED
13 ABOUT THAT. AND I DON'T THINK WE CAN SIMPLY TRY TO SHOVE
14 SOMETHING IN UNDER THE DOOR IN RELIANCE OF GOLDSMITH AND
15 FORGET ABOUT THE RIGHTS OF THESE DEFENDANTS TO CONFRONT THE
16 WITNESSES AGAINST THEM AND HAVE THE OPPORTUNITY TO
17 CROSS-EXAMINE THEM. I THINK THE COURT HAS TO LOOK AT THOSE
18 CONCERNS AS WELL.

19 THE COURT: MR. SMITH, THANK YOU. MR. HANDFUSS.

20 MR. HANDFUSS: YOUR HONOR, I JOIN IN EVERYTHING
21 MR. SMITH SAYS. I THINK HE INSIGHTFULLY CITED IN HIS BRIEF
22 AND CITED TO THE COURT THE EXACT PROBLEM IN THIS CASE.

23 THE STATE IS RELYING MAINLY UPON THE GOLDSMITH
24 CASE. THAT IS THE CASE THAT THE STATE CITES AGAIN AND AGAIN,
25 HAS CITED TO THE COURT ORALLY IN ARGUMENT AND WHICH THE STATE

1 WOULD LIKE THIS COURT TO DEPEND UPON.

2 HOWEVER, THERE ARE SEVERAL PROBLEMS WITH THE
3 GOLDSMITH CASE AND I WOULD SUBMIT THAT THE GOLDSMITH CASE IS
4 REALLY AN ABERRATION AND SHOULD NOT BE APPLIED TO THIS CASE.

5 THE STATE SAID THAT ALL STATEMENTS UNTIL THE END
6 OF THE CONSPIRACY -- THAT THE AIM OF THE CONSPIRACY IS NOT
7 OVER UNTIL THE GOAL, THE COLLECTION OF THE INSURANCE PROCEEDS
8 OR INHERITANCE UNDER A WILL.

9 IF YOU TAKE THAT TO THIS CASE OR TO ANY CASE
10 SIMILAR, TO CARRY IT TO ITS LOGICAL END, WHAT TURNS UP IS A
11 LUDICROUS CONCLUSION BECAUSE ASSUMING THERE ARE NO INSURANCE
12 PROCEEDS, ASSUMING THERE IS NO WILL AND NO INHERITANCE, THAT
13 ANY STATEMENT MADE 100 YEARS FROM NOW COULD ALSO BE IN
14 FURTHERANCE OF THE CONSPIRACY AND NOT EXCLUDABLE UNDER THE
15 CO-CONSPIRATOR RULE, THE EVIDENCE RULE.

16 WHAT THAT MEANS IS THAT IF 40 YEARS FROM NOW, ONE
17 OF THESE DEFENDANTS MAKES ANOTHER STATEMENT HAVING ABSOLUTELY --
18 AFTER ALL THESE PROCEEDINGS ARE OVER WITH, NOTHING TO DO
19 ANYMORE, EVERYTHING IS FINISHED, THE CASE IS CLOSED, THAT IS
20 ALSO IN FURTHERANCE OF THE CONSPIRACY.

21 IT NEVER ENDS UNDER THE GOLDSMITH CASE WHICH IS
22 REALLY NOT A LOGICAL CONCLUSION. I WOULD HOPE THIS COURT
23 WOULD AGREE.

24 THE SECOND THING IS THAT THE STATE ALSO SUBMITS
25 THAT ALL STATEMENTS MADE IN FURTHERANCE OF THE CONSPIRACY ARE

1 NOT NECESSARILY THOSE STATEMENTS MADE TO A PERSON BUT WHAT
2 THEY DO IS RELATE BACK TO THE ACTUAL CONSPIRACY.

3 SO IF ONE DEFENDANT MAKES A STATEMENT THAT THIS
4 IS WHAT HAPPENED, EVEN THOUGH GRATUITOUS, THAT AS LONG AS IT
5 REFERS BACK TO SOMETHING THAT OCCURRED IN ORDER TO FULFILL
6 THIS CONSPIRACY, THAT THOSE ARE ALSO ALWAYS NOT EXCLUDABLE
7 UNDER THE CO-CONSPIRATOR RULE.

8 THE PROBLEM WITH THAT IS, IS THAT NO DEFENDANT
9 COULD EVER MAKE A STATEMENT REGARDING THE ACTS OF THE
10 CONSPIRACY. NO DEFENDANT CAN EVER MAKE A STATEMENT REGARDING
11 THE ACTS OF THE CONSPIRACY WITHOUT IT FALLING UNDER THE
12 GOLDSMITH CASE AND WITHOUT IT BEING ADMISSIBLE.

13 BUT THAT IS LUDICROUS. IF THAT IS THE CASE, YOU
14 COULD NEVER HAVE ANY STATEMENT BY A DEFENDANT AS TO THE -- OR
15 ANY STATEMENT BY A DEFENDANT OR ANYBODY ELSE WHO SAYS THAT
16 THERE WAS AN ADMISSION BY A DEFENDANT THAT WOULD EVER BE
17 EXCLUDABLE UNDER NRS 51 OF THE STATUTE BEFORE THE COURT HERE.

18 UNDER THE GOLDSMITH CASE IS NOT APPLICABLE AND
19 ITS LOGICAL OBJECTIVES DO NOT FALL IN LINE WITH WHAT THE
20 LEGISLATURE INTENDED. AND I WOULD SUBMIT TO THE COURT THAT
21 THE COURT SHOULD NOT FOLLOW THE GOLDSMITH CASE.

22 AND, AGAIN, I WOULD JOIN IN MR. SMITH'S ARGUMENT
23 AND RULE IN THE DEFENSE FAVOR ON THIS ISSUE.

24 THE COURT: THANK YOU VERY MUCH. COUNSEL.

25 MR. PIKE: THANK YOU, YOUR HONOR. I WAS UP AT

1 THE SUPREME COURT WORKING AND ONE OF THE JUSTICES TOLD ME
2 ONCE THAT HEARING AN ARGUMENT THE THIRD TIME BY THE THIRD
3 ATTORNEY IS LIKE EATING ICE CREAM. YOU ENJOY THE FIRST TWO
4 TIMES. THE THIRD TIME IT STARTS TO GET OLD.

5 SO I WILL ADOPT THE STATEMENTS OF THE PREVIOUS
6 COUNSEL AS THEY HAVE DIRECTED THEIR ARGUMENTS TOWARDS THE
7 CO-CONSPIRATOR DECLARATIONS AND WHAT IS BEING OFFERED BY THE
8 STATE.

9 THE ONLY THING I WOULD OFFER THAT THEY DID NOT
10 TOUCH ON IS THAT I THINK THAT BECAUSE THERE IS SO MUCH
11 INTERTWINING OF THE STATEMENTS WHERE ONE OR TWO MAY HAVE BEEN
12 PRESENT BUT NOT ALL OF THEM, OR JUST ONE MAY HAVE BEEN
13 AVAILABLE AFTERWARDS, I THINK THAT THE ONLY REMEDY TO ANY OF
14 THE PROBLEMS INVOLVED IN THIS IS TO GIVE THE DEFENDANTS A
15 SEPARATE TRIAL.

16 AND TO EITHER REDACT THE STATEMENTS AS IT APPLIES
17 TO THEM, WHICH IS ALLOWED FOR, OR TO EXCLUDE THEM AND THAT
18 WAY THE COURT WOULD HAVE MUCH FIRMER CONTROL OVER THE
19 ADMISSION OF THE EVIDENCE OVER EACH DEFENDANT.

20 ALSO, DURING THE PENDENCY OF THE TRIAL, I WOULD
21 REQUEST THAT I, WITHOUT HAVING TO MAKE THE OBJECTION, BE
22 DEEMED TO HAVE JOINED IN OBJECTIONS MADE BY CO-COUNSEL UNTIL
23 I SPECIFICALLY MAKE A STATEMENT THAT I DO NOT JOIN IN THAT
24 OBJECTION.

25 THE COURT: WE WILL SET THE FOUNDATION FOR THAT

1 AT A PROPER TIME. I UNDERSTAND YOUR THINKING. MR. POSIN,
2 ANYTHING?

3 MR. POSIN: ARGUMENTS EVERYBODY MADE SO WE WILL
4 JOIN WITH THE ARGUMENTS OF CO-COUNSEL AT THIS POINT.

5 THE COURT: I WILL KEEP IN CONSIDERATION THOSE
6 THINGS THAT HAVE BEEN BROUGHT UP AT THIS JUNCTURE. I WOULD
7 ASK THAT WE PROCEED THROUGH THE MATERIAL THAT WAS SUBMITTED
8 BY THE STATE ONE AT A TIME AND WE WILL HEAR THE STATEMENTS,
9 ARGUMENT AS TO WHY IT IS ADMISSIBLE AND WE WOULD HEAR ANY
10 ARGUMENT AGAINST IT.

11 I WOULD SUGGEST THAT PERHAPS AFTER THE FIRST TWO
12 OR THREE PARAGRAPHS THAT WE PROBABLY TOUCHED ON THE LAW
13 PRETTY MUCH THAT APPLIES AND WE CAN THEN APPLY IT PRETTY
14 SUMMARILY. THE FIRST WILL BE MR. HARMON. YOU ALREADY BEGUN.

15 MR. HARMON: YES, YOUR HONOR. IN FACT, FIRST
16 FOUR PARAGRAPHS, I THINK, PERHAPS WE COULD DEAL WITH TOGETHER
17 BECAUSE WE ARE CERTAINLY NOT TALKING ABOUT EVENTS WHICH
18 OCCURRED AFTERWARDS WITH THE FIRST FOUR PARAGRAPHS. WE ARE
19 TALKING ABOUT PLANNING AND DISCUSSION OF THE MODUS OPERANDI
20 BEFORE THE CRIMES OCCUR.

21 THE DEFENSE, I DON'T REALLY THINK, WANTS TO
22 ACCEPT WHAT INDEED IS A RULE OF LONG STANDING IN THIS STATE
23 WHICH IS ONCE A CONSPIRACY HAS BEEN ESTABLISHED, THE
24 STATEMENTS AND ACTS OF ONE BECOME THE ACTS OF ALL.

25 IT IS CERTAINLY OUR ARGUMENT THAT THE CONSPIRACY

1 HAS BEEN SHOWN WHEN RUSTY HAVENS TALKS ABOUT A DISCUSSION AT
2 337 NORTH 13TH STREET IN THE LIVING ROOM INVOLVING HIMSELF,
3 AKERS, WALSH, MOORE AND FLANAGAN.

4 HE SAYS THAT THE PARTIES DID DISCUSS THE KILLING
5 OF THE GORDONS.

6 IN FACT, ORIGINALLY HE WAS ASKED TO BE THE VERY
7 PERSON WHO KILLED MRS. GORDON. HE SAYS AFTER THE
8 CONVERSATION, IT WAS DEFENDANT MOORE WHO SAID TO HIM AND
9 EVERYBODY ELSE PRESENT THAT NO INFORMATION IS TO GO ANYWHERE
10 AND IF IT DID, THEY WOULD BE KILLED.

11 I THINK IT'S APPARENT, YOUR HONOR, THAT THAT IS
12 IN FURTHERANCE BY ANY DEFINITION OF THE CONSPIRACY. AND I
13 REALLY ARGUE THE SAME THING WITH RESPECT TO THE ENSUING THREE
14 PARAGRAPHS.

15 HAVENS TALKS ABOUT A PARTY WHICH OCCURRED A
16 LITTLE OVER A WEEK -- I AM SORRY. PARAGRAPH 2, I SEE, DOES
17 REFER TO AFTER THE OFFENSES. BUT IN ANY EVENT, PARAGRAPHS 3
18 AND 4 INVOLVING AKERS, ALSO DISCUSS MEETINGS WHICH OCCURRED
19 BEFOREHAND.

20 HE TALKS ABOUT THREATS. HE TALKS ABOUT
21 DISCUSSION BETWEEN THE PERSONS THERE AND ALL SIX WERE PRESENT
22 ACCORDING TO AKERS AS TO WHO WOULD DO WHAT. HE IS DESCRIBING
23 THE PRESENCE OF GUNS AND THERE IS A DISCUSSION AS TO WHO IS
24 GOING TO SHOOT WHOM, HOW THEY WILL GET INTO THE HOUSE.

25 ALL THIS OBVIOUSLY FURTHERED THE CONSPIRACY.

1 THE COURT: MR. HARMON, CONCERNING THE SECOND
2 PARAGRAPH WHERE MR. MOORE IS QUOTED AS SAYING HE WAS OVER HIS
3 HEAD AND THERE WAS NOTHING HE COULD DO, PARAPHRASING, I
4 THINK, HOW IS THAT IN FURTHERANCE OF THE CONSPIRACY? I MAY
5 BE MISQUOTING.

6 MR. HARMON: NO. I THINK THAT THE COURT IS
7 CERTAINLY ACCURATELY QUOTING THE LANGUAGE. YOUR HONOR, IN
8 THE FIRST PLACE, IT IS DESCRIBED THAT FOUR OF THE
9 CONSPIRATORS WERE PRESENT. IT'S APPROXIMATE TO THE TIME OF
10 THE OFFENSES.

11 SEE, I THINK WE HAVE TO MAKE A FEW INFERENCES AS
12 TO HOW CERTAIN THINGS FURTHERED. IN THE GOLDSMITH CASE, THEY
13 SAID, "WELL, PERHAPS THE PARTIES WANTED TO SEND A MESSAGE TO
14 MR. GOLDSMITH BECAUSE HE HADN'T PAID OFF LIKE THEY WERE
15 EXPECTING."

16 THE DEFENSE IN THEIR ARGUMENTS, IT SEEMS TO ME,
17 ENTIRELY OVERLOOKED THE LANGUAGE IN FOSS AND CREW WHICH TALK
18 ABOUT A CONCEALMENT PHASE.

19 NOW, WHETHER CERTAIN COURTS AT THE FEDERAL LEVEL
20 WANT TO ACCEPT THAT OR NOT, THE FAC. REMAINS THAT IN BOTH
21 FOSS AND CREW THEY SAID IF THE STATEMENTS OR ACTS FURTHERED
22 THE CONCEALMENT OF THE CRIMES, IN FACT, IN BOTH OF THOSE
23 CASES IT INVOLVED MOVING BODIES, THEN IT WAS IN FURTHERANCE.

24 NOW, HERE THE INFERENCE, I THINK, THAT IS MOST
25 REASONABLE IS THAT MR. MCDOWELL WAS HAVING SOME SECOND

1 THOUGHTS. JUDGE, I DON'T KNOW WHETHER HE INTENDED TO GO TO
2 THE POLICE OR WHETHER HE WAS SAYING HE WAS GOING TO CONFIDE
3 IN SOMEONE ELSE AND TALK ABOUT WHAT HE HAD DONE AND HIS
4 PRESENCE AT 5851 WASHBURN.

5 THE FACT IS THAT HAVENS SAID THEY WERE HAVING AN
6 ARGUMENT, MOORE AND MCDOWELL. AND, JUDGE, THE MOST REASONABLE
7 INFERENCE IS THAT MOORE WANTED TO PUT THE LID ON MR.
8 MCDOWELL. HE DIDN'T WANT HIM EITHER GOING TO THE POLICE OR
9 TALKING TO HIS MOTHER OR A FRIEND OR A GIRLFRIEND AND SO HE
10 WAS SIMPLY POINTING OUT TO HIM THAT HE HAD BEEN THERE, HE WAS
11 IN OVER HIS HEAD AND THERE WAS NOTHING MORE HE COULD DO.

12 AND, JUDGE, I CERTAINLY THINK THAT THIS FALLS
13 INTO THE CONCEALMENT PHASE OF THE CONSPIRACY.

14 THE COURT: ONE OTHER THING. AS WE ARE GOING
15 THROUGH THESE PARAGRAPH BY PARAGRAPH, I THINK WE OUGHT TO
16 ADDRESS PRETTY MUCH ALL THE ISSUES AS IT PERTAINS TO EACH
17 PARAGRAPH.

18 1 THROUGH 4. PARAGRAPH 2, THE CONVERSATION
19 INVOLVED BETWEEN MR. MOORE AND MR. MCDOWELL, I BELIEVE IT WAS
20 PRETTY MUCH CONCEDED MR. LUCKETT WAS PRESENT.

21 PARAGRAPHS 1, 3 AND 4, THERE MAY BE SUBSTANTIAL
22 QUESTION. AND I'D ASK -- AND YOU WILL HAVE AN OPPORTUNITY IN
23 A MOMENT, MR. SMITH -- MR. HARMON, IF YOU RECALL TESTIMONY
24 WHICH WOULD PLACE MR. LUCKETT AT THE EVENTS ALLUDED TO IN
25 PARAGRAPHS 1, 3 AND 4?

1 MR. HARMON: JUDGE, WHEN HAVENS TESTIFIED, HE
2 DIDN'T HAVE ANY RECOLLECTION THAT MR. LUCKETT WAS THERE AT
3 THE OCTOBER MEETING. THAT IS MY RECOLLECTION. WHEN HE
4 DESCRIBED PARAGRAPH 2, HE SAID THAT ALL SIX WERE THERE.

5 WHEN MR. SMITH TOOK HIM ON CROSS-EXAMINATION, HE
6 COULDN'T SAY POSITIVELY THEY WERE ALL IN THE SAME ROOM BUT HE
7 SAID AT THE PARTY WHICH WAS ABOUT A WEEK AFTER, HE DEFINITELY
8 SAID THAT MR. LUCKETT WAS PRESENT.

9 THE COURT: THE PARTY?

10 MR. HARMON: WELL, HE DESCRIBED IT AS BEING A
11 PARTY WHICH OCCURRED A LITTLE OVER A WEEK AFTER THE OFFENSES
12 AT 337 NORTH 13TH STREET.

13 THE COURT: WE ARE NOT TALKING ABOUT THE OCTOBER
14 MEETING?

15 MR. HARMON: NO. IN THE OCTOBER MEETING, I THINK
16 HAVENS MADE IT CLEAR THAT HIS RECOLLECTION THAT HE DIDN'T
17 REMEMBER LUCKETT BEING THERE.

18 JUDGE, I AM NOT SURE THAT IS CRITICAL, THOUGH.
19 OUR POINT IS IF WE HAVE SHOWN EVIDENCE OF A CONSPIRACY AND
20 THAT LUCKETT IS A PART OF THE CONSPIRACY AND WE HAVE HAD
21 WITNESSES TESTIFY HE WENT ALONG, HE HAD A GUN.

22 THE COURT: I THINK THE POINT IN WHICH MR.
23 LUCKETT BECAME A CO-CONSPIRATOR IS RELEVANT AND THAT IS WHY I
24 AM ADDRESSING THE ISSUE. BEFORE YOU BEGIN, MR. SMITH, NOW WE
25 ARE TALKING ABOUT PARAGRAPHS 1 AND 3 WHICH ALLUDE TO THE

1 OCTOBER MEETING.

2 4 ALLUDES TO THE NOVEMBER 5TH MEETING. IF MY
3 RECOLLECTION SERVES ME, MR. LUCKETT WAS SAID TO BE IN THE
4 SHOWER AND THEN IN THE BEDROOM AND THEREABOUTS. AND YOU
5 MIGHT WANT TO ENLIGHTEN ME FURTHER AS YOUR RECOLLECTION
6 ALLOWS YOU.

7 MR. HARMON: THAT IS MY RECOLLECTION. THAT IS
8 EXACTLY WHAT THOMAS AKERS SAID. AKERS, WHEN HE FIRST
9 TESTIFIED, SAID ALL SIX WERE THERE AND ON CROSS-EXAMINATION
10 HE SAID, WELL, LUCKETT LIVED THERE BUT HE COULDN'T SAY
11 WHETHER HE WAS IN THE SHOWER, IN THE SAME ROOM OR WHAT.

12 THE COURT: ALL RIGHT. LET'S ALLOW MR. SMITH TO
13 ADDRESS THIS ISSUE AT THIS TIME.

14 MR. SMITH: JUDGE, I AGREE WITH YOUR ANALYSIS. I
15 THINK MR. HARMON CORRECTLY STATES THE FACTS. THERE IS NO
16 EVIDENCE IN THE RECORD TO INDICATE THAT MR. LUCKETT EVER
17 HEARD ANY OF THE COMMENTS WHICH ARE MENTIONED IN PARAGRAPHS 1
18 THROUGH 4.

19 THE COURT: I BELIEVE 2 THERE MAY BE. HE WAS
20 PRESENT.

21 MR. SMITH: IN 2, THEY WERE AT A PARTY. AGAIN,
22 IT IS LIKE AT THE RESIDENCE WHEN DISCUSSIONS WERE HELD. NO
23 ONE CAN PUT HIM AS PARTICIPANT IN THE CONVERSATION. THE
24 EXTENT OF THE TESTIMONY PHYSICALLY PRESENT IN THE HOUSE.

25 I THINK THAT IS A PERVASIVE PROBLEM. I HAVE TO

1 AGREE WITH MR. HARMON IT IS NOT NECESSARY WITH RESPECT TO
2 PARAGRAPH 1, HE NEEDED TO BE PRESENT. IF HE LATER JOINED THE
3 CONSPIRACY, THEN HE IS ACCOUNTABLE FOR STATEMENTS MADE BY
4 CO-CONSPIRATORS PRIOR TO THE TIME HE JOINED. BUT I DO AGREE
5 WITH THAT POINT.

6 I DON'T THINK THAT PARAGRAPH 2 CONSTITUTES AN
7 EXCEPTION TO THE HEARSAY RULE FOR THE REASONS THAT I HAVE
8 STATED. JUST GRATUITOUS COMMENT THAT ROY IS OVER HIS HEAD
9 AND THERE IS NOTHING HE CAN DO. HOWEVER, IF I HAVE TO GO TO
10 TRIAL WITH EVERYONE ELSE, I INTEND TO BRING THAT OUT AGAINST
11 MR. MOORE.

12 I DON'T KNOW WHETHER IT IS ADMISSIBLE AGAINST
13 OTHER PEOPLE. IF I WERE MR. MCDOWELL, I WOULD HAVE PROBLEMS
14 WITH THAT STATEMENT. BUT AS FAR AS MY DEFENSE IS CONCERNED,
15 WHICH THE COURT IS AWARE OF, I WOULD FEEL THAT IT WOULD BE
16 IMPORTANT IN MY DEFENSE TO BRING THAT STATEMENT UP. I CAN
17 SEE HOW IT IS PREJUDICIAL TO MR. MCDOWELL, THOUGH.

18 THE COURT: ALL RIGHT. COUNSEL.

19 MR. HANDFUSS: I WAS GOING TO ADDRESS THAT AS TO
20 PARAGRAPH 2. IF ANYTHING, IT IS ADMISSIBLE OR POSSIBLY
21 ADMISSIBLE AT THE MOST TO MR. MOORE ON THE STATE'S SIDE. I
22 DON'T BELIEVE IT IS ADMISSIBLE TO MR. MCDOWELL.

23 IN ADDITION, NRS 47.110, LIMITED ADMISSIBILITY,
24 EVEN IF THE COURT IS GOING TO ADMIT THIS STATEMENT, IF THEY
25 BELIEVE IT IS IN FURTHERANCE OR FOR SOME OTHER REASON BELIEVE

1 IT IS ADMISSIBLE, THAT THE COURT SOMEHOW UNDER 47.110 SHOULD
2 LIMIT THE ADMISSIBILITY AND NOT BRING IN MR. MCDOWELL'S NAME.

3 I BELIEVE THE COURT HAS THE POWER TO EXCISE HIS
4 NAME WHEN MR. HAVENS TESTIFIES, TO ADMONISH MR. HAVEN NOT TO
5 MENTION MR. MCDOWELL'S NAME AT THE MOST.

6 IN ADDITION, MR. MCDOWELL STANDS IN THE SAME SPOT
7 AS MR. LUCKETT AS THE COURT STATED ITS CONCERN WITH REGARDS
8 TO PARAGRAPH 1. EVEN THE STATE, WHEN IT WAS FIRST ARGUING
9 THE LAW EARLIER THIS MORNING, STATED THAT SEVERAL INDIVIDUALS
10 WERE AT THIS MEETING BUT MR. MCDOWELL -- STATE DIDN'T MENTION
11 NAMES.

12 MR. MCDOWELL WAS NOT PRESENT AT THE MEETING.
13 PARAGRAPH 1 ALSO SHOWS THAT MR. MCDOWELL WAS NOT PRESENT AT
14 THAT OCTOBER MEETING, JUST AS MR. LUCKETT WAS NOT PRESENT AT
15 THAT MEETING.

16 SO AS FAR AS WHEN THE CONSPIRACY STARTS, MR.
17 MCDOWELL AND MR. LUCKETT ARE IN THE SAME BOAT THERE. THE
18 STATEMENT IN PARAGRAPH 2, ROY WAS IN OVER HIS HEAD, THERE IS
19 NOTHING HE CAN DO, THERE IS NO EVIDENCE OF SPECIFIC
20 CONCEALMENT, NOTHING ON MR. MCDOWELL'S PART HE INTENDED TO
21 EITHER CONCEAL OR INTENDED NOT TO CONCEAL THE THING.

22 IF THAT IS ADMISSIBLE, THAT IS GOING TO BE VERY
23 PREJUDICIAL AGAINST MR. MCDOWELL AND BASED UPON THAT
24 PREJUDICE WITHOUT ANY FURTHER PREDICATE LAID BY THE STATE,
25 MR. HAVENS HAS SHOWN NOTHING ELSE AS TO THE BASIS FOR THAT

1 STATEMENT.

2 HE SAID ON THE STAND HE COULDN'T HEAR ANYTHING
3 ELSE. THAT IS ALL HE HEARD, COULDN'T UNDERSTAND ANYTHING
4 ELSE. BUT DIDN'T UNDERSTAND THE CONTENTS, HEARD VOICES.

5 IT IS PREJUDICIAL AS TO MR. MCDOWELL. I DON'T
6 BELIEVE IT IS ADMISSIBLE UNDER THE STATUTE I CITED OR BECAUSE
7 IT DOES NOT TEND TO SHOW ANY FURTHERANCE OF ANY CONSPIRACY
8 ESSENTIALLY SINCE MR. MCDOWELL IS NOT NAMED IN PARAGRAPH 1.

9 THE COURT: COUNSEL, ANYTHING FURTHER?

10 MR. PIKE: NO, YOUR HONOR. IT'S BEEN ADEQUATELY
11 COVERED AS AND FOR MR. PLANAGAN. I JOIN IN COMMENTS OF BOTH
12 COUNSEL.

13 THE COURT: MR. POSIN?

14 MR. POSIN: I JOIN ON BEHALF OF MR. MOORE.

15 THE COURT: YOUR RESPONSE?

16 MR. HARMON: YES, YOUR HONOR, VERY BRIEFLY. I
17 WOULD POINT OUT THAT THERE IS A GOOD REASON, I THINK, TO
18 CONCLUDE THAT WHEN AKERS DESCRIBES A MEETING WHICH HE SAYS
19 WAS ABOUT A MONTH BEFORE THE CRIMES IN PARAGRAPH 3 AND HAVENS
20 TALKS ABOUT A MEETING -- I HAVE CALLED IT THE OCTOBER MEETING
21 HERE. I THINK HE SAID IT WAS SEVERAL WEEKS, A WEEK AND A
22 HALF OR TWO WEEKS BEFORE -- JUDGE, I THINK THAT HAVENS AND
23 AKERS ARE TALKING ABOUT THE SAME MEETING.

24 AKERS RECALLED THAT CERTAIN PERSONS WERE THERE
25 AND I THINK WE HAVE ACCURATELY SET THAT OUT IN PARAGRAPH 1.

1 HOWEVER, IT IS AKERS' RECOLLECTION THAT ALL SIX WERE THERE.
2 HE SAYS HAVENS WAS ALSO PRESENT.

3 THAT IS WHAT CAUSES ME TO THINK THAT AKERS AND
4 HAVENS IN PARAGRAPHS 1 AND 3 ARE TALKING ABOUT THE SAME
5 MEETING. THE SUBJECT MATTER ALSO IS SIMILAR.

6 AS I ARGUED BEFORE, I DON'T THINK WITH RESPECT TO
7 THE COURT THAT MATTERS A GREAT DEAL IF WE SHOW THAT LUCKETT
8 OR MCDOWELL JOINED IN THE CONSPIRACY. BUT IN CASE THE COURT
9 IS STILL TROUBLED BY THAT, I THINK THERE IS EVIDENCE IN THE
10 RECORD FROM WHICH WE MAY INFER. NOW, WHETHER THEY OVERHEARD
11 AND HOW ACTIVE THEIR PARTICIPATION WAS IN THE CONVERSATION,
12 OF COURSE, IS ANOTHER MATTER.

13 AS WE BEGAN BY SAYING IT IS DIFFICULT IN THESE
14 TYPES OF CASES TO SHOW THERE IS A CONSPIRACY, THAT IS THE
15 REASON ONLY SLIGHT EVIDENCE OF THE CONSPIRACY IS NECESSARY
16 AND THAT IS THE REASON GREAT LATITUDE SHOULD BE SHOWN.

17 BUT IF PARAGRAPHS 1 AND 3 RELATE TO THE SAME
18 MEETING, THEN IT MAY BE ARGUED THAT ALL SIX OF THE DEFENDANTS
19 PLUS HAVENS WERE PRESENT.

20 FURTHERMORE, YOUR HONOR, WITH RESPECT TO
21 PARAGRAPH 2, WE ARE ARGUING THE CONSPIRACY RULE BUT I AM NOT
22 WILLING TO CONCEDE EVEN THE ABSENCE OF THAT RULE THAT THAT
23 CONVERSATION IS HEARSAY AS TO MR. MCDOWELL.

24 IF HE IS PRESENT AND IF HE IS ENGAGING IN A
25 CONSPIRACY CONVERSATION, IN FACT, IT WAS APPARENTLY AN

1 ARGUMENT WITH MR. MOORE, THEN UNDER BEASLEY VERSUS STATE, AND
2 UNDER THE AUTHORITY OF A NUMBER OF OTHER CASES, IT WOULD NOT
3 BE HEARSAY AS TO MCDOWELL.

4 THE COURT: AS TO MCDOWELL?

5 MR. HARMON: YES.

6 THE COURT: WE NEED TO ADDRESS THE THRESHOLD
7 ISSUE OF WHETHER OR NOT THERE WAS A CONSPIRACY BEFORE WE CAN
8 PROCEED MUCH FURTHER. I THINK THE EVIDENCE IS OVERWHELMING
9 THAT THERE WAS A CONSPIRACY INVOLVED HERE INVOLVING EACH OF
10 THE NAMED DEFENDANTS AND OTHERS UNNAMED.

11 I THINK THERE IS INDEPENDENT EVIDENCE WHICH HAS
12 BEEN SET FORTH BY MR. HARMON, AND MR. LUCAS AND MR. AKERS
13 SUPPLIED MUCH OF THAT, AND OTHERS, SO I THINK THERE HAS BEEN
14 A PRIMA FACIE SHOWING OF A CONSPIRACY.

15 NOW, AS TO THE PARAGRAPHS 1 THROUGH 4, I AM GOING
16 TO ADOPT THE POSTURE CONTRARY TO WHAT MR. HARMON MAY DESIRE,
17 THAT THERE MUST BE A SHOWING OF SOME DIRECT EFFECT BETWEEN
18 THE STATEMENT AND A FURTHERANCE OF THE CONSPIRACY.

19 I THINK THIS RELATING BACK ARGUMENT, ALTHOUGH MAY
20 BE FOUNDED IN REASON, IS A LITTLE FLIN. AND I HAVE YET TO BE
21 SHOWN CASE AUTHORITY WHICH I BELIEVE GIVES ME THAT PARAMETER.

22 BASED ON THAT POSTURE, IT IS APPARENT THAT
23 PARAGRAPHS 1, 3 AND 4, WHEREIN THE MODUS OPERANDI, AS HAS BEEN
24 SET OUT HERE AND DESCRIBED, IS DESCRIBED AND DISCUSSED AMONG
25 THE CONSPIRATORS, IS OBVIOUSLY IN FURTHERANCE OF THE

1 CONSPIRACY. IN ESSENCE, THIS IS WHERE THE PLAN IS DEvised.

2 PARAGRAPH 2, WHERE MOORE SAID HERE THAT ROY WAS
3 IN OVER HIS HEAD AND THERE IS NOTHING TO BE DONE, THAT WHEN
4 APPLIED TO THE STANDARD I HAVE JUST ESPOUSED, IS NOT IN
5 FURTHERANCE OF THE CONSPIRACY PER SE.

6 NOW, I THINK MR. HARMON'S POINT IS WELL TAKEN
7 WHEN HE INDICATES UNDER BEASLEY THIS CONVERSATION COULD BE
8 UTILIZED AGAINST MR. MCDOWELL AND MR. MOORE AND THAT THEY
9 WERE PARTIES TO THE CONVERSATION.

10 AND THAT I THINK BEASLEY, WHICH EMANATED IN THE
11 LATE SIXTIES, IS A CASE THAT HAS BEEN FOLLOWED BY THIS COURT
12 AND MANY OTHERS THROUGHOUT AND SO I AM GOING TO NOT EXCLUDE
13 THAT STATEMENT PER SE UNDER BEASLEY.

14 BUT I AM GOING TO INDICATE THAT IT IS NOT IN
15 FURTHERANCE OF THE CONSPIRACY AND NOT AN EXCEPTION TO THE
16 HEARSAY RULE UNDER THAT EXCEPTION.

17 LET'S PROCEED TO 5, MR. HARMON.

18 MR. HARMON: YOUR HONOR, IN PARAGRAPH 5, WE
19 REALLY DISCUSSED CONDUCT AND STATEMENTS WHICH OCCURRED WHILE
20 THE PARTIES WERE DRIVING FROM THE SCENE OF THE CRIME AND ALSO
21 WHAT HAPPENED WHEN THEY GOT BACK TO THE APARTMENT.

22 JUST AS AN EXAMPLE, AKERS EXPLAINS SINCE HE WAS
23 DRIVING, HE WAS TOLD HOW TO DRIVE, FIRST WITH THE LIGHTS OUT.
24 IT SEEMS TO US THAT THIS IS SO APPROXIMATE IN TIME AND PLACE
25 TO THE OFFENSES THAT REGARDLESS OF WHO GAVE HIM THAT

1 INSTRUCTION, THAT THAT WOULD FURTHER THE CONSPIRACY.

2 WHEN HE WAS TOLD TO STOP AND APPARENTLY CERTAIN
3 OF THE PARTIES GOT OUT OF THE VEHICLE AT SOME LOCATION, THERE
4 WAS A HOLE DUG. THEY WERE EVIDENTLY GOING TO LEAVE THE GUNS
5 AT THAT LOCATION AND ALSO ANY CARTRIDGES WHICH THEY POSSESSED
6 AT THAT TIME WERE THROWN AWAY.

7 ALL THAT FURTHERS THE CONSPIRACY. THEN WHEN THEY
8 GOT BACK TO THE APARTMENT, AKERS SAYS THAT ALL OF THE
9 PARTIES, HE IDENTIFIES FLANAGAN, MOORE, MCDOWELL, WALSH AND
10 LUCKETT, WERE TALKING AT A GREAT PACE, EXCITED, A LOT OF
11 ADRENALIN PUMPING.

12 AND WHEN THEY HAD DESCRIBED WHAT THEY HAD DONE AT
13 THE SCENE OF THE CRIME, AND IN THE PROCESS ARE PRODUCING A
14 PURSE OR A WALLET, WHICHEVER IT WAS, WHICH INCLUDED A
15 PHOTOGRAPH AND IDENTIFICATION AND ALSO A SMALL AMOUNT OF
16 MONEY;

17 AND, IN FACT, THE PHOTOGRAPHS AND THE
18 IDENTIFICATION WERE BURNED, YOUR HONOR, ALL THIS IS SO
19 APPROXIMATE IN TIME AND PLACE, SO INEXTRICABLY INTERWOVEN
20 WITH WHAT THE PARTIES HAD JUST DONE, WE MAINTAIN FOR THOSE
21 REASONS THAT IT CERTAINLY FURTHERED THE CONSPIRACY.

22 THE COURT: THANK YOU. COUNSEL.

23 MR. SMITH: I DON'T HAVE ANY PROBLEM WITH
24 PARAGRAPH 6 OTHER THAN IF IT COMES OUT THAT DURING THE COURSE
25 OF THESE EVENTS THERE IS MERELY A DESCRIPTION BY ONE

1 CODEFENDANT TO ANOTHER PARTY OF WHAT HAPPENED. ONCE AGAIN,
2 GRATUITOUS COMMENTS THAT WOULD BE EXCLUDED, BUT THE
3 PARAMETERS DESCRIBED BY MR. HARMON ARE ADMISSIBLE.

4 THE COURT: YOU MEANT PARAGRAPH 5?

5 MR. SMITH: YES.

6 THE COURT: COUNSEL, ANYTHING FURTHER?

7 MR. HANDFUSS: I JOIN IN MR. SMITH'S.

8 MR. PIKE: SAME OBJECTION, YOUR HONOR.

9 MR. POSIN: SAME OBJECTION.

10 THE COURT: I SUBSCRIBE TO MR. HARMON'S RATIONALE
11 IN HIS ARGUMENT THERE. I THINK THAT IT IS OBVIOUSLY A METHOD
12 OF, WELL, IT IS SO CLOSE IN TIME IT IS ALMOST ONE ACT BUT IN
13 ADDITION TO THAT IT COULD BE SAID CLEARLY TO BE A METHOD TO
14 GET AWAY WITH THE ACT.

15 IF THEY DID NOT GET AWAY WITH IT THEY CERTAINLY
16 WERE NOT GOING TO OBTAIN THEIR OBJECTIVE AND THAT IS TO
17 COLLECT THE INHERITANCE OR INSURANCE PROCEEDS.

18 IT WILL BE ALLOWED AS FURTHERANCE OF THE
19 CONSPIRACY. PARAGRAPH 6, COUNSEL.

20 MR. HARMON: YOUR HONOR, PARAGRAPH 6 INVOLVES
21 JOHN LUCAS WHO TESTIFIED THAT ABOUT ONE, PERHAPS TWO
22 MONTHS BEFORE THE CRIMES AT THE DOME HOUSE, WHICH HE
23 CHARACTERIZES AS BEING THE FORMER RESIDENCE OF RANDY MOORE,
24 THAT THERE WAS A CONVERSATION INVOLVING HIMSELF, MOORE, AND
25 FLANAGAN.

1 AND BASICALLY, IT WAS MR. MOORE AND MR. FLANAGAN
2 SAYING HOW EASY IT WOULD BE TO GET INTO THE HOUSE. THEIR
3 STATEMENT THAT THE GRANDPARENTS WERE GOING TO BE KILLED AND
4 THE REASON GIVEN IS THAT THEY WERE WORTH A LOT OF MONEY.

5 YOUR HONOR, WE SUBMIT WE ARE DISCUSSING AGAIN THE
6 PLANNING STAGES OF THE CONSPIRACY. AND, IN FACT, THE
7 DECLARANCE AS DESCRIBED BY MR. MOORE OR TO THE PEOPLE THAT WE
8 HAVE SHOWN TO BE PART OF THE CONSPIRACY, MR. MOORE AND MR.
9 FLANAGAN.

10 THE COURT: COUNSEL?

11 MR. SMITH: NO OBJECTION.

12 MR. HANDFUSS: YOUR HONOR, MY ONLY OBJECTION, OF
13 COURSE, WOULD BE, AS I SAID, UNDER 47.110, I WOULD ASK THAT IF
14 THIS COMES IN AT THE TIME OF TRIAL, WHICH IT APPEARS IT MAY,
15 THAT UNDER THE LIMITED ADMISSIBILITY RULE I WOULD ASK AT THAT
16 TIME FOR THE COURT TO GIVE INSTRUCTION TO THE JURY IT IS NOT
17 ADMISSIBLE AGAINST MR. MCDOWELL AT ALL SINCE HE WASN'T
18 PRESENT AS FAR AS MR. LUCAS'S TESTIMONY.

19 THE COURT: WE WILL TAKE THAT UP AT THE
20 PROPER TIME DURING THE FORMAL MOTION IN LIMINE.

21 I UNDERSTAND YOUR POSITION. IT WILL BE YOUR
22 POSITION THROUGHOUT, I ASSUME?

23 MR. HANDFUSS: YES, YOUR HONOR.

24 THE COURT: WITH THAT UNDERSTANDING, WE WILL
25 PROCEED. MR. PIKE.

1 MR. PIKE: YOUR HONOR, THERE IS A NUMBER OF
2 THEORIES THAT THE STATE COULD USE TO BRING THIS IN AS AGAINST
3 MR. FLANAGAN. SO I AM NOT GOING TO OFFER ANY ARGUMENTS AT
4 THIS TIME.

5 MR. POSIN: SAME RATIONALE APPLIES TO MR. MOORE.

6 THE COURT: FINE, MR. POSIN, THANK YOU. WELL,
7 CLEARLY AMONG OTHER THINGS IT IS FORMULATION OF THE PLAN IN
8 ITS EARLY STAGES AND IT WILL BE RECEIVED IN FURTHERANCE OF
9 THE CONSPIRACY.

10 7, MR. HARMON.

11 MR. HARMON: YOUR HONOR, IF I MAY, IT IS OUR
12 POSITION THAT WHEN LUCAS TALKS ABOUT STATEMENTS MADE THE
13 NIGHT OF NOVEMBER THE 5TH AT 337 NORTH 13TH STREET, IN OUR
14 VIEW, HE IS TALKING ABOUT THE SAME MEETING WHICH AKERS
15 DESCRIBED IN PARAGRAPH 4.

16 AND WHEN MR. LUCAS IN 8 DESCRIBES WHAT HAPPENED
17 BETWEEN 1:00 AND 1:30 A.M. WHEN THE PARTIES CAME BACK TO THE
18 APARTMENT, HE IS TALKING ABOUT THE SAME INCIDENTS BASICALLY
19 WHICH AKERS DESCRIBED IN PARAGRAPH 5.

20 SO THE ARGUMENTS WE MADE AS TO PARAGRAPHS 4 AND 5
21 ALSO ARE APPLICABLE TO PARAGRAPHS 7 AND 8.

22 THE COURT: ALL RIGHT. COUNSEL.

23 MR. SMITH: YOUR HONOR, I HAVE NO OBJECTION TO 7.
24 WITH RESPECT TO 8, MY ONLY OBJECTION WOULD BE, ONCE AGAIN, IF
25 THERE IS A MERE RECITATION BY ONE PARTY AS TO WHAT THEY

1 OBSERVED TO HAVE OCCURRED, THEN THAT DOES NOT HAVE A DIRECT
2 EFFECT ON FURTHERING AN OBJECTIVE OF THE CONSPIRACY BUT
3 MERELY IT'S A SUMMARIZATION OF THE EVENTS.

4 ONLY TO THAT I WOULD OBJECT, BUT OTHERWISE I
5 THINK IT IS ADMISSIBLE.

6 THE COURT: MR. HANDFUSS.

7 MR. HANDFUSS: I WOULD JOIN WITH MR. SMITH AND
8 WITHOUT HAVING TO RAISE THE LIMITED ADMISSIBILITY ISSUE, CAN
9 I TELL THE COURT -- CAN THE COURT ASSUME I WOULD MAKE THAT
10 ARGUMENT TO EVERY STATEMENT?

11 THE COURT: YES. MR. PIKE.

12 MR. PIKE: YOUR HONOR, I THINK THAT MR. LUCAS CAN
13 TESTIFY AS TO THE ACTS THAT HE OBSERVES BUT I JOIN WITH MR.
14 SMITH WITH ANY LONG RECITATIONS BY ANY INDIVIDUAL CONCERNING
15 WHAT OCCURRED.

16 IF ONE OR ANOTHER INDIVIDUAL IS COUNSELING,
17 ENCOURAGING OR DIRECTING SOMEBODY TO DO SOMETHING, BURN THIS
18 OR DISPOSE OF THIS OR DO THAT, THAT CLEARLY WOULD BE IN
19 FURTHERANCE OF THE CONSPIRACY.

20 BUT THE MERE RECITATION OF ANY FACTS BY ANY
21 INDIVIDUAL AT THAT POINT WOULD FALL OUTSIDE OF THE
22 CONSPIRACY.

23 MR. POSIN: YES, I WOULD CONCUR IN THAT.

24 MR. HARMON: YOUR HONOR, COULD I SAY ONE THING
25 ELSE, PLEASE. COUNSEL ARE BEGINNING TO TALK NOW ABOUT THE

1 LIMITED ADMISSIBILITY. IT WAS MY UNDERSTANDING THAT WE WERE
2 HERE TO DECIDE, BECAUSE THERE ARE ALREADY MOTIONS IN LIMINE,
3 IF THERE WAS, ONE, A CONSPIRACY AND, TWO, IF THESE
4 DECLARATIONS FURTHERED IT.

5 IF THE COURT FINDS THE ANSWER IS YES TO BOTH OF
6 THOSE QUESTIONS, THEN OUR POSITION IS THAT THE EVIDENCE COMES
7 IN AGAINST EVERYONE. THE ACTS AND STATEMENTS OF ONE BECOME
8 THE ACTS AND STATEMENTS OF ALL.

9 AND NOW, IT SEEMS THAT COUNSEL WANT THE COURT TO
10 DEFER ITS RULING AND THAT IS GOING TO PUT US IN SOMEWHAT OF
11 AN AWKWARD POSITION.

12 THE COURT: AS I INDICATED TO MR. HANDFUSS, THAT
13 ISSUE IS NOT BEING ADDRESSED AT THIS TIME. IF AT A LATER
14 TIME THERE IS A SHOWING IT SHOULD NOT BE APPLIED TO ALL
15 DEFENDANTS, I WOULD ENTERTAIN IT.

16 INCIDENTALLY, AS I INDICATED SEVERAL DAYS AGO, I
17 WOULD LIKE TO RESOLVE THESE MOTIONS TODAY AND I THINK I
18 ADMONISHED COUNSEL TO TRY TO FORESEE SUCH ARGUMENTS AS EARLY
19 AS POSSIBLE. IN ANY CASE, AS OF THIS TIME IF THESE
20 STATEMENTS ARE DETERMINED TO BE IN FURTHERANCE OF THE
21 CONSPIRACY AND, THEREFORE, ADMISSIBLE, THEY ARE ADMISSIBLE AS
22 TO ALL DEFENDANTS AND THEN OF COURSE THERE MAY BE SOME
23 ALTERATION FROM IT AT A LATER TIME.

24 MR. HANDFUSS: THE REASON I DIDN'T BRING IT UP
25 BEFORE I DID NOT THINK THIS 47.110 WAS PROPER FOR MOTION IN

1 LIMINE. THAT WHAT ACTUALLY HAPPENS AT THE TIME THE EVIDENCE
2 IS OFFERED, I MUST MAKE AN OFFER OF PROOF TO YOU AND AT THAT
3 TIME IF YOU AGREE WITH MY OFFER OF PROOF, YOU MUST INSTRUCT
4 THE JURY.

5 I WON'T ANSWER MR. HARMON'S STATEMENTS AT THIS
6 TIME AND WE WILL TAKE IT UP LATER.

7 THE COURT: THE DIFFICULTY IN OBJECTING EACH TIME
8 A STATEMENT IS PRODUCED WHEN YOU HAVE SIX COUNSEL AND LENGTHY
9 TESTIMONY SUCH AS WE HAVE, WE NEVER WOULD GET THROUGH THE
10 TRIAL AS YOU CAN SEE THE PROBLEM THERE.

11 MR. HANDFUSS: I UNDERSTAND. SEE THE PROBLEM
12 HERE, WHEN YOUR HONOR TALKED ABOUT OVERWHELMING EVIDENCE OF
13 THE CONSPIRACY, THE ONLY TIME ANYBODY PUT MR. MCDOWELL AT THE
14 CONSPIRACY IS WHEN MR. AKERS GOT ON THE STAND.

15 MR. HAVENS NEVER PUT HIM AT THE MEETING, MR.
16 LUCAS NEVER PUT HIM AT ANY MEETING BEFORE THEY CAME BACK 1:30
17 NOVEMBER 5TH OR ACTUALLY NOVEMBER 6TH

18 SO AS TO WHERE MEETINGS, WHERE OTHER INDIVIDUALS
19 WERE PRESENT BESIDES MR. MCDOWELL, IN PARAGRAPH 1 OTHER
20 INDIVIDUALS WERE PRESENT, NOT MR. MCDOWELL OR MR. LUCKETT.
21 WHAT WENT ON THERE, MR. MCDOWELL -- THERE IS NO SHOWING MR.
22 MCDOWELL HAS ANY KNOWLEDGE OF THAT MEETING WHATSOEVER.

23 AND THERE IS EVEN NO SHOWING THAT MR. AKERS'
24 TESTIMONY OF OCTOBER MEETING IS THE SAME MEETING THAT MR.
25 HAVENS WAS TALKING ABOUT.

1 I THINK IT IS EXTREMELY PREJUDICIAL AND ITS
2 PREJUDICIAL EFFECT OUTWEIGHS ITS PROBATIVE VALUE TO ASSUME
3 THAT OCTOBER MEETING WHERE OTHER INDIVIDUALS WERE PRESENT,
4 NOT MR. MCDOWELL, ARE DISCUSSING POSSIBLE MURDER PLANS SHOULD
5 NOT BE ADMITTED AGAINST MR. MCDOWELL UNDER THE LIMITED
6 ADMISSIBILITY RULE.

7 THE COURT: I THINK YOUR ARGUMENT'S A BIT
8 PREMATURE. I UNDERSTAND YOUR POSITION.

9 MORE DIRECTLY TO THE ISSUE AT THIS TIME, MR.
10 HARMON, I THINK COUNSEL HAS BROUGHT UP AN ISSUE AND THAT IS --
11 AND I THINK MR. PIKE, SPECIFICALLY, STATES THAT WHEN THE
12 INDIVIDUALS ARE BACK AT THE APARTMENT, AND I THINK WE ARE
13 TALKING ABOUT PARAGRAPH 8, AND THEY ARE DISCUSSING AND
14 RECOUNTING THE EVENTS, THAT BEYOND ANY DIRECTION TO BURN I.D.
15 OR TO HIDE A PURSE OR WHATEVER IT MIGHT HAVE BEEN WHICH WOULD
16 BE OBVIOUSLY IN FURTHERANCE OF THE CONSPIRACY TO CONCEAL AND
17 TO PROCEED, BUT JUST THE RECOUNTING OF WHAT OCCURRED, MR. PIKE
18 TAKES EXCEPTION THAT ON THAT BASIS THAT IS NOT IN
19 FURTHERANCE. NOW, COULD YOU ADDRESS THAT ISSUE?

20 MR. HARMON: WELL, JUDGE, IN THE GOLDSMITH CASE,
21 LINN AND LUCAS WERE TALKING TO NONCONSPIRATORS WEEKS AND
22 MONTHS AFTERWARDS AND THEY WERE EXPLAINING WHAT HAPPENED.

23 WE ARE TALKING ABOUT STATEMENTS THAT WOULD
24 PROBABLY QUALIFY AS EXCITED UTTERANCES EVEN. THE WITNESS HAS
25 TOLD US THAT THEIR ADRENALIN WAS PUMPING, THEY WERE ALL

1 TALKING AT ONCE. THEY WERE EXCITED. THE PROXIMITY OF TIME
2 AND PLACE. THE FACT THAT ALL OF THE CONSPIRATORS ARE
3 TOGETHER.

4 WE DON'T KNOW AT WHAT POINT EXACTLY, BECAUSE WE
5 WEREN'T THERE TO SEE, THE PURSE WAS PRODUCED, THE
6 IDENTIFICATION, THE PHOTOGRAPHS ARE PULLED OUT AND BURNED. WE
7 JUST KNOW THERE IS A DESCRIPTION OF THE CONSPIRATORS BEING
8 PRESENT AND A DESCRIPTION OF WHAT HAPPENED.

9 JUDGE, IN OUR VIEW, IT ALL FALLS INTO THE SAME
10 CATEGORY. IT IS DIFFICULT TO SEE HOW THESE STATEMENTS WITHIN
11 MINUTES OF THE COMMISSION OF THESE CRIMES ARE NOT IN
12 FURTHERANCE OF THE CONSPIRACY.

13 UNDERSTANDABLY, COUNSEL WANT TO TALK ABOUT THE
14 NINTH CIRCUIT, THEY WANT TO TALK ABOUT SISTER JURISDICTIONS.
15 THE FACT REMAINS THAT GOLDSMITH HAS NEVER BEEN OVERRULED.

16 THE FACT REMAINS THAT GOLDSMITH MADE IT VERY
17 CLEAR THAT INFERENCES HAVE TO BE DRAWN SOMETIMES TO DETERMINE
18 WHY CERTAIN STATEMENTS FURTHER THE CONSPIRACY.

19 AS I ENCOURAGED THE COURT ORIGINALLY, IT'S
20 IMPORTANT TO LOOK AT THE VARIOUS STATEMENTS WHICH WERE
21 APPROVED IN THE GOLDSMITH DECISION.

22 IT REMAINS THE WATERSHED DECISION ON THIS ISSUE.
23 IN THIS JURISDICTION, IT HAS NOT BEEN OVERRULED. IT
24 SHOULDN'T BE OVERRULED BY THIS COURT.

25 IT REMAINS THAT THE COURT IN GOLDSMITH SAID IF

1 THE STATEMENTS RELATE BACK TO CONDUCT WHICH FURTHERED THE
2 CONSPIRACY. AND WHEN FLANAGAN IS SAYING, "WALSH USED A STICK
3 TO BREAK IN," THAT IS RELATING BACK TO ACTS WHICH FURTHERED
4 THE CONSPIRACY.

5 AND HE IS SAYING IT WITHIN 30 MINUTES OR AN HOUR
6 OF WHEN IT HAPPENED. AND WHEN FLANAGAN SAYS, "I KILLED HER"
7 AND WHEN MOORE SAYS, "I KILLED HIM," ALL THIS RELATES TO
8 CONDUCT WHICH FURTHERED THE CONSPIRACY.

9 IN UNEQUIVOCAL LANGUAGE, GOLDSMITH SAID IN ITS
10 DISCUSSION OF FURTHERANCE THAT FURTHERS --

11 THE COURT: ALL RIGHT. I WILL RESERVE RULING ON
12 8 AS TO THAT PORTION FOR THE TIME BEING. LET'S GO TO 9.

13 MR. HARMON: YOUR HONOR, 9 IS LUCAS WHO DESCRIBES
14 THAT HE HAD A MEETING. IT WAS A COUPLE OF WEEKS AFTER THE
15 CRIMES ACCORDING TO HIS RECOLLECTION. DEFENDANT MOORE,
16 DEFENDANT LUCKETT AND THE GIRLFRIEND OF MR. MOORE CAME BY HIS
17 RESIDENCE. HE TALKED WITH MR. MOORE IN THE YARD.

18 HE SAID, TO MY RECOLLECTION, THAT LUCKETT AND
19 CONNIE LEAVITT, THE GIRLFRIEND, WERE IN THE VEHICLE AND MOORE
20 SAID THEY WERE GOING TO THE CLIFFS AND THAT THEY WERE GOING
21 TO THROW THE THREE GUNS OVER THE CLIFFS. AND, IN FACT, IF WE
22 WERE TO EXAMINE THE TRANSCRIPT OF HIS TESTIMONY, IT WAS EVEN
23 MORE EMPHATIC THAT IT WAS THE THREE GUNS USED.

24 WE ARE TALKING ABOUT THE CONCEALMENT PHASE.
25 THESE ARE PEOPLE WHO DON'T WANT TO BE CAUGHT. THEY ARE

1 DISCUSSING DISPOSAL OF MURDER WEAPONS. THAT IS CERTAINLY
2 ANALOGOUS TO THE DISPOSAL OF BODIES WHICH ARE DESCRIBED IN
3 BOTH THE CREW AND FOSS CASES.

4 THE COURT: COUNSEL.

5 MR. SMITH: I THINK FOR THAT STATEMENT TO BE
6 ADMITTED AGAINST MR. LUCKETT WOULD BE IMPROPER BECAUSE IT
7 WOULD BE ANALOGOUS FOR MR. MOORE SAYING, "WE ARE GOING TO GO
8 OUT AND KILL SOMEBODY TONIGHT."

9 AGAIN, IT IS SIMPLY A GRATUITOUS COMMENT. THERE
10 IS NO EFFORT TO SOLICIT LUCAS'S HELP AND ASSISTANCE IN
11 DISPOSING OF THESE WEAPONS.

12 IF THE COURT CONCLUDES THAT THE CONCEALMENT PHASE
13 IS AN INTEGRAL PART OF THE CONSPIRACY, I.E., ONE OF ITS
14 OBJECTIVES, THIS GRATUITOUS STATEMENT DOES NOTHING TO FURTHER
15 THE CONSPIRACY. IT IS SIMPLY A GRATUITOUS COMMENT.

16 MR. HANDFUSS: I WOULD ALSO JOIN IN MERELY
17 POINTING OUT MR. MCDOWELL WAS NOT PRESENT AT THAT MEETING.

18 MR. PIKE: SAME OBJECTION FOR MR. FLANAGAN.

19 MR. POSIN: AND FOR MR. MOORE, IF YOUR HONOR
20 PLEASE.

21 MR. HARMON: YOUR HONOR, IN THE FOSS CASE, GUNTER
22 WAS IN EL PASO, TEXAS. HE WAS SHOWN TO BE THE ACTUAL KILLER
23 OF GORDON BRADY IN THE CASE.

24 HE WAS MAKING, IF WE WANT TO USE COUNSEL'S WORDS,
25 A GRATUITOUS COMMENT TO HIS WIFE. I AM SURE SHE WANTED TO

1 KNOW WHY HE WAS HEADED BACK TO NEVADA AGAIN.

2 BUT THAT DOESN'T NECESSARILY COME OUT IN THE
3 OPINION. WHAT GUNTER SAID TO HIS COMMON-LAW WIFE IS THAT, "I
4 AM GOING UP THERE TO MOVE THE BODY AND BURY IT."

5 NOW, IF IT WAS ADMISSIBLE IN FOSS AND THEY TALK
6 ABOUT A CONCEALMENT PHASE, THEN CERTAINLY THE DESCRIPTION BY
7 MOORE TO LUCAS WHO ACTUALLY WAS THERE -- LUCAS THEY HAD
8 APPARENTLY TRIED TO BRING IN THE WEB OF THE CONSPIRACY. HE
9 WAS PRESENT WHEN THEY HAD THE DISCUSSION AFTER IT HAPPENED.

10 FOR WHATEVER THE REASON AND, YOU KNOW, WE CAN
11 DRAW LOTS OF INFERENCES. PERHAPS MOORE WANTS TO DRAW HIM
12 FURTHER INTO IT. HE FIGURES IF HE KNOWS WHERE THE GUNS ARE,
13 HE IS AN ACCESSORY AFTER. THERE ARE LOTS OF REASONS WE COULD
14 ARTICULATE.

15 BUT THE FACT REMAINS GOLDSMITH SAYS IF THE
16 STATEMENT REFERS TO ACTS WHICH FURTHER IT, THEN IT IS IN
17 FURTHERANCE. AND HERE WE HAVE MOORE SAYING, "WE ARE GOING TO
18 GO THROW THE GUNS AWAY."

19 AND THAT CERTAINLY REFERS TO ACTS WHICH FURTHERED
20 THE CONSPIRACY.

21 THE COURT: THAT WAS SAID TO JOHN LUCAS; IS THAT
22 CORRECT?

23 MR. HARMON: EXACTLY, SAID TO JOHN LUCAS. DWAYNE
24 GUNTER IS SAYING HE IS GOING TO HIDE A BODY TO HIS WIFE. SHE
25 WASN'T PART OF THE BRADY KILLING. THAT BRINGS US BACK TO ONE

1 OF THE ORIGINAL PREMISES WHICH IS THE DECLARANT NOT BE A
2 CONSPIRATOR.

3 THE COURT: I UNDERSTAND THAT. SO THAT THERE IS
4 NO MISTAKE, I SUBSCRIBE TO THE THEORY OR THE INTERPRETATION
5 OF THE LAW AND HAVE FOR SOME TIME THAT THE CONCEALMENT OF A
6 CONSPIRACY IN A CRIME IS PART OF THE CONSPIRACY WITHIN
7 REASONABLE NEXUS.

8 NOW, AGAIN, WHEN YOU ARE TALKING YEARS LATER,
9 MAYBE EVEN MONTHS LATER, I THINK YOU WOULD HAVE TO HAVE A
10 MORE PROMINANT SHOWING AS TO HOW IT RELATES TO THE
11 CONCEALMENT AS TIME PROGRESSES.

12 BUT I THINK THERE IS NO QUESTION THE LAW OF
13 NEVADA IS THAT THE COVERING UP OR GETTING AWAY WITH A CRIME
14 COULD BE CONSIDERED PART OF THE ONGOING CONSPIRACY.

15 PARTICULARLY, WHEN YOU HAVE THE SITUATION SUCH AS
16 THIS WHERE THERE IS THE GOAL ULTIMATELY TO BE ACHIEVED, THAT
17 IS, TO ACQUIRE MONIES.

18 AND OBVIOUSLY, AS I SAID EARLIER, IF THERE IS A
19 DISCOVERING OF THE CRIME, THERE WOULD BE NO MONIES RECEIVED
20 AND THAT WOULD BE FRUITS OF THE CRIME. AS WE KNOW, IT CANNOT
21 BE -- NO MONIES COULD BE RECEIVED UNDER THAT CIRCUMSTANCE.

22 AS TO PARAGRAPH 9, I THINK THERE IS A NEXUS
23 BETWEEN THE STATEMENT MADE AND THE GOAL TO AVOID DISCOVERY.
24 GRANTED, IT IS SLIM. BUT MR. HARMON HAS CORRECTLY STATED THE
25 LAW IN THAT IT NEED NOT BE SUBSTANTIAL IN A CASE OF THIS

1 NATURE.

2 I AM GOING TO RULE THAT THE STATEMENT CONCERNING
3 PARAGRAPH 9 WOULD BE ADMITTED IN FURTHERANCE OF THE
4 CONSPIRACY.

5 LET'S GO ON TO 10.

6 MR. HARMON: YOUR HONOR, PARAGRAPH 10, I THINK
7 OUR BASIS FOR ARGUING ITS ADMISSIBILITY IS PRETTY MUCH SET
8 OUT IN THE PARAGRAPH.

9 IT WAS A SHORT CONVERSATION. ACCORDING TO LISA
10 LICATA, DEFENDANT FLANAGAN TOLD HER PERHAPS TWO WEEKS BEFORE
11 THE COMMISSION OF THE CRIMES, AND IF WE USE THIS IN OUR FRAME
12 OF REFERENCE ALREADY, THIS IS APPARENTLY AFTER HE HAS HAD
13 CONVERSATIONS WITH OTHER OF THE CO-CONSPIRATORS, HE TELLS
14 HER THAT HE HAS A PLAN TO GET RID OF HIS GRANDPARENTS SO HE
15 CAN INHERIT MONEY.

16 WE THINK THAT, JUDGE, AGAIN I WOULD ANTICIPATE
17 THE OBJECTION THAT THIS IS MERELY GRATUITOUS COMMENT. BUT
18 THE FACT REMAINS THAT IT IS A COMMENT WHICH BEARS DIRECTLY
19 UPON THE CONSPIRACY IN THIS CASE.

20 IT'S DIFFICULT FOR ANY PROSECUTOR TO BE ABLE TO
21 CLIMB INTO THE HEAD OF MR. FLANAGAN AND FIGURE OUT WHAT
22 MOTIVATED HIM EXACTLY TO MAKE THE STATEMENT.

23 IT RELATED TO THE CONSPIRACY. IT ALSO EMBODIES
24 IN IT HIS MOTIVE. HE SAYS SO HE CAN INHERIT MONEY. WHETHER
25 HE IS SEEKING EITHER MORAL JUSTIFICATION FROM HER, OR WHETHER

1 HE IS SEEKING TO DRAW HER INTO THE WEB OF THE CONSPIRACY.

2 SHE IS A GIRLFRIEND. HE MAY BE AFRAID SHE HAS
3 ALREADY OVERHEARD THINGS, THAT SHE WILL GO TO THE POLICE.

4 IT IS VERY DIFFICULT TO DETERMINE EXACTLY WHAT
5 THE MOTIVATION WAS. THIS IS THE REASON THE COURTS SAY THAT A
6 TRIAL COURT MUST GIVE GREAT LATITUDE IN THIS AREA.

7 BUT IT IS A STATEMENT CLEARLY OF A CONSPIRATOR
8 AND IT CLEARLY RELATES TO THE PLAN AND MOTIVE INVOLVING THE
9 GORDON KILLINGS.

10 THE COURT: COUNSEL.

11 MR. SMITH: YOUR HONOR, I AM NOT GOING TO GO
12 THROUGH THE OBJECTIONS AGAIN. I THINK IT IS CLEARLY
13 ADMISSIBLE AGAINST MR. FLANAGAN AS ADMISSION. IF HE WANTS TO
14 BE TRIED ALONE, THAT IS FINE.

15 I CAN'T UNDERSTAND HOW IT FURTHERS ANY OBJECTIVE
16 OF THIS CONSPIRACY. IT IS GRATUITOUS COMMENT AND SHOULD NOT
17 BE ADMITTED AGAINST MR. LUCKETT.

18 MR. HANDFUSS: I JOIN, YOUR HONOR.

19 MR. PIKE: I ALSO JOIN.

20 MR. POSIN: NOT ONLY DOES IT -- IS IT GRATUITOUS
21 STATEMENT AND NOT ADMISSIBLE TO THE OTHER DEFENDANTS OR MR.
22 MOORE, BUT IT DOESN'T DIRECTLY SPELL OUT THE PLAN AS I
23 RECALL THE TESTIMONY AS BEING RELATED TO THE GRAVAMEN OF THE
24 CHARGES BEFORE THE COURT. AS I RECALL THERE IS NO
25 DEVELOPMENT OF THE SUBSTANCE OF WHAT THAT PLAN IS AND NO

1 INDICATION AS TO WHO ELSE MIGHT BE INVOLVED OR THAT THERE HAD
2 BEEN ANY FURTHERANCE OR FURTHER DISCUSSION OR ACTIVITY WITH
3 REGARD TO WHATEVER THE VAGUE STATEMENT OF THE PLAN MIGHT HAVE
4 BEEN. WE FEEL THIS SHOULD NOT BE PERMITTED.

5 THE COURT: ALL RIGHT. PARAGRAPH 10, THE
6 COMMENTS ALLUDED TO, I THINK UNDER THE TEST THAT I INDICATED
7 I HAVE UTILIZED AND THE APPLICATION OF THE RELEVANT LAW, I
8 THINK IT COULD NOT CONCEIVABLY BE SAID TO FURTHER THE
9 CONSPIRACY.

10 I DON'T KNOW HOW TELLING THIS LITTLE GIRL HIS
11 PLAN IN ANY WAY FURTHERS THE CONSPIRACY. IN FACT, THE
12 CONTRARY COULD BE SAID. IT COULD PUT SOME PERSON IN JEOPARDY
13 BEFORE THE EVENT AND WHICH COULD CAUSE A THWARTING OF THE
14 PLAN IF SHE HAD GONE TO THE POLICE OR ANYONE ELSE.

15 SO I AM GOING TO DISALLOW THAT WHICH IS SET IN
16 10.

17 MR. HARMON: I DON'T MEAN TO QUARREL WITH THE
18 COURT. IT SEEMS TO ME WE HAVE TO FACE HEAD-ON OUR PRECEDENT.
19 NOW, MY RESPONSE AS THE PROSECUTOR TO THE COURT IS IF WE ARE
20 GOING TO LIMIT IN FURTHERANCE TO A DEFINITION WHICH IS THAT
21 NARROW, IS HOW THE SUPREME COURT COULD DECIDE IN GOLDSMITH
22 THAT A STATEMENT MADE BY LINN TO A NONCONSPIRATOR WEEKS AFTER
23 THE COMMISSION OF THE CRIME THAT "WE HAD TO KILL A COUPLE OF
24 GUYS AND BULLETS WERE FLYING AROUND THE CAR AND ONE CREASED
25 GLENN LUCAS IN THE BACK OF HIS HEAD AND ANOTHER ONE ALMOST

1 HIT ME AND WENT IN THE DASHBOARD OF THE CAR RIGHT NEXT TO THE
2 RADIO," HOW DOES THAT FURTHER THE CONSPIRACY?

3 THE COURT: IN GOLDSMITH, CAN YOU CITE ANY
4 STATEMENT OF THE PROPOSITION OF LAW?

5 MR. HARMON: OF COURSE. I ALREADY CITED IT TO
6 THE COURT. IT IS THE DEFINITION OF WHAT FURTHERANCE MEANS.

7 THE COURT: WHERE IS THAT COMMENT?

8 MR. HARMON: THE COURT AT PAGE 93 OF THE OPINION.
9 THIS IS THE PACIFIC CITATION, 454 P.2D.

10 THE COURT: I DON'T HAVE THAT CITE.

11 MR. HARMON: WELL, I READ FROM PAGE 93. "IN
12 CONSTRUING THE EXPRESSION IN FURTHERANCE OF THE CONSPIRACY,
13 REFERENCE IS NOT TO THE ADMISSIONS AS SUCH BUT RATHER TO THE
14 ACT CONCERNING WHICH THE ADMISSION IS MADE.

15 "THAT IS TO SAY, IF THE ACT OR DECLARATION
16 CONCERNING WHICH THE ADMISSION OR DECLARATION IS MADE BE IN
17 FURTHERANCE OF THE CONSPIRACY, THEN IT MAY BE SAID THAT THE
18 ADMISSION IS IN FURTHERANCE OF THE CONSPIRACY."

19 YOUR HONOR, THAT IS THE ONLY WAY THAT, IT SEEMS
20 TO US AS A PRACTICAL MATTER, YOU CAN DEAL WITH THESE TYPES OF
21 CASES. BECAUSE OTHERWISE IT IS IMPOSSIBLE TO FIGURE OUT WHAT
22 MOTIVATES A FLANAGAN OR A MOORE OR A LUCKETT ON VARIOUS
23 OCCASIONS TO MAKE THEIR COMMENTS.

24 THAT IS THE REASON THE COURTS SAY GREAT LATITUDE
25 SHOULD BE SHOWN WHERE YOU HAVE A CONSPIRACY CHARGE IN

1 INTRODUCING THE EVIDENCE, ONCE, AND THIS IS THE SAFETY VALVE,
2 ONCE PROOF OF THE CONSPIRACY IS SHOWN.

3 IN FACT, WE CAN RELATE PARAGRAPH 10 TO 11.
4 BECAUSE WHAT HAPPENED THE NEXT DAY AFTER THE CRIMES,
5 ACCORDING TO LICATA, IS THAT FLANAGAN APPROACHED HER AND
6 SAID, "I HAVE GOT INFORMATION THAT YOU WENT TO THE POLICE AND
7 YOU HAVE TOLD THEM THAT I KILLED MY GRANDPARENTS. AND IF
8 THAT HAPPENED, YOU BETTER GET IT STRAIGHTENED OUT WITH THEM."

9 THE COURT: THAT IS CLEARLY IN FURTHERANCE.

10 MR. HARMON: THAT CLEARLY IS IN FURTHERANCE BUT
11 IT VERY WELL MAY RELATE AND IF WE ARE NOT TO BE PERMITTED TO
12 GET EVIDENCE OF PARAGRAPH 10 BEFORE THE JURY, THEN IT COMES
13 IN A VACUUM, BECAUSE ALREADY WE CAN SEE THAT FLANAGAN KNOWS
14 THAT SHE KNOWS THAT HE PERHAPS COULD BE INVOLVED.

15 IN PARAGRAPH 10, JUST AS GOLDSMITH DESCRIBED, IT
16 MAY BE THAT THE STATEMENT TO HER IN AND OF ITSELF DOESN'T
17 FURTHER, BUT THE QUESTION IS DOES FLANAGAN REFER TO A PLAN.

18 DOES HE REFER TO A MOTIVE AND DO THOSE THINGS IN
19 AND OF THEMSELVES FURTHER WHAT THESE PEOPLE WERE INTENDING TO
20 DO. AND IT IS APPARENT THAT THEY DO.

21 THE COURT: YOU KNOW, IF THAT TEST WOULD BE
22 FOLLOWED, ANYTHING THAT IS RELEVANT TO THIS TRIAL WOULD BE
23 ADMISSIBLE, ANYTHING THAT REFERRED TO ANY OF THE EVENTS THAT
24 TOOK PLACE. AND WE WOULDN'T EVEN BE HERE EVALUATING THESE
25 PARAGRAPHS BECAUSE THEY WOULD ALL BE ADMISSIBLE BECAUSE THEY

1 REFER IN SOME WAY TO THE EVENTS.

2 MR. HARMON: I THINK WE HAVE TO LIMIT GOLDSMITH
3 TO THE TYPES OF CONVERSATIONS IT WAS CONSIDERING. NOBODY IN
4 GOLDSMITH CONTENDED TO THE SUPREME COURT THAT WHEN THE
5 CONSPIRATORS TALKED TO THE POLICE THAT THOSE THINGS WERE
6 ADMISSIBLE BECAUSE WE GET INTO A WHOLE DIFFERENT AREA THEN.

7 WE ARE TALKING ABOUT BRUTON, THE SIXTH AMENDMENT
8 AND WE ARE NOT CONTENDING IN THIS CASE THAT STATEMENTS MADE
9 BY MCDOWELL AND AKERS AND OTHERS TO THE POLICE ARE IN
10 FURTHERANCE OF THE CONSPIRACY.

11 WE ARE SAYING WHEN THESE PEOPLE ARE TALKING TO
12 THEIR CLOSE FRIENDS, PEOPLE TO WHOM THEY CONFIDED,
13 GIRLFRIENDS, FRIENDS WHO WERE RIGHT THERE AT THE APARTMENTS
14 BEFORE AND AFTER, THAT THESE TYPES OF THINGS DO FURTHER AND
15 THEY ARE TOTALLY CONSISTENT WITH THE LANGUAGE IN GOLDSMITH.

16 WHAT WE HAVE YET TO HEAR IS FOR THE DEFENSE TO
17 COME UP WITH ANY NEVADA AUTHORITY TO WHERE THE DEFINITION IN
18 GOLDSMITH OF WHAT FURTHERANCE MEANS HAS BEEN REPUDIATED
19 BECAUSE IT HAS NOT.

20 AND FOSS AND PETERSON AND CREW AND FISH ALL DID.
21 THE OTHER CASES ARE TOTALLY CONSISTENT WITH THE LANGUAGE
22 ANNOUNCED IN GOLDSMITH.

23 MR. SMITH: YOUR HONOR, I HATE TO KEEP STANDING
24 UP BUT IF YOU READ GOLDSMITH, AND I AM AT PAGE 306 OF THE
25 OPINION, THAT YOU HAVE THE NEXT TO THE LAST PARAGRAPH. THE

1 LANGUAGE CITED BY MR. HARMON AS TO WHAT IN FURTHERANCE MEANS
2 IS TAKEN FROM A 1928 CASE OUT OF THE SECOND CIRCUIT AND,
3 STRICTLY SPEAKING, IN LIGHT OF THE FACTS OF THIS CASE, THAT
4 LANGUAGE IS DICTA.

5 IT IS TOTALLY UNNECESSARY TO THE DECISION IN THIS
6 CASE AND THAT IS PARTICULARLY SO IF YOU READ THE PARAGRAPH
7 WHICH IMMEDIATELY PROCEEDS IT.

8 IT SAYS THIS, "THE DECLARATIONS COULD HAVE BEEN
9 INFERRED BY THE MAGISTRATE TO HAVE A TWOFOLD PURPOSE. FIRST,
10 THE WITNESSES WERE BOTH ACQUAINTANCES OF GOLDSMITH AND MIGHT
11 TAKE A MESSAGE TO HIM.

12 "AND, SECONDLY, THE CONSPIRATORS WERE SCHEMING
13 AMONG THEMSELVES TO PROCURE THE INSURANCE PROCEEDS. WHICH
14 HAD BEEN PAID, ET CETERA AND MATTHEIS AND LAMIR WERE
15 BYSTANDERS AND HAPPENED TO HEAR THE CONVERSATION. BOTH OF
16 THOSE SITUATIONS ARE CLASSIC IN FURTHERANCE OF STATEMENTS."

17 I WOULD SUBMIT THIS LANGUAGE QUOTED FROM LEMAN,
18 WHICH HAS VIRTUALLY BEEN ABANDONED BY EVERY JURISDICTION IN
19 THE COUNTRY, IT IS UNNECESSARY. IT IS UNFORTUNATE IT IS
20 INCLUDED IN THERE BECAUSE IT CERTAINLY DIDN'T HAVE TO BE.

21 I CAN'T FOCUS THE COURT'S ATTENTION ON ANY RECENT
22 CASE WHICH WISHES TO STATE AS A MATTER OF LAW THAT IN
23 FURTHERANCE OF IS AS BROAD AS THE STATE WISHES IT TO BE. SO
24 YOU CAN CONFINE GOLDSMITH ON ITS FACTS AND CONCLUDE THAT THAT
25 REFERENCE TO THE LEMAN CASE IS DICTA BECAUSE INDEED IT IS NOT

1 NECESSARY.

2 THE COURT: ALL RIGHT. I AM NOT GOING TO STRAY
3 FROM MY PREVIOUSLY STATED POSITION. IT MUST BE SOME SHOWING
4 THAT THERE WAS SOME FURTHERANCE AND I THINK THE RULE OF
5 REASON HAS TO BE APPLIED HERE. I CAN'T BELIEVE THAT
6 GOLDSMITH CONTEMPLATED THE BROAD PARAMETERS THAT ARE ALLUDED
7 TO BY THE STATE'S ATTORNEY.

8 IT JUST IS TOO ENCOMPASSING. NOW, I THINK ON
9 THAT BASIS, AGAIN, THAT 10 WOULD BE DISALLOWED. WE GO ON TO
10 11. I THINK WE KNOW THE LEGAL POSITIONS OF EVERYONE
11 CONCERNED.

12 HERE, WE HAVE AN OBVIOUS ATTEMPT TO KEEP SOMEONE,
13 THIS LITTLE LISA LICATA, FROM GOING TO THE AUTHORITIES OR
14 OTHERWISE DIVULGE WHAT SHE KNEW. AGAIN, THAT WOULD SEEM IN
15 FURTHERANCE.

16 IF THERE IS ANYTHING ELSE TO BE SAID ABOUT IT
17 THAT HASN'T BEEN SAID, THAT IS MY POSITION. 11 WOULD BE IN
18 FURTHERANCE. LET'S GO ON TO 12.

19 MR. HARMON: YOUR HONOR, 12 INVOLVES TESTIMONY OF
20 ANGELA SALDANA. SHE SAID THE CONVERSATION WAS IN FLANAGAN'S
21 TRAILER ABOUT A WEEK AFTER THE CRIMES.

22 AS I REMEMBER IT, SHE SAID THIS WAS THE VERY DAY
23 DETECTIVE LEVOS OF THE POLICE DEPARTMENT HAD PAID A VISIT TO
24 THE SCENE.

25 FLANAGAN CAME TO HER AFTER A MEETING WITH

1 DETECTIVE LEVOS, AND I HAVE TO PARAPHRASE THE WORDS, BUT THE
2 GIST OF IT WAS THAT SOMETHING HAD BEEN FOUND AT THE SCENE
3 THAT SHOULDN'T HAVE BEEN THERE. AND SHE WANTED TO KNOW WHAT
4 IT WAS AND HE SAID IT WAS THE KNIFE.

5 JUDGE, LIKE 10 AND 11, WE REALLY THINK THAT THE
6 COURT HAS TO CONSIDER 12 AND 13 TOGETHER. BECAUSE HAVING
7 SAID THAT MUCH, IT IS APPARENT IN 13 THAT THE DEFENDANT DOES
8 SOLICIT AT LEAST BY INFERENCE THE ASSISTANCE OF ANGELA
9 SALDANA. BECAUSE HE COMES TO HER ABOUT TWO WEEKS AFTER THE
10 CRIMES -- APPARENTLY, ABOUT A WEEK LATER AND HE DISPLAYS A
11 KNIFE AND TELLS HER HE FOUND HIS KNIFE.

12 AND SHE TELLS HIM, "WELL, THIS ONE LOOKS NEW."
13 AND, OF COURSE, HIS COMMENT IS A MATTER OF RECORD, "YES, BUT
14 NO ONE KNOWS THAT AND NOW THE COPS DON'T HAVE ANYTHING ON
15 ME."

16 JUDGE, IT'S APPARENT TO US THAT SHE WAS HIS
17 GIRLFRIEND, HE LIVED WITH HER, HE HAD TO BE CONCERNED THAT
18 SHE HAD PERCEIVED THINGS ABOUT HIM AND OVERHEARD THINGS, HAD
19 PUT TWO AND TWO TOGETHER.

20 THIS IS A GUY WHO DOESN'T WANT HER GOING TO THE
21 POLICE TO TELL WHAT SHE KNOWS. THE ONLY WAY REALLY TO AVOID
22 THAT IS PROBABLY THE ONLY REASON THAT A LINN WOULD TELL A
23 MATTHEIS, "WE GOT INVOLVED IN A SHOOTING OR WE WERE INVOLVED
24 IN A CONSPIRACY TO KILL TWO BUSINESSMEN TO GET INSURANCE."

25 THAT IS BECAUSE THEY WANT TO DRAG THESE OTHER

1 PEOPLE INTO IT SO THAT THEY WON'T TELL WHAT THEY KNOW AND WE
2 CERTAINLY THINK THAT BOTH PARAGRAPHS 12 AND 13 FURTHERED THE
3 CONSPIRACY.

4 THE COURT: OKAY. COUNSEL.

5 MR. SMITH: I HAVE THE SAME OBJECTIONS TO BOTH
6 THOSE PARAGRAPHS, YOUR HONOR.

7 THE COURT: VERY GOOD, COUNSEL.

8 MR. HANDFUSS: ALSO JOIN.

9 MR. PIKE: TRUE.

10 MR. POSIN: TRUE, ALSO.

11 THE COURT: I THINK IT IS APPARENT THAT MR.
12 FLANAGAN IN REFERRING TO THE KNIFE IN PARAGRAPH 12 AND 13,
13 REALIZED THAT THE INVESTIGATION WAS GETTING SOMEWHAT CLOSE
14 AND HE ALLUDED TO THE KNIFE TO HIS GIRLFRIEND IN ORDER TO
15 PLACATE HER, TO PUT HER ON NOTICE THAT THERE WAS AN
16 INVESTIGATION ONGOING AND THAT THERE WAS SOMETHING TO BE
17 AWARE OF.

18 AND I THINK, IN ESSENCE, WAS SETTING THE STAGE TO
19 KEEP HER QUIET, TO KEEP HER FROM SAYING SOMETHING MAYBE
20 INADVERTENTLY THAT MIGHT INVOLVE HIM.

21 HE HAD TO SAY SOMETHING, I THINK, AT THAT
22 JUNCTURE BECAUSE THE INVESTIGATION WAS ALREADY UNCOVERING
23 THINGS AND COULD EASILY HAVE BEEN CONCEIVED BY HIM THAT THE
24 NEXT TIME THE OFFICER WOULD COME OUT, IT WOULD BE MORE
25 INVOLVED AND HE WANTED TO PUT HIS LITTLE GIRLFRIEND ON NOTICE

1 THAT "I THINK WE HAVE TO BE CAUTIOUS."

2 AND THAT I THINK IS REASONABLE INTERPRETATION OF
3 WHAT HIS MOTIVE WAS. I AM GOING TO ALLOW 12 AND 13 ON THAT
4 BASIS, IN FURTHERANCE OF THE CONSPIRACY AND COVER-UP.

5 14 AND 15.

6 MR. HARMON: WELL, YOUR HONOR, WE PROBABLY SHOULD
7 DEAL WITH THEM SEPARATELY BECAUSE 14 DEALS WITH DECLARATIONS
8 MADE BY MR. FLANAGAN. ANGELA SALDANA SAID IT OCCURRED
9 DECEMBER THE 5TH, 1984.

10 THE CONTEXT IS INTERESTING. AND, IN FACT, IT'S
11 PRIMARILY BECAUSE OF THE CONTEXT THAT WE MAINTAIN THAT THIS
12 FURTHERED THE CONCEALMENT PHASE. IT'S APPARENT THEY WERE
13 HAVING AN ARGUMENT.

14 THEY HAD BEEN CLOSE. SHE HAD BEEN LIVING THERE
15 WITH HIM. THEY HAD BEEN ARGUING OVER A FORMER BOYFRIEND. IF
16 WE MAY BE GRANTED THE LIBERTY WE HAVE TO DRAW IN CERTAIN
17 INFERENCES. THE LANGUAGE POINTED OUT IN GOLDSMITH BY MR.
18 SMITH WAS, WELL, THE CONSPIRATORS MIGHT HAVE INTENDED TO SEND
19 A MESSAGE TO MR. GOLDSMITH. THEY COULD HAVE INTENDED THIS.

20 I THINK WE HAVE TO SAY THAT MR. FLANAGAN MAY HAVE --
21 HE COULD HAVE BEEN CONCERNED THAT SHE IS GOING TO LEAVE AND
22 WHERE SHE IS GOING IS DIRECTLY TO THE POLICE.

23 WHAT HE ATTEMPTED THEN TO DO, JUDGE, IN OUR VIEW,
24 MAYBE PART OF IT WAS PLACATE, BUT WE THINK MORE THAN THAT, HE
25 WANTED TO MAKE SURE THAT SHE WAS BROUGHT MORE INTO THE WEB OF

1 THE CONSPIRACY AND, IN FACT, INTIMIDATED.

2 IT REALLY COMES BACK TO THE SAME TYPE OF APPROACH
3 THAT THE COURT HELD IN PARAGRAPH 2 SHOULDN'T COME IN. BUT WE
4 HAD MOORE ATTEMPTING TO INTIMIDATE MCDOWELL AND IT IS STILL
5 VERY CLEAR TO ME THAT MCDOWELL IN SO MANY WORDS IS BEING TOLD
6 "DON'T GO TO THE POLICE. YOU ARE IN THIS UP TO YOUR NECK."

7 AND MISS SALDANA HAS TO BE A SOURCE OF CONCERN TO
8 MR. FLANAGAN ON DECEMBER THE 5TH.

9 HE HAS TO BE THINKING "IF SHE LEAVES, SHE IS
10 PROBABLY GOING TO BLOW THE WHISTLE ON ME. IN FACT, SHE MIGHT
11 EVEN INADVERTENTLY BLURT SOMETHING OUT. IF I TELL HER I
12 ACTUALLY DID IT" -- AND THAT IS THE WAY IT CAME OUT. HE SAID,
13 "HOW DO YOU LIKE THIS, I DID IT. I ACTUALLY KILLED MY
14 GRANDPARENTS."

15 IF HE IS TELLING HER I DID THAT, THEN SHE HAS TO
16 GET THE MESSAGE FROM HIM, "IF I AM CAPABLE OF KILLING THEM, I
17 AM CAPABLE OF DOING THE SAME THING TO YOU IF YOU DON'T STAY
18 IN LINE, IF YOU DON'T STAY WITH ME."

19 SO, NUMBER ONE, HE WANTS TO KEEP A GIRLFRIEND
20 AND, NUMBER TWO, HE WANTS TO MAKE SURE SHE STAYS IN LINE.
21 SHE IS GOING TO BE INTIMIDATED AND NOT GOING TO THE POLICE BY
22 UNDERSTANDING JUST HOW VIOLENT, JUST HOW CAPABLE HE IS OF
23 DEALING WITH PEOPLE WHO GET OUT OF LINE.

24 THE COURT: COUNSEL.

25 MR. SMITH: THIS NOTION OF INTIMIDATION WAS NEVER

1 EXPLORED ON CROSS-EXAMINATION NOR WAS IT EVER ATTEMPTED TO BE
2 EXPLORED. THE WITNESS TESTIFIED IT WAS SIMPLY A BOYFRIEND-
3 GIRLFRIEND RELATIONSHIP. IF ANYTHING, HE MIGHT BE TRYING TO
4 HOLD THE RELATIONSHIP TOGETHER.

5 IT IS JUST A QUANTUM LEAP OF FATE FOR US TO
6 ASSUME THERE WAS AN EVIL PURPOSE INTENDED OR TO FURTHER
7 ANY OBJECTIVE OF THE CONSPIRACY. I DON'T THINK IT IS
8 ADMISSIBLE ON THOSE GROUNDS. IT MAY BE ADMISSIBLE ON OTHER
9 GROUNDS FOR THE DEFENDANTS BUT I DON'T THINK IT IS ADMISSIBLE
10 UNDER THE THEORY OF CO-CONSPIRATOR EXCEPTION.

11 THE COURT: MR. SMITH, HOW DO YOU CONCLUDE
12 TELLING HIS GIRLFRIEND OF KILLING HIS GRANDPARENTS WOULD
13 PRESERVE THE RELATIONSHIP?

14 MR. SMITH: I DON'T CONCLUDE THAT. I THINK THAT
15 IS A POSSIBLE EXPLANATION. IT IS ALSO A MATTER HE IS JUST
16 SAYING, "I AM TIRED OF IT. I AM SICK OF RUNNING. HERE IT
17 IS." HE IS JUST BARING HIS SOUL.

18 COULD BE JUST WANTED TO GET SOME THINGS OFF HIS
19 CHEST, HAD SOMEBODY, A FRIEND TO TALK TO. I THINK THAT IS
20 REALLY THE INFERENCE THAT I GOT AT HER TESTIMONY HERE IN
21 COURT AND ALSO THE PRELIMINARY HEARING. HE NEEDED SOMEONE TO
22 TALK TO.

23 THE COURT: THANK YOU. COUNSEL.

24 MR. HANDFUSS: YOUR HONOR, I WOULD ALSO AGREE.
25 IF THE COURT RECALLS MISS SALDANA'S TESTIMONY, AT NO TIME DID

1 SHE EVER MAKE ANY INFERENCE THAT THE STATE IS ATTEMPTING TO
2 MAKE HERE THAT "I KILLED MY GRANDPARENTS. YOU BETTER KEEP IN
3 LINE OR I WILL KILL YOU."

4 SHE NEVER SAID THAT. HER TESTIMONY WAS THEY WERE
5 HAVING PROBLEMS, HAVING A CONVERSATION WHICH STARTED OUT
6 BOYFRIEND-GIRLFRIEND DISPUTE. SHE SAID THAT THE CONVERSATION
7 WAS REGARDING WHERE THEY WERE GOING AS BOYFRIEND AND
8 GIRLFRIEND, THE RELATIONSHIP.

9 AND SHE EVEN STATED, I BELIEVE -- I DON'T HAVE
10 THE EXACT PAGE. SHE EVEN STATED THAT, ON PAGE 74, "HE STATED
11 THAT HE DIDN'T CARE AND THEN HE STATED HE DIDN'T CARE WHAT I
12 DID ANYMORE. HE WAS TIRED OF RUNNING FROM THE PROBLEM."
13 THAT IS VERY INDICATIVE OF THE BASIS FOR THAT STATEMENT BY
14 MR. FLANAGAN.

15 IT WAS NO THREAT WHATSOEVER. WHAT THAT WAS WAS
16 JUST SOMEBODY, AS MR. SMITH INDICATED, SOMEBODY THROWING UP
17 HIS HANDS SAYING, "I AM TIRED OF THIS THING." ALL HE DID WAS
18 BASICALLY, AS MR. SMITH SAID, BARE HIS SOUL. THERE WAS NO
19 INTIMIDATION. THAT IS FROM MISS SALDANA. THAT WAS HER
20 TESTIMONY.

21 THE COURT: ANYTHING FURTHER?

22 MR. PIKE: ONE THING, YOUR HONOR. BY THIS TIME
23 SHE WOULD BE A POLICE AGENT AND I THINK WHAT SHE WAS DOING
24 WAS PUMPING HIM TRYING TO GET INFORMATION FOR OFFICER BERNI
25 THAT SHE COULD TURN OVER TO HIM OR THE DISTRICT ATTORNEY'S

1 OFFICE.

2 I THINK ANYTHING BEYOND THE POINT THAT SHE FIRST
3 CONTACTED OFFICER BERNI AND WAS TURNED OVER AT WHICH POINT
4 SHE BECAME A POLICE AGENT AND IT WAS ACTING AS AN ARM OF THE
5 STATE SHOULD BE EXCLUDED IN CONSIDERATION AGAINST MR.
6 FLANAGAN.

7 MR. POSIN: YOUR HONOR, JUST ONE OTHER
8 OBSERVATION. TREATING THIS, WHAT SHE SAID, AS INTIMIDATION
9 AND SEEKING TO KEEP HER IN LINE SEEMS TO BE A GROSS EXTENSION
10 OF THE TESTIMONY THAT WE HEARD FROM THE WITNESS STAND.

11 THERE WAS NOTHING IN THE SENSE OF HER TESTIMONY,
12 LET ALONE THE WORDS OF HER TESTIMONY, THAT WOULD SO INDICATE
13 TO THE COURT.

14 THE COURT: OKAY.

15 MR. HARMON: MAY I SAY SOMETHING BRIEFLY?

16 THE COURT: YES.

17 MR. HARMON: NATURALLY, WE WEREN'T GOING TO HEAR
18 FROM ANGELA SALDANA EXACTLY WHAT WAS IN THE DEFENDANT'S HEAD.
19 IF HE HAD GIVEN UP, IF HE WAS TIRED OF RUNNING, WHY DIDN'T HE
20 TURN HIMSELF INTO THE POLICE.

21 THAT DIDN'T HAPPEN. SO WHAT WE HAVE TO DO IS TO
22 INFER THAT HE HAD OTHER MOTIVES.

23 NOW, IF HE WAS TRYING TO PLACATE HER, IN GIVING
24 HER INFORMATION ABOUT THE KNIFE, THE FACT IS HE HAD GIVEN HER
25 THAT INFORMATION. SHE KNEW THAT, HE KNEW THAT SHE KNEW IT.

1 THEN OBVIOUSLY HE HAS TO SAY SOMETHING TO HER IF SHE IS ON
2 THE VERGE OF LEAVING. FOR ALL HE KNOWS, SHE GOES DIRECTLY TO
3 THE POLICE.

4 IT IS JUST THE TYPE OF AREA WHERE IT SEEMS TO US
5 CERTAIN REASONABLE INFERENCES HAVE TO BE DRAWN.

6 I SAY THERE IS INHERENT INTIMIDATION. WHEN I AM
7 TALKING TO SOMEBODY AND THAT PERSON SAYS, "HOW DO YOU LIKE
8 THIS? I KILLED TWO INDIVIDUALS." ISN'T THAT GOING TO MAKE ME
9 HAVE SECOND THOUGHTS ABOUT WHERE I STAND IN THE RELATIONSHIP
10 AND IF I CROSS THIS INDIVIDUAL WHAT IS LIABLE TO HAPPEN TO
11 ME.

12 THE INTIMIDATION IS INHERENT. NOW, MISS SALDANA
13 DOESN'T HAVE TO ARTICULATE IT.

14 THE COURT: ALL RIGHT. I THINK IN THIS LITTLE
15 EXCHANGE BETWEEN MR. FLANAGAN AND HIS GIRLFRIEND, I THINK
16 IT SPOKE TO TWO ISSUES ESSENTIALLY OR TWO MATTERS OF CONCERN.

17 ONE IS THEIR RELATIONSHIP AS BOYFRIEND-GIRLFRIEND
18 AND THE OTHER IS MR. FLANAGAN'S CONSCIOUSNESS OF THE CRIME
19 THAT OCCURRED, AT LEAST, WHATEVER HIS INVOLVEMENT MIGHT HAVE
20 BEEN AND THE FACT THAT SHE WAS IN CLOSE PROXIMITY AND WOULD
21 HAVE PROBABLY KNOWN SOME FACTS ABOUT IT AS WELL.

22 THE STATEMENT, "I DON'T CARE WHAT YOU DO"
23 ALLEGEDLY MADE BY MR. FLANAGAN TO HIS GIRLFRIEND COULD
24 ADDRESS EITHER ONE OF THOSE ISSUES, BUT MORE LIKELY ADDRESS
25 THE ISSUE OF THE BOYFRIEND-GIRLFRIEND, "GO BACK TO YOUR

1 BOYFRIEND, DO WHATEVER RATHER THAN GO TO THE POLICE."

2 I THINK THERE MIGHT BE TWO REASONABLE
3 INTERPRETATIONS OF THE EFFECT AND THE MOTIVE BEHIND THE
4 STATEMENT. ONE, AS MR. HARMON SAID, TO INTIMIDATE. NO DOUBT
5 ABOUT IT, IT IS AN INTIMIDATING STATEMENT.

6 SECONDLY, TO PUT MISS SALDANA ON NOTICE OF THE
7 SERIOUSNESS OF HIS INVOLVEMENT IF, IN FACT, HE WAS INVOLVED.
8 HE IS SAYING HE WAS INVOLVED AND TO THE MAXIMUM EXTENT.

9 AND I THINK THAT APPLIES TO HER UNDERSTANDING THE
10 CONSEQUENCES. "IF YOU GO TO THE POLICE OR IN SOME WAY YOU
11 DIVULGE INFORMATION." I THINK IT IS IN FURTHERANCE OF THE
12 CONSPIRACY IN THAT IT TENDS TO COVER-UP HIS INVOLVEMENT.

13 15, MR. HARMON.

14 MR. HARMON: YOUR HONOR, 15 ALSO DEALS WITH
15 TESTIMONY OF ANGELA SALDANA. SHE IS INVOLVED IN DISCUSSION
16 AT THE FLANAGAN TRAILER ABOUT TWO WEEKS AFTER THE MURDERS
17 WITH THOMAS AKERS. AND EVIDENTLY SHE WAS CONCERNED ABOUT THE
18 INVOLVEMENT OF THE MAN SHE LIVED WITH.

19 AND THE CONVERSATION IS PRETTY MUCH SET FORTH IN
20 PARAGRAPH 15. SHE EVIDENTLY ASKED AKERS AND HE EQUIVOCATED.
21 HE TOLD HER THAT HE WOULD NOT TELL HER WHETHER FLANAGAN WAS
22 INVOLVED OR NOT. BUT HE WOULD SAY THIS MUCH, IT WASN'T SAFE
23 FOR HER TO REMAIN AT THE TRAILER AND SHE SHOULD LEAVE.

24 YOUR HONOR, THE EVIDENCE HAS ESTABLISHED AKERS
25 WAS PART OF THE CONSPIRACY. THERE IS AN EFFORT IN THIS

1 INSTANCE BY AVOIDING A DIRECT ANSWER TO THE QUESTION OF
2 CONCEALING HIS ROLE AND THAT OF MR. FLANAGAN.

3 AND YET BY ENCOURAGING HER TO LEAVE, IT SEEMS TO
4 US SHE IS BEING GIVEN JUST ENOUGH TO PLACATE HER AND WE
5 MAINTAIN THIS ALSO IS ADMISSIBLE.

6 THE COURT: COUNSEL.

7 MR. SMITH: I THINK THAT WOULD JUST BE LIKE
8 SAYING IF SOMEONE ASKED A CO-CONSPIRATOR, "WHAT DID YOU HAVE
9 TO DO WITH THIS?" AND HE SAYS, "I AM NOT GOING TO TELL YOU."
10 IT IS THE SAME THING. IT DOESN'T FURTHER ANY OBJECTIVE,
11 JUDGE.

12 MR. HANDFUSS: YOUR HONOR, I ALSO JOIN MR. SMITH.
13 IN ADDITION, TO REITERATE WHAT MR. PIKE SAID LAST TIME. IF
14 THE COURT WILL RECALL MY CROSS-EXAMINATION OF MISS SALDANA,
15 SHE STATED THAT SHE CALLED THE POLICE, THAT SHE SPOKE TO
16 OFFICER BERNI, FORMER BOYFRIEND OF HERS. SHE SPOKE TO
17 BEECHER AVANTS.

18 THAT IT WAS HER STATEMENT AS RELATED WITH HER
19 CONVERSATION WITH THE POLICE AUTHORITIES THAT SHE WOULD GO
20 AHEAD AND SHE WOULD TRY TO LEARN WHATEVER ELSE SHE COULD.
21 SHE WAS GOING TO TURN OVER WHATEVER OTHER INFORMATION SHE
22 COULD TO THE POLICE AUTHORITIES, THE DISTRICT ATTORNEY,
23 POLICE DEPARTMENT, THE INVESTIGATION DIVISION.

24 AND SHE SAID THAT SHE SPECIFICALLY LIED ON THE
25 PHONE TO MR. AKERS IN THAT CONVERSATION FROM JAIL JUST TO GET

1 HIM TO TRUST HER AND JUST SO SHE CAN GET MORE INFORMATION SO
2 THAT SHE COULD TURN AROUND AND GIVE IT TO THE POLICE.

3 I AGREE WITH MR. PIKE, THAT ANYTHING THAT THIS
4 SPECIFIC PARAGRAPH AND ALL CONVERSATIONS FROM THERE ON ARE
5 BASICALLY POLICE AGENT CONVERSATIONS. AND SINCE THERE IS NO
6 BASIC DISCOVERY, SINCE THEY ARE POLICE AGENT STATEMENTS, I
7 WOULD ASK THE COURT TO NOT ADMIT THEM.

8 THE COURT: MR. PIKE.

9 MR. PIKE: JOIN IN BOTH OF THE ARGUMENTS OF
10 COUNSEL.

11 THE COURT: MR. POSIN.

12 MR. POSIN: ME, TOO, YOUR HONOR.

13 THE COURT: CONCERNING THE THEORY OF AGENCY, I
14 FIND THE TESTIMONY DOES NOT SUBSTANTIATE THAT. MISS SALDANA
15 INDICATED SHE WAS ACTING ON HER OWN VOLITION. THE OFFICER
16 TOLD HER TO PUT THE KNIFE BACK AND STAY OUT OF HARM'S WAY,
17 IN ESSENCE.

18 THE OFFICER DIDN'T DIRECT HER AND SHE, FOR
19 WHATEVER REASON, DECIDED TO FOLLOW THE MATTER UP.

20 NOW, CONCERNING THE QUESTION OF THE STATEMENT.
21 AGAIN, I SEE NO WAY HOW SUCH A STATEMENT COULD FURTHER THE
22 CONSPIRACY. NOW, IT WOULD BE DISALLOWED ON THAT BASIS.

23 GENTLEMEN, WE ARE GOING TO CALL A RECESS AT THIS
24 POINT. I HAVE A PLACE I HAVE TO BE ALTHOUGH WE WILL RESUME
25 AS EARLY AS POSSIBLE AND GET THIS CONCLUDED.

1 LET US TRY TO BE BACK HERE AT QUARTER AFTER ONE.
2 IS THAT AGREED? NOW, DOES ANYONE HAVE ANYTHING IN JUSTICE
3 COURT OR ANY PROBLEMS?

4 MR. PIKE: I HAVE ONE BUT I HAVE -- I GOT IT
5 CONTINUED THIS MORNING.

6 THE COURT: WE WILL TRY TO BE HERE QUARTER AFTER
7 ONE.

8 (RECESS TAKEN.)

9 THE COURT: THE CONTINUATION OF CASE C69269,
10 STATE OF NEVADA VERSUS DALE FLANAGAN, RANDOLPH MOORE, JOHN
11 LUCKETT AND ROY MCDOWELL. THE RECORD WILL REFLECT THE
12 PRESENCE OF EACH OF THE DEFENDANTS, THEIR RESPECTIVE COUNSEL,
13 MR. HARMON AND MR. SEATON REPRESENTING THE STATE. COUNSEL.

14 MR. HARMON: THANK YOU, YOUR HONOR. I THINK WE
15 WERE DOWN TO PARAGRAPH 16. YOUR HONOR, WITHOUT BELABORING
16 THE POINT, THIS ACCORDING TO SALDANA WAS INFORMATION SHE
17 SOUGHT.

18 EVIDENTLY, HER UNCLE AND AUNT HAD BEEN CURIOUS
19 ABOUT THE DISPOSAL OF THE GUNS AND SO AT THEIR REQUEST SHE
20 MADE SURE SHE ASKED THIS QUESTION OF AKERS. AND HIS RESPONSE
21 WAS THAT THE GUNS HAD BEEN PUT IN A POND OR LAKE.

22 IT'S OUR POSITION THAT THEY ARE IN FURTHERANCE
23 BECAUSE, AS WE ARGUED THIS MORNING, WE BELIEVE THAT
24 GOLDSMITH, AT LEAST WITHIN FACTUAL CIRCUMSTANCES ANALOGOUS TO
25 THAT CASE, STANDS FOR THE PROPOSITION THAT WHILE THE

1 STATEMENT ITSELF MAY NOT FURTHER, IF THE STATEMENT REFERS TO
2 ACTIONS WHICH DID FURTHER THE CONSPIRACY, THEN IT IS
3 ADMISSIBLE.

4 THE COURT: THANK YOU. COUNSEL.

5 MR. SMITH: YOUR HONOR, I WILL SUBMIT THE MATTER
6 ON THE ARGUMENTS PREVIOUSLY MADE.

7 MR. HANDFUSS: ALSO JOIN, YOUR HONOR.

8 MR. PIKE: THE ONLY ADDITION I MAKE IS NOW THAT
9 THOMAS AKERS HAS BECOME A WITNESS OF THE STATE, I THINK THE
10 BEST EVIDENCE WOULD JUST HAVE MR. AKERS TESTIFY ABOUT WHAT HE
11 DID WITH IT AND NOT ABOUT WHAT WAS SAID.

12 THAT IS JUST ATTEMPTING TO CORROBORATE WHAT MR.
13 AKERS IS GOING TO TESTIFY TO, WHAT HIS ACTIONS WERE, NOT HIS
14 KNOWLEDGE.

15 MR. POSIN: I WILL JOIN IN THE ARGUMENT.

16 THE COURT: OVER THE LUNCH HOUR, I HAVE HAD
17 OCCASION TO LOOK INTO THE GOLDSMITH CASE ONCE AGAIN AND IT
18 HAS MERELY REAFFIRMED MY INITIAL INTERPRETATION AND THE LAW
19 THAT IT ESPOUSES.

20 I DO NOT SEE THAT THOSE REPRESENTATIONS SET OUT
21 IN PARAGRAPH 16 FURTHER IN ANY WAY THE CONSPIRACY AND BASED
22 ON THE PARAMETERS THAT I CHOOSE TO UTILIZE, THEY WOULD BE
23 DISALLOWED ON THAT BASIS.

24 I BELIEVE 17, COUNSEL, YOU CONCEDED.

25 MR. HARMON: YES, YOUR HONOR.

1 THE COURT: 18, PLEASE.

2 MR. HARMON: YOUR HONOR, IF THE COURT PLEASE, I
3 THINK WE CAN PROBABLY CONSIDER PARAGRAPHS 18, 19 AND 20
4 TOGETHER. THEY RELATE TO DIFFERENT CONVERSATIONS BUT IN EACH
5 INSTANCE IT WAS MICHELLE GRAY WHO WAS REFERRING TO
6 CONVERSATIONS SHE HAD WITH THE DEFENDANT.

7 AND HE IS COMPLAINING THAT HE IS NOT GETTING
8 ALONG WITH HIS GRANDPARENTS. HE SAID ON ONE OCCASION IF IT
9 WASN'T FOR HER, HE COULD KILL HIS GRANDFATHER.

10 HE SAYS ON ANOTHER OCCASION THAT THEY DON'T CARE
11 FOR HIS FRIENDS. IN SO MANY WORDS, HE IS DESCRIBING HIS
12 MOTIVE. IN PARAGRAPH 20, HE IS SAYING THAT HE WOULD KILL
13 THEM IF IT CAME DOWN TO IT.

14 APPARENTLY, AFTER HE HAD SAID HE WOULDN'T
15 HESITATE TO DO IT, SHE SAID THAT WOULDN'T ACCOMPLISH ANYTHING
16 AND THEN HE CHANGED THE SUBJECT.

17 YOUR HONOR, IT'S OUR POSITION THAT EVIDENTLY
18 MICHELLE GRAY WAS A RATHER CLOSE FRIEND OF THE DEFENDANT. I
19 WOULD SAY THAT THIS FURTHERS THE CONSPIRACY BECAUSE FROM ALL
20 INTERPRETATIONS OF THE EVIDENCE BEFORE US, I THINK MR.
21 FLANAGAN, AGAIN BECAUSE HE WAS THE BLOOD RELATIVE, HAS TO BE
22 DESCRIBED AS THE PERSON WHO CONCEIVED OF THE PLAN.

23 HE, IN FACT, AS THE INSTIGATOR, IS THE PERSON WHO
24 CAN CERTAINLY DERAIL IT IF HE IS CONVINCED IT IS NOT
25 PRACTICABLE. AND I SUGGEST TO THE COURT THROUGH HIS CLOSE

1 FRIEND IN COMPLAINING ABOUT THE GRIEVANCES HE HAD TOWARDS HIS
2 GRANDPARENTS, HE WAS SEEKING FOR MORAL JUSTIFICATION FROM
3 HER.

4 HE IS LOOKING FOR AN ALLY. HE IS LOOKING FOR
5 SOMEONE WHO WILL SUPPORT HIM IN WHAT HE PERCEIVES TO BE A
6 RIGHTEOUS CAUSE. IN THAT SENSE, YOUR HONOR, WE CERTAINLY
7 ARGUE THAT IT DID FURTHER THE CONSPIRACY.

8 THE COURT: THANK YOU. COUNSEL.

9 MR. SMITH: YOUR HONOR, I HAVE TO THINK THAT IT
10 IS REALLY PURE SPECULATION AS TO WHAT HIS MOTIVATION IN
11 TALKING ABOUT HIS FEELINGS WERE. I DON'T SEE HOW IT FURTHERS
12 ANY OBJECTIVE OR HOW THIS STATEMENT IS INTENDED TO ELICIT ANY
13 SUPPORT FOR THE OBJECTIVES.

14 ONCE AGAIN, I THINK IT IS JUST GRATUITOUS
15 COMMENTS AND I DON'T SEE ANY GUARANTEE OF TRUSTWORTHINESS IN
16 IT OR HOW THOSE STATEMENTS SHOULD BE HELD ACCOUNTABLE AGAINST
17 MY CLIENT.

18 AT LEAST, MR. LUCKETT THERE IS NO EVIDENCE HE WAS
19 AWARE OF THIS PLAN OR FLANAGAN'S FEELINGS UNTIL THE NIGHT IN
20 QUESTION. ONCE AGAIN, ASSERT THE SAME ARGUMENTS THAT I HAVE
21 MADE.

22 THE COURT: VERY WELL.

23 MR. HANDFUSS: I JOIN WITH MR. SMITH. IN
24 ADDITION, PARAGRAPH 18 IS REALLY NO DIFFERENT THAN PARAGRAPH
25 NUMBER 10 THAT YOUR HONOR DISALLOWED AS TO LISA LICATA'S

1 STATEMENT.

2 PARAGRAPH 18 IS EVEN LESS RELIABLE THAN PARAGRAPH
3 10 BECAUSE HERE FLANAGAN SUPPOSEDLY SAYS IF HE COULD, HE
4 WOULD KILL HIS STEP-GRANDFATHER. PARAGRAPH 10, HE SUPPOSEDLY
5 SAYS HE HAS A PLAN IN THE SAME AMOUNT OF TIME.

6 JUST A COUPLE OF DAYS, PARAGRAPH 10 AND PARAGRAPH
7 18 OCCUR WITHIN EACH OTHER. AND I WOULD ASK THE COURT TO
8 FOLLOW THE SAME REASONING IT USED IN EXCLUDING PARAGRAPH 10
9 AND, THEREFORE, ALSO EXCLUDE PARAGRAPH 18 FOR THOSE SAME
10 REASONS.

11 THE COURT: 18, 19 AND 20 ARE AT ISSUE?

12 MR. HANDFUSS: YES, YOUR HONOR, ALL OF THEM.

13 THE COURT: COUNSEL.

14 MR. PIKE: JOIN WITH THE PREVIOUS COMMENTS.

15 MR. POSIN: WE WILL ALSO JOIN.

16 THE COURT: CONCERNING PARAGRAPHS 18, 19 AND 20,
17 I AM AT A LOSS TO DETERMINE HOW THE RELATING TO MICHELLE GRAY
18 FLANAGAN'S PLANS IS IN FURTHERANCE OF THE CONSPIRACY IN ANY
19 WAY.

20 SEEKING MORAL JUSTIFICATION DOES NOT IN MY
21 JUDGMENT FURTHER THE CONSPIRACY. THEY WILL NOT BE ALLOWED AS
22 AN EXCEPTION TO HEARSAY UNDER CONSPIRACY REPRESENTATIONS.

23 AND WE ARE AT 21, COUNSEL.

24 MR. HARMON: YOUR HONOR, WITHOUT ARGUMENT, IT
25 APPEARS THAT THE COURT HAVING RULED ON PARAGRAPH 15 AND I

1 THINK DISALLOWING IT, THAT PROBABLY ALTHOUGH OUR POSITION
2 REMAINS THE SAME THAT IT SHOULD BE ADMITTED, I SUSPECT THAT
3 21 FALLS INTO THE SAME CATEGORY AS 15.

4 THE COURT: THANK YOU. YES, THE ISSUE IS VERY
5 SIMILAR HERE. ANY COMMENTS, COUNSEL?

6 MR. PIKE: NONE, YOUR HONOR.

7 MR. POSIN: NONE, YOUR HONOR.

8 THE COURT: FOR THE REASONS THAT WERE ESPOUSED IN
9 MY DISALLOWING 15, 21 WILL BE DISALLOWED SIMILARLY. 22.

10 MR. HARMON: 22, YOUR HONOR, DEALS AGAIN WITH THE
11 KNIFE. I THINK IT AGAIN REFLECTS THE MENTALITY OF MR.
12 FLANAGAN. HE WAS SEEKING TO COVER UP WHAT HAD OCCURRED.

13 AS THE SYNOPSIS INDICATES, HE APPROACHED MICHELLE
14 GRAY. THIS WAS ABOUT FOUR DAYS AFTER THE CRIMES HAD BEEN
15 COMMITTED AT HER RESIDENCE.

16 HE INDICATES THAT HIS KNIFE HAD SOMEHOW BEEN LEFT
17 AT THE SCENE OF THE CRIME AND IF ANYONE ASKED TO SAY HE HAD
18 BEEN CARRYING IT WITH HIM ALL THE TIME.

19 CLEARLY, HE HAS SOLICITED HER SUPPORT IN COVERING
20 UP A PIECE OF EVIDENCE WHICH TIED HIM TO THE CRIME SCENE AND
21 FOR THAT REASON, IT'S OBVIOUSLY IN FURTHERANCE OF THE
22 CONSPIRACY.

23 THE COURT: COUNSEL.

24 MR. SMITH: I DON'T THINK THE SITUATION IS ANY
25 DIFFERENT THAN THE SITUATION WE PREVIOUSLY DISCUSSED WITH

1 REFERENCE TO THE KNIFE AND I HAVE THE SAME OBJECTION, YOUR
2 HONOR.

3 THE COURT: VERY GOOD.

4 MR. HANDFUSS: I JOIN.

5 MR. PIKE: I JOIN.

6 MR. POSIN: YES.

7 THE COURT: AS I INDICATED, IN MY OPINION THINGS
8 THAT ARE DONE IN AN EFFORT TO AVOID BEING FOUND OUT OR BEING
9 CAUGHT AND PROSECUTED, PARTICULARLY IN THE FACTS OF THIS CASE
10 AND HOW THEY APPLY, IT IS IN FURTHERANCE AND THIS IS CLEARLY
11 IN FURTHERANCE WITH THAT RATIONALE BEING APPLIED SO 22 --

12 MR. HARMON: 23.

13 THE COURT: 22 WOULD BE AN EXCEPTION TO THE
14 HEARSAY RULE. 23.

15 MR. HARMON: YOUR HONOR, 23 INVOLVES TESTIMONY OF
16 MEHLIA MOORE. SHE ESTIMATED THAT THE CONVERSATION WAS ON
17 NOVEMBER THE 12TH, '84. DEFENDANTS MOORE AND LUCKETT WERE
18 PRESENT ALONG WITH MR. MOORE'S GIRLFRIEND.

19 RANDY MOORE SAID THAT THEY HAD TO GO TO THE LAKE
20 TO TAKE CARE OF SOME BUSINESS. FROM THAT STATEMENT ALONE, WE
21 ARE NOT SURE WHAT BUSINESS IT WAS, BUT FROM THE TOTALITY OF
22 THE EVIDENCE, WE MAY REASONABLE INFER IT WAS TO DISPOSE OF
23 THE GUNS.

24 THIS, LIKE SOME OF THE OTHER STATEMENTS, IN AND
25 OF ITSELF A STATEMENT GIVEN TO MEHLIA MOORE MAY NOT FURTHER

1 THE CONSPIRACY. BUT THE FACT IS BY THE GOLDSMITH STANDARD,
2 IT RELATES TO CONDUCT WHICH THEY CONTEMPLATE DOING WHICH DOES
3 FURTHER THE CONSPIRACY.

4 THE COURT: OKAY. COUNSEL.

5 MR. SMITH: YOUR HONOR, I WOULD AGREE WITH MR.
6 HARMON. I THINK THAT THE STATEMENT IS INHERENTLY AMBIGUOUS
7 WITH RESPECT AS TO SOME BUSINESS. THERE ARE SOME OTHER
8 RELATED PROBLEMS. I GUESS WE CAN ADDRESS IT.

9 WE MENTIONED THE INHERENT UNRELIABILITY OF MISS
10 MOORE'S TESTIMONY. I THINK IN LIGHT OF THAT FACT AND ALSO
11 THE FACT THIS IS APPARENTLY THE SAME INCIDENT THAT LUCAS WILL
12 TESTIFY TO, THAT IT COULD BE CONSTRUED AS CUMULATIVE.

13 AND I WILL SUBMIT IT ON THAT BASIS. I THINK WE
14 ARE GETTING INTO A REAL CAN OF WORMS WITH MISS MOORE AND I
15 THINK THE COURT PERHAPS SHOULD, IF THAT IS ALL THEY ARE
16 OFFERING HER FOR IS THIS ONE INCIDENT, CONCEDE 24 WILL NOT BE
17 ADMISSIBLE. I REALLY DON'T SEE ANY NEED FOR IT.

18 MR. HANDFUSS: I WOULD JOIN, YOUR HONOR. AND AS
19 THE COURT WILL REMEMBER, HER TESTIMONY APPEARS TO BE
20 INHERENTLY UNRELIABLE. IN ADDITION, TO HOLD A VAGUE AND
21 AMBIGUOUS STATEMENT, WITHOUT FURTHER FOUNDATION AS TO WHAT
22 SOME BUSINESS MEANS, ADMISSIBLE WHEN MR. MCDOWELL WASN'T
23 THERE, I WOULD ASK THE COURT NOT TO ADMIT THIS STATEMENT.

24 MR. PIKE: SAME OBJECTIONS, YOUR HONOR.

25 THE COURT: THANK YOU.

1 MR. POSIN: I WOULD BELIEVE, IF YOUR HONOR
2 PLEASE, TO SUBMIT TO THE COURT, THAT THIS WILL BE THE LEAST
3 PROBLEMATICAL DETERMINATION FOR THE COURT TO MAKE IN TERMS
4 OF EXCLUDING EVIDENCE. THIS CLEARLY SHOULD BE EXCLUDED.

5 THE COURT: I DON'T THINK IT PARTICULARLY TAXES
6 ONE'S IMAGINATION TO UNDERSTAND WHAT BUSINESS IS BEING
7 ALLUDED TO HERE. I DON'T HAVE A PROBLEM WITH THAT
8 PARTICULARLY.

9 HOWEVER, MR. HARMON INDICATES THAT THE STATEMENT
10 REFERS TO CONDUCT WHICH IS IN FURTHERANCE TO THE CONSPIRACY
11 AND AS I HAVE INDICATED, THAT DOESN'T RISE TO THE TEST
12 IMPLYING IT MUST IN ITSELF FURTHER THE CONSPIRACY.

13 AND TO MY WAY OF THINKING MERELY RELATING TO
14 SOMEONE THEY ARE GOING TO THE LAKE TO TAKE CARE OF BUSINESS
15 DOES NOT FURTHER THE CONSPIRACY PER SE. IT WILL BE
16 DISALLOWED ON THE BASIS OF THE EXCEPTION OF THE HEARSAY RULE.

17 COUNSEL, I BELIEVE YOU CONCEDED TO 24 AS WELL.

18 MR. HARMON: YES, YOUR HONOR.

19 THE COURT: GOING BACK TO ONE OF THE PARAGRAPHS
20 THAT I INDICATED I WOULD NOT RULE ON AT THE TIME, 8. IF
21 THERE IS ANYTHING ELSE TO BE SAID THERE, I WOULD ENTERTAIN
22 ARGUMENT.

23 I THINK THAT INITIALLY, AT LEAST, MY FEELING IS
24 AS FOLLOWS. IF THERE WERE DIRECTIONS TO BURN OR TO DISPOSE
25 OF PROPERTY, IDENTIFICATION, PHOTOS, PURSE, WHATEVER IT MIGHT

1 BE, OR ANY INSTRUCTIONS IN REGARD TO ANYTHING AFTER THEY
2 RETURNED ALLEGEDLY TO THE APARTMENT IN ORDER TO AVOID BEING
3 DETECTED AND AVOID PROSECUTION AND ULTIMATELY BEING BROUGHT
4 TO TRIAL, CERTAINLY IT IS IN FURTHERANCE.

5 THE MERE SITTING ABOUT IN THE APARTMENT RECANTING
6 WHAT THEY HAD DONE AND GLOATING OVER IT OR DISCUSSING IT OR
7 WHATEVER YOU MIGHT WANT TO DETERMINE IT AS, IS NOT IN
8 FURTHERANCE PER SE TO THE CONSPIRACY.

9 NOT TO SAY THIS MIGHT NOT BE ALLOWED UNDER SOME
10 OTHER EXCEPTION TO THE HEARSAY RULE BUT MY INITIAL OPINION IS
11 THAT IT IS NOT IN FURTHERANCE.

12 I WOULD ENTERTAIN ANY ARGUMENT CONTRARY TO THAT,
13 COUNSEL.

14 MR. HARMON: YOUR HONOR, I AM NOT SURE THAT IT
15 WOULD BE FURTHER ARGUMENT ON THE ISSUE OF FURTHERANCE. I DO
16 WANT TO POINT OUT THAT LUCAS AND AKERS ARE IN THE POSITION OF
17 DESCRIBING THE SAME CONDUCT AND THE SAME CONVERSATIONS
18 AFTERWARDS.

19 AND WHILE LUCAS WAS NOT AS EXPLICIT ON THE
20 SUBJECT OF WHERE THE VARIOUS PARTIES WERE, AKERS IS VERY
21 SPECIFIC.

22 HE SAYS ALL SIX PERSONS WERE SEATED IN THE
23 KITCHEN. THEY WERE TALKING TOGETHER. HE SAID THE ADRENALIN
24 WAS FLOWING, THEY WERE EXCITED AND THEY WERE CHIMING IN WITH
25 WHAT THEY DID.

1 YOUR HONOR, IT IS HARD TO SEPARATE THE STATEMENTS
2 FROM THINGS THAT WERE HAPPENING, THE PRODUCTION OF THE
3 WALLET, THE IDENTIFICATION, THE PHOTOGRAPHS WHICH WERE
4 BURNED.

5 IT SEEMS TO ME THAT THIS IS SO APPROXIMATE TO THE
6 TIME OF THE CRIME. WE ARE TALKING ABOUT THE CONSPIRATORS
7 THEMSELVES WITH THE EXCEPTION OF LUCAS AND HE KNEW WHAT WAS
8 HAPPENING FROM WHAT OCCURRED BEFORE.

9 IT IS DIFFICULT FOR ME TO CONCEIVE UNDER ANY OF
10 THE CASES CITED BY EITHER THE DEFENSE OR THE PROSECUTION HOW
11 ALL OF THIS IS NOT ADMISSIBLE AS FURTHERING THE CONSPIRACY.

12 AND THEN WE HAVE OTHER EXCEPTIONS, ADOPTIVE
13 ADMISSIONS, EXCITED UTTERANCES, I THINK BEASLEY. THERE ARE
14 ANY NUMBER OF EXCEPTIONS THAT UNDOUBTEDLY WILL MAKE THIS
15 ADMISSIBLE.

16 IT WAS FURTHERMORE OUR UNDERSTANDING THAT THE
17 COURT HAD INDICATED IN THE ANALOGOUS PARAGRAPH WHICH RELATES
18 TO AKERS THAT ALL OF THAT WOULD BE ADMISSIBLE AS FURTHERING
19 THE CONSPIRACY.

20 THE COURT: WHICH PARAGRAPH?

21 MR. HARMON: YOUR HONOR, THAT WOULD BE PARAGRAPHS
22 5. IF THE ARGUMENT IS MADE IT IS CUMULATIVE, WELL, OF
23 COURSE, MANY TIMES IF YOU HAVE THREE EYEWITNESSES TO A CRIME
24 AND YOU CALL THEM ALL, YOU COULD ARGUE IT IS CUMULATIVE.

25 BUT THE RESPONSE TO THAT IS THAT THE TESTIMONY OF

1 ONE, THAT OF AKERS, WILL CORROBORATE LUCAS AND THE TESTIMONY
2 OF LUCAS WILL GO A LONG WAYS TOWARD CORROBORATING THAT OF
3 AKERS.

4 THE COURT: ALL RIGHT. THANK YOU FOR BRINGING
5 PARAGRAPH 5 TO MY ATTENTION. MY THINKING THERE WAS THAT THE
6 PORTION OF THE TESTIMONY CONCERNING THE DRIVING, WHATEVER
7 TRANSPIRED AFTER THE ALLEGED INCIDENT IN AN EFFORT TO GET
8 AWAY FROM THE AREA -- I BELIEVE THERE WAS SOME MENTION OF A
9 DIGGING A HOLE OR PERHAPS --

10 MR. HARMON: THERE WAS. IN FACT, THEY DUG A
11 HOLE.

12 THE COURT: ALL OF THAT SORT OF THING IN MY
13 ESTIMATION IS PART OF TRYING TO ESCAPE DETECTION AND
14 PROSECUTION. NOW, TO WHATEVER EXTENT IN PARAGRAPH 5 MR.
15 AKERS MIGHT TESTIFY TO, THAT THEY SAT AROUND THEREAFTER OR
16 DURING THE PERIOD AND ALLUDED TO WHAT THEY HAD DONE FOR THE
17 PURPOSE OF AGAIN BRAGGING OR JUST RELIVING IT, I DON'T KNOW
18 THAT IS IN FURTHERANCE.

19 MR. HARMON: MR. LUCAS IS THERE. HE HEARD WHAT
20 WAS GOING TO HAPPEN BEFOREHAND. HE DIDN'T GO TO THE SCENE.
21 HERE IS A GUY AWAKENED. THEY HAD TO GO SOMEWHERE.

22 SO THEY HAVE COME IN AND IN HIS PRESENCE THEY ARE
23 BURNING PHOTOGRAPHS AND IDENTIFICATION AND THEY ARE LOOKING,
24 EVEN THOUGH IT IS A SMALL AMOUNT, AT MONEY THAT THEY HAVE
25 TAKEN FROM THE SCENE.

1 CERTAINLY, THERE IS AN INTIMIDATION FACTOR HERE,
2 TOO. CERTAINLY, THESE PEOPLE DON'T WANT MR. LUCAS RUNNING
3 OUT TO EXPLAIN WHAT HE KNOWS TO THE POLICE.

4 SO IT IS A REASONABLE ARGUMENT THAT THEY TELL IN
5 HIS PRESENCE WHAT HAS OCCURRED SO HE APPRECIATES THE
6 SERIOUSNESS OF WHAT HAS OCCURRED, SO HE IS PART OF THE GROUP.
7 AND, IN A SENSE, IS UP TO HIS NECK IN THIS AND THERE IS
8 NOTHING NOW THAT HE CAN DO ABOUT IT.

9 THE COURT: THAT IS ARGUMENT THAT HADN'T BEEN
10 MADE PREVIOUSLY. MR. SMITH.

11 MR. SMITH: YOUR HONOR, I AGREE WITH YOUR INITIAL
12 INCLINATION WITH RESPECT TO THESE STATEMENTS. IF THEY ARE
13 SIMPLY REMARKING WHAT HAS HAPPENED, IT DOESN'T FURTHER AN
14 OBJECTIVE OF THE CONSPIRACY.

15 IF MR. LUCAS COULD COME IN AND SAY THAT HE WAS
16 SPECIFICALLY TOLD DON'T GO TO THE POLICE, THAT'S ONE THING.

17 BUT FOR US TO SIMPLY INFER THAT THE COMMENTS MADE
18 BY VARIOUS CODEFENDANTS CAN BE ADMISSIBLE AGAINST OTHER
19 PEOPLE, THERE HAS TO BE SOME GUARANTEE OF TRUSTWORTHINESS AND
20 TRUTHFULNESS.

21 AND, ONCE AGAIN, I HAVE TO REITERATE MY STRONG
22 CONCERNS THAT THERE WAS A LEGITIMATE ATTEMPT TO SHIFT THE
23 BLAME IN THIS CASE. AND PARTICULARLY IN THIS AREA I THINK
24 THE COURT SHOULD FOCUS ON NOT ONLY THE CO-CONSPIRATOR
25 EXCEPTION BUT ALSO SIXTH AMENDMENT CONCERNS.

1 AND I THINK WHEN VARIOUS CODEFENDANTS, NOT
2 NECESSARILY IN EARSHOT OF OTHER CODEFENDANTS, ARE MAKING
3 STATEMENTS ABOUT WHAT OTHER PEOPLE DID, THEN THE SIXTH
4 AMENDMENT CONCERNS ARE OF PARAMOUNT IMPORTANCE.

5 NO ONE HAS YET TESTIFIED THAT THEY COULD SAY FOR
6 SURE AT LEAST THAT MY CLIENT OVERHEARD ANY OF THESE
7 CONVERSATIONS THAT WERE MADE IN LUCAS'S PRESENCE, THAT HE
8 OVERHEARD. AND I THINK FOR THOSE STATEMENTS TO BE USED
9 AGAINST HIM COULD BE PREJUDICE OF THE HIGHEST ORDER. I THINK
10 THEY SHOULD BE EXCLUDED.

11 THE COURT: THANK YOU. MR. HANDFUSS, ANYTHING?

12 MR. HANDFUSS: I WOULD JOIN WITH MR. SMITH. ONE
13 OTHER THING. THE STATE HAS ALLUDED SEVERAL TIMES TO THIS
14 INTIMIDATION FACTOR. I THINK THIS IS MERELY AN ATTEMPT TO
15 TRY BOOTSTRAPPING THIS OTHERWISE INADMISSIBLE EVIDENCE IN
16 ON THIS TYPE OF ARGUMENT, POSSIBLE INTIMIDATION.

17 MR. LUCAS TESTIFIED AT THE PRELIMINARY HEARING,
18 HE'S TESTIFIED HERE. HE'S TESTIFIED IN HIS STATEMENTS. AT
19 NO TIME DID HE EVER SAY THAT ANYBODY, AT LEAST NONE OF THESE
20 DEFENDANTS OR SPEAKING FOR MR. MCDOWELL, HAD EVER TRIED TO
21 INTIMIDATE HIM OR THREATEN HIM NOT TO SAY ANYTHING.

22 I WOULD ASK THE COURT TO FOLLOW ITS INITIAL
23 REACTION TO THIS EVIDENCE AND SPECIFICALLY NOT PAY ATTENTION
24 TO ANY INTIMIDATION ARGUMENT THAT THE STATE MAY BRING FORTH.

25 THE COURT: COUNSEL.

1 MR. PIKE: THE TWO STATEMENTS DIFFER
2 SIGNIFICANTLY. THE CRUX OF THE WHOLE THING IS WHAT WAS GOING
3 ON DURING THE TIME FROM SOMEONE THAT WAS SUPPOSEDLY THERE AS
4 OPPOSED TO JUST MR. LUCAS WHO WAITED THERE AT THE PLACE WHERE
5 THEY WENT AND WERE SAFE.

6 AS FAR AS ANY ARGUMENT FOR EXCITED UTTERANCE, AN
7 EXCITED UTTERANCE, NRS 51.095, IS ONLY ADMISSIBLE WHEN THE
8 STATEMENT RELATING TO STARTLING EVENTS OR UNDER THE STRESS OF
9 EXCITEMENT CAUSED BY THE EVENT, THAT WOULD BE SOMETHING THAT
10 OCCURRED WHILE HE WAS THERE.

11 IF ONE SHOUTED AND THE THIRD PERSON OVERHEARD IT
12 LIKE, "TOMMY, GET THE GUN" OR SOMETHING LIKE THAT, THAT WOULD
13 BE EXCITED UTTERANCE. NOT COMING BACK, BEING AT A PLACE OF
14 SAFETY AND SITTING TOGETHER AND TALKING.

15 MR. POSIN: WE WILL ENDORSE THE ARGUMENT OF
16 COUNSEL.

17 MR. HARMON: MAY I SAY ONE THING FURTHER?

18 THE COURT: YOU MAY.

19 MR. HARMON: MR. SMITH SAYS IT IS REHASH. THERE
20 AREN'T ANY EYEWITNESSES. THIS ISN'T A REHASH AT ALL AS TO
21 EXACTLY WHAT HAPPENED AT THE TIME OF THE SHOOTING. AKERS IS
22 NOT A WITNESS OF THAT AND NEITHER IS LUCAS.

23 THESE ARE PEOPLE WHO ARE DESCRIBING CONVERSATION
24 WHICH IS OCCURRING AT THE VERY TIME EVIDENCE IS BEING
25 DESTROYED. HOW CAN YOU REASONABLY DISTINGUISH ONE FROM THE

1 OTHER. MR. SMITH AND MR. HANDFUSS SAY WE HAVE A SIXTH
2 AMENDMENT CONFRONTATION PROBLEM.

3 THE FACT REMAINS AKERS AND LUCAS ARE OBVIOUSLY
4 DESCRIBING THE SAME THING AND AKERS HAS SAID ALL SIX WERE
5 SEATED TOGETHER, THAT THEY ARE IN THE KITCHEN. THEY ARE
6 OBVIOUSLY WITHIN HEARING DISTANCE. THEY ARE OBVIOUSLY
7 ADOPTING THE STATEMENTS OF ONE ANOTHER.

8 THERE IS NO TESTIMONY THAT WHEN LUCKETT SAYS, "I
9 DID THIS AND THAT," AND MCDOWELL SAYS, "THIS IS WHAT I DID,"
10 THAT SOMEBODY ELSE SAYS, "NO, THAT'S WRONG."

11 SO THERE ISN'T AN CONFRONTATION PROBLEM, YOUR
12 HONOR. IT IS EVIDENT THAT THESE ARE CONSPIRATORS WHO ARE
13 CONCEALING WHAT THEY HAVE DONE. THEY ARE DESTROYING EVIDENCE
14 AND THEY ALSO HAD THE FACTOR OF ANOTHER WITNESS THAT THEY
15 WANT TO DRAW FURTHER INTO THE CONSPIRACY. I SPEAK OF LUCAS.

16 THE COURT: MR. HARMON, CONCERNING THIS ARGUMENT
17 OF EXCITED UTTERANCE. I REALIZE YOU DIDN'T MAKE THAT
18 ARGUMENT PER SE BUT IT WAS RESPONDED TO AS IF YOU HAD. I
19 KNOW YOU DID ALLUDE TO SOME EXTENT. HOW MUCH TIME HAD
20 EVOLVED THERE BETWEEN THE ALLEGED EVENTS AND THE
21 CONVERSATION, DO YOU RECALL?

22 MR. HARMON: YOUR HONOR, I AM NOT SURE THAT THE
23 RECORD CLEARLY INDICATES. WHAT WE HAVE INTO THE RECORD IS
24 LUCAS SAYING THAT HE THINKS THE CONVERSATIONS OCCURRED
25 BETWEEN 10:30 AND 11:00. AND THEN HE FELL ASLEEP AND THE

1 NEXT THING HE KNOWS IS THE KNOCK ON THE DOOR AND HE ESTIMATES
2 IT WAS BETWEEN 1:00 AND 1:30 IN THE MORNING.

3 WE HAVE AKERS DESCRIBING WHAT THEY DROVE. IT IS
4 TRUE THAT THEY STOPPED FOR A PERIOD OF TIME AND CARTRIDGES
5 WERE DISPOSED OF AND A HOLE WAS DUG, BUT I THINK WE MAY INFER
6 AFTER THAT THE PARTIES WENT DIRECTLY BACK TO THE APARTMENT.

7 I THINK THE TIMING DEPENDS UPON WHAT WE ARE
8 TALKING ABOUT. THESE AREN'T PEOPLE WHO JUST SAW A ROBBERY.
9 THEY AREN'T PEOPLE WHO JUST HAD SOMEBODY TAKE A SHOT AT THEM.
10 THESE ARE PEOPLE WHO ALLEGEDLY HAVE JUST COMMITTED A DOUBLE
11 MURDER.

12 AND THE UNREBUTTED TESTIMONY AT THIS POINT IS
13 THAT THEY WERE ALL SEATED THERE, THEY WERE TALKING AT A QUICK
14 PACE, THEY WERE EXCITED. A LOT OF ADRENALIN PUMPING. THAT
15 IS AN EXACT QUOTE FROM THE RECORD.

16 SO IN RESPONSE TO THE DEFENSE ARGUMENT, I SAY
17 THAT THESE VERY CERTAINLY DO QUALIFY AS EXCITED UTTERANCES.

18 THE COURT: THANK YOU. CONCERNING THE QUESTION
19 OF EXCITED UTTERANCE, THERE ARE VARIOUS CIRCUMSTANCES THAT
20 HAVE TO BE TAKEN INTO CONSIDERATION.

21 IT IS NOT, AS COUNSEL UNDERSTANDS, SOMETHING THAT
22 HAS TO OCCUR SIMULTANEOUSLY WITH THE STATEMENT. AS LONG AS
23 THE NATURE OF THE EVENTS IS SUCH THAT WOULD CONTINUE
24 REASONABLY AND EXCITED AND PROMPT SOMEONE TO SPEAK WITHOUT
25 THINKING, THAT IS THE TEST.

1 THE REASON BEING, SOMEONE WHO MAKES THE
2 STATEMENT OUT OF EXCITEMENT, DOESN'T CONTEMPLATE THE EFFECT
3 OF HIS STATEMENT, HOW IT MIGHT BE USED AGAINST HIM.

4 I THINK VIEWING THE NATURE OF THE CONVERSATION
5 AND THE TOTALITY OF THE FACTS IN THIS CASE, AS TO PARAGRAPHS
6 5 AND 8, I AM GOING TO DEEM THAT IT IS ADMISSIBLE IN ITS
7 ENTIRETY BY THE THREE ARGUMENTS ESPOUSED, ADOPTIVE ADMISSION,
8 EXCITED UTTERANCE AND INTENDING TO INTIMIDATE.

9 I THINK IN ITS TOTALITY THAT IS A PROPER RULING
10 IN THIS PARTICULAR INSTANCE.

11 GENTLEMEN, THAT CONCLUDES THE STATEMENTS THAT WE
12 HAVE LISTED HERE. ALL THE STATEMENTS THAT -- MY
13 UNDERSTANDING, AT LEAST, ALL THE STATEMENTS THAT THE STATE
14 WOULD TEND TO UTILIZE ARE PRESENT ON THIS LIST SO WE WON'T
15 HAVE ANYTHING SURPRISING US.

16 LET'S DIRECT OUR ATTENTION TO THE MOTIONS
17 THAT ARE SET OUT ON THE CALENDAR. FIRST, IT APPEARS, MR.
18 FLANAGAN'S MOTION TO SEVER. COUNSEL.

19 MR. PIKE: YOUR HONOR, THAT HAS BEEN RATHER FULLY
20 BRIEFED BY ME IN MY POINTS AND AUTHORITIES. I ACTUALLY HAD
21 FILED ONE OF THOSE IN CONJUNCTION WITH ALSO MOTION FOR CHANGE
22 OF VENUE IN THIS CASE.

23 I WILL JUST DIRECT MYSELF AS TO THE SEVERANCE
24 MOTION AND SUBMIT IT ON THE POINTS AND AUTHORITIES THAT I
25 HAVE HERETOFORE SUBMITTED BEFORE THE COURT.

1 THE COURT: VERY GOOD. WELL, THE STATE, I AM
2 SURE, WILL HAVE A RESPONSE. I CAN SAY AS FAR AS CHANGE OF
3 VENUE IS CONCERNED, IF WE BECOME SO EMBROILED WITH THE
4 ATTEMPT TO IMPANEL THE JURY, IT MAY BE THAT IT WOULD BE
5 NECESSARY.

6 MR. PIKE: THAT IS ALL THAT I ASK ON THAT. I
7 WASN'T GOING TO ARGUE FOR IT AS A MATTER OF LAW. JUST
8 BROUGHT IT BEFORE THE COURT SO THAT ONCE THE QUESTIONING OF
9 THE JURY IS CONDUCTED, IN THE EVENT THAT IT APPEARS WE CANNOT
10 OBTAIN A JURY HERE THAT CAN GIVE A FAIR AND IMPARTIAL
11 TRIAL TO MR. FLANAGAN, THEN IT WOULD TRIGGER THAT MOTION.
12 UNTIL THEN, IT CAN JUST BE HELD IN ABEYANCE.

13 THE COURT: ALL RIGHT. THE STATE CARE TO ADDRESS
14 MR. PIKE'S MOTION FOR SEVERANCE?

15 MR. SEATON: DO YOU WANT ME TO SPEAK, YOUR HONOR,
16 TO EACH OF THE DEFENDANTS IN ORDER OR DO YOU WANT TO HEAR
17 FROM ALL OF THE DEFENDANTS FIRST? IT MAY BE EASIER BECAUSE
18 MANY OF THE ARGUMENTS WILL BE INCORPORATED INTO ONE.

19 THE COURT: I THINK PERHAPS MANY OF THE SAME
20 ARGUMENTS WOULD BE MADE. WHY DON'T WE HEAR FROM EACH OF THE
21 DEFENSE COUNSEL. IN THE MATTER OF MR. LUCKETT'S MOTION.

22 MR. SMITH: YOUR HONOR, I THINK YOU WILL HAVE TO,
23 UNLESS YOU DEEM SEVERANCE PROPER AT THIS TIME, HAVE TO
24 WITHHOLD AN ULTIMATE RULING UNTIL WE HEAR THE VOIR DIRE
25 QUESTIONS AND THE RESPONSES CONCERNING WHAT THE VARIOUS

1 POTENTIAL JURORS THINK THEY KNOW ABOUT THIS CASE.

2 LUCKETT'S INVOLVEMENT, NOT ONLY IN THE FACTS OF
3 THIS CASE BUT ALSO WITH CULT INVOLVEMENT. THERE IS REFERENCE
4 IN THE PAPER WHICH CAME UP YESTERDAY TO A STATEMENT
5 ATTRIBUTABLE TO SALDANA THAT ALL THE DEFENDANTS EXCEPT WALSH
6 WERE INVOLVED IN SATANIC ACTIVITIES.

7 SHE INDICATED SHE HAD NO PERSONAL KNOWLEDGE OF
8 THAT ON THE WITNESS STAND. THAT WHETHER THAT TAINTED THE
9 ATTITUDE OF THE JURY, I DON'T KNOW.

10 THE REAL CRUX OF OUR ARGUMENT, IT IS REALLY NOT
11 ARGUMENT SO MUCH THAT WE SAY THAT WE ARE PREJUDICED BY
12 JOINDER. BUT WE HAVE TO ADVISE THE COURT, I DO AS AN
13 OFFICER, THAT THE OTHER DEFENDANTS ARE GOING TO BE PREJUDICED
14 IF LUCKETT IS BROUGHT TO TRIAL WITH THEM.

15 I THINK THE PROSECUTOR, THEY HAVE US IN TRIAL
16 BECAUSE THEY REALIZE THAT WE ARE GOING TO DO AS MUCH
17 PROSECUTING OF THE OTHER DEFENDANTS AS THEY ARE.

18 THE COURT SHOULD BE AWARE THAT UNDER NO VERY
19 CERTAIN CIRCUMSTANCES THAT WE WILL PRESENT A DEFENSE OF
20 COERCION IN THIS CASE, OF INTIMIDATION, OF THREATS AND OF A
21 VERY STRONG REASON FOR MR. LUCKETT TO BE AFRAID.

22 IN SOME INITIAL MOVING PAPERS THAT I SUBMITTED TO
23 THE COURT, I INDICATED I WAS CONCERNED ABOUT THIS TRIAL BEING
24 TAINTED WITH MENTION OF ANY SATANIC OR CULT INVOLVEMENT ON
25 THE PART OF THE OTHER DEFENDANTS.

1 I HAVE ESSENTIALLY CHANGED HORSES AND FEEL NOW IN
2 LIGHT OF EVERYTHING THAT HAS COME FORWARD, PARTICULARLY THE
3 TESTIMONY OF MR. AKERS BROUGHT FORWARD LAST WEEK, THAT IT IS
4 GOING TO BE ABSOLUTELY ESSENTIAL FOR US IN PRESENTING A
5 DEFENSE TO PORTRAY OTHER DEFENDANTS AS, QUITE FRANKLY, VERY
6 SAVAGE, AMORAL INDIVIDUALS.

7 I AM CONFIDENT UNDER DUE PROCESS RATIONALE, I
8 WILL BE ENTITLED TO BRING THAT OUT. I CAN'T SEE THAT
9 EVIDENCE WOULD, IN FACT, BE ADMISSIBLE AGAINST THESE OTHER
10 DEFENDANTS WERE THEY TO BE TRIED SEPARATE FROM MR. LUCKETT.

11 I BRING THAT UP BECAUSE I CAN SEE GETTING INTO
12 THE MIDDLE OF THIS TRIAL WITH ME ATTEMPTING TO BRING ALL THIS
13 EVIDENCE UP AND THE OTHER DEFENDANTS AT THAT POINT MOVING FOR
14 SEVERANCE.

15 MY PERSONAL BELIEF IS THEY WOULD BE ENTITLED TO
16 SEVERANCE. SO IF THE COURT IS GOING TO HAVE TO CROSS THAT
17 BRIDGE ANYWAY, THIS WOULD BE THE APPROPRIATE TIME TO
18 STRUCTURE THE TRIALS TO WHERE THEY COULD PROCEED EFFICIENTLY
19 AND FAIRLY. I DON'T SEE HOW MY CASE SHOULD BE HEARD ALONG
20 WITH THE OTHERS.

21 THE COURT: THANK YOU, MR. SMITH. COUNSEL.

22 MR. HANDFUSS: YOUR HONOR, A LOT OF WHAT MR.
23 SMITH SAID ALSO APPLIES TO MR. MCDOWELL. THERE IS A GREAT
24 PROBLEM HERE ESPECIALLY WITH THE MEDIA COVERAGE, ANY ARTICLES
25 IN THE PAPER AND ON T.V. ABOUT COVENS AND BLACK MAGIC AND

1 WHITE MAGIC AND THINGS LIKE THAT.

2 THERE HAS BEEN PLENTY OF COVERAGE AND COPIES OF
3 THOSE THAT I HAVE, AND I BELIEVE MR. SMITH HAVE, HAVE BEEN
4 SUPPLIED TO THE COURT AS EXHIBITS ATTACHED TO THE MOTIONS.
5 THE PROBLEM IS HERE MR. SMITH IS OBVIOUSLY GOING TO GO AHEAD
6 AND, AS HE SAID, PROSECUTE AT LEAST TWO IF NOT ALSO MR.
7 MCDOWELL IN THIS TRIAL IN ORDER TO SEPARATE HIS CLIENT FROM
8 THE REST OF OUR CLIENTS.

9 THE PROBLEM WITH THAT IS, IS THAT THERE IS NO
10 CONFRONTATION RIGHT. AND, IN ADDITION, THE DEFENSES ARE SO
11 INCONSISTENT THAT ONE DEFENDANT MAY ACTUALLY BE RUNNING OVER
12 ANOTHER DEFENDANT AND WE MAY BE FORCED TO PREJUDICE EACH
13 OTHER WITHOUT ANY HELP FROM THE GOVERNMENT, WITHOUT ANY HELP
14 FROM THE STATE SIMPLY BECAUSE WE ARE BEING TRIED TOGETHER.

15 SHOULD THE SEVERANCE BE GRANTED, WE HAVE
16 ALLEVIATED THAT PROBLEM OF ACTUALLY HAVING TO BE PROSECUTING
17 EACH OTHER AND WHICH WE ARE ORDINARILY NOT CALLED UPON TO DO.

18 THE STATE IN THAT MATTER COULD PROBABLY JUST SIT
19 BACK AND WAIT TO SEE WHAT HAPPENS AND WHO IS LEFT AND PUT ON
20 THEIR EVIDENCE AS TO THAT ONE PERSON OR TWO PEOPLE, WHATEVER.

21 I BELIEVE ON THOSE GROUNDS, THE VERY, VERY
22 INCONSISTENT DEFENSES, ABOUT THE COVEN, THE BLACK MAGIC AS
23 WAS SHOWN ON THE STAND. EVEN IN THE PRELIMINARY HEARING
24 TRANSCRIPT AS IN THIS HEARING, THE OTHER HEARING THE OTHER
25 DAY, IT WAS BROUGHT UP ABOUT GANGS, ACES GANGS.

1 AT THE PRELIMINARY HEARING, I HAD OBJECTED TO
2 SUCH TESTIMONY AS TO MR. MCDOWELL BECAUSE THERE WAS NO
3 EVIDENCE THAT MR. MCDOWELL WAS EVER INVOLVED IN ANY ACES GANG
4 OR ANY GANG HAVING TO DO WITH ANY EVIDENCE IN THIS CASE.

5 THE PRELIMINARY HEARING JUDGE, JUDGE SLADE,
6 GRANTED THAT MOTION STRIKING ALL TESTIMONY AS IT PERTAINED TO
7 MR. MCDOWELL. IF THAT TESTIMONY COMES IN, IF YOU AGREE WITH
8 THAT RULING FROM JUDGE SLADE, WHAT HAPPENS IS THE JURY'S
9 GOING TO BE SITTING THERE LOOKING AT MR. MCDOWELL ALONG WITH
10 MR. LUCKETT, MR. FLANAGAN AND MR. MOORE AND SAYING, "WELL, WE
11 UNDERSTAND THAT WE MIGHT HAVE BEEN TOLD THAT THE EVIDENCE WAS
12 STRICKEN AS TO MR. MCDOWELL," BUT HOW A JURY NOT -- HOW COULD
13 THAT NOT TAINT MR. MCDOWELL AND HIS DEFENSE.

14 IF A SEVERANCE WERE GRANTED, THAT PROBLEM WOULD
15 NEVER COME UP.

16 THE COURT: THANK YOU. I BELIEVE, MR. POSIN, YOU
17 HAVE A SIMILAR MOTION.

18 MR. POSIN: IF YOUR HONOR PLEASE, I SUPPORT THE
19 MOTIONS OF BOTH COUNSEL.

20 THE COURT: RESPONSE, MR. SEATON.

21 MR. SEATON: FIRST OF ALL, LET'S GET SOME BASICS
22 OUT OF THE WAY. IT HASN'T BEEN BROUGHT UP. I WANT EVERYONE
23 TO UNDERSTAND THERE ARE NO BRUTON PROBLEMS IN THIS CASE.

24 THE STATE HAS NO INTENTION OF EVER PUTTING ANY
25 CONFESSIONS TO POLICE OFFICERS INTO EVIDENCE IN THIS CASE.

1 UNLESS, OF COURSE, AFTER THE STATE HAS RESTED, CERTAIN
2 DEFENDANTS TAKE THE STAND.

3 AND UNDER THE AUSPICES OF THE SUPREME COURT CASE
4 OF NELSON VERSUS O'NEAL AND THE NEVADA SUPREME COURT CASE OF
5 SMITH VERSUS STATE, WE ARE ALLOWED TO BRING IN THOSE THINGS
6 ONCE THOSE PARTICULAR DEFENDANTS HAVE HAD THE OPPORTUNITY TO
7 DO SOME CROSS-EXAMINING. SO THAT REALLY ISN'T A PROBLEM.

8 WE NEED ALSO TO RECOGNIZE AS A BASIC PREMISE THAT
9 COURTS THROUGHOUT THE UNITED STATES AND PARTICULARLY IN THE
10 NINTH CIRCUIT, AS WELL AS IN THIS STATE AS MR. SMITH, I THINK
11 IT WAS, WANTED TO POINT OUT, THE COURTS HAVE SAID THAT JOINT
12 TRIALS ARE BEST SUITED TO CONSPIRACY CASES.

13 IN FACT, I WANT TO READ SOMETHING TO THE COURT
14 FROM THE CASE CALLED UNITED STATES VERSUS POLIZZI, FOUND AT
15 500 F.2D, 856, 1974 NINTH CIRCUIT CASE. :

16 IN THAT CASE, THE COURT HELD THAT "WHERE A
17 CONSPIRACY IS CHARGED, JOINT TRIAL IS PARTICULARLY
18 APPROPRIATE."

19 THE COURT WENT ON TO SAY, AND I QUOTE, "ONE
20 PURPOSE OF A JOINT TRIAL OF DEFENDANTS ALLEGEDLY INVOLVED IN
21 A SINGLE SCHEME IS TO FACILITATE EVALUATION BY THE JURY OF
22 THE EVIDENCE AGAINST EACH DEFENDANT IN LIGHT OF THE ENTIRE
23 COURSE OF CONDUCT.

24 "SUCH PROCEDURE NOT ONLY INCREASES THE SPEED AND
25 EFFICIENCY OF THE ADMINISTRATION OF JUSTICE BUT ALSO SERVES

1 TO GIVE THE JURY A COMPLETE OVERALL VIEW OF THE WHOLE SCHEME
2 AND HELPS THEM TO SEE HOW EACH PIECE FITS INTO THE PATTERN. "

3 AND POSSIBLY ONE OF THE MOST SUCCINCT STATEMENTS
4 MADE BY COURTS FAVORING JOINT TRIALS IN CASES LIKE THIS ONE
5 WAS FOUND IN UNITED STATES VERSUS BRADY, ANOTHER NINTH
6 CIRCUIT CASE, 1978 FOUND AT 579 F.2D, 1121.

7 AND THE COURT THERE IN A NUTSHELL SAID, "WE MUST
8 BE GUIDED BY OUR GENERAL RULE THAT JOINT TRIALS OF PERSONS
9 CHARGED WITH COMMITTING THE SAME OFFENSE EXPEDITES THE
10 ADMINISTRATION OF JUSTICE, REDUCES THE CONGESTION OF TRIAL
11 DOCKETS, CONSERVES JUDICIAL TIME, LESSENS THE BURDENS UPON
12 CITIZENS TO SACRIFICE TIME AND MONEY TO SERVE ON JURIES AND
13 AVOIDS THE NECESSITY OF RECALLING WITNESSES WHO WOULD
14 OTHERWISE BE CALLED UPON TO TESTIFY ONLY ONCE. "

15 OBVIOUSLY, IF THE DEFENDANTS CAN SHOW ENOUGH
16 PREJUDICE, IT IS ONLY IN THOSE SITUATIONS THAT COURTS SHOULD
17 SEVER THE DEFENDANTS ONE FROM THE OTHER.

18 ONE THING THIS COURT HAS GOT TO RECOGNIZE, THERE
19 HAS ALWAYS BEEN THIS UNDERCURRENT, PARTICULARLY BY MR. SMITH
20 ON BEHALF OF MR. LUCKETT, THAT HIS CASE IS SOMEHOW BETTER
21 THAN THE OTHER DEFENDANTS. THAT FROM A STATE'S POINT OF VIEW,
22 IT IS WEAKER THAN.

23 I HAVE HEARD THAT COUNTLESS TIMES. THAT HAS
24 NOTHING TO DO WITH THE THOUGHT OF SEVERANCE. ABSOLUTELY
25 NOTHING. IT HAPPENS IN EVERY CASE. THERE IS ALWAYS MORE

1 EVIDENCE AGAINST ONE DEFENDANT THAN THERE IS ANOTHER.

2 THE QUESTION IS ONLY ONE OF PREJUDICE. BOTH MR.
3 LUCKETT AND MR. MCDOWELL THROUGH THEIR COUNSEL ARE INDICATING
4 THAT ONE OF THE PROBLEMS OF THIS CASE IS THAT THERE IS TALK
5 ABOUT CULT INVOLVEMENT AND GANG INVOLVEMENT AND NEITHER OF
6 THEM HAVE ANYTHING TO DO WITH IT AND THE MENTION OF THOSE AS
7 AGAINST DEFENDANTS FLANAGAN AND MOORE WILL PREJUDICE LUCKETT
8 AND MCDOWELL.

9 FIRST OF ALL, LET ME -- THE FIRST THING I SHOULD
10 SAY IS THE STATE HAS NO INTENTION OF BRINGING OUT ANYTHING
11 HAVING TO DO WITH CULT INVOLVEMENT, ANYTHING TO DO WITH GANG
12 INVOLVEMENT.

13 AND WE HAVE A CASE IN NEVADA CALLED SMITH VERSUS
14 LEWIS, 50 NEVADA, 212, AND IT INDICATES THAT THE FACT THAT
15 SOME EVIDENCE IS INADMISSIBLE AGAINST ONE DEFENDANT AND IS
16 ADMISSIBLE AGAINST ANOTHER IS NOT ADEQUATE GROUNDS FOR
17 SEVERANCE.

18 AND TO GO ALONG WITH THAT, WE HAVE CASES FROM NEW
19 MEXICO AND ARIZONA. STATE VERSUS AULL, 435 P.2D, 437, 1937
20 NEW MEXICO CASE. STATE VERSUS ROBERTS, 336 P.2D, 151, 1959
21 ARIZONA CASE.

22 THOSE CASES HOLD THAT THERE IS NO SEVERANCE
23 ALLOWED BECAUSE ONE DEFENDANT IS WORSE THAN THE OTHER, HE HAS
24 A BAD REPUTATION, HE HAS BAD CHARACTER, HE HAS BEEN CONVICTED
25 OF A PRIOR FELONY WHERE THE OTHER DEFENDANTS HAVE NONE OF

1 THOSE DETRIMENTS.

2 THOSE ARE NOT GROUNDS FOR SEVERANCE. SO THIS
3 BUSINESS ABOUT CULT INVOLVEMENT AND GANGS IS SOMETHING TO BE
4 WORKED OUT AMONGST THE DEFENDANTS.

5 THE STATE'S NOT GOING TO SAY ANYTHING ABOUT IT.
6 IF THEY CHOOSE TO, THAT IS THEIR BUSINESS. BUT THE CASE LAW
7 IS CLEAR THAT THOSE GROUNDS ARE NOT ADEQUATE GROUNDS FOR
8 SEVERANCE.

9 MR. SMITH HAS RIGHTFULLY ACKNOWLEDGED THAT HIS
10 DEFENDANT IS NOT GOING TO BE PREJUDICED AT ALL SO IT IS NOT
11 MR. SMITH WE ARE CONCERNED ABOUT.

12 IT IS PROBABLY MR. MOORE WHO WE ARE CONCERNED
13 ABOUT. AND HE HASN'T TOLD US, BUT AS I AM GUESSING FROM
14 HEARING THE TESTIMONY, IT IS PROBABLY THE CONVERSATION IN THE
15 BEDROOM HELD BY MR. MOORE AND MR. LUCKETT THAT MR. AKERS WAS
16 A WITNESS TO, THAT IS GOING TO FORM THE FOUNDATION FOR HIS
17 SAYING THAT HE WAS INTIMIDATED INTO GOING ALONG. AND HE HAS
18 THE RIGHT TO TRY TO ATTAIN THE DEFENSE OF DURESS OR COERCION.

19 WHAT HE FAILS TO FACE OR WHAT ANY OF THE COUNSEL
20 FAIL TO FACE IN THIS SITUATION IS THAT THE REAL QUESTION IN
21 THESE KIND OF CASES AS TO WHETHER OR NOT A SEVERANCE IS
22 GIVEN, IS WHETHER OR NOT THE DEFENDANTS ARE TRYING TO PROVE
23 THE GUILT OF THE OTHER DEFENDANTS.

24 AND WE HAVE A CASE THAT WE HAVE CITED, STATE
25 VERSUS MCLAIN AND THE DEFENSE HAVE CITED IT, TOO.

1 MCLAIN INDICATES THAT IT WAS A CASE WHERE EACH
2 DEFENDANT ACCUSED THE OTHER OF MURDER. WE DON'T HAVE THAT
3 HERE. BUT EACH DEFENDANT HAD GIVEN CROSS CONFESSIONS, ONE
4 SAYING "A" DID THE MURDER AND "A" SAYING THAT "B" DID THE
5 MURDER.

6 THE COURT HAD SAID THAT IF IT HAD BEEN POSED TO
7 THE COURT PROPERLY, IT SHOULD HAVE BEEN GROUNDS FOR SEVERANCE
8 BECAUSE EACH OF THEM WAS TRYING TO PROVE THE OTHER ONE
9 GUILTY.

10 BUT LET'S LOOK AT WHAT MR. LUCKETT AND MR.
11 MCDOWELL ARE SAYING. THEY ARE NOT GOING TO TRY TO PROVE THE
12 GUILT OF THESE OTHER DEFENDANTS. THAT ISN'T THEIR AIM. WE
13 ARE GOING TO BE ABLE TO DO THAT QUITE ADEQUATELY BY
14 OURSELVES.

15 THEY ARE GOING TO TRY TO PROVE THE BAD CHARACTER
16 OF THESE DEFENDANTS. THEY ARE GOING TO TRY TO SAY THAT THESE
17 DEFENDANTS ARE CULT MEMBERS, THEY ARE GANG MEMBERS AND MORE
18 THAN THAT, AND MOST IMPORTANTLY, THEY TRIED TO FORCE THEM
19 UNDER DURESS TO PARTICIPATE.

20 THAT IS A DEFENSE THAT GOES TO MR. LUCKETT AND TO
21 MR. MCDOWELL ALONE. IT DOESN'T HAVE ANYTHING TO DO WITH THE
22 GUILT OR THE INNOCENCE OF MR. MOORE OR MR. FLANAGAN IN THIS
23 CASE.

24 YOU KNOW, WE HAVE GOT TO RECOGNIZE THAT THERE IS
25 AN ACCESSORY-PRINCIPAL ARGUMENT HERE. MR. LUCKETT'S GUILT IS

1 GOING TO BE BASED IN PART UPON THE FACT THAT HE WAS AN
2 ACCESSORY TO THE CRIME OF FIRST DEGREE MURDER.

3 AND AS SUCH UNDER 195.020, HE IS A PRINCIPAL AND
4 MUST BE PROCEEDED AGAINST AS SUCH WHICH IS PRECISELY WHAT WE
5 ARE DOING HERE.

6 SO WE FIND MR. MOORE AND MR. FLANAGAN GUILTY BY
7 PRESENTING THE EVIDENCE THAT WE WILL. AND AS TO MR. LUCKETT,
8 THE FACT THAT HE WAS AN ACCESSORY MAKES HIM A PRINCIPAL AND
9 EQUALLY GUILTY.

10 HE IS GOING TO TRY TO SAY NOT THAT HE WASN'T
11 THERE BUT THAT HE WAS THERE, HE WAS AN ACCESSORY, BUT IT WAS
12 UNDER DURESS. AND THAT BEING THE CASE IS NOT TRYING TO PROVE
13 THE GUILT UNDER MCLAIN IN NEVADA WHICH THEY WANT TO RELY ON.

14 HE IS NOT TRYING TO PROFFER THE GUILT OF MR.
15 MOORE, MR. FLANAGAN. HE IS TRYING TO PROVE THEIR BAD
16 CHARACTER AND THE FACT THEY DURESSSED HIM INTO IT.

17 IT GOES TO ANTAGONISTIC DEFENSES WHICH THEY HAVE
18 ALLUDED TO. THEY DIDN'T MENTION STRAIGHT OUT BUT I THINK
19 THAT IS PROBABLY WHAT THEY ARE GETTING AT.

20 LET ME READ, IF I CAN, THE STANDARD FOR
21 DETERMINING WHEN ANTAGONISTIC DEFENSES WILL BE SO PREJUDICIAL
22 AS TO REQUIRE SEVERANCE. UNITED STATES VERSUS HALDEMAN, 559
23 F.2D, 31, DISTRICT COURT CIRCUIT 1976.

24 AND I QUOTE, "WHILE THERE ARE MANY SITUATIONS IN
25 WHICH INCONSISTENT DEFENSES MAY SUPPORT A MOTION FOR

1 SEVERANCE, THE DOCTRINE IS A LIMITED ONE.

2 "AS SET FORTH IN STIRONE VERSUS UNITED STATES, I
3 WILL OMIT THE CITES, THE GOVERNING STANDARDS REQUIRES THE
4 MOVING DEFENDANT TO SHOW THAT THE DEFENDANTS PRESENT
5 CONFLICTING AND IRRECONCIABLE DEFENSES AND THERE IS A DANGER
6 THAT THE JURY WILL UNJUSTIFIABLY INFER THAT THIS CONFLICT
7 ALONE DEMONSTRATES THAT BOTH ARE GUILTY.

8 "APPLICATION OF THE STANDARDS REQUIRES THAT THE
9 COUNTS OF CODEPENDANTS BE NOT MERELY DIVERGENT FROM ONE
10 ANOTHER BUT SO CONTRADICTORY AS TO RAISE AN APPRECIABLE
11 DANGER THAT THE JURY WOULD CONVICT SOLELY ON THE BASIS OF THE
12 INCONSISTENCY."

13 THE INCONSISTENCY HERE ON MR. LUCKETT AND MR.
14 MCDOWELL'S BEHALF, THEY ARE SAYING MR. MOORE AND MAYBE MR.
15 FLANAGAN PUSHED US INTO DOING THIS.

16 THAT INCONSISTENCY, WHEN PRESENTED TO THE JURY,
17 IS NOT GOING TO AUTOMATICALLY, AS THIS COURT ASKS IT TO, TO
18 GIVE A SEVERANCE, IS NOT GOING TO AUTOMATICALLY CAUSE THEM TO
19 CONCLUDE THAT BOTH ARE GUILTY.

20 IT IS GOING TO MAKE THEM WONDER ONLY ABOUT THE
21 CHARACTER OF MR. MOORE AND MR. FLANAGAN AND WHETHER OR NOT
22 THEY DID, IN FACT, FORCE MR. LUCKETT OR MR. MCDOWELL INTO
23 PARTICIPATING.

24 AND I THINK THAT IS ALL THAT I HAVE TO ADD IN
25 THAT PARTICULAR AREA. THE ONLY OTHER THING I WANT TO CALL TO

1 THE ATTENTION OF THE COURT IS THAT CERTAINLY WHEREVER THERE
2 ARE DIFFICULTIES WITH CODEFENDANTS, WHEREVER THERE IS
3 EVIDENCE THAT SHOULD BE RECEIVED AS TO ONE AND NOT AS TO
4 ANOTHER, INSTRUCTIONS CAN CERTAINLY BE GIVEN SO THAT THE JURY
5 CAN SORT ALL OF THAT OUT.

6 AND POLIZZI, WHICH I CITED BEFORE, TALKED IN
7 TERMS OF THAT AND WHAT THEY SAID IN ESSENCE WAS THAT OUR
8 COURT ASSUMES THAT JURIES LISTEN TO AND FOLLOW THE DICTATES
9 OF THE COURT'S INSTRUCTIONS AND CERTAINLY THAT COULD BE THE
10 CASE HERE.

11 SO ON THAT GROUND, YOUR HONOR, AND BASED ON THE
12 RULINGS THAT THE COURT HAS GIVEN THUS FAR, AND BASED ON THE
13 FACT THAT THE STRENGTHS OR WEAKNESSES OF THE VARIOUS
14 DEFENDANT'S POSITIONS ARE CONCERNED, THERE SHOULD BE NO
15 SEVERANCE.

16 AND THEY CERTAINLY HAVE NOT BROUGHT BEFORE THIS
17 COURT ANYTHING THAT WOULD CONCLUSIVELY SHOW THIS COURT, AS
18 THE CASES SAY THAT THEY MUST, CONCLUSIVELY SHOW THIS COURT
19 THAT BY PUTTING THESE FOUR DEFENDANTS TOGETHER IN THE SAME
20 TRIAL, THAT A JURY WOULD AUTOMATICALLY BECAUSE OF ANY
21 DIFFERENCES BETWEEN THEIR TESTIMONY, OR THEIR GOALS, WOULD
22 AUTOMATICALLY COME TO THE CONCLUSION THAT ALL FOUR ARE
23 GUILTY.

24 THE COURT: THANK YOU, MR. SEATON.

25 MR. HANDFUSS: YOUR HONOR.

1 THE COURT: MR. HANDFUSS, BRIEFLY, PLEASE.

2 MR. HANDFUSS: WHAT WE ARE TALKING ABOUT HERE IS
3 NOT MERELY THE DEFENSE THAT ONE INDIVIDUAL IS WORSE THAN
4 ANOTHER INDIVIDUAL. THAT IS NOT WHAT I THINK PROBABLY MR.
5 SMITH AND ESSENTIALLY I MYSELF DID NOT MEAN TO SAY.

6 WE ARE TALKING ABOUT INADMISSIBLE EVIDENCE COMING
7 IN AS TO SPECIFIC DEFENDANTS THAT WOULD HAVE TO COME IN IF
8 SEVERANCE WAS NOT GRANTED.

9 IN ADDITION, IF MR. SMITH LAYS HIS DEFENSE
10 AGAINST MR. FLANAGAN AND MR. MOORE AS HE STATED HE WOULD,
11 THERE IS A SPILLOVER EFFECT THAT CANNOT BE IGNORED BY THIS
12 COURT ON MR. MCDOWELL AS TO THIS CULT ISSUE.

13 IN ADDITION, IF THAT COMES UP AND MR. MCDOWELL IS
14 SITTING HERE IN THIS TRIAL NOT SEVERED, WHAT MR. MCDOWELL MAY
15 HAVE --

16 AS THE COURT KNOWS, MR. MCDOWELL HAS THE RIGHT
17 NOT TO TAKE THE STAND IN ADDITION TO HIS RIGHT TO TAKE THE
18 STAND. IF THAT EVIDENCE COMES IN, MR. MCDOWELL MAY BE FORCED
19 INTO GIVING UP HIS RIGHT NOT TO TAKE THE STAND IN ORDER TO
20 REBUT EVIDENCE THAT MAY COME IN REGARDING SOMETHING THAT HAS
21 NOTHING TO DO WITH HIM. THAT'S ALL I HAVE TO SAY.

22 THE COURT: ALL RIGHT, THANK YOU. IS THERE
23 ANYTHING FURTHER?

24 MR. SMITH: JUST I FEEL I SHOULD ALSO LET THE
25 COURT KNOW WITH RESPECT TO THIS GANG INVOLVEMENT, THERE WILL

1 BE DIRECT TESTIMONY THAT MR. MCDOWELL WAS ALSO A GANG MEMBER.
2 THERE SHOULD BE NO QUESTION ABOUT THAT AND THAT WILL BE PART
3 OF OUR DEFENSE WHETHER OR NOT HE IS IN THE COURTROOM.

4 AND I DON'T MEAN TO LIMIT MY DEFENSE OF DURESS TO
5 ONLY MCDOWELL OR, RATHER, TO ONLY FLANAGAN AND MOORE. IT
6 WILL ALSO SPILLOVER INTO MR. MCDOWELL SO --

7 THE COURT: ALL RIGHT. IT COMES TO MIND THAT I
8 SHOULD ADMONISH YOU, MR. SMITH, THAT EVIDENCE, OF WHATEVER
9 NATURE, HAS TO BE SHOWN TO BE RELEVANT AND I THINK WE OUGHT TO
10 KEEP THAT IN MIND AND WE CAN PROCEED. WE ARE NOT GOING TO
11 USE A SHOTGUN HERE TO PAINT EVERYBODY RESPONSIBLE EXCEPT OUR
12 CLIENT NOTWITHSTANDING THE RELEVANCY.

13 SO WITH THAT UNDERSTANDING, GENTLEMEN, DUE TO THE
14 NATURE OF THE CHARGES IN THIS CASE AND THE FACT THAT THE SAME
15 OPERATIVE FACTS ARE TO BE PROVEN, IF THEY CAN BE, AND THE
16 FACT OF LACK OF SHOWING, I THINK, OF A LIKELY PREJUDICE WHICH
17 WOULD RISE TO JUSTIFY SEVERANCE, I AM GOING TO DECLINE TO
18 SEVER THIS CASE.

19 I WOULD POINT OUT THAT IF THE COURT WERE TO
20 SUBSCRIBE TO THE ARGUMENTS OF COUNSEL IN FAVOR OF SEVERANCE,
21 I WOULD ALMOST BE COMPELLED TO DO SO IN EVERY CASE WHERE YOU
22 HAVE MULTIPLE DEFENDANTS BECAUSE IN PRACTICALLY EVERY
23 INSTANCE YOU WOULD HAVE ELEMENTS THAT WERE INCONSISTENT. AND
24 THAT WOULD LEAVE US WITH A SITUATION WHERE WE WOULD NEVER,
25 PRACTICALLY NEVER HAVE MULTIPLE DEFENDANTS TRIED AT THE SAME

1 TIME.

2 AND I DON'T THINK I HAVE TO TELL YOU WHAT THE
3 RESULT OF THAT WOULD BE. AND THIS CASE, PARTICULARLY DUE TO
4 THE ALLEGATION OF CONSPIRACY, IT WOULD BE DEEMED APPROPRIATE
5 THIS MATTER BE TRIED AS ONE TRIAL.

6 ARE THERE ADDITIONAL MOTIONS TO RESOLVE?

7 MR. PIKE: YOUR HONOR, AS TO MY REMAINING
8 MOTIONS. I HAD A REQUEST, MOTION FOR EXCULPATORY EVIDENCE
9 AND NUMBER OF OTHER MOTIONS.

10 MR. SEATON AND I CAME IN LAST WEDNESDAY ON THE
11 DATE ORIGINALLY SCHEDULED FOR CALENDAR CALL AND I WILL REPORT
12 TO THE COURT THAT MR. SEATON GAVE ME ACCESS TO THE COMPLETE
13 FILE.

14 I REVIEWED THAT. ALL MY DISCOVERY MOTIONS WERE
15 FULFILLED SO THOSE MOTIONS ARE NOW MOOT AT THIS TIME.

16 THE COURT: ALL RIGHT. MR. HANDFUSS.

17 MR. HANDFUSS: THERE IS MOTION TO DISMISS THE
18 WITH USE COUNTS AGAINST MR. MCDOWELL. I FILED THAT MONTHS
19 AGO AND HEARING DATE WAS NOT SET. MR. SEATON ASKED ME FOR
20 TIME TO RESPOND AS THE CASE KEPT PROGRESSING. THAT MOTION IS
21 STILL STANDING AROUND.

22 IT WAS A SIMILAR MOTION TO THE ONE MR. WATERMAN
23 BROUGHT FOR MR. AKERS THAT THE COURT GRANTED. THE FACT THAT
24 MR. MCDOWELL HAD NO CONTROL UNDER THE ANDERSON CASE OVER ANY
25 OF THE WEAPONS AT THE TIME OF THE COMMISSION, THAT MR.

1 WATERMAN ARGUED HIS WRIT AND THIS COURT DID GRANT.

2 THERE WAS SIMILAR PRELIMINARY HEARING TESTIMONY
3 ALSO AS TO MR. MCDOWELL AND UNDER THE ANDERSON CASE HE HAD NO
4 CONTROL WHATSOEVER OF THE WEAPONS AT THE TIME THE OFFENSE
5 OCCURRED JUST LIKE MR. AKERS ACCORDING TO THE PRELIMINARY
6 HEARING TRANSCRIPT AND THAT MOTION IS STILL SITTING. I DON'T
7 KNOW WHAT MR. SEATON'S POSITION IS.

8 THE COURT: ALL RIGHT. I HAVE NOT HAD AN
9 OPPORTUNITY TO REVIEW ANY DOCUMENTS FILED IN THAT REGARD BUT
10 ARE YOU FAMILIAR, MR. SEATON?

11 MR. SEATON: I WASN'T AWARE MR. HANDFUSS HAD
12 FILED ANYTHING ALONG THE SAME LINES THAT MR. WATERMAN HAD. I
13 WAS UNDER THE UNDERSTANDING THAT NOTHING HAD BEEN AND THAT
14 THE 21 DAYS FOR FILING WRITS WERE LONG PAST AND THIS ISSUE
15 CANNOT BE BROUGHT BEFORE THE COURT.

16 MR. HANDFUSS: OKAY.

17 MR. SEATON: I AM NOT SURE.

18 MR. HANDFUSS: YOUR HONOR EXTENDED THE TIME FOR
19 WRIT. I FILED IT WITHIN A FEW DAYS OF MY MOTION FOR
20 SEVERANCE. WHAT HAPPENED WAS THE TIME FOR THE SEVERANCE WAS
21 PUT DOWN, WAS CONTINUED, OF COURSE, UNTIL TODAY.

22 HEARING DATE FOR THE MOTION TO DISMISS THE COUNTS
23 OF WITH USE OF DEADLY WEAPON WAS NOT GIVEN A DATE.

24 AND I DON'T KNOW IF MR. SEATON RECALLS. WE HAD A
25 PHONE CALL. HE ASKED ME IF HE CAN HAVE OPEN EXTENSION TO

1 ANSWER THAT, TO DISMISS THE WITH USE COUNTS OF THAT.

2 AND THERE WAS NO PROBLEM BECAUSE IT LOOKED LIKE
3 SOMETHING MAY HAVE BEEN TAKEN CARE OF THE CASE. THAT WAS
4 SITTING AROUND FOR A WHILE. I DON'T HAVE THE MOTION IN FRONT
5 OF ME. I AM SURE IT IS IN THE COURT'S FILE.

6 MR. SEATON: I APOLOGIZE. I CAN NEITHER CONFIRM
7 OR DENY. I JUST DON'T HAVE ANY RECOLLECTION.

8 MR. HARMON: COULD I SAY SOMETHING ADDITIONAL,
9 YOUR HONOR?

10 THE COURT: YES.

11 MR. HARMON: THERE IS ABUNDANT CASE AUTHORITY TO
12 INDICATE YOU DON'T HAVE TO BE THE PERSON WHO PHYSICALLY
13 HANDLED THE WEAPON. IN FACT, IN A SENSE, WE CAN SLIDE BACK
14 INTO THE CONSPIRACY RULE BECAUSE ONCE A CONSPIRACY IS
15 ESTABLISHED, IF IT IS SHOWN MCDOWELL WAS PART OF THE
16 CONSPIRACY AND HE KNOWS THAT GUNS ARE GOING TO BE USED, THEN
17 THE ACTS OF ONE BECOME THE ACTS OF ALL.

18 CASE AFTER CASE INVOLVES DEFENDANTS WHERE ONE OR
19 TWO HAVE WEAPONS, SOMEBODY ELSE DOESN'T. BUT IF HE IS A
20 PARTICIPANT IN THE JOINT VENTURE, THEN THE USE OF A GUN IS
21 IMPUTED TO THE DEFENDANT WHO DOESN'T HAVE THE DEADLY WEAPON.

22 THE COURT: THAT IS CERTAINLY MY UNDERSTANDING OF
23 THE LAW. I DON'T KNOW, THOUGH, WHAT MR. HANDFUSS IS ALLEGING
24 IN HIS MOTION HAVING NOT REVIEWED IT. LET'S SET THIS ASIDE.
25 I WILL TRY TO FIND THE FILE DURING THE RECESS.

1 MR. HANDFUSS: IT IS THE ANDERSON CASE WHICH IS
2 THE SAME AUTHORITY -- I WAS HERE WHEN MR. WATERMAN'S WRIT WAS
3 ARGUED AND YOU GRANTED HIS WRIT ON THAT PARTICULAR POINT. ON
4 ANDERSON VERSUS STATE.

5 THE COURT: AS I RECALL, MR. HANDFUSS -- I DON'T
6 MEAN TO INTERRUPT YOU. AS I RECALL, MR. WATERMAN'S SITUATION
7 IS THAT MR. AKERS DROVE THE VEHICLE AND IT WAS ALLEGED THAT
8 THE WEAPONS WERE IN THE VEHICLE SOMEWHERE BUT HE PERHAPS
9 DIDN'T HAVE KNOWLEDGE OF THEIR EXISTENCE.

10 HE TRANSPORTED THE INDIVIDUALS AND THE WEAPONS TO
11 THE AREA OF THE ALLEGED KILLINGS AND THEN HE LEFT AND WENT
12 OVER TO THE TRAILER OR SOMEWHERE AWAY.

13 MY POINT IS THAT AS I RECALL THE FACTUAL
14 SITUATION, IT MAY BE SIGNIFICANT HERE. BUT IN ANY CASE, I
15 BRING THAT UP ONLY FOR YOU TO CONSIDER AND FOR MYSELF TO
16 CONSIDER. WE WILL LOOK AT IT DURING THE RECESS AND SEE WHERE
17 WE ARE.

18 ADDITIONALLY, MR. PIKE, YOUR CHANGE OF VENUE IS
19 GOING TO BE CONSIDERED AS WE HAVE DISCUSSED. MR. SMITH.

20 MR. SMITH: PRELIMINARILY, THERE IS A MOTION BY
21 THE STATE TO USE THE PRELIMINARY HEARING TRANSCRIPT OF DR.
22 GREEN.

23 MR. HARMON: WE WOULD LIKE THE COURT TO DEFER
24 RULING ON THAT. I WILL EXPLAIN TO THE COURT AND COUNSEL OUR
25 APPROACH IS PROBABLY GOING TO BE THAT WE WILL MAINTAIN

1 THAT CERTIFIED COPIES OF THE AUTOPSY REPORTS ARE ADMISSIBLE.
2 AND WE WILL CITE SEVERAL SECTIONS UNDER NRS 51.

3 I THINK OUR REQUIREMENT, OF COURSE, IS, FIRST OF
4 ALL, GOING TO SHOW THAT DR. GREEN IS UNAVAILABLE AND WE ARE
5 PREPARED TO DO THAT. HE IS, IN FACT, AS WE HAVE REPRESENTED,
6 AT A MEDICAL EXAMINERS CONFERENCE.

7 CHAPTER 171 -- I CAN JUST SAY IT IS IN CHAPTER
8 171 THAT INDICATES THAT PRELIMINARY HEARING TRANSCRIPTS ARE
9 ADMISSIBLE IF UNAVAILABILITY IS SHOWN AND ONE IS THAT THE
10 WITNESS IS OUT OF STATE.

11 CERTAINLY, DR. GREEN IS OUT OF STATE BUT WE
12 PREFER THAT THE COURT DEFER RULING ON THAT BECAUSE WE ARE
13 PROBABLY GOING TO OFFER THE AUTOPSY REPORTS IN LIEU OF THE
14 REPORTED TESTIMONY.

15 THE COURT: DO WE KNOW WITH ANY DEGREE OF
16 CERTAINLY THAT HE WILL BE UNAVAILABLE KNOWING THE SCHEDULING
17 OF THIS TRIAL HAS BEEN CHANGED FROM TIME TO TIME?

18 MR. HARMON: YOUR HONOR, WE KNOW WITH A GOOD DEAL
19 OF CERTAINTY THAT HE WILL NOT BE AVAILABLE UNTIL OCTOBER THE
20 7TH. HE WILL BE AVAILABLE ON THAT DATE AND THEREAFTER.
21 THERE IS ONE OTHER THING THAT WE PERHAPS SHOULD MENTION.

22 WE DON'T KNOW WHETHER THE COUNSEL ARE AWARE OF
23 THIS OR UNAWARE BUT ARGUABLY IT FALLS WITHIN THE PARAMETERS
24 OF BRADY VERSUS MARYLAND SINCE MR. PIKE RAISED THE MOTION
25 ABOUT EXCULPATORY EVIDENCE.

1 WITH RESPECT TO WITNESSES SALDANA AND LUCAS, WE
2 WANT TO MAKE IT A MATTER OF RECORD THAT THEY HAVE WORKED WITH
3 THE POLICE DEPARTMENT SECRET WITNESS PROGRAM.

4 THEY HAVE RECEIVED PAYMENTS AS A RESULT OF
5 COOPERATION AND TESTIMONY OFFERED UP TO THIS POINT. AND IT
6 MAY BE THAT THEY WILL RECEIVE FURTHER PAYMENTS. SO WE WANT
7 TO MAKE SURE THAT COUNSEL UNDERSTAND THAT BEFORE THESE
8 WITNESSES ARE CALLED TO THE STAND SO THEY MAY EXPLORE THIS
9 AREA.

10 THE COURT: MR. HARMON, DIDN'T WE HAVE TESTIMONY
11 FROM AT LEAST ONE OF THE YOUNG LADIES THEY WERE NOT INVOLVED
12 IN SUCH A PROGRAM?

13 MR. PIKE: YES, WE DID, YOUR HONOR.

14 THE COURT: NO BEARING ON WHAT YOU ARE
15 INDICATING?

16 MR. HARMON: WITH RESPECT AS TO ANGELA SALDANA.

17 THE COURT: I THINK ONE OF THEM INDICATED THEY
18 DID NOT.

19 MR. HANDFUSS: MR. LUCAS DID ALSO, YOUR HONOR.

20 THE COURT: WELL, MR. LUCAS. WE ARE TALKING
21 ABOUT THE TWO YOUNG LADIES.

22 MR. HARMON: JUDGE, I CAN ONLY SAY THAT WE HAVE
23 SPOKEN WITH DETECTIVE GEARY OF THE POLICE DEPARTMENT. THE
24 INFORMATION HE PASSES ON TO US IS THAT THOSE TWO WITNESSES
25 HAVE WORKED WITH THE SECRET WITNESS PROGRAM.

1 THE COURT: ALL RIGHT. MY QUESTION DIDN'T BEAR
2 ON ANYTHING OF ANY PARTICULAR SIGNIFICANCE. IT SEEMED LIKE
3 AN INCONSISTENCY. I WANTED TO CLARIFY.

4 GENTLEMEN, WE WILL TAKE UP THE MATTER OF DR.
5 GREEN AT THE APPROPRIATE TIME. I WILL LOOK INTO YOUR MATTER,
6 MR. HANDFUSS, DURING A QUICK RECESS HERE. WE ARE GOING TO
7 BRING IN OUR PROSPECTIVE JURORS HERE SHORTLY. WE WILL HAVE
8 JUST A SHORT RECESS.

9 THOSE INDIVIDUALS WHO HAVE CHOSEN TO BE
10 SPECTATORS, WE ARE GOING TO HAVE A VERY LARGE PROSPECTIVE
11 JURY PANEL. THERE WILL BE VERY LITTLE, IF ANY, SEATING
12 AVAILABLE. AS YOU CAN WELL IMAGINE, THEY WOULD TAKE
13 PRECEDENCE.

14 LET ME EXPLAIN SOMETHING. THE VOIR DIRE PROCESS
15 IS NOTHING OF PARTICULAR INTEREST, I WOULD THINK, TO THE
16 AVERAGE OR CASUAL OBSERVER.

17 TODAY AND PROBABLY FULLY TOMORROW IT WILL BE A
18 QUESTIONING PROCESS BETWEEN MYSELF, COUNSEL AND THE
19 PROSPECTIVE JURORS. THEY WOULD BE CALLED UPON ONE AT A TIME.
20 IT IS A VERY LABORIOUS PROCESS.

21 YOU WOULD NOT MISS ANYTHING OF ANY SUBSTANCE IF
22 YOU ARE FOLLOWING THIS TRIAL JUST OUT OF CURIOSITY OR FOR ANY
23 OTHER REASON, FOR THAT MATTER.

24 WE ARE OUT OF NECESSITY GOING TO HAVE TO ASK THAT
25 YOU VACATE THE COURTROOM, ALLOW THE PROSPECTIVE JURORS TO BE

1 SEATED AND WE WILL WORK WHATEVER OTHER ROOM WE HAVE AS FIRST
2 COME, FIRST SERVE, BUT I ASK YOU TO BEAR WITH ME IN THAT
3 REGARD.

4 I WOULD LIKE TO SEE COUNSEL IN CHAMBERS. COURT
5 IS IN RECESS.

6 (RECESS TAKEN.)

7 THE COURT: CASE C69269, STATE OF NEVADA VERSUS
8 DALE FLANAGAN, RANDOLPH MOORE, JOHN LUCKETT AND ROY MCDOWELL.

9 THE RECORD WILL REFLECT THE PRESENCE OF EACH OF
10 THE DEFENDANTS, THEIR COUNSEL, MR. PIKE REPRESENTING MR.
11 FLANAGAN, MR. POSIN REPRESENTING MR. MOORE, MR. SMITH
12 REPRESENTING MR. LUCKETT, MR. HANDFUSS REPRESENTING MR.
13 MCDOWELL.

14 THE RECORD WILL ALSO REFLECT THE PRESENCE OF MR.
15 HARMON AND MR. SEATON REPRESENTING THE STATE. MISS CLERK,
16 WILL YOU CALL THE ROLL OF OUR PROSPECTIVE JURORS.

17 THE CLERK: YES, YOUR HONOR.

18 (ROLL CALL TAKEN.)

19 THE CLERK: ALL PRESENT, YOUR HONOR.

20 THE COURT: THE RECORD WILL SO REFLECT. WILL THE
21 STATE'S ATTORNEYS PLEASE INTRODUCE THEMSELVES, INDICATE THE
22 NATURE OF THE CHARGES IN THIS CASE AND LIST OF WITNESSES THEY
23 PROPOSE TO CALL.

24 MR. SEATON: CERTAINLY, YOUR HONOR. THANK YOU.
25 LADIES AND GENTLEMEN, FIRST, LET ME INTRODUCE MYSELF AND MY