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APPELLATE COURT NO. _____
IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS
AT AUSTIN

SHIRLEY ANNETTE MARTIN SUTHERLAND,
Appellant,

VS.

THE STATE OF TEXAS,
Appellee.

APPEAL FROM 180TH DISTRICT COURT OF HARRIS COUNTY
TEXAS
Judge Patricia R. Lykos, Presiding

TRIAL
STATEMENT OF FACTS
VOLUME III OF

Kathleen O'Connor Powers
Official Court Reporter
301 San Jacinto
Houston, Texas 77002

FILED
RAY HARDY
District Clerk
AUG 22 1990

Harris County, Texas
By M. Money
Deputy

88
1991

(F)

1 CAUSE NO. 526,673

2 STATE OF TEXAS

IN THE 180TH DISTRICT COURT

3 VS.

OF

4 SHIRLEY ANNETTE

5 MARTIN SUTHERLAND

HARRIS COUNTY, T E X A S

6 A P P E A R A N C E S:

7 For the State: Mr. Steve Baldassano
Assistant District Attorney
Harris County, Texas

8
9 For the Defendant: Mr. Ken Goode
Attorney at Law
Houston, Texas

10
11
12
13 BE IT REMEMBERED that upon this the 15th
14 day of March, A. D. 1990, the above entitled and
15 numbered cause came on for trial before the Honorable
16 Patricia R. Lykos, Judge of the 180th District Court of
17 Harris County, Texas; and the State appearing by counsel
18 and the Defendant appearing in person and by counsel,
19 announced ready for trial, and a jury having been
20 selected and duly sworn, and all preliminary matters
21 having been disposed of the following proceedings were
22 had, viz:

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1 THE COURT: Please seat the jury, sir.

2
3 (WHEREUPON, the following proceedings were
4 had within the presence and hearing of the jury:)

5
6 THE COURT: Jury may be seated.

7 Good morning, ladies and gentlemen.

8 THE JURORS: Good morning.

9 THE COURT: Are the attorneys ready to
10 proceed?

11 MR. BALDASSANO: State is ready.

12 MR. GOODE: The Defense is ready, Judge.

13 THE COURT: Call your next witness, please,
14 sir.

15 MR. BALDASSANO: State calls Angelica
16 Cavazos.

17 THE COURT: Please take the stand, ma'am.

18 You may proceed, sir.

19 MR. BALDASSANO: Thank you, Your Honor.
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1 ANGELICA CAVAZOS,
2 was called as a witness by the State, and after having
been duly sworn, testifies as follows:

3
4 DIRECT EXAMINATION

5 BY MR. BALDASSANO:

6 Q. Please state your name.

7 A. Angelica Cavazos.

8 Q. And how old are you, ma'am?

9 A. 19.

10 Q. And where do you live now?

11 A. I live in the Rio Grande Valley.

12 Q. And how long have you been living down in
13 the Rio Grande Valley?

14 A. Six months.

15 Q. Did you, at one time, live over on
16 Silvercrest in Houston?

17 A. Yes.

18 Q. And when did you live on Silvercrest?

19 A. October of '88. It was in there.

20 Q. And who did you live with?

21 A. Pedro, my brother-in-law, Jesse, my
22 husband, Yvonne, a friend of mine, and our little son.

23 Q. Okay. And what's your little son's name?

24 A. Jesus Cavazos, Junior.

25 Q. And how old is he?

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A. 2.

Q. He's 2 now?

A. Oh, he was 2 -- well, now he's 3. Sorry.

Q. He was 2 back in '88, or late '88?

A. Yes.

Q. The people that you lived with on Silvercrest, can you tell us a little bit about what they did for a living, that is, at the house on Silvercrest?

A. It was where they sell drugs, coke.

Q. People you lived with did this?

A. Yes.

Q. Did you know the defendant in this case when you lived on Silvercrest, person named Shirley Stokley or Shirley Sutherland?

A. Yes.

Q. And how long had you known her back in February of '89?

A. Well, ever since we moved there in Silvercrest, ever since October.

Q. Okay. So, you moved there in October of 1988?

A. No. '87.

Q. '87?

A. Yeah.

1 Q. And how long had you known her, for about
2 how many months?

3 A. Well, what do you mean? I don't
4 understand.

5 Q. Okay. Let's take it from today, going
6 backwards. How long have you known the defendant,
7 Shirley Stokley, just roughly?

8 A. A year and something.

9 Q. And do you see her in the courtroom today?

10 A. Yes.

11 Q. Could you just point her out and for the
12 record describe where she is sitting and what she is
13 wearing?

14 A. She is wearing, like, a blue shirt with
15 white something and she's over there (indicating).

16 MR. BALDASSANO: Your Honor, let the record
17 reflect the witness has identified the defendant.

18 THE COURT: The record shall so reflect.

19 Q. (BY MR. BALDASSANO) Okay. And did you see
20 her walk in the courtroom today?

21 A. Yes.

22 Q. And did you know the victim in this case
23 Shawnte Collins?

24 A. Yes.

25 Q. And how long had -- from today going back,

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how long have you known Shawnte?

A. About a year and so.

Q. Okay. Did you meet them both about the same time?

A. Oh, no.

Q. Who did you meet first?

A. Shirley.

Q. And did both Shirley and Shawnte come to your house on Silvercrest on different occasions?

A. Oh, Shirley, well, she would go --

MR. GOODE: Objection, Your Honor.

Nonresponsive.

THE COURT: Ma'am, please listen to the question that's asked of you and answer that question.

Q. (BY MR. BALDASSANO) Did both Shirley and Shawnte come to the house on Silvercrest on different occasions?

A. Yes, sir.

Q. Had you had any trouble with Shirley Sutherland?

A. No.

MR. GOODE: Your Honor, I am going to object, calling for an extraneous offense.

Q. (BY MR. BALDASSANO) You have?

A. No.

1 Q. What was your relationship with Shawnte?
2 Were you a friend, an acquaintance, an
3 enemy?

4 A. A friend.

5 Q. How about with Shirley?

6 A. Friend.

7 Q. Now, I am going to call your attention to
8 the evening of Saturday, February the 18th, 1989.

9 Can you please tell the members of the
10 jury, first of all, if you were living at the
11 Silvercrest address?

12 A. Yes.

13 Q. And on that day had you had any chance to
14 see Shawnte Collins?

15 A. Yes.

16 Q. And do you remember when the first time you
17 saw Shawnte Collins that day?

18 A. Can you repeat the question?

19 Q. Okay. You stated earlier that you saw
20 Shawnte Collins on Saturday, the 18th, in February of
21 1989?

22 A. Yes.

23 Q. Okay. When was the first time that day
24 that you saw her?

25 A. Well, that time I only saw her once that

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day.

Q. Okay. You saw her once?

A. Yes.

Q. And was it in the early evening or late evening?

A. It was late evening.

Q. Can you describe for the members of the jury what you were doing that evening?

A. Well --

Q. Well, let me ask you specifically regarding your child. Were you taking care of the child that evening?

A. Yes.

Q. And were you the person that was actually handling the child?

A. Yes.

Q. Okay. And do you remember where Jesse, Junior -- is that his name?

A. Yes, sir.

Q. -- where he was that evening?

Was he in the house, first of all?

A. Yes, he was with me.

Q. Do you remember what room he was in?

A. Well, I was carrying him.

Q. You were carrying him around?

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A. Yes.

Q. And can you describe for us anything unusual or what it's like to have -- I guess he was a 1-year-old at the time?

A. No, he was 2 at the time.

Q. He was 2 at the time.

What type of things had you done for him that evening or on any evening?

A. Well, like, take him to the bathroom and get him something to eat and, well, most of the time I had him with me, you know, carrying him.

Q. Okay. And did you carry him around anywhere or just kind of sit him down and stay with him?

A. Yeah, I would sit him down by my side or carrying him.

Q. Okay. Does he ever cry or carry on?

MR. GOODE: Your Honor, I am --

Q. (BY MR. BALDASSANO) Anything like that?

MR. GOODE: I object. I don't see the relevance to the entire line of inquiry.

MR. BALDASSANO: Judge, I will tie it together.

A. Yeah, well, when he cried, I carried him.

Q. (BY MR. BALDASSANO) And is that often or just --

1 A. It was because he was a real fussy baby.

2 Q. Do you remember if you saw the defendant
3 Shirley come over that evening?

4 A. Yes.

5 Q. And do you remember if that was the early
6 evening or late evening?

7 A. Late evening.

8 Q. Do you remember if both Shawnte and Shirley
9 were in the house at the same time?

10 A. Yes.

11 Q. Do you remember where Pedro was at the
12 time?

13 A. When they got there or --

14 Q. Right.

15 A. Well, he was sitting on the couch.

16 Q. Okay. Do you remember if Pedro ever left
17 to go upstairs?

18 A. Yeah, he went to take a shower.

19 Q. Now, can you explain who was sitting on the
20 couch? First of all, was Shirley sitting on the couch?

21 A. No -- well, Shawnte was sitting on the
22 couch first, and then when Shirley got there she sat
23 beside her.

24 Q. And where were you sitting?

25 A. Well, I would stand up and sit down, you

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know.

Q. Were you always remaining in the room or were you leaving the room?

A. Well, I left the room a couple of times.

Q. And why was that?

A. Because of the baby.

Q. Did you see anything unusual happen between Shirley and Shawnte that evening?

A. Yeah, well, after awhile both of them were there, they started arguing. Well, Shirley started arguing with Shawnte.

Q. And can you describe -- did you hear that, first of all, yourself?

A. Yes.

Q. Can you describe what was said by Shirley?

A. She said, first she said, "Bitch," or, "Why were you sleeping with my husband?" -- and then --

Q. Was that what the argument was about?

A. Yes.

Q. Did you see any physical contact between the two?

A. Well, yeah. I saw Shirley hitting Shawnte a couple of times.

Q. And where did she hit her?

A. Well, first I saw her hit her on her

*I saw
Shirley
hit Shawnte
on her
back
with
her
hand*

1 shoulder and then on her leg and then she kind of pushed
2 her.

3 Q. And do you remember if she had something in
4 her hand or had nothing in her hands?

5 A. Well, I remember she had something in her
6 hand, but, you know, I really can't tell you what, you
7 know, I'm not sure of.

8 Q. Okay. You don't remember what it was that
9 she had?

10 A. No.

11 Q. Okay. Now, you say that she said something
12 about bitch. Did she say anything else or anything else
13 about the husband?

14 A. Well, she told her, "Bitch, why you messing
15 with my husband?" -- and she hit her. She hit her on
16 her shoulder and then she goes, "I am going to kill you.
17 I am going to beat you up and you are not going to make
18 it through the night." And then she said, "If I don't
19 get you here I am going to get you somewhere else."

20 Q. And what was Shawnte's reaction?

21 A. Well, she would just like lean to the side.
22 She wouldn't say nothing.

23 Q. And about how long did this go on? Do you
24 know?

25 A. I would say about an hour and a half.

*Collins was there
longer 30 mins?
I was in the hall
15 mins*

NO WAY!
Shirley
was
waiting
for me
outside

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Q. ~~Well, okay, was the argument lasting an hour and a half, or they were just in the house together an hour and a half, or what happened for an hour and a half?~~

A. Well, first she argued, then she started hitting her, then she, you know, Yvonne told her, I told Yvonne to tell her, you know, that she couldn't be doing that, you know.

Q. Okay.

A. And then she -- well, Shirley didn't do nothing to her anymore. So, she just stayed there and when Yvonne wanted to leave, she didn't want to leave and so Yvonne told her, again, then they left.

MR. GOODE: At this time, I object to a narrative, Your Honor.

THE COURT: Question and answer, please.

MR. BALDASSANO: Thank you.

Q. (BY MR. BALDASSANO) You said an hour and a half. What exactly lasted an hour and a half? Was it the argument that lasted an hour and a half, the fight that lasted an hour and a half?

A. Well, you know, fighting, arguing.

Q. Okay. So, an hour and a half. And did you have a discussion with Shirley about leaving? You, personally?

Baldassano

1 A. No, sir.

2 Q. Did you talk to anybody else about telling
3 her to leave?

4 A. Yes.

5 Q. And who, again, was that?

6 A. Yvonne.

7 Q. And did anybody tell Shirley to leave, in
8 your presence?

9 A. Well, Yvonne and then when Pete came out of
10 the shower. *(when I arrived Pete was coming out of the
back bedroom - He'd just showered!)*

11 Q. Okay. And did Shirley leave?

12 A. Yes, sir.

13 Q. Now, did you have a watch on at the time? *and he was
with Shawnta*

14 A. No.

15 Q. Do you know what time she left?

16 A. Oh, no, I can't tell you exactly when she
17 left.

18 Q. Well, not exactly; can you tell me roughly?
19 Was it still Saturday night, or do you think it was
20 Sunday morning, or do you not know?

21 A. I think it's still Saturday night.

22 Q. Okay. Do you think it was late Saturday
23 night?

24 A. Yeah, late Saturday night.

25 Q. Okay. How late? Do you have any idea?

*I left abt
11pm*

1 A. ~~Like around 11:00.~~ *yes*

2 Q. And do you remember the defendant Shirley
3 leaving first? Is that --

4 A. Yes.

5 Q. And did she leave at the request of
6 Yvonne? -- or was it Pete?

7 A. Oh, it was Pete.

8 Q. Do you remember if Shawnte stayed?

9 A. Yes.

10 Q. And do you remember if Shawnte -- do you
11 remember Shawnte eventually leaving?

12 A. Yes.

13 Q. Do you remember what time Shawnte left?

14 A. No. -- well, after Shirley.

15 Q. Well, do you remember how long after
16 Shirley Shawnte left?

17 A. Like, about an hour.

18 Q. An hour?

19 And do you remember going outside and
20 seeing either one of them outside the house?

21 A. No.

22 Q. Did you go outside at all?

23 A. No.

24 Q. What did you do after Shawnte left?

25 A. I just got the baby and went to bed.

1 Q. Can you describe for the jury how Shirley
2 left the house?

3 A. I don't understand you.

4 Q. Okay. Well, did she just walk out quietly?
5 Did she -- first of all, did she seem angry or upset or
6 calm?

7 A. Well, she was angry and she said, okay, I
8 will leave. And then she got to the door and she
9 slammed it and she left.

10 Q. So, she slammed the door?

11 A. Yes.

12 Q. Do you know if she was angry at anybody in
13 particular?

14 A. Shawnte.

15 Q. Did you see Shirley get into an argument
16 with anybody else in the house?

17 A. No.

18 Q. Did you ever see Shirley again that night?

19 A. No.

20 Q. Did you ever see Shawnte again that night?

21 A. No.

22 Q. When was the next time you saw Shirley, if
23 you did?

24 A. Sunday.

25 Q. I'm sorry?

1 A. Sunday. Sunday, like, in the afternoon.

2 Q. Okay. Was that Sunday the same Sunday or

3 the day after, the very next Sunday?

4 A. Yeah, the very next.

5 Q. So, that would be February the 19th?

6 A. Yes.

7 Q. And do you remember about what time you saw

8 her?

9 A. No.

10 Q. Do you remember where you saw her?

11 A. Who?

12 Q. Where it was that you saw her?

13 A. Oh, at Silvercrest.

14 Q. Same house?

15 A. Yes, same house.

16 Q. And can you describe for the members of the

17 jury if the defendant said anything to you?

18 A. That day or --

19 Q. Yes, on that day.

20 A. Well, no, not on that day.

21 Q. Okay. Now, we are talking about Sunday?

22 A. Yeah.

23 Q. That correct?

24 A. Yeah, we are talking about Sunday.

25 Q. When you saw the defendant on Sunday,

1 Shirley, did she go in the house or did she stay
2 outside?

3 A. Oh, she went in the house.

4 Q. And were you inside the house or outside
5 the house?

6 A. Inside.

7 Q. Did you see Shirley talk with anybody?

8 A. No.

9 Q. Did you hear Shirley say anything inside
10 the house?

11 A. No.

12 Q. Do you know what room Shirley went to?

13 A. Yeah, the living room.

14 Q. The living room?

15 A. Yes.

16 Q. Okay and what did she do in the living
17 room?

18 A. Well, most -- well, I would sit around and
19 watch TV.

20 Q. Okay. You were just sitting and watching
21 TV?

22 A. Yeah.

23 Q. Shirley didn't say anything to anybody on
24 that day?

25 A. No.

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Q. Is that -- okay.

Did you ever see Shirley again after that day?

A. Yeah, Monday.

Q. On Monday?

A. Yes.

Q. And did you see her inside the house or outside the house?

A. Inside the house.

Q. And do you remember if Shirley said anything to you on Monday?

A. Yes. -- well, no.

Q. Okay. She didn't say anything to you, specifically?

A. No.

Q. Okay. Did you see her talk to anybody?

A. Yes, because I asked Yvonne -- I asked Yvonne to ask her if she knew what had happened -- well, because that Monday morning Shawnte's dad had come to the house and he --

Q. Okay.

A. -- he was crying and then he said he was --

MR. GOODE: Objection. Hearsay, Your Honor.

THE COURT: Please don't repeat what

1 someone says to you, ma'am, unless you have permission
2 to do so.

3 THE WITNESS: Oh, okay.

4 Q. (BY MR. BALDASSANO) My question to you is:
5 Did you hear Shirley say anything on that Monday? Yes
6 or no?

7 A. Yes.

8 Q. Okay. And did Shirley say anything to you?
9 Yes or no?

10 A. Yes.

11 Q. Okay. What did Shirley say to you?

12 A. She told me that for me not to say anything
13 about what had happened Sunday night -- Saturday night
14 and that I better not tell nobody else or else I was
15 going to be in big trouble.

16 Q. Did she say anything else to you?

17 A. No.

18 Q. Did you see Shirley talk to anybody else in
19 the house?

20 A. Yes.

21 Q. And who was that?

22 A. Jesse.

23 Q. And where was that?

24 A. It was in the kitchen.

25 Q. And were you in the kitchen at the time?

1 A. No, in the living -- I was in the living
2 room.

3 Q. And could you hear what was going on in the
4 kitchen?

5 A. Yes.

6 Q. And how could you hear that?

7 A. It's because the living room and the
8 kitchen, they are, you know, together, and there isn't a
9 door or nothing and the kitchen is real small. So, it's
10 right there.

11 Q. Now, were you trying to hear what was going
12 on?

13 A. Yes.

14 Q. And was there anybody with you trying to
15 hear what was going on?

16 A. Yes. Yvonne.

17 Q. And what did you hear the defendant say,
18 Shirley say?

19 A. She told -- she told Jesse that she had
20 killed -- well, first, Jesse goes, "Do you know what
21 happened?"

22 And then she goes, "What?" And he goes,
23 "Shawnte got killed." And then she goes, "Oh, that
24 bitch." And then he -- she goes, "I killed the bitch.
25 I finally put out the trash where it was supposed to

1 have been."

2 And then Jesse goes, "Why did you kill
3 her?"

4 MR. GOODE: Objection to hearsay as to what
5 Jesse said.

6 Q. (BY MR. BALDASSANO) Can't say what Jesse
7 said.

8 A. Okay.

9 Q. What else did you hear Shirley say?

10 A. Well --

11 Q. Did Shirley make a response to Jesse's
12 statement?

13 A. Yes.

14 Q. Okay. And what did you hear her say?

15 A. That she had killed her because she was
16 messing with her husband.

17 Q. And did you hear Shirley saying anything
18 else to Jesse about it?

19 A. No, I -- that was it.

20 Q. And what did Shirley do after that?

21 A. She left.

22 MR. BALDASSANO: I will pass the witness.

23 THE COURT: You may proceed, Counsel.

24 MR. GOODE: Thank you, Judge.

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CROSS-EXAMINATION

BY MR. GOODE:

Q. Ma'am, you testified before the Grand Jury; is that correct?

A. Yes, sir.

MR. GOODE: Your Honor, I would like to have access to that statement.

(WHEREUPON, the Prosecutor handed a document to the Defense Counsel.)

MR. GOODE: May I have a moment, Your Honor?

THE COURT: Yes, sir.

Jury may stand up and stretch, if you wish.

MR. GOODE: May I proceed, Your Honor?

THE COURT: Yes, sir.

Q. (BY MR. GOODE) Ma'am, you just testified that Shirley left the house about an hour after Shawnte; is that correct?

A. Yes.

Q. Now, when you testified on June 6th, of 1989, before the 209th District Court's Grand Jury, did you testify that it was more like two hours that she left after Shirley had left?

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A. Yes.

Q. Which is the correct answer?

A. Well, I don't remember, you know.

Q. Okay. Well, you said it was two hours then and today you say it is one hour. How long after Shirley left there, did Shawnte leave?

A. I say in between there. I don't know.

Q. In between one hour and two hours?

A. Yes.

Q. Okay. Are you sure it wasn't two minutes?

A. No.

Q. Could have been just two minutes afterwards?

A. I don't understand you.

Q. Could Shawnte have left the house two minutes after Shirley did?

A. No.

Q. How about 15 minutes?

A. No.

Q. It was at least an hour?

A. Yes.

Q. You speak Spanish?

A. Yes.

Q. Are you familiar with the word hermeno, h-e-r-m-e-n-o?

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A. Yes.

Q. What does that mean in English?

A. Brother.

Q. How long after this incident on February 18th was the carpet removed from the house?

A. Would you repeat the question?

Q. How long after February 18th, how long after that date was it when the carpet was removed from the living room of that house?

A. About two months.

Q. Do you remember who picked it up and removed it?

A. Yeah, it was me and my brother-in-law.

Q. And what's his name?

A. Evran Cavazos.

Q. Did the police ever take your fingerprints?

A. No.

Q. You testified on direct examination that they were selling drugs out of that house. Are you talking about your husband Jesse?

A. Yes.

Q. He was selling drugs?

A. Yes.

Q. And Pedro, also, was selling drugs?

A. Yes.

April?
No it was
some Feb

1 Q. Now, on the 18th, were you present when
2 Shawnte arrived?

3 A. Yes.

4 Q. Did you notice her carrying a weapon?

5 A. No.

6 Q. Is it possible she was carrying a weapon
7 and you didn't notice it?

8 A. No.

9 Q. So, you are pretty sure she didn't have a
10 weapon here?

11 A. Yes, I am sure.

12 Q. Okay. Do you know what the purpose of her
13 visit to the house was that night?

14 A. Yes.

15 Q. What?

16 A. To buy some cocaine.

17 Q. Do you know what she proposed to use in
18 return for the cocaine?

19 A. Would you repeat the question?

20 Q. Do you know what she was offering in return
21 for the cocaine, whether it be money, whatever?

22 A. No.

23 Q. Have you seen a lot of pistols around that
24 house?

25 A. Yes.

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Q. Do you know a Columbian named Pablo?

A. No.

Q. With regard to the pistols in the house, were they Jesse's or Pedros'?

A. Well, I guess both of them.

Q. Now, after witnessing the vicious beating you described, inflicted by Shirley on Shawnte, did you call the police?

A. No.

Q. Did you provide any medical attention for Shawnte or call an ambulance or anything?

A. No.

Q. Joe was there, also, that night; isn't that correct?

A. No.

Q. Wasn't he staying there, from time to time?

A. No.

Q. Where does he live?

A. He -- well, he lives in Colorado.

Q. Has he ever resided in Houston?

A. Yes.

Q. And where was that?

A. Well, at Silvercrest.

Q. So, Joe has lived there?

A. Well, he was staying there for two weeks.

1 Q. And what is Joe's last name?

2 A. Govera.

3 Q. And are you related to Joe?

4 A. Yes, sir.

5 Q. In what way?

6 A. He's my brother.

7 Q. Do you remember what two weeks he was
8 living there?

9 A. Yeah, it was in May.

10 MR. GOODE: Your Honor, I will pass the
11 witness.

12 MR. BALDASSANO: Nothing further, Your
13 Honor.

14 THE COURT: Do you wish this witness to
15 remain on call or be excused?

16 MR. BALDASSANO: Be excused.

17 MR. GOODE: Yes, Your Honor.

18 THE COURT: You may step down, ma'am, you
19 are excused.

20 Call your next witness, please, sir.

21 MR. BALDASSANO: State calls Jesse Cavazos.

22 THE COURT: Jury may stand up and stretch
23 if you wish.

24 Has this witness been sworn?

25 THE BAILIFF: Yes, Your Honor.

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THE COURT: You may proceed, Counsel.

MR. BALDASSANO: Thank you, Your Honor.

1 JESUS CAVAZOS,
2 was called as a witness by the State, and after having
3 been duly sworn, testifies as follows:

4 DIRECT EXAMINATION

5 BY MR. BALDASSANO:

6 Q. Please state your name, sir.

7 A. Jesus Cavazos.

8 Q. And, sir, how old are you?

9 A. 19 -- 20.

10 Q. 20? Sure?

11 A. 20.

12 Q. And where do you work?

13 A. I don't.

14 Q. You are not working now?

15 Have you worked?

16 A. Yes.

17 Q. Where did you used to work?

18 A. Cleanup, Las Babies Lounge.

19 Q. Las Babies Lounge?

20 A. Yes.

21 Q. And when was the last time you worked?

22 A. Been a while, two -- six months, maybe.

23 Q. Have you ever been convicted of a felony in
24 this State or any other State?

25 A. No.

1 Q. Have you ever been convicted of a
2 misdemeanor involving moral turpitude, like bad checks
3 or theft or prostitution, or something like that?

4 A. No.

5 Q. Can you tell us, first of all, where you
6 live now, just the street?

7 A. Excuse me?

8 Q. The street, what street do you live on?

9 A. Perry.

10 Q. Perry?

11 A. Yeah.

12 Q. Is that in Houston or Harris County?

13 A. (Witness nods.)

14 Q. And did you, at one point, live on a
15 location on Silvercrest?

16 A. Yes, sir.

17 Q. Who did you live with?

18 A. My brother and Angie.

19 Q. I'm sorry?

20 A. My brother and my wife.

21 Q. Anybody else live there?

22 A. My brother Munez.

23 Q. Your brother?

24 A. Munez.

25 Q. Okay. And did Yvonne Munez live there,

1 too?

2 A. Oh, yes, she lived there, too.

3 Q. Now, on February the 18th, 1989 who lived
4 at the house?

5 A. Me, my brother, my wife, and Yvonne.

6 Q. Okay, your brother?

7 A. Munez.

8 Q. Okay. Did Pedro live at the house?

9 A. Oh, yes, Pedro.

10 Q. And did any young people live at the house?

11 A. Yvonne.

12 Q. Okay. Any young children?

13 A. My son.

14 Q. Your son?

15 A. Yes.

16 Q. And who is that?

17 A. Jesus Cavazos, Junior.

18 Q. And can you describe a little about the
19 house? First of all, what type of house? Is it a big
20 house or small house?

21 A. It's a small house. It's a small house.
22 Three bedroom, small.

23 Q. Did you rent the house or own the house?

24 A. Rent it.

25 Q. Can you describe, back in February, had it

1 had carpet or wood floor?

2 A. Yes, it had carpet.

3 Q. Can you describe a little bit about the
4 carpet?

5 A. Well, in January, first of January, I guess
6 New Years, we were playing with fireworks in the house
7 and there was burnt marks in it.

8 Q. This is the house that you rent, you were
9 throwing firecrackers inside the house?

10 A. Yeah, we were throwing firecrackers and
11 Texas bottle rockets and things.

12 Q. Anything else about the carpet other than
13 burned?

14 A. No, sir. Filthy, dirty.

15 Q. Okay. And how did that happen?

16 A. All the dope deals that were going in
17 there, they were walking in there and raining and mud
18 and track up real bad.

19 Q. People selling dope out of the house?

20 A. Yes, sir.

21 Q. Did you know a person named Shawnte
22 Collins?

23 A. Yes, sir.

24 Q. Okay. Can you tell the members of the jury
25 how you knew her and when you first met her?

1 A. Well, I met her when my cousin introduced
2 me to her and she --

3 Q. When was that?

4 A. Um, it's been awhile back.

5 Q. 1986, '87, '88?

6 A. I don't remember.

7 Q. Do you know a person named Shirley
8 Sutherland?

9 A. Shirley Sutherland? Oh, yeah.

10 Q. And that's the defendant in this case, do
11 you know that?

12 A. Yes, sir.

13 Q. And do you see her in the courtroom today?

14 A. Yes, sir.

15 Q. Could you just point her out and describe
16 an article of clothing she's wearing?

17 A. (Indicating.) Over there.

18 Q. Can you describe an article of clothing
19 that she's wearing, for the record?

20 A. What she's wearing?

21 Q. Yeah.

22 A. Blue dress with stripes.

23 MR. BALDASSANO: Your Honor --

24 A. White shoes, sandals.

25 MR. BALDASSANO: -- may the record reflect

1 the witness has identified the defendant in this case?

2 THE COURT: The record shall so reflect.

3 Q. (BY MR. BALDASSANO) How long have you
4 known the defendant Shirley?

5 A. About two years now.

6 Q. And have you ever seen Shawnte and Shirley
7 together?

8 A. No.

9 Q. Now, can you describe where you were on
10 February the 18th, 1989?

11 Were you at the house on Silvercrest?

12 A. Yes.

13 MR. GOODE: Objection. Leading the
14 witness, Your Honor.

15 THE COURT: Please don't lead your witness.

16 Q. (BY MR. BALDASSANO) And can you describe
17 what you were doing there?

18 A. Selling dope.

19 Q. Okay. Well, what were you doing,
20 specifically on that day in the evening hours, say
21 between 7:00 p.m. and midnight?

22 A. Was upstairs, my room.

23 Q. Do you remember seeing the defendant
24 Shirley at the house that day?

25 A. No, I don't.

1 Q. Do you remember seeing Shawnte Collins that
2 day?

3 A. No, I don't.

4 Q. Could they have been at the house that day?

5 A. Yeah, they could have.

6 Q. Did you go into the living room that day in
7 the late evening hours?

8 A. Yes, sir.

9 Q. And do you remember what time you went to
10 the living room?

11 A. No, I was -- no, I can't remember.

12 Q. Well, do you remember how much time you
13 spent in the living room?

14 A. No.

15 Q. Do you remember you spent more time in the
16 living room, or your bedroom, or some other place?

17 A. No, in the living room.

18 Q. Now, you didn't see the defendant Shirley
19 in the house at all?

20 A. No.

21 Q. And you didn't see Shawnte Collins in the
22 house at all?

23 A. No, sir.

24 Q. Do you remember if you were awake or asleep
25 in the evening?

1 A. No, I sure don't.

2 Q. Is it the date you don't remember or just
3 don't remember seeing these people at all?

4 A. I don't remember seeing them, you know.

5 Q. Okay. Do you remember any kind of fight
6 occurring inside the house?

7 A. No.

8 Q. Could there have been a fight that occurred
9 inside the house when you were in your bedroom?

10 MR. GOODE: Your Honor, I am going to
11 object. Calls for speculation.

12 THE COURT: Rephrase your question.

13 Q. (BY MR. BALDASSANO) If there was a fight
14 inside your house, in the living room, and you were in
15 the bedroom, is it possible you would not have heard it?

16 A. Yes.

17 Q. Were you doing drugs that day, that night?

18 A. Yes, sir.

19 Q. And what type of drugs were you doing?

20 A. Marijuana and crack.

21 Q. Crack cocaine?

22 A. Yeah.

23 Q. And how were you ingesting this crack
24 cocaine? Was it something you swallow or smoke?

25 A. Smoke.

1 Q. Now, did you have an occasion to see the
2 defendant Shirley any time, either Saturday night or
3 very early Sunday morning?

4 A. Sunday morning, I think.

5 Q. When did you see her Sunday morning?

6 A. When she was leaving my house.

7 Q. Okay. And about what time was that?

8 A. 11:30 at night, maybe 12:30. Somewhere
9 around there.

10 Q. Okay. Now, my first questions were about
11 Saturday night, February the 18th.

12 A. Okay.

13 Q. Your testimony regarding the defendant that
14 day, did you see her at the house or not, or if you now
15 remember?

16 A. I didn't see her.

17 Q. Didn't see her?

18 A. No.

19 Q. Now, you said that you saw her leaving the
20 house?

21 A. Yes.

22 Q. Was that the Saturday night into the early
23 Sunday morning, or was that Sunday night?

24 A. Okay, Saturday going into the morning.

25 Q. Okay. So, you saw her leaving the house?

1 A. Yes, sir.

2 Q. But you didn't see her at the house?

3 A. No.

4 Q. And how does that happen?

5 A. Okay. I come downstairs, you know, and
6 they tell me what had happened and, so, my brother tells
7 me to see if she went --

8 MR. GOODE: Objection to hearsay.

9 MR. BALDASSANO: Okay.

10 You are not --

11 THE COURT: Sir, excuse me, don't repeat
12 anything anybody said to you unless the Court gives you
13 permission.

14 THE WITNESS: Uh-huh.

15 Q. (BY MR. BALDASSANO) Did your brother say
16 something to you? -- not what he said, but did he say
17 something?

18 A. To see if she was going. To see if she was
19 gone.

20 THE COURT: Say yes or no.

21 THE WITNESS: Yes.

22 MR. BALDASSANO: Just yes or no.

23 Q. (BY MR. BALDASSANO) And then did you see
24 Shirley leave?

25 A. Yes, sir.

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Q. Did you see Shawnte there?

A. No.

Q. Were you looking for Shawnte?

A. No.

Q. And do you know about what time that was?

A. 11:00, you know, 11:00 o'clock.

Q. This Saturday or Sunday?

A. Saturday.

Q. Saturday night?

A. Saturday night going into the morning.

Q. Okay and did you see her any other time that evening?

A. No.

Q. Did you see her come back in early Sunday morning, like 1:00 or 2:00 o'clock in the morning or anything like that?

A. No.

MR. GOODE: Objection, Your Honor, I am going to object to leading the witness.

Q. (BY MR. BALDASSANO) Did you see Shawnte leave the house?

A. No, sir.

Q. When was the next time you saw the defendant Shirley?

A. I think it was Sunday morning.

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Q. What time?

A. About 9:00 or 10:00 in the morning.

Q. Okay. And where did you see her?

A. At my house.

Q. And did you ever see her again after that?

A. Yes, I did.

Q. Okay. And when was the next time you saw her?

A. About 5:00 or 6:00.

Q. Same night? Same day?

A. Same day.

Q. Did you have any chance to talk with her?

A. Oh, yes, I did.

Q. And do you remember where you spoke with her?

A. In the kitchen.

Q. Did she come over your house -- well, how often did she come over your house between the Saturday that you saw her leave and, say, the next three or four days?

A. About six, seven times, probably.

Q. And do you remember her ever having any conversation with you?

A. Yes, I do.

Q. And do you remember where the conversation

1 was?

2 A. Yes, sir.

3 Q. Where?

4 A. The kitchen.

5 Q. And do you remember if anybody else was in
6 the kitchen?

7 A. No, sir.

8 Q. Do you remember what the topic of the
9 conversation was?

10 A. Killing Shawnte.

11 Q. And who brought that up?

12 A. She did -- well, I did.

13 Q. Okay. And how did you bring it up?

14 A. I told her if she had heard that she had
15 killed Shawnte.

16 Q. And had she heard? What was her response?

17 A. That she did it.

18 Q. And what exactly did she say?

19 A. She killed the bitch. She was fucking her
20 old man.

21 Q. Is that what she said?

22 A. Yes, sir.

23 Q. And did she say anything else about it?

24 A. That, "She deserved it; don't you think
25 so?" Okay. She --

1 Q. She was asking you if you thought so?

2 A. Yes.

3 Q. And what did you tell her?

4 A. I played along. I said, "Yeah, I guess."

5 Q. Do you know why she told you?

6 A. No.

7 Q. Did she -- well, describe how she seemed
8 when she told you. First of all, was she laughing or
9 crying?

10 A. No, she wasn't laughing or crying.

11 Q. Did she seem like she was?

12 A. She had a straight face, straight face.

13 Q. Did she seem like she was serious or
14 joking?

15 A. Serious.

16 Q. And do you remember if she said anything
17 else?

18 A. No.

19 Q. And what happened after she -- you had this
20 conversation?

21 A. She left. She told me that I didn't --
22 that she only told me about it.

23 Q. That she only told you about it?

24 A. Yes.

25 MR. BALDASSANO: I will pass the witness.

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THE COURT: You may proceed, Counsel.

MR. GOODE: Thank you, Judge.

CROSS-EXAMINATION

BY MR. GOODE:

Q. Mr. Cavazos, did the police ever take your fingerprints?

He has on what was

A. No, sir.

Q. Now, that carpet you are talking about that was removed, when did you say that was removed?

A. I don't know.

Q. Well, was it before or after the February 18th incident you have just been testifying?

A. After I talked to Detective Johnson I told him about the, you know, the DA, assistant DA, last time I was here.

MR. BALDASSANO: Sir, I object to hearsay.

Q. ~~(BY MR. GOODE)~~ My question is: When was the carpet removed, after February 18th or before?

A. Before.

Q. Are you sure?

A. What was the question again?

Q. On the night of February 18th, was that carpet still in the living room of your house?

A. February 18th? Yes, it was.

1 Q. ~~And how long after that was it removed?~~

2 A. ~~Two months, about.~~

3 Q. And it's your testimony that it was removed
4 because you shot bottle rockets off inside the house?

5 A. Yes, sir.

6 Q. It wouldn't be because there was blood on
7 it, would it?

8 A. No. No. No. No.

9 Q. Where did you take that carpet?

10 A. ~~We just threw it outside. We had this~~
11 ~~charge, you know, to haul it off.~~

12 Q. ~~Who helped you do that?~~

13 A. ~~Friends.~~

14 Q. ~~What friends?~~

15 A. ~~Just friends of mine.~~

16 Q. ~~Did your wife help you?~~

17 A. ~~No, sir.~~

18 Q. ~~She didn't?~~

19 A. No.

20 Q. ~~Did Pete help you?~~

21 A. ~~No.~~

22 Q. ~~Joe?~~

23 A. No.

24 Q. ~~Just you and some other friends?~~

25 A. Yes, sir.

1 Q. Do you know a Columbian named Pablo?

2 A. Pablo? No.

3 Q. What sort of small caliber pistols do
4 you-all keep in that house?

5 A. .32's.

6 Q. That's it?

7 A. Yes, sir.

8 Q. Who owns those small caliber pistols?

9 A. No, don't have them no more.

10 Q. Who owns them?

11 A. I did, I guess.

12 Q. Now, you testified on direct examination
13 you never been convicted of a felony or a misdemeanor
14 involving moral turpitude; is that right?

15 A. Yes, sir.

16 Q. But you were selling cocaine out of that
17 house, right?

18 A. Yes, sir.

19 Q. Where were your wife and your little child
20 living at the time you were selling cocaine out of a
21 house?

22 A. They were living there.

23 Q. And you speak Spanish; don't you, sir?

24 A. They were living there.

25 Q. Could you tell us what the word "hermeno",

1 h-e-r-m-e-n-o, means?

2 A. Brother.

3 MR. GOODE: Your Honor, I will pass the
4 witness.

5 MR. BALDASSANO: Nothing further, Your
6 Honor.

7 THE COURT: Do you wish this witness to
8 remain on call or may he be excused?

9 MR. BALDASSANO: No, he may be excused.

10 THE COURT: You may step down, sir. You
11 are excused.

12 Call your next witness, please.

13 MR. BALDASSANO: State calls Detective
14 Pratt.

15 THE COURT: Jury may stand up and stretch,
16 if you wish.

17 THE BAILIFF: No answer, Your Honor.

18 MR. BALDASSANO: State will call Wanda Jean
19 White.

20 THE COURT: Wanda Jean White.

21 You may proceed, Counsel.

22 MR. BALDASSANO: Thank you, Your Honor.
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1 WANDA JEAN WHITE,
2 was called as a witness by the State, and after having
been duly sworn, testifies as follows:

3
4 DIRECT EXAMINATION

5 BY MR. BALDASSANO:

6 Q. Please state your name.

7 A. Wanda White.

8 Q. And, Miss White, are you currently
9 employed?

10 A. Yes, sir, as a babysitter.

11 Q. Okay, and looks like -- are you pregnant
12 right now?

13 A. Yes, sir.

14 Q. And what part of town do you live in?

15 A. Baytown.

16 Q. In Baytown. Okay.

17 Miss White, I am going to ask you: Have
18 you ever been convicted of a felony in this State or any
19 other State?

20 A. Yes, sir.

21 Q. And what felony?

22 A. Robbery, felony theft.

23 Q. Were you actually convicted of robbery?

24 A. Yes, sir.

25 Q. And what happened? Go to the penitentiary?

1 A. Yes, sir. Well, no, sir; but, I got TDC
2 time. I paroled out of the county jail.

3 Q. Okay. And have you ever been convicted of
4 a misdemeanor involving moral turpitude?

5 A. Yes, sir.

6 Q. That is, including theft, prostitution, bad
7 checks, anything like that?

8 A. Yes, sir. DWI.

9 Q. Okay, that's --

10 A. Okay.

11 Q. That wasn't -- okay.

12 Had you ever spent time in the Harris
13 County Jail?

14 A. Yes, sir.

15 Q. Miss White, have you ever met a person
16 named Shawnte Collins?

17 A. No, sir.

18 Q. How long have you lived in the Baytown
19 area?

20 A. 24 years -- my whole life.

21 Q. Had you ever lived in the northern part of
22 the county at all, that is, in the area north of
23 Houston?

24 A. No, sir.

25 Q. Had you ever met the defendant in this

1 case, Shirley Sutherland?

2 A. Yes, sir.

3 Q. Where did you first meet the defendant in
4 this case?

5 A. Harris County Jail.

6 Q. Do you remember what date that was?

7 A. No, sir. I just remember it was in May.

8 Q. May of which year?

9 A. '89.

10 Q. Okay. This past May?

11 A. Yes, sir.

12 Q. Had you ever seen her before then?

13 A. No, sir.

14 Q. Do you remember when you were booked into
15 jail?

16 A. It was Mother's Day.

17 Q. Do you think that's in May?

18 A. Yes, sir.

19 Q. Of 1989?

20 A. Yes, sir.

21 Q. Can you describe the accommodations, for
22 lack of a better word, what it's like in jail?

23 What are the room situations like?

24 A. Well, you have a -- you are in a tank with
25 about -- it was overcrowded at the time and it was,

1 like, 25 women in a 9-man -- 12-man cell.

2 Q. I'm sorry, 29 women?

3 A. 25 or 30 women in a 12-man cell.

4 Q. Okay. And how -- what is the cell like?

5 Is it like --

6 A. Well, you have your own --

7 Q. Big room?

8 A. Well, the one I was in with Shirley I was
9 in a different tank at different times. When I was in
10 the one with Shirley it's -- they have bunks and
11 everybody -- as somebody goes out, somebody else gets a
12 bunk; but, you got to be in line for it. I was on the
13 floor at the time she was in a bunk.

14 Q. Okay. And how many bunks are in this room?

15 A. I don't know. I don't recall.

16 Q. Did most of the people have a bunk or
17 did --

18 A. No, sir.

19 Q. So, most of the people were laying on the
20 floor in a big room?

21 A. Yes, sir.

22 Q. Is it like a cement floor?

23 A. Yes, sir.

24 Q. And is it kind of like a cage in that you
25 are locked up, right?

1 A. Yes, sir.

2 Q. And are -- do you remember what the
3 different people were in for?

4 A. I remember what some were in for.

5 Q. Okay and was it different crimes or all the
6 same type of thing?

7 A. No, it was all different crimes.

8 Q. And what were you in for at the time?

9 A. Robbery and felony theft.

10 Q. And that's the cases that you were talking
11 about?

12 A. Yes, sir.

13 Q. Now, do you remember what cell block it
14 was?

15 A. 9-C-2.

16 Q. And did you have an occasion to talk with
17 the defendant?

18 A. Yes, sir.

19 Q. And can you, just for the record, point her
20 out and describe an article of clothing that she's
21 wearing?

22 A. It's -- that's her right there
23 (indicating).

24 MR. BALDASSANO: Your Honor, let the record
25 reflect the witness identified the defendant.

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THE COURT: The record shall so reflect.

Q. (BY MR. BALDASSANO) Okay. Now, what was your arrangements in relation to the defendant?

Where were you sleeping in relation to her?

A. Right on the floor beside her.

Q. And are the bunks, like, 1, 2, 3, going up?

A. No. It's 1, 2. And I was right here on the floor and she was right here on the bottom bunk.

There was --

Q. Do you remember if you spoke with her right away, as soon as you -- well, first of all, did you get there first or did she get there first?

A. No, she had been there for awhile before I ever come in the tank.

Q. And do you remember if she spoke to you first or you spoke to her first?

A. No, she talked to me first.

Q. And was that when you first arrived?

A. It was about three hours after I had been there, she noticed that I was kind of scared.

Q. And was she the first person you spoke with or had you spoken with others?

A. No, I had spoken to one other girl, the woman that was over her bunk, a black lady.

Q. Did you ever ask her what she was in for?

1 A. Yes, sir.

2 Q. And what was her response?

3 A. Murder.

4 Q. And did you ever have an occasion to ask
5 her a little bit about that?

6 A. Yes, sir.

7 Q. Okay. And what did you ask her?

8 A. Well, not until that night, late that night
9 and then she told me she was in --

10 Q. Let me back up then.
11 Your first -- what time is it in the day
12 that you first start talking to her?

13 A. I don't recall the time.

14 Q. Okay. Do you remember if it was in the
15 morning?

16 A. It was, like, in the afternoon.

17 Q. In the afternoon? Okay.
18 And you asked her about what she was in
19 for, she said murder?

20 A. Right.

21 Q. Did you start talking about other things?

22 A. Other things, yes, sir.

23 Q. And did you have a continuous conversation
24 all the way to the evening or did you break it off?

25 A. Well, we sit there and played cards and

1 dominoes and stuff.

2 Q. Did you know anything about her case, at
3 that point?

4 A. No.

5 Q. Other than what she had told you, murder?

6 A. That was it.

7 Q. Any of the other girls in the cell block
8 tell you anything about the case?

9 A. No, sir.

10 Q. Had you read about it in the newspaper?

11 A. No, sir.

12 Q. Or seen anything about it on TV?

13 A. No, sir.

14 Q. Do you know any of the other witnesses in
15 this case, Angelica Cavazos, Jesse Cavazos?

16 A. No, sir, I don't know any of them.

17 Q. Pedro?

18 Now, you say you had another part of the
19 conversation later in the evening?

20 A. Yes, sir.

21 Q. What was that about?

22 A. Well, she -- I said, "Well, did you really
23 commit the murder?"

24 And she goes -- she cussed. You want me to
25 tell you what she said?

1 Q. Yes.

2 A. She said, "Yes. I shot that fucking bitch
3 in the head. I killed that bitch for screwing my old
4 man."

5 Q. She told you she shot her in the head?

6 A. Yes, sir.

7 Q. Did she tell you anything else?

8 A. Yes, sir.

9 Q. What did she tell you?

10 A. She told me that her -- okay, it was either
11 '84 or '87. I don't recall what year she said. She
12 said that she was in jail and that while she was in jail
13 this -- the dead girl was staying with her son; but,
14 when she got out of jail, when Shirley got out of jail
15 she found out that that girl had slept with her husband
16 and, so, when she seen the girl, after she got out of
17 jail and found out about it, she seen her at the dope
18 house and they got into an argument. And I don't recall
19 where she -- where she is supposed to have shot her in
20 the head at; but, she said, "I shot the bitch inside the
21 head, me and this fat Mexican put her in a plastic bag,
22 put her in a barrel and put her under a Crime Stopper
23 sign on the highway and the State ain't got no evidence
24 to convict me of it."

25 Q. She say what kind of gun she used?

1 A. She said a small -- she said what kind;
2 but, I don't recall; but, I can remember in my mind that
3 it was a small caliber gun.

4 Q. How did she seem when she was telling you
5 this? She seem like she was serious or not serious?

6 A. Well, she sounded real serious. She didn't
7 have any kind of remorse, you know, it was -- at first,
8 I thought she was just lying, you know, trying to act
9 bad because she was in jail; but, then she kept on
10 telling me. I said, "Did you really do it?"

11 She said, "Yeah, I am telling you I shot
12 that bitch and I am going to get three more of them when
13 I get out of here."

14 MR. BALDASSANO: I will pass the witness.

15 THE COURT: You may proceed, Counsel.

16 MR. GOODE: Thank you, Judge.

17
18 CROSS-EXAMINATION

19 BY MR. GOODE:

20 Q. Ma'am, you testified on direct examination
21 that you were convicted of robbery and a felony theft?

22 A. Yes, sir.

23 Q. Are you leaving a few thefts out?

24 A. Sir?

25 Q. Are you leaving a few theft convictions

1 out?

2 You have been convicted of theft more than
3 once; haven't you?

4 A. Twice, yes, sir.

5 Q. Twice?

6 A. It's all -- it all was run cc.

7 q. Isn't it more like five theft convictions
8 and one robbery conviction total?

9 A. I am -- I am on bond now for one.

10 Q. You have been convicted at least five times
11 of theft; correct?

12 A. Yes, sir.

13 Q. And that robbery case you were discussing,
14 did you say you got two years in prison on that?

15 A. Yes, sir. It was run with the two thefts.

16 Q. Right. When was that case settled?

17 A. I don't recall the date.

18 Q. What month?

19 A. I don't recall the month.

20 Q. Do you remember the year?

21 A. '89.

22 Q. And that was a robbery case, right?

23 A. Yes, sir.

24 Q. And what did you get?

25 A. Two years TDC.

1 Q. And what was the possible range of
2 punishment?

3 Do you remember?

4 A. No, sir, I sure don't.

5 Q. Anyone tell you it was two to 20 years?

6 A. Okay.

7 Q. Did you realize you were getting the
8 minimum two years?

9 A. Yes, sir.

10 Q. And that was in a plea bargain agreement
11 with the District Attorney's Office?

12 A. Yes, sir.

13 Q. And did you just testify you still have a
14 pending case?

15 A. Yes, sir.

16 Q. Are you hoping to plea bargain that case
17 out, too?

18 A. I hadn't even thought about it.

19 Q. Hadn't thought about it at all?

20 A. No.

21 Q. When did you first contact the District
22 Attorney's Office about what you supposedly overheard?

23 A. As soon as she told me.

24 Q. When was that?

25 A. That -- the night she told me, about two

1 hours after that.

2 Q. Who did you call?

3 A. I called the deputy to the gate to get me
4 out of there.

5 Q. How long after that did you get your two
6 year minimum sentence?

7 A. If I am not mistaken, I believe I had
8 already took my time. I may be wrong. I don't recall.
9 I don't remember.

10 Q. What was the nature of the pending case,
11 the one that is still out there?

12 MR. BALDASSANO: Judge, I am going to
13 object to that as being a violation of the rules of
14 evidence.

15 MR. GOODE: Your Honor, that is not a
16 violation.

17 THE COURT: Objection is overruled.

18 Q. (BY MR. GOODE) What is the nature of that
19 pending case?

20 A. What does that mean?

21 Q. You just testified that you still have a
22 pending case, a case that's still out there that hasn't
23 been settled?

24 A. It's stiff. They increased it to a felony
25 because I have two priors.

1 Q. You have more than two priors; isn't that
2 correct?

3 A. Not on felony theft, just misdemeanor.

4 Q. So, you are saying you have two prior
5 felony thefts?

6 A. Yes, sir.

7 Q. And rest are misdemeanor thefts?

8 A. I think so.

9 Q. That robbery case, that was robbery by
10 bodily injury, right?

11 A. Yes, sir. No, sir. No, sir.

12 Q. You weren't charged?

13 A. Strong arm robbery is what it was.

14 Q. Strong arm robbery?

15 A. Yes, sir.

16 Q. When is your next court date on that
17 pending case?

18 A. It's in June.

19 Q. That's here in Harris County, right?

20 A. Yes, sir.

21 Q. Now, how many times have you talked with
22 Mr. Baldassano before today about your testimony?

23 A. About my testimony?

24 Q. Right.

25 A. Twice, I believe.

1 Q. Now, isn't it true that you have recanted a
2 statement that you just claim you overheard, you have
3 recanted that in the past; haven't you?

4 A. I don't understand the question.

5 Q. In the past, have you told anyone that you
6 did not hear that being said? Yes or no?

7 A. Well, can I explain that to you?

8 Q. I would like a yes or no answer.

9 MR. BALDASSANO: Judge, I am going to
10 object. The witness is allowed to explain.

11 MR. GOODE: On redirect.

12 MR. BALDASSANO: Trying to mislead. This
13 witness is allowed to explain her answers.

14 THE COURT: Don't interrupt his objection.

15 You may respond now.

16 MR. GOODE: On redirect I believe he is
17 allowed to inquire into whatever he wants to.

18 THE COURT: I will give the instructions.

19 Do you have a response?

20 MR. GOODE: Your Honor, I am entitled to
21 ask her a yes or no question.

22 THE COURT: Objection overruled.

23 Q. (BY MR. GOODE) Have you changed your story
24 in the past, yes or no? Did you tell someone that you
25 didn't overhear this?

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A. Yes, sir.

MR. GOODE: Pass the witness, Judge.

THE COURT: You may proceed, Counsel.

REDIRECT EXAMINATION

BY MR. BALDASSANO:

Q. First of all, Miss White, did you make a statement to the police, the initial statement about what happened, what you had overheard?

A. Yes, sir.

Q. A written statement?

A. Yes, sir.

Q. And do you remember who you gave that written statement to?

A. A detective is all I remember.

Q. Do you remember when that was?

A. It was back in May.

Q. Had you ever met me before then?

A. No, sir.

Q. Do we have any secret deals about your other cases?

A. No, sir.

Q. Have you even told me what other court you have another case in?

A. No, sir.

1 Q. Do you have any deals with any DA's about
2 any of your testimony?

3 A. No, sir.

4 Q. Why are you here to testify?

5 A. Because the girl murdered somebody and
6 laughed about it.

7 Q. Did you receive a subpoena in the mail?

8 A. Yes, sir.

9 Q. Have somebody bring one personally?

10 A. Yes, sir.

11 Q. Have you ever met the investigator in this
12 case, a DA investigator?

13 A. Have I what?

14 Q. Ever met the DA investigator in this case,
15 Buddy Barringer?

16 A. Yes, sir, I have.

17 Q. Now, regarding a retraction, why don't you
18 tell the jury a little bit about that?

19 Can you tell the jury what happened after
20 you gave this statement to a detective about what
21 happened, what you heard?

22 A. Yes, sir. When I -- okay, I just recently
23 was picked up again on another theft and they put me in
24 the cell block with her (indicating). When I got in
25 there she told me that, "That's the snitching bitch," is

1 what she was telling everybody in the cell block. And I
2 was scared.

3 And I told her, "I didn't give no statement
4 to anybody. I didn't tell nobody that she had told
5 me -- admitted to me about the murder."

6 Q. Why did you say that?

7 A. Because she had told me her attorney had
8 found out that I had gave a statement to the -- a
9 written statement to the police department about what
10 she had told me in jail while I was in this stay in
11 jail, so --

12 Q. Excuse me.

13 MR. BALDASSANO: May I approach the
14 witness, Your Honor?

15 THE COURT: Yes, sir.

16 MR. BALDASSANO: Mark this, please.

17
18 (WHEREUPON, the instrument referred to by
19 Counsel was marked for identification purposes only as
20 State's Exhibit No. 18.)

21
22 Q. (BY MR. BALDASSANO) Ma'am, I am going to
23 show you what's been labeled as State's Exhibit No. 18
24 and for identification purposes only do you recognize
25 that State's Exhibit No. 18?

1 A. Yes, sir.

2 Q. Now, when you gave this written statement
3 to the detective did you sign it at the end?

4 A. Yes, sir.

5 Q. Have you stated you told the defendant you
6 didn't make a statement?

7 A. Yes, sir. She told me -- I had to sign the
8 paper for her.

9 Q. Okay. And where did you sign that paper
10 for her?

11 A. In the cell block.

12 Q. And how many other people were there when
13 you signed that statement?

14 A. The whole tank.

15 Q. Did you feel any pressure when you signed
16 that statement?

17 A. Yes, sir. I was scared.

18 MR. BALDASSANO: I will pass the witness.

19 MR. GOODE: No further questions, Judge.

20 THE COURT: May this witness be excused or
21 do you wish her to remain on call?

22 MR. BALDASSANO: She may be excused.

23 MR. GOODE: Yes, Your Honor.

24 THE COURT: You may step down, ma'am. You
25 are excused.

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Do you have a brief witness?

MR. BALDASSANO: No, Your Honor. The State rests.

THE COURT: State rests?

I think this is a good opportunity -- Mr. Bailiff, approach the bench, please. Retire the jury, sir. Permit them an opportunity to refresh themselves and then escort them to lunch.

Enjoy your lunch, folks.

(WHEREUPON, the following proceedings were had outside the presence and hearing of the jury:)

THE COURT: Let the record reflect the jury is in retirement.

Do you have a motion you wish to present, sir?

MR. GOODE: Yes, Your Honor.

THE COURT: The Court has correctly anticipated that.

MR. GOODE: I do have a motion for instructed verdict of not guilty based on the utter failure of the State to prove that a crime was committed in Harris County as alleged in the indictment.

I would ask that the Court take the case

1 away from the jury and instruct a verdict of not guilty
2 based on the failure to prove the venue and prove that
3 the allegation that a crime was committed in Harris
4 County, Texas, other than a dead body being found in
5 Harris County, Texas.

6 MR. BALDASSANO: Your Honor, may I respond?

7 THE COURT: Yes, sir.

8 MR. BALDASSANO: The defendant was seen
9 very late in the evening on Saturday night, February 18,
10 1989, and also in the early morning hours of Sunday,
11 February 19, 1989, with the complainant. They were both
12 seen together. The house in the early morning hours of
13 that Sunday, the complainant at that time was alive in
14 Harris County.

15 May I approach the bench, Your Honor?

16 THE COURT: Yes, sir.

17 MR. BALDASSANO: Regarding State's Exhibit
18 No. 17, shows, and it has been admitted into evidence,
19 the relative portions of the location that the defendant
20 and the complainant were seen together. That would be
21 the middle blue dot on State's Exhibit No. 17. Also,
22 the dot that has a "B" in it shows where the body was
23 found and testimony the body was found at 2:45 a.m., on
24 February 19, 1989. All three locations also on the far
25 right. The blue dot indicates the defendant's home

1 address. All three locations are in the center of
2 Harris County.

3 There has been absolutely no evidence,
4 whatsoever, from any witness, that the complainant, the
5 defendant, or anybody involved, went anywhere near the
6 county line. The defendant's body was found a very
7 short time after she was seen alive inside of Harris
8 County, nowhere near the county line. I think the
9 evidence shows beyond, at this point, there is evidence
10 to show that the crime occurred in Harris County, Texas.

11 MR. GOODE: Your Honor, I believe the
12 Prosecutor is misplacing the burden. I don't believe
13 there has to be any evidence showing where -- we don't
14 have to show where it was. They have to prove that it
15 took place in Harris County. They have not proved --
16 excuse me. They have not proven that lady was murdered
17 in Harris County. They have proven her body found in
18 Harris County; but, not one shred of evidence that she
19 was shot in Harris County.

20 MR. BALDASSANO: Judge, I will agree with
21 the Defense Attorney a million percent. He doesn't have
22 to prove anything.

23 What I'm saying is that there has been no
24 testimony from any of the witnesses in the State's case
25 that indicate that the complainant was seen outside of

1 Harris County before she died, had traveled outside of
2 Harris County before she died. There is every
3 indication from every witness that she was alive and
4 very close to the time of death in the center of Harris
5 County, Texas. And her body was found a short distance
6 later, also near the center of Harris County, Texas.

7 THE COURT: Do you have any case law, sir?

8 MR. GOODE: No, Judge, other than the fact
9 that they have to prove beyond a reasonable doubt that
10 the crime was committed in Harris County and finding a
11 body in Harris County is not sufficient to do that.

12 THE COURT: Well, since the jury are the
13 final arbiters of the facts and the standard is beyond a
14 reasonable doubt, the Court overrules your motion.

15 MR. GOODE: To 2:00 o'clock, Your Honor?

16 THE COURT: I think he might have them back
17 a little before 2:00.

18 How much time do you think you might need?

19 THE BAILIFF: Might take an hour and 15
20 minutes, Judge.

21 THE COURT: Why don't we do ten till.

22 THE BAILIFF: Yes, ma'am.

23 THE COURT: You are going to present
24 witnesses; is that correct?

25 MR. GOODE: I am, Your Honor.

1 THE COURT: Are you going to make an
2 opening statement?

3 MR. GOODE: No opening statement, Your
4 Honor.

5 THE COURT: You are excused until ten till.

6 MR. GOODE: Thank you, Judge.

7
8 (Lunch recess.)

9
10 (WHEREUPON, the following proceedings were
11 had outside the presence and hearing of the jury:)

12
13 THE COURT: Are the attorneys ready for the
14 jury?

15 MR. BALDASSANO: Yes.

16 MR. GOODE: Yes.

17 THE COURT: Please seat the jury, sir.

18
19 (WHEREUPON, the following proceedings were
20 had within the presence and hearing of the jury:)

21
22 THE COURT: Are the attorneys ready to
23 proceed?

24 MR. BALDASSANO: State is ready.

25 MR. GOODE: Yes, Your Honor.

1 THE COURT: Do you wish to make an opening
2 statement, sir?

3 MR. GOODE: No, Your Honor, we waive
4 opening statement and begin with our case immediately.

5 THE COURT: Call your first witness.

6 MR. GOODE: We call Deputy Talmadge.

7 THE COURT: Please take the stand, sir.

8 MR. GOODE: May I proceed, Your Honor?

9 THE COURT: You may, sir.

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1 GARRY W. TALMADGE,
2 was called as a witness by the Defense, and after having
3 been duly sworn, testifies as follows:

4 DIRECT EXAMINATION

5 BY MR. GOODE:

6 Q. Deputy, would you state your full name for
7 the Court, again, please?

8 A. Garry W. Talmadge.

9 Q. Sir, are you the same person who testified
10 here yesterday?

11 A. Yes, sir, I am.

12 Q. Okay, sir, if you remember, we had talked
13 about a note with the word "hermeno," h-e-r-m-e-n-o,
14 written down on it during the inventory of the contents
15 of the red barrel; is that correct?

16 A. Yes, it is.

17 Q. And you were to try and locate that note
18 which was recovered by you, correct?

19 A. Yes, sir.

20 Q. Okay. What steps have you taken to recover
21 that note?

22 A. I spoke with the Detective Johnson and I
23 also made a search of the evidence that's contained in
24 our property room in an effort to obtain that piece of
25 paper.

Vol 3

1 Q. Were you successful?

2 A. No, I was not.

3 Q. And why not?

4 A. I was unable to locate the piece of paper.

5 I spoke with Detective Johnson. It's my understanding,
6 my recollection, that even that piece of paper was given
7 to Detective Johnson on the night that the defendant was
8 processed.

9 Q. Did you personally transfer that note, with
10 the word "hermeno" written on it, to Bruce Johnson?

11 A. Yes.

12 Q. And Mr. Johnson no longer has that note,
13 correct?

14 A. He was unable to locate it.

15 Q. And did you look anywhere else for that
16 note?

17 A. I went through the evidence that's
18 contained in the property room under this case number.

19 Q. And you did not find it?

20 A. No, sir, I did not.

21 Q. Do you have any idea what happened to the
22 note?

23 A. No, I do not.

24 MR. GOODE: Pass the witness, Judge.

25

1 CROSS-EXAMINATION

2 BY MR. BALDASSANO:

3 Q. Deputy, did you fully process that note,
4 that is, did you try to lift fingerprints from it?

5 A. Yes, I did.

6 Q. Was there any other evidentiary value of
7 that note, in your opinion, other than the word?

8 A. No, there was not.

9 Q. Could you reproduce the word that was on
10 the piece of paper, that is, is it just a white piece of
11 paper with a word on it?

12 A. Yes. As I recall, just a small torn piece
13 of paper, wasn't even a complete sheet of paper, just a
14 small torn sheet of paper with a name on it.

15 Q. Did you ever hear from the Court or the
16 DA's office or the Defense, anybody telling you you must
17 hold that piece of paper with the word on it?

18 A. No.

19 Q. Is it unusual that after some evidence is
20 fully processed that it gets disposed?

21 A. That's normal procedure.

22 MR. BALDASSANO: I will pass the witness.

23 MR. GOODE: No further questions, Judge.

24 THE COURT: You may step down, sir.

25 Attorneys approach the bench.

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(WHEREUPON, there was a discussion held at sidebar, outside the hearing of the court reporter.)

THE COURT: Retire the jury, please, ma'am.

(WHEREUPON, the following proceedings were had outside the presence and hearing of the jury:)

THE COURT: Let the record reflect that the jury is in retirement, that the Defense Attorney earlier stated, and the Prosecutor, also, that we need to have a hearing outside the jury's presence on the next witness. So, we will proceed.

Call your next witness.

MR. GOODE: Your Honor, call Kitty Smith.

THE COURT: You may proceed, Counsel.

MR. GOODE: Thank you, Your Honor.

1 KATY LOU SMITH,
2 was called as a witness by the Defense, and after having
3 been duly sworn, testifies as follows:

4 DIRECT EXAMINATION

5 BY MR. GOODE:

6 Q. Ma'am, could you state your full name for
7 the Court, please?

8 A. I beg your pardon?

9 Q. Could you state your full name for the
10 Court, please?

11 A. My full name is Katy Lou Smith.

12 Q. Are you, ma'am, are you the same Miss Smith
13 who testified in this case yesterday?

14 A. Yes, I am.

15 Q. Ma'am, yesterday, if you will remember, you
16 testified on direct examination by Mr. Baldassano that
17 you had provided some information to the police
18 department; is that correct?

19 A. Yes, it is.

20 Q. And this information was provided after the
21 death of your stepdaughter; is that correct?

22 A. Yes, it is.

23 Q. Ma'am, did you have an occasion to re-speak
24 with several officers from the Houston Police Department
25 in your home?

1 A. I spoke with two officers from the Houston
2 Police Department.

3 Q. And was your husband and Dewan Collins
4 present?

5 A. Yes, he was.

6 Q. At that time, ma'am, did you tell the
7 police that a Columbian named Pablo had some trouble
8 with your stepdaughter?

9 A. They asked -- how can I explain this?

10 Q. I am going to try to give you a chance.
11 Simply, did you tell police officer that a
12 Columbian named Pablo had some trouble with your
13 stepdaughter?

14 A. Yes.

15 Q. And did you tell them that she had ripped
16 him off for drugs?

17 A. Yes, I did.

18 Q. And did you also tell them that she
19 exclusively dates Mexican men?

20 A. She does.

21 MR. GOODE: Those are the questions I want
22 to propound, Your Honor.

23 MR. BALDASSANO: May I proceed, Judge?
24
25

1 CROSS-EXAMINATION

2 BY MR. BALDASSANO:

3 Q. When you told the police officers that
4 Shawnte had trouble with Pablo, was Shawnte's trouble
5 with Pablo something that you personally observed
6 yourself?

7 A. No, sir, it was not.

8 Q. Was the trouble that she had with Pablo,
9 that is, any kind of fight or yelling and screaming,
10 something that you personally heard yourself?

11 A. No, sir, it was not.

12 Q. Was the trouble, if she had any, with
13 Pablo, something that you were told by somebody else?

14 A. Sissy told me that she and Pablo had some
15 problems a year -- it was a year before this ever
16 occurred.

17 Q. So, that was information that you learned
18 from somebody else, that is, Sissy?

19 A. Yes.

20 Q. Now, were you there when Pablo or when
21 Sissy ripped Pablo off for some drug money?

22 A. It was approximately a year previous to,
23 yes, sir, to when Sissy died.

24 Q. Please listen to my question, ma'am.

25 Were you personally there when it happened?

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A. Oh, no, sir.

Q. Did you see it happen or hear it happen?

A. No, sir.

Q. That is, hear the scuffle?

A. No, sir.

Q. Do you have any personal knowledge, that is, things that you heard yourself or saw yourself about any of the things that Sissy did regarding Pablo?

A. No, sir.

Q. Now, when you say Sissy only dated Mexican men, what do you base that on?

A. The fact that in the four years that Sissy lived with me she had three boyfriends who were Mexican descent and Sissy, herself, liked Mexican men. This was her preference in men.

Q. And did you see all the people that Sissy went out with?

A. No. No, I didn't see all of the people that Sissy dated. Sissy had a lot of friends; but, on a personal level, I know of three.

Q. Is it safe to say that Sissy probably went out with other people than the three people that you saw?

A. Oh, I am sure.

Q. And do you know if those people were white,

1 Black, Mexican, Chinese, Vietnamese, or anything else?

2 A. If I didn't see them, I wouldn't know.

3 MR. BALDASSANO: That's all I have, Judge.
4 I pass the witness.

5 MR. GOODE: Your Honor, may I make some
6 brief argument with regard --

7 THE COURT: I haven't heard an objection
8 yet.

9 MR. GOODE: Are you objecting to this?

10 MR. BALDASSANO: Well, yes. The objection
11 is going to be that, obviously, all she knows about the
12 trouble with Pablo is hearsay. Things she heard from
13 somebody else, somebody that it's impossible to have
14 that person cross-examined in the courtroom today about
15 whether or not -- the truth of those statements,
16 cross-examine as to the truth of the statements, as to
17 the truth of whether the complainant had problems with
18 Pablo.

19 There's nobody here who can cross-examine
20 whether or not the complainant ripped Pablo off. There
21 is nobody here that we can cross-examine on that. Those
22 statements are hearsay. They are inadmissible.

23 Also, this witness has stated that many --
24 and I will allow -- I will not object to her stating
25 that the only people that she had seen Sissy with were

1 Mexican; but, the statement that all she went out with
2 were Mexicans, she has no personal knowledge. She's
3 speculating, because there are other people, by her
4 other statements, that she probably did go out with.

5 MR. GOODE: With regard to the
6 admissibility, Your Honor, I am going to read the
7 sentence from the Rule 106: Nor does it alter the
8 common law doctrine that the rule of optional
9 completeness as to writings or conversations or other
10 matters may take precedence over exclusionary doctrines
11 such as hearsay, best evidence rule, or the firsthand
12 knowledge requirement.

13 In other words, the firsthand knowledge
14 requirement of the hearsay rule will not bar this
15 testimony as being optional completeness.

16 THE COURT: What are you trying to
17 complete?

18 MR. GOODE: I'm trying to complete the
19 testimony on direct examination that she had provided
20 information to the police department.

21 It's our position that the clear inference
22 from that is that she provided information contrary to
23 the defendant. In other words, inculcating the
24 defendant, when, in truth, part of that information
25 given was inconsistent or could be interpreted as being

1 inconsistent with the guilt of the defendant; and Rule
2 107, which we're also offering this under, explicitly
3 says that the purpose of this rule is to accommodate
4 part when it is necessary to make it fully understood or
5 to explain evidence that's been given before.

6 Now, with the inference of what they
7 offered, she gave information to police is that that is
8 information contrary to our position, I think to clear
9 that up it's only fair that we show that she gave
10 evidence which may be inconsistent with the defendant's
11 guilt. And I think it's not only a violation of Rule
12 106 -- 107 to keep us from completing the picture; but,
13 it's also a violation of due process to suppress, in
14 essence, evidence that a Columbian drug dealer named
15 Pablo had had trouble with this lady. I think that's
16 something relevant to the question of guilt in this
17 case.

18 MR. BALDASSANO: Regarding that very last
19 point, there's no evidence that a Columbian named Pablo
20 had any trouble with the complainant because nobody in
21 this courtroom and probably nobody alive except Pablo
22 knows that and can testify to that.

23 Regarding the optional completeness rule, I
24 don't think that applies in this case, whatsoever,
25 because Miss Smith, when she testified, was merely to

1 tell the police that a person named Arnold had some
2 information. She in no way stated that she told the
3 police she had any firsthand knowledge of the
4 defendant's guilt, that she had seen anything or heard
5 anything herself. She was merely testifying as showing
6 the logical steps that the police took.

7 Arnold Ramirez testified that the Defense
8 could have talked to him at length about what he told
9 this witness. This witness's testimony regarding what
10 she told the police in no way is relevant or is part of
11 the statement that should be considered, in fairness,
12 the rule of optional completeness, I think it's 107 that
13 he's talking about.

14 MR. GOODE: 107, -6.

15 MR. BALDASSANO: 106 is Remainder of
16 Related Writings or Recorded Statements. I don't think
17 that that happened. Rule of optional completeness is
18 really -- is just a statement that it has to be
19 considered, a statement that's pulled apart, that's not
20 considered in whole, and it wouldn't be fair to admit
21 part of the statement. Miss Smith never made part of a
22 statement. She merely stated that she had heard some
23 information and passed it on to the police, just the
24 name of Arnold, and Arnold was the one who eventually
25 told the police what he heard and they followed up his

1 lead.

2 I don't think the optional completeness
3 rule applies or the remainder of recorded writings
4 applies in this case.

5 MR. GOODE: Your Honor, it's our position
6 that it does.

7 MR. BALDASSANO: If the Defense's position
8 is true, then I would say that everything a witness told
9 the police comes into evidence as if they had testified
10 to anything they told the police. It wouldn't make any
11 sense, just wouldn't be fair --

12 THE COURT: I believe there was an
13 objection posed by the Defense to make sure this lady
14 didn't say what it was she told the police, if my
15 recollection serves me right. Whether it does or not, I
16 have looked over my notes and my notes show that this
17 lady did not state anything of what she told the police
18 aside from providing them with a name.

19 MR. GOODE: May I explain, Your Honor?

20 THE COURT: Yes, sir.

21 MR. GOODE: Your Honor, I think the clear
22 inference from her saying that she provided information
23 was that it was information damaging to the defendant
24 and the whole purpose of them asking that question --

25 THE COURT: Counsel, I'm sorry, but you had

1 ample opportunity to talk with the investigating officer
2 and ask them did they receive information about so and
3 so, did they follow-up on that or whatever. That's
4 totally different than your concept of optional
5 completion because this lady did not say, "I told the
6 police that the defendant committed the offense," or "I
7 heard the defendant committed the offense." In fact, I
8 don't even know what it is that she told the police.

9 MR. GOODE: Okay, Your Honor. Your Honor
10 is then sustaining the objection?

11 THE COURT: I think you can get some of
12 this into evidence if you pose it properly; but, you are
13 not doing it through this witness.

14 MR. GOODE: With regard to the questions I
15 propounded to the witness, are you allowing those
16 questions to the jury?

17 THE COURT: Not in the form you put them
18 in.

19 MR. GOODE: Yes, with this witness.

20 THE COURT: If you are going to say did you
21 tell the police thus and such?

22 MR. GOODE: That's exactly what I'm going
23 to say.

24 THE COURT: That is not an optional
25 completion.

1 MR. GOODE: Okay, Your Honor.

2 THE COURT: But, I'm telling you there are
3 other ways to, perhaps, approach and reach the goal you
4 want to; but, you are doing it improperly.

5 MR. GOODE: I understand, Your Honor. So,
6 the objection is sustained?

7 THE COURT: If your premise is optional
8 completion, some of your questions had nothing to do
9 with optional completeness, but to the witness's
10 personal observation, and that's something else.

11 MR. GOODE: Your Honor, I believe all my
12 questions were prefaced with: Did you tell the police
13 this and that?

14 At any rate, I will rely on Rule 52 of the
15 Rules of Appellate Procedure and won't propound these in
16 front of the jury. I take it you are sustaining the
17 objection and I --

18 THE COURT: Counsel, I don't dictate the
19 form of the questions. I am telling you that you can
20 elicit from this woman any personal observations that
21 she may have had.

22 Now, if you choose not to do so, to say did
23 you see this, were you told thus and such, that will be
24 your business.

25 MR. GOODE: Futile gesture to ask if she

1 was told something because the State will object as
2 hearsay. I am not offering it as hearsay. I am
3 offering it as an exception to hearsay. At any rate,
4 for the record, the objection is sustained.

5 THE COURT: Counsel, I have ruled what I
6 ruled. If you can elicit personal observations then
7 certainly I am not going to overrule that. If you are
8 using the doctrine of optional completion, then I
9 sustain that objection.

10 MR. GOODE: Thank you, Your Honor.

11 THE COURT: But, there are other ways that
12 you can get this evidence, at least some way through
13 this witness. If you choose not to, that's your trial
14 pattern.

15 MR. GOODE: Thank you, Your Honor.

16 THE COURT: Are you-all ready for the jury?

17 MR. GOODE: Yes, Your Honor. I am not
18 going to call this witness.

19 MR. BALDASSANO: If I could ask Miss Smith
20 to step outside before the jury comes in.

21 THE COURT: You may step down, ma'am.

22 Please seat the jury, sir.

23
24 (WHEREUPON, the following proceedings were
25 had within the presence and hearing of the jury:)

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THE COURT: Jury may be seated. Call your next witness, please.

MR. GOODE: Yes, ma'am. I call Shirley Sutherland.

THE COURT: Has your witness been sworn, sir?

MR. GOODE: No, Your Honor.

THE COURT: Please raise your right hand to be sworn, ma'am.

(Defendant sworn.)

THE COURT: You may proceed, Counsel.

MR. GOODE: Thank you, Your Honor.

1 SHIRLEY ANNETTE MARTIN SUTHERLAND,
2 was called as a witness in her own behalf, and after
3 having been duly sworn, testifies as follows:

4 DIRECT EXAMINATION

5 BY MR. GOODE:

6 Q. Shirley, would you state your full name for
7 the Court, please?

8 A. Shirley Ann Sutherland.

9 Q. Shirley, how old are you?

10 A. 41.

11 THE COURT: Counsel, please, Mr. and Mrs.

12 MR. GOODE: Yes, Your Honor.

13 Q. (BY MR. GOODE) Ma'am, with regard to
14 February 18th, what brought you to the house on
15 Silvercrest that evening?

16 A. I went by there to see if Pete or Jesse
17 wanted to pay \$75 for a shotgun.

18 Q. Did you talk with him about that?

19 A. Yes.

20 Q. And did you consummate that transaction?

21 A. No, because they only buy small handguns.

22 Q. Who was present at the home when you were
23 there?

24 A. Pete, Jesse, the two ladies, Shawnte and
25 Joe.

1 Q. Now, with regard to Shawnte, how long had
2 you known Shawnte?

3 A. Since 1987.

4 Q. Since when?

5 A. 1987.

6 Q. Was she there when you got there or did she
7 arrive after you were there?

8 A. She was there.

9 Q. Okay. Did you have any conversation with
10 her?

11 A. Yes.

12 Q. Okay. What was the nature of that
13 conversation?

14 A. I told Shawnte, and I used the term "bitch"
15 to -- in funning with her. She calls me mom. I said,
16 "Hey, bitch," I said, "what are you doing in here? You
17 know you are not supposed to be running the streets.
18 You know I don't like for you doing dope. You are too
19 young for this and you ought to go on home where you
20 belong. Does your daddy know where you are?"

21 And she would -- she was looking down and I
22 tapped her on the knee.

23 MR. BALDASSANO: Excuse me, Judge. Can I
24 ask that it be question and answer, please?

25 MR. GOODE: Yes, Your Honor.

1 Q. (BY MR. GOODE) Now, you have heard
2 testimony Shirley during the trial that you hit Shawnte?

3 A. I couldn't hear you?

4 Q. You heard testimony, ma'am, during the
5 trial, that you had hit Shawnte with something on her
6 leg or her shoulder; is that correct?

7 A. I heard that I had something.

8 Q. Did you strike her?

9 A. No.

10 Q. Did you menace her in any way?

11 A. No.

12 Q. Okay. Did you use loud words?

13 A. Yeah.

14 Q. And approximately what time did you leave
15 that house?

16 A. Around 11:00 o'clock.

17 Q. And where was Shawnte when you left?

18 A. She was going into the bedroom with Pete.

19 Q. Okay. And by Pete, who are you referring
20 to?

21 A. Sir?

22 Q. Pete who?

23 A. Cavazos.

24 Q. Do you know for what purpose?

25 A. I don't know for sure, but --

1 MR. BALDASSANO: Judge, I will object, if
2 she doesn't know for sure.

3 A. As they were walking away --

4 THE COURT: Ma'am.

5 MR. BALDASSANO: Judge, I object to
6 speculation.

7 Q. (BY MR. GOODE) Ma'am, where did you go
8 when you left the house?

9 A. I went home.

10 Q. Where was that?

11 A. 3422 Cedar Hill.

12 Q. And who lived at that residence at that
13 time?

14 A. Myself and my two sons.

15 Q. And what are their names?

16 A. Sir?

17 Q. What are their names?

18 A. Larry Armstrong and Gerald Stokley.

19 Q. What did you do when you got home?

20 A. Put on a video, had a couple of -- I guess
21 Coca Cola and whiskeys and then went to sleep.

22 Q. Okay. Did you, at any time, leave the
23 house that evening?

24 A. No, sir.

25 Q. And when did you next leave your home?

*There is where
Goode had told me
not to elaborate
on where I
been or
who I saw
talked to or about
Jerry*

1 A. Oh, the next day; but, I went to the store.
2 Q. About what time was that?
3 A. In the afternoon when I woke up.
4 Q. When did you first hear about Shawnte's
5 death?
6 A. On Tuesday.
7 Q. How did you become aware of her death?
8 A. I went to the house on Silvercrest.
9 Q. All right. Without saying what anyone told
10 you, is that where you acquired the information?
11 A. Yes, that's where I was told.
12 Q. Okay. Who was present there when you
13 learned of Shawnte's death?
14 A. In the house?
15 Q. Right.
16 A. Pete Cavazos.
17 Q. Okay. Now, on this evening, February 18th,
18 when you were at the house and Shawnte was there, was
19 there a carpet in the living room?
20 A. Yes.
21 Q. Okay. Did you at any later date notice the
22 carpet gone?
23 A. On Tuesday, the date I went back for the
24 first time since that night.
25 Q. Okay. Did you see the carpet at all?

1 A. No. Totally off the floor. I was talking
2 to Pete and --

3 MR. BALDASSANO: Judge, I will object.

4 MR. GOODE: Ma'am, wait until I ask a
5 question.

6 MR. BALDASSANO: Not responsive.

7 THE COURT: Excuse me. The court reporter
8 cannot take two people at the same time, let alone
9 three.

10 Ma'am, when one of the lawyers stands up,
11 please permit them to pose their objection and me to
12 rule on it before you answer the question.

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Okay. Now, Counsel, the jury
15 is having some difficulty hearing your question. If you
16 could raise your voices we would all appreciate it.

17 MR. GOODE: Thank you, Your Honor.

18 THE COURT: Thank you.

19 MR. BALDASSANO: Judge, my objection is
20 unresponsive.

21 THE COURT: Ma'am, please listen to the
22 question that's asked of you and just answer that
23 question.

24 THE DEFENDANT: Yes, ma'am.

25 MR. GOODE: May I proceed, Your Honor?

1 Q. (BY MR. GOODE) When you went back to the
2 house you are sure it was two days later, Tuesday?

3 A. Yes.

4 Q. It was not the next day?

5 A. No.

6 Q. Okay. Did you tell either Jesse or Pete or
7 Angelica or Yvonne that you killed Shawnte?

8 A. No, I did not.

9 Q. Did you tell them that you had thrown out
10 the trash or anything like that?

11 A. I told Jesse, we were standing in the
12 kitchen and there were two large garbage bags full. The
13 kitchen is very small. I said, "Jesse, you need to take
14 out the garbage." That was all. And then I did ask him
15 some questions.

16 Q. About what?

*I asked
Pete about the
carpet*

17 A. What happened to the carpet. What happened
18 to Shawnte. Where did she go after I left. And other
19 questions, like, pertaining to what went on in that
20 house after I left.

21 Q. Now, did you hear the testimony of Wanda
22 White regarding what she said she overheard in the jail?

23 Did you have a conversation with Wanda
24 White regarding the charges in this case?

25 A. Yes, when she was housed --

1 Q. Ma'am, what did you tell her?

2 A. When she was housed in ⁹⁰²902 she asked me
3 what I was there for and I said murder. And she said,
4 well, give me the gory details. And I said there are no
5 gory details. It is that I was accused and I am being
6 accused of shooting a girl in a barrel and that the last
7 time I saw her she was in a house, dope house, with some
8 Mexicans, and that was -- and that their motive, that
9 the DA's motive would be that because she slept with my
10 husband and that was it, that's all I told her.

11 Q. Did you, in fact, kill Shawnte?

12 A. No, I did not. I did not kill Shawnte
13 Collins.

14 Q. Did you ever have the intention of killing
15 her?

16 A. No, I liked her. She was good people.

17 Q. How long had you known her?

18 A. Since 1987.

19 Q. Did you know her family?

20 A. I knew her father. He had used to bring
21 her to my house.

22 Q. Ma'am, do you own now or did you own at the
23 time a .25 caliber pistol?

24 A. No, I do not. I did not then and never
25 have.

1 Q. Had you ever seen a small caliber pistol in
2 the home in Silvercrest?

3 A. Of course. Many of them.

4 Q. Who had them?

5 A. Well, they kept one on their person all the
6 time, each of the -- Joe, the brother-in-law who did
7 live there and was there that night, Jesse, Pete. They
8 all carried a weapon on their person and at nights they
9 slept with them because if I ever went there late at
10 night and I talked to them they were laying on the gun,
11 the gun was with them. So, was their drugs.

12 Q. Now, on this evening where you saw Shawnte
13 there, did you tell her you were going to get her
14 somewhere else or kill her somewhere else?

15 A. No.

16 Q. Did you say to Yvonne that you respected
17 the house and you didn't want to do anything there; but,
18 you would get her somewhere else?

19 A. I told them I respected their house and
20 their business as drug dealers, that I shouldn't be
21 running off a customer; but, I didn't think Shawnte
22 should be there and I told Shawnte that very loudly.

23 Q. Did you see Shawnte after you left the
24 house that night?

25 Did you see her again?

1 A. No, I did not.

2 Q. How did you find out about the details that
3 you told Wanda White? In other words, all the details
4 you told Wanda White when she asked you about the case.

5 A. When you came to me and discussed my case
6 and told me what was going on.

7 Q. Okay. So, when you were talking with Wanda
8 White --

9 MR. BALDASSANO: I am going to object to a
10 leading question.

11 THE COURT: Well, I will permit a certain
12 amount of leading to situate the witness; but, please
13 try to not overdo it.

14 MR. GOODE: Thank you, Your Honor.

15 Q. (BY MR. GOODE) Ma'am, with regard to your
16 conversation with Wanda White --

17 A. M-h'm.

18 Q. -- were you telling her the events that had
19 been told to you, or were you telling her events you
20 knew firsthand?

21 A. Events told to me.

22 Q. Okay. By whom?

23 A. By you.

24 MR. GOODE: Pass the witness, Judge.

25 THE COURT: You may proceed, Counsel.

1 MR. BALDASSANO: Judge, at this time, may
2 we approach the bench?

3
4 (WHEREUPON, there was a discussion held at
5 sidebar outside the hearing of the court reporter.)

6
7 THE COURT: Retire the jury, sir.

8
9 (WHEREUPON, the following proceedings were
10 had outside the presence and hearing of the jury:)

11
12 MR. BALDASSANO: May I proceed, Your Honor?

13 THE COURT: Yes, sir.

14
15 CROSS-EXAMINATION

16 BY MR. BALDASSANO:

17 Q. Ma'am, have you ever been convicted of a
18 felony in this State or any other State?

19 A. No.

20 Q. Have you ever been convicted of a
21 misdemeanor involving moral turpitude in this State or
22 any other State, such as theft, prostitution, theft by
23 check, issuance of a bad check?

24 A. Bad check.

25 Q. Okay, and how many, approximately how many

1 times have you been convicted of writing a bad check?

2 A. It was, all together, I think --

3 MR. BALDASSANO: May I approach the
4 witness?

5 A. There's several checks, I know.

6 Q. (BY MR. BALDASSANO) Okay. Well, why don't
7 you just go ahead and take a look.

8 A. I know.

9 Q. Out of these, out of County Court 11, or
10 Municipal Court 11, approximately how many cases of bad
11 checks do you have?

12 A. A lot.

13 Q. Can you be a little more vague?

14 A. I am not really sure. 200, I guess. I
15 don't know.

16 Q. Okay.

17 MR. BALDASSANO: That's all I have, Judge.

18 MR. GOODE: Your Honor, we would object.

19 MR. BALDASSANO: Judge, it's our position
20 that these are impeachable offenses.

21 THE COURT: Permit Counsel to pose an
22 objection and then respond.

23 MR. GOODE: Your Honor, we would object,
24 No. 1, under Rule 609. I don't believe this is evidence
25 which could result in a conviction of a crime. The rule

1 requires that it be a conviction of a misdemeanor
2 involving moral turpitude or felony. It is clearly not
3 a felony and our position is that issuance of a bad
4 check is not a misdemeanor involving moral turpitude.

5 And our second objection would be, even
6 assuming relevancy under Rule 609, that under Rule 603
7 this relevant evidence, if the Court finds it relevant,
8 should be excluded because of the danger of unfair
9 prejudice and is leading the jury because of the
10 cumulative nature, talking about a hundred bad checks.

11 MR. BALDASSANO: May I respond, Judge?

12 I don't know how that would be misleading.
13 It's true we are merely leading the jury to assist or
14 help the jury to assess this witness's credibility. Bad
15 check cases are like theft cases, or at least they
16 indicate that a person may be dishonest and I think
17 that's where the rule comes from.

18 People that commit felonies and people that
19 commit crimes involving moral turpitude, such as theft,
20 prostitution, and I submit to the Court theft by check,
21 indicates to the jury that these people are not to be
22 trusted, that their testimony should be weighed in light
23 of the fact that they are this type of person, that they
24 have written bad checks and it is clearly a crime of
25 moral turpitude.

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MR. GOODE: Your Honor, may I respond?

THE COURT: Yes, sir.

MR. GOODE: I would also suggest that in the event that the Court allows him to ask that question I would like to see some sort of proof other than a printout with general allegations of, I believe it says misdemeanor. I don't believe it says theft conviction on there.

I don't believe you intend to introduce that document, do you?

MR. BALDASSANO: Judge, I am just showing this document to show -- I'm asking the question in good faith. It's her testimony that's going to be material, whether she did it or not.

THE COURT: And you are not going to use that before the jury?

MR. BALDASSANO: No, Your Honor, unless she denies it; but, she already admitted it, unless she turns around.

MR. GOODE: Your Honor, I guess basically the Court has to rule whether or not it's a crime of moral turpitude, a misdemeanor involving moral turpitude, issuance of a bad check.

THE COURT: What are the elements?

MR. GOODE: Moral turpitude is very

1 nebulous.

2 THE COURT: What are the elements of
3 misdemeanor offense of theft by check?

4 MR. GOODE: I am not sure what she has been
5 convicted of.

6 Is that what she's been convicted of?

7 MR. BALDASSANO: Writing, introducing a
8 check that's worthless into the stream of commerce. And
9 I think people that do that, indicates dishonest person,
10 knows it's worthless when they introduce it into
11 commerce. That's what we have to prove on that.

12 Judge, issuance of a bad check is Penal
13 Code Section 32.41. It's in Subchapter D, titled:
14 Other Deceptive Practices.

15 A person commits an offense if he issues or
16 passes a check or similar sight order for the payment of
17 money knowing that the issuer does not have sufficient
18 funds in or on deposit with the bank or other drawee for
19 the payment in full of the check or order as well as all
20 other checks or orders outstanding at the time of
21 issuance.

22 Then there is some information about
23 presumptions and all and then it says the offense under
24 this section is a Class C misdemeanor; but, Judge, I
25 think the fact that it's under Subchapter D, Other

1 Deceptive Practices, shows how the Legislature felt
2 about issuance of a bad check, that it is a deceptive
3 practice and that it is a crime of moral turpitude
4 showing dishonesty.

5 MR. GOODE: I just asked Counsel if he
6 would check with his appellate section on that issue.

7 MR. BALDASSANO: I will give him a call,
8 Judge, if I have a minute?

9
10 (WHEREUPON, there was a discussion held off
11 the record.)

12
13 MR. BALDASSANO: We would waive any right
14 to ask the defendant about her prior criminal history
15 and I talked to Tim Taft and he stated pretty quickly
16 that the answer is no, that it's not a crime of moral
17 turpitude. So, based on his assertions I will withdraw
18 my proffer of that type of evidence.

19 MR. GOODE: Your Honor, may the witness be
20 instructed that if she's asked if she has been convicted
21 of a crime of moral turpitude --

22 Are you going to ask her?

23 MR. BALDASSANO: I am not going to ask her.
24 You can ask her, if you want.

25 MR. GOODE: Nothing further, Judge.

1 THE COURT: Are you-all ready for the jury
2 now?

3 MR. GOODE: We are, Your Honor.

4 MR. BALDASSANO: Yes, Judge.

5
6 (WHEREUPON, the following proceedings were
7 had within the presence and hearing of the jury:)

8
9 THE COURT: Jury may be seated.

10 You may proceed, sir.

11 MR. BALDASSANO: Thank you, Judge.

12
13 CROSS-EXAMINATION

14 BY MR. BALDASSANO:

15 Q. Ma'am, please state your name.

16 A. Shirley Annette Sutherland.

17 Q. Shirley Annette Sutherland?

18 A. M-h'm.

19 Q. Have you ever gone by the name of Shirley
20 Martin?

21 A. That's my maiden name.

22 Q. How about Shirley Annette Williams?

23 A. Married name.

24 Q. Shirley Annette Stokley?

25 A. Married name.

1 Q. Shelley Ann Maliski?

2 A. AKA.

3 Q. That's a -- what do you mean by "AKA"?

4 A. An alias.

5 Q. Shirley Ann Minski?

6 A. That was an alias, one alias.

7 Q. Okay. Maliski and Minski?

8 A. Well, it was spelled two different ways.

9 We couldn't decide on which one.

10 Q. And have you ever been known as the
11 "embalming fluid lady"?

12 A. Not really.

13 Q. Not really?

14 A. I made a purchase one time for some
15 embalming fluid; but, that was it.

16 Q. Ma'am, when you were arrested were you
17 employed or unemployed?

18 A. Unemployed.

19 Q. Isn't it true, ma'am, that you are a heavy
20 drug user?

21 MR. GOODE: Objection, Your Honor. May we
22 approach the bench?

23 THE COURT: Yes, sir.

24

25 (WHEREUPON, there was a discussion held at

1 sidebar, outside the hearing of the court reporter.)

2
3 THE COURT: Retire the jury, ma'am.

4
5 (WHEREUPON, the following proceedings were
6 had outside the presence and hearing of the jury:)

7
8 THE COURT: You may pose your objection.

9 MR. GOODE: Your Honor, I would object to
10 the last question as calling for an extraneous offense
11 not relevant to any issue in this case and I would ask
12 not only the jury be instructed to disregard, but I
13 would ask for a mistrial and, once again, in the
14 presence of the jury, will renew the objection.

15 MR. BALDASSANO: For purposes of the
16 record, the defendant is on the witness stand testifying
17 in front of the jury. The jury has a right to know who
18 the person is, if she's a heavy drug user. It's not an
19 offense in Texas to use drugs. We have people come in
20 court all the time that admit to being drug users. It's
21 not an offense in Texas to be a drug user. It is an
22 offense to possess buy and sell drugs; but, not to use
23 drugs or have drugs in your system.

24 The witness is coming up here telling the
25 jury a story. They have a right to weigh her

1 With regard to in determining if he were to ask the
2 witness were you using drugs on the night in question
3 when this happened, I can see that as res gestae; but,
4 he's asking you generally, are you a drug user, which is
5 an improper question.

6 MR. BALDASSANO: Judge, I think the jury
7 has a right to know who they are listening to. If a
8 person that they are listening to is a drug addict,
9 that's something that's relevant to their inquiry,
10 whether or not to believe they are, first of all, they
11 probably know she goes to a drug house three or four
12 times a day.

13 THE COURT: That is on the record. Ask Ann
14 Richards and Mattox and former Governor Mark White and
15 see what their opinion is on that issue.

16 I tend to agree with Defense Counsel,
17 a question like that, with no time frame, involving
18 somebody, could perhaps be a heavy drug user 50 years
19 ago, 20 years ago, which may be relevant then but not at
20 this period of time.

21 Since we are in recess I am going to permit
22 both of you-all to see if you can present me with any
23 law in this.

24 MR. BALDASSANO: Yes, Your Honor. If I can
25 pick up with the last question.

1
2 (WHEREUPON, the requested testimony was
3 read back by the court reporter.)
4

5 THE COURT: Mr. Baldassano?

6 MR. BALDASSANO: The State would withdraw
7 the last question asked and does not object to any kind
8 of limiting instruction to the jury about the question
9 and, also, the State would rephrase the question,
10 tailoring it a little more specifically to heavy drug
11 usage or drug usage by the defendant the night in
12 question, the night that she's testified to, for the
13 mere purpose of impeaching the witness's memory and
14 recollection of the offense that she has already
15 testified to on direct.

16 MR. GOODE: Your Honor, with regard to the
17 question posed, as we would have objected in the
18 presence of the jury we would object to that question
19 based on 404, ask that the jury -- the Court sustains
20 the objection; but, the jury be ordered to disregard
21 that question; and we further move for a mistrial.

22 THE COURT: Well, with respect to ruling
23 right now, the Court will sustain your objection to that
24 particular question that was asked before the jury and
25 will order them to disregard that question. Your motion

1 with respect to a mistrial is overruled. No. 1, the
2 Prosecutor is going to refine the question to a relevant
3 point in time. And, secondly, the jury certainly has
4 heard that that was a dope house and certainly through
5 the testimony of your witness she had admonished the
6 deceased about using drugs. And, so, for all of those
7 reasons, the Court is going to overrule your
8 objection --

9 MR. GOODE: Motion for mistrial.

10 THE COURT: -- or, rather, your motion for
11 mistrial. Excuse me. Thank you. And I am doing, the
12 Court's reasons are being done outside the presence of
13 the jury and will not be done in the presence of the
14 jury.

15 MR. GOODE: Other than the instruction to
16 disregard the last question, the jury will be
17 instructed?

18 THE COURT: I said the Court's reasonings
19 are done outside the presence of the jury.

20 MR. GOODE: Yes, Your Honor.

21 THE COURT: And will not be done in the
22 presence of the jury.

23 I would caution the Prosecutor, if you are
24 going to seek to impeach any of the testimony of this
25 witness, then please make it relevant in time.

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MR. BALDASSANO: Yes, Your Honor.

THE COURT: Please seat the jury.

(WHEREUPON, the following proceedings were had within the presence and hearing of the jury:)

THE COURT: Jury may be seated.

The State's -- rather the Defense's objection to the State's last question is sustained and the jury is ordered to disregard that last question.

MR. BALDASSANO: May I proceed, Your Honor?

THE COURT: Yes, sir.

Q. (BY MR. BALDASSANO) Regarding use of the drugs, I am talking about on the late evening of February 18th or February 19th, did you use any drugs at all?

A. No.

Q. Now, ma'am, how many times have you been married?

A. Four.

Q. Okay. And how long did each marriage last, just generally?

A. A year, two years -- no, two years, three years. This time ten.

Q. Ten years to Ronald Sutherland?

1 A. M-h'm.

2 Q. And he's the gentleman that's been in the
3 courtroom and outside this whole trial; is that correct?

4 A. Yes.

5 Q. And are you happily married to him? I
6 mean, is that a good marriage?

7 A. Pretty much, yes.

8 Q. Okay. You have a house and family and
9 stuff like that?

10 A. No children together.

11 Q. Okay. Live together at sometimes -- at
12 points in the marriage did you live together?

13 A. We were separated when this happened.

14 Q. Well, when did you first find out that your
15 husband Ronald or Ron had slept with Shawnte?

16 A. I never found that out. I did not know
17 that.

18 Q. Okay. You never found that out?

19 A. No. And it really wouldn't matter.

20 Q. Wouldn't matter?

21 A. No.

22 Q. Why wouldn't it matter?

23 A. Because we both had extra marital
24 relationships all through the time that I have been --
25 before we married and after.

1 Q. Oh, so, it's just kind of an open marriage?

2 A. Yes.

3 Q. So, you never found out. So, during this
4 trial would be the first time you found it out, is that
5 what you are saying?

6 A. When my attorney told me what the motive or
7 that they was going to use was. I couldn't believe it.

8 Q. Okay. So, you never saw Shawnte at your
9 house sleeping with your husband? You never caught them
10 in bed together or anything like that?

11 A. No. No.

12 Q. You ever bring up Shawnte's name to your
13 husband and say: Hey, I know you slept with this girl
14 and bother him about it?

15 A. No, she stayed at our house a lot of times.

16 Q. No problem with her at all?

17 A. No.

18 Q. You liked the girl?

19 A. Yes.

20 Q. Good people, right?

21 A. Yes, she was good people.

22 Q. So, when Yvonne Munez, Angelica and Jesse
23 Cavazos says about you being mad at Shawnte about her
24 sleeping with Ron that's really not true?

25 A. That's not true.

1 Q. Because you didn't even know Ron was
2 sleeping with Shawnte?

3 A. I didn't know if he has or not.

4 Q. Okay. But you had not even heard about
5 that --

6 A. No.

7 Q. -- on February the 18th? News to you,
8 right?

9 A. News to me.

10 Q. Okay. So, all this testimony about that is
11 it just couldn't have happened?

12 A. That's wrong, yeah. They did know that she
13 stayed at my house on and off, yeah.

14 Q. Isn't it true, ma'am, that the reason you
15 broke up was because of Shawnte?

16 A. Oh, no, I hadn't seen Shawnte. We had not
17 seen Shawnte since 1987 until that night.

18 Q. Now, you lived on Cedar Hill; isn't that
19 correct?

20 A. Yes.

21 Q. With Ron?

22 A. Yes -- no, we were separated.

23 Q. Okay. Well, you did at one point live on
24 Cedar Hill with Ron?

25 A. Yes. We separate at a house.

1 Q. And what time of year did you separate?

2 A. Early -- well, late January, early
3 February.

4 Q. Of 1989?

5 A. '89.

6 Q. Okay. And Ron moved over to a place near
7 the Little York Hospital --

8 A. Right.

9 Q. -- is that correct? Isn't it true that the
10 reason he moved out was because you kept bringing up
11 Shawnte Collins' name to him?

12 A. Oh, no.

13 Q. No. Okay. Now, do you remember telling
14 Larry Patterson that the reason that you broke up with
15 Ron was over Shawnte?

16 A. Oh, no.

17 Q. Didn't say that? You know Larry Patterson?

18 A. It would take a week of argument to bring
19 up all the other people that we have had in our lives.

20 Q. Didn't your son, Larry, bring Shawnte over
21 the house --

22 A. On Cedar Hill?

23 Q. -- on numerous occasion?

24 A. On Cedar Hill?

25 Q. Yeah.

1 A. No.

2 Q. Never did?

3 A. No. She did not know where I lived there.

4 Q. Didn't he ever try to kick Shawnte out of
5 the house on Cedar Hill?

6 A. No.

7 Q. Never did -- never got into a fight with
8 Larry about that, your son Larry?

9 A. No, she didn't know where I lived and she
10 had never been there and in 1987 I knew her when I lived
11 on Margaret.

12 Q. You are saying Shawnte didn't know where
13 you lived on Cedar Hill?

14 A. No, she did not.

15 Q. Do you remember telling the -- you know
16 Robbie Carter?

17 A. Yes.

18 Q. Okay. You remember telling him that nobody
19 knew how deeply you were hurt by Shawnte?

20 A. No. You mean her being killed? Yes.

21 Q. You were deeply hurt by her death?

22 A. Yes.

23 Q. Oh, I understand. Okay.

24 A. But never anything else.

25 Q. Go to the funeral?

1 A. I didn't know when it was. If I would have
2 found out on Tuesday and I couldn't find out much more
3 because I didn't know where her parents lived.

4 Q. Isn't it true that Larry Patterson drove
5 you to the house on Silvercrest that night on February
6 the 18th?

7 A. No, it's not, no.

8 Q. Okay. Who drove you there?

9 A. Terry.

10 Q. Terry who?

11 A. I don't know his last name.

12 Q. What kind of car?

13 A. He had an old beat-up truck.

14 Q. He had a truck. Okay. And did he wait for
15 you out there?

16 A. Yes.

17 Q. Did he come in with you?

18 A. Yes, he did.

19 Q. He waited for you?

20 A. M-h'm.

21 Q. Do you remember what time you got to the
22 house?

23 A. Probably a little after 10:30.

24 Q. After 10:30? Okay. And he waited outside
25 the whole time?

1 A. Yeah, 15, 20 minutes, because that's -- you
2 can't -- you just don't leave someone sitting in front
3 of a place like that very long.

4 Q. And when you walked in you saw Shawnte in
5 there?

6 A. Yeah, she was sitting down on a chair.

7 Q. Okay. And you saw Pedro, Angelica, and
8 Yvonne; is that correct?

9 A. Yes.

10 Q. Were they in the house?

11 A. And Joe.

12 Q. And Joe and some -- anybody else?

13 A. Not really -- no.

14 Q. And did you mentioned something about going
15 over there for some reason? What was the reason you
16 said?

17 A. To see if they wanted to purchase a shotgun
18 for \$75 in cash.

19 Q. Okay. And did you bring the shotgun over?

20 A. Yes.

21 Q. So, you walked in with a shotgun?

22 A. Unloaded, yes.

23 Q. And do you remember seeing Shawnte there
24 but not getting into a fight with her; is that correct?

25 A. I saw her there and I argued with her about

1 her being there and she was stoned and I told her to
2 leave. I said she needs to go on home.

3 Q. Okay. And that's because she was a young
4 girl and she shouldn't --

5 A. 20 years old.

6 Q. And shouldn't be at a dope house?

7 A. 20 years old.

8 Q. And you felt kind of bad about that, that
9 she was a girl?

10 A. Have a 19-year-old.

11 Q. So, it was out of concern for her --

12 A. Yes.

13 Q. -- to ask her to leave?

14 A. That plus things that she had told me in
15 the past about herself and her situations and --

16 Q. Okay. Now, your testimony is you never
17 touched her, never laid a finger on her with the
18 shotgun?

19 A. I touched her on the knee. She was looking
20 down and I was talking to her and I was preaching to her
21 and she was looking down and I said -- shook here on the
22 knee and I said: Look at me when I'm talking to you,
23 because I said: What I'm saying is right. You know you
24 are not supposed to be here.

25 Q. Okay. And you wanted her to just go ahead

1 and leave, right? Just walk out the door?

2 A. I couldn't get her to do something like
3 that. I mean, I wanted her to stay away from there.
4 You know, just to go home.

5 Q. And did she leave before you or did you
6 leave first?

7 A. No. No, she stayed. She went into the
8 bedroom with Pete.

9 Q. Did you say: Hey, listen, Shawnte, let me
10 give you a ride home or something like that?

11 A. If I had she would still be alive. If I
12 had she would still be alive.

13 Q. So, you didn't -- is that your testimony
14 you didn't offer her a ride home?

15 A. No, and I wished I had.

16 Q. You never made any threats to her: You
17 won't make it to the corner. I am going to kill, you
18 bitch?

19 A. No.

20 Q. You are not going to make it through the
21 night. If I don't get you here, I will get you
22 somewhere else?

23 A. No.

24 Q. All that stuff was just completely made up?

25 A. Made up.

1 Q. Okay. By four different people?

2 A. Right.

3 Q. And these people are friends of yours?

4 These are people that you visited over and over, yes or
5 no?

6 A. They are --

7 Q. Ma'am, my question is yes or no. Are these
8 people you have gone over their house over and over on
9 many occasions?

10 A. I have been there, yes.

11 Q. Isn't it true that they kicked you out
12 because you were beating on her and you were threatening
13 her?

14 A. No.

15 Q. Isn't it true that you said: I have
16 respect for your house so I will leave, but I am going
17 to get her later?

18 A. I said that I respected their house and I
19 shouldn't be running off their business and I left.

20 Q. Okay. So, you were concerned about their
21 business because you respected their business, their
22 drug dealing?

23 A. They are dangerous people and you do not,
24 in there place of business, distract their customers.

25 Q. Okay. Now, you do admit that you called

1 her bitch, but you said that you were just funning with
2 her?

3 A. I called a lot of people that.

4 Q. Okay. And she kind of called you that,
5 right?

6 A. She always did.

7 Q. And that she is too young for dope and
8 that's what the loud words came from?

9 A. Yes.

10 Q. You were trying to tell her, from your
11 experience, that she shouldn't be there because she's
12 too young?

13 A. Yeah. She kept telling me she was going to
14 quit back in 1987. That's all I could hear was how she
15 was going to quit, but I hadn't seen her since then and
16 I thought she had quit and then there she was.

17 Q. And then your testimony on direct was that
18 she left the house at 11:00 p.m.

19 A. Around 11:00, right. Maybe give or take
20 five minutes -- well, wasn't after 11:00 because when I
21 got home -- I think it was just about 11:15 when I got
22 home.

23 Q. Okay. So, you drove from -- well, I guess
24 that guy Terry drove you?

25 A. Terry.

1 Q. From the Silvercrest address to Cedar Hill?

2 A. Correct.

3 MR. BALDASSANO: Judge, may I approach the
4 witness?

5 THE COURT: Yes, sir.

6 Q. (BY MR. BALDASSANO) Ma'am, I am going to
7 show you what's been introduced as State's Exhibit No.
8 17 and ask you if the dots on here are accurate, that
9 is, to the right being your Silver -- Cedar Hill
10 address?

11 A. Yes.

12 Q. That about the right, correct?

13 A. Yes.

14 Q. And to the left being the Silvercrest
15 address?

16 A. Yes.

17 Q. And what road you use to go between those
18 two places?

19 A. Let's see, we left Silvercrest went up
20 Parker, across Parker to Aldine Westfield, from Aldine
21 Westfield to Little York, took a right towards 59 and up
22 to Bentley turn left and --

23 Q. Went straight home?

24 A. Right home.

25 Q. You say you left, give or take five

1 minutes, 10:55 or 11:05, is that safe to say?

2 A. It was around there because his old truck,
3 we just drove slow. Like I said, it was a little after
4 11:00 when I got home.

5 Q. You said you weren't on any kind of
6 narcotic?

7 A. No.

8 Q. Do you remember this pretty clearly?

9 A. No drugs.

10 Q. Okay. And you remember this pretty
11 clearly?

12 A. Yes.

13 Q. Okay. And it takes you about 10 minutes to
14 get there to Cedar Hill, 15 minutes going slow?

15 A. Sometimes 20 minutes, depending on how fast
16 you drive and --

17 Q. Well, what's the absolute latest that you
18 got home?

19 A. From there that night?

20 Q. Right.

21 A. 11:15.

22 Q. 11:15. Anybody else at your house when you
23 got there?

24 A. No, I was the only one there.

25 Q. Completely alone?

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A. Yes.

Q. And then you went into the house, you turn on the videotape. What tape was it?

A. "Man From Snowy River", I believe.

Q. "Man From Snowy River", and did you watch the tape all the way through or go to sleep in the middle of it?

A. Went to sleep.

Q. Do you have any estimate of the time that you were actually asleep?

A. Oh, no. Just --

Q. Okay. Absolutely positive you didn't leave the house?

A. Absolutely positive. I do not own a car.

Q. You don't own a car.

A. I do not own -- I had a brown car, but it was impounded a month before this happened.

Q. Talked to Larry Patterson that night?

A. No.

Q. So, it's not true that you asked Larry Patterson for any kind of weapon that night, is it?

A. No.

Q. Nine millimeter gun?

A. No.

Q. Would you know where to get a gun late at

1 night on a Saturday night in your neighborhood?

2 A. Silvercrest.

3 Q. Okay. That's the only place?

4 A. That's it.

5 Q. And you were there; weren't you?

6 A. Yes.

7 Q. Isn't it true that you asked Larry to get
8 rid of Shawnte?

9 MR. GOODE: Your Honor, at this time I
10 would object to continually asking the witness what they
11 told Larry Patterson until the Prosecutor is going to
12 make a good faith proffer of proof.

13 MR. BALDASSANO: Judge, I am
14 cross-examining this witness and I have a good faith
15 reason on do so.

16 MR. GOODE: Your Honor, I would like to see
17 the basis of these questions outside the jury's
18 presence.

19 THE COURT: Retire the jury, please.

20
21 (WHEREUPON, the following proceedings were
22 had outside the presence and hearing of the jury:)

23
24 THE COURT: Let the record reflect the jury
25 has been retired.

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MR. GOODE: Judge, basis of my objection is that --

THE COURT: Are we on the record?

MR. GOODE: Yes, Your Honor.

THE COURT: You have to keep your voice up so the court reporter can hear you.

MR. GOODE: Judge, for the record, Your Honor, the basis of our objection is that it's my understanding that the witness, Larry Patterson, is not available to the State and Counsel's attempting to introduce through his questions evidence that he cannot otherwise get into evidence. That there is no basis, do not have a witness for rebuttal on this issue.

MR. BALDASSANO: Judge, the State is cross-examining this witness. I have a good faith reason to do so. I have a statement written by a person -- written by Larry Douglas Patterson given to Harris County Sheriff M. B. Johnson on June 27th, 1989, at 5:15 p.m. That's my good faith reason to ask this defendant -- this witness questions.

MR. GOODE: Judge, the nature of our objection is he's getting into evidence without even having the use of witness. Saying every statement the witness would say if the witness was here. The witness is not here.

1 THE COURT: Well, seems to show good faith
2 in asking that question, not as though he made up
3 somebody.

4 MR. GOODE: Not accusing him of making up
5 somebody.

6 THE COURT: Or attributing something to
7 someone without any basis, just using a name.

8 MR. GOODE: Judge, I am not accusing Steve
9 of making it up. He has a statement from that witness,
10 but both Steve and I know that witness is not available
11 to testify. In other words, this cannot be made a
12 matter of rebuttal.

13 THE COURT: That would be his problem;
14 wouldn't it?

15 MR. BALDASSANO: Right, that's --

16 MR. GOODE: He won't need to, Judge. He's
17 getting every bit -- he's going to go line by line
18 through the statement. That's as good as having the
19 witness here.

20 MR. BALDASSANO: Judge, I think in final
21 argument the Defense Counsel could say the questions are
22 in evidence and you didn't hear from any witness and if
23 they had the guy, why isn't he here and he can make a
24 lot of hay. They always do.

25 MR. GOODE: I think it's a clear violation

1 of our right to confrontation, not asking this fellow
2 about the statement he's making, getting statements into
3 evidence without being here.

4 MR. BALDASSANO: I'm asking the question,
5 not trying to bring anything into evidence, not trying
6 to do anything shifty or underhanded. Just trying to
7 examine this witness.

8 THE COURT: I don't want you to waive any
9 document around.

10 MR. BALDASSANO: I won't unless he asked
11 for it to be otherwise. I didn't even have it out.

12 THE COURT: All right. So, the jury
13 doesn't know where these questions are coming from. So,
14 they don't see a statement there that they can --

15 MR. BALDASSANO: No, Judge, I have it
16 just -- I already have the questions written down. This
17 thing is in a different area. He could --

18 MR. GOODE: I can't cross-examine him.

19 MR. BALDASSANO: He can call me a Nazi on
20 final argument, that I make all this stuff up and don't
21 have the witnesses to support it. Typically,
22 cross-examination on the Defense side is just like that,
23 ask a bunch of questions from somebody that is not here.

24 MR. GOODE: And often objected to and
25 sustained. The witness is not here. If the witness --

1 MR. BALDASSANO: Judge, I think I can
2 cross-examine her on she said she wasn't there. She
3 didn't do it. That's the end of the inquiry when I have
4 all this information.

5 MR. GOODE: She denied making any
6 statements, going through statements. Once she's denied
7 that she made any statement to this fellow, unless he's
8 prepared to bring the fellow in, go through each.

9 THE COURT: I don't think there's been an
10 absolute denial of making any statements. I think
11 there's been a denial of individual statements.

12 Do you follow what I'm saying?

13 MR. GOODE: Yes, Your Honor. Could he
14 preface his question: Have you spoken with Larry
15 Patterson about this? And if she denies it, unless
16 he's --

17 THE COURT: I'm not going to tell him how
18 to frame his questions because you have a date and time
19 in point. Actually, if you are going to impeach
20 somebody you need to orient them as to time and place
21 and person.

22 MR. BALDASSANO: I think he might object
23 more strenuously if I do, if I say: Isn't it a fact
24 that after you walked out of the house, you got in an
25 argument about a gun? I mean, I think that's something

1 that --

2 THE COURT: Counsel, that --

3 MR. BALDASSANO: I have no problem doing
4 that, Judge.

5 THE COURT: Why don't we take our afternoon
6 recess so both of you-all can cool off.

7 MR. BALDASSANO: Judge, I would rather not,
8 rather keep going forward on this.

9 THE COURT: That's fine, but the court
10 reporter needs a break.

11 MR. BALDASSANO: Yes, Judge.

12
13 (Brief recess.)

14
15 THE COURT: Please be seated, ladies and
16 gentlemen.

17 Are you-all ready for the jury?

18 MR. GOODE: Your Honor, I think we ought to
19 take advantage of this one other matter.

20 THE COURT: Okay.

21 MR. GOODE: I anticipate that the State is
22 going to call the husband of the defendant and I would
23 ask that they not invoke the marital privilege in front
24 of the jury. It will be invoked and I don't want that
25 in front of the jury.

1 MR. BALDASSANO: Judge, the State, based on
2 my conversations with the defendant's husband, probably
3 depending on what the defendant says in the rest of her
4 testimony I probably would attempt to call him and I
5 talked to him about his testimony on other occasions,
6 not today. I haven't talked to him whether or not he
7 wants to testify today for the State or for the Defense.

8 MR. GOODE: Judge, he has told me he wants
9 to assert his privilege of not testifying against his
10 wife and I am just asking that he not -- we not be
11 forced to do that in front of the jury.

12 THE COURT: We'll just retire the jury and
13 have another hearing. It's not an all-inclusive rule
14 and privilege, as you are well aware, and I am not going
15 to make a prospective ruling before he's called. Just
16 let me know and we'll retire the jury and have a
17 hearing.

18 MR. GOODE: So, that I have an oral motion
19 in limine that the Prosecutor is not, in front of the
20 jury, say they are calling him to the stand. I believe
21 the rule says they can comment on our failure to call
22 him, but the case law, I believe, says that they cannot
23 force us to invoke the privilege in front of the jury.

24 THE COURT: Any problem with that
25 procedure, sir?

1 MR. BALDASSANO: Well, Judge, I hate to
2 tell the jury or act like I am indecisive about whether
3 I am going to call witnesses or not. I would like to
4 know ahead of time if I can call the guy or not. I
5 don't want to sit here and act like I don't know if I
6 have another witness or, wait, let me talk to him before
7 I call him.

8 THE COURT: Just approach the bench before
9 you call him and then I will make that determination
10 without you invoking his name in front of the jury.
11 Fair enough?

12 MR. GOODE: That's all we want at this
13 time.

14 THE COURT: Mr. Baldassano?

15 MR. BALDASSANO: Yes, Your Honor.

16 THE COURT: Okay. Now, with respect to
17 asking questions, you can ask virtually any question in
18 the world, either side, unless there is an objection.
19 Once there is an objection then you-all have to follow
20 rules of law and with respect to any prior inconsistent
21 statement you have to say, and I am not going to lead
22 you through it, but do you know something, did you have
23 a conversation with them or so forth.

24 Are we ready to go?

25 MR. BALDASSANO: Sorry, Judge, I was trying

1 to concentrate on the other. I am allowed to ask
2 whether or not a conversation existed and I can
3 cross-examine her on statements that she supposedly made
4 to other witnesses; is that correct?

5 THE COURT: Seat the jury, sir.

6
7 (WHEREUPON, the following proceedings were
8 had within the presence and hearing of the jury:)

9
10 THE COURT: Jury may be seated.

11 You may continue, sir.

12 MR. BALDASSANO: Thank you, Your Honor.

13 Q. (BY MR. BALDASSANO) Ma'am, wouldn't you
14 agree with me that somebody that stripped a body naked,
15 threw it in the garbage can, threw garbage on top of it
16 and dumped it out under the road under a Crime Stopper's
17 sign, that person is trying to humiliate the person that
18 they killed?

19 Would you agree with that statement?

20 A. I would agree.

21 Q. Ma'am, isn't it true that you talked to
22 Larry Patterson that night about looking for a sucker to
23 help do in Shawnte?

24 A. No.

25 Q. Do you know a person named Cecil Taylor?

1 A. Yes.

2 Q. And how do you know Cecil Taylor?

3 A. Through Larry Patterson.

4 Q. And do you know -- are you familiar that
5 Cecil Taylor has a small caliber weapon?

6 A. Yes. So did Patterson.

7 Q. Isn't it true that you spoke with Cecil
8 Taylor that night about a .25 caliber chrome-plated
9 pearl-handled pistol?

10 A. No.

11 Q. Did you talk to a person named Paul Reyes
12 that night?

13 A. No.

14 Q. Do you know a person named Paul or Pablo
15 Reyes?

16 A. That man and the other two are associated
17 with Cavazos.

18 Q. Well, I am asking you if you know them?

19 A. I know who they are, yes.

20 Q. You do know them and can you describe Pablo
21 Reyes?

22 A. Mexican male, long frizzy black hair,
23 short, fat.

24 Q. Isn't it true that you used his car to put
25 the body in that night?

1 A. No, sir.

2 Q. Isn't it true that he helped you carry the
3 body?

4 A. No, sir.

5 Q. Now, are you saying that when Jesse Cavazos
6 testified about you coming by the next day and telling
7 them what you did, that he is making that up, that it
8 was just a mistake, you were talking about garbage being
9 in the kitchen?

10 A. That's correct.

11 Q. And he --

12 A. I didn't go there the next day.

13 Q. Okay.

14 A. I went there on Tuesday.

15 Q. Okay. On Tuesday and you went and you
16 talked to him about the garbage in his kitchen?

17 A. We were standing in the kitchen and you
18 couldn't move two garbage bags and I said you need to
19 take out your garbage.

20 Q. And he, by mistake, thought you meant that
21 you killed somebody and stuffed them in the garbage? Is
22 that what you are saying? Or that he was just plain
23 lying about the whole thing?

24 A. He's lying about that.

25 Q. But you did go over and talk about garbage,

1 but just garbage in the kitchen?

2 A. When I backed up and almost fell in it,
3 yes.

4 Q. Okay. So, when you said: I shot her. I
5 killed the bitch, that was something that --

6 A. No.

7 Q. You never said that at all? He just made
8 that up?

9 A. No.

10 Q. And when you told Angelica you finally put
11 out the trash, that's something that she just made up?

12 A. I would imagine with Jesse.

13 Q. And Pedro, also, when you said that she is
14 where she is supposed to be --

15 A. With Jesse?

16 Q. -- you weren't gloating over the fact that
17 she had been killed, were you?

18 You felt bad about it?

19 A. I asked questions of these people.

20 Q. Okay.

21 A. I --

22 Q. My question was: Were you gloating about
23 the fact that she was dead?

24 A. No.

25 Q. You were deeply hurt? Is that your

1 testimony?

2 A. I was hurt over it.

3 Q. Now, isn't it true that the day before your
4 arrest you talked with a person named Robbie Carter?

5 Do you know Robbie Carter?

6 A. Yeah, I know Robbie Carter.

7 Q. Isn't it true you spoke to him the day
8 before you were arrested?

9 A. He was with me the day I was arrested.

10 Q. Okay. But you talked to him before you
11 were arrested; isn't that true?

12 A. No, I don't think it was the day before.

13 Q. Isn't it true that you told Robbie Carter
14 that anybody who messes with you has to pay the price,
15 Shawnte paid the price?

16 A. No.

17 Q. Isn't it true that you were on your way to
18 Tennessee right before you were arrested?

19 A. My husband and I were split up and I
20 thought maybe I would go and stay with my sister.

21 Q. Now, ma'am, regarding your testimony
22 earlier, you stated that Shawnte was at your house on
23 Cedar Hill a lot or --

24 A. Never.

25 Q. -- that she didn't know where it was?

1 A. She did not know where I lived.

2 Q. Never been to your house?

3 A. Never been to Cedar Hill.

4 Q. And that regarding the statement that you
5 made to Wanda White you say, first of all, you talked
6 about this murder with her; is that correct?

7 A. She asked me what I was here for.

8 Q. And you told her murder, right?

9 A. And she asked what the deal was and I told
10 her what my attorney told me.

11 Q. Okay. And then, so, the statement she made
12 to the police was completely wrong?

13 A. Wrong.

14 Q. Any reason to believe that she is out to
15 get you?

16 Did she even know you before this happened?

17 A. She's an informant and --

18 Q. Did you know her before this happened?

19 A. No.

20 Q. You told the members of the jury here that
21 you told Wanda White that the girl was put in a garbage
22 can and that the girl was shot in the head; is that
23 correct?

24 A. I told her that the girl was in a garbage
25 receptacle and she was shot.

1 Q. Okay. And I believe you told your attorney
2 that and that's all you told; is that correct?

3 A. Sir?

4 Q. I believe you told the attorney: I am
5 accused of killing a girl in a barrel, something about
6 some Mexicans, because she slept with my husband and
7 then that's all you told her?

8 A. I didn't tell her that. I told her what my
9 attorney told me.

10 Q. What was that?

11 A. My attorney told me that I was accused of
12 murder of Shawnte Collins; that she was found in a
13 barrel and shot with a -- at that time, did not know
14 what caliber pistol or if it was a pistol. He did not
15 remember which part of the head she was shot in and that
16 she was found out on a road.

17 Q. And that's all he told you, right?

18 A. That's what he told me.

19 Q. Is that all he told you?

20 A. The motive.

21 Q. Okay. Anything else?

22 A. Just about, you know, what did I know or
23 people I knew or when was the last time I saw her.

24 Q. As far as you knew at that time, according
25 to your attorney, that's all the information you had?

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A. Right.

Q. And that's all the information that you could have possibly told Wanda White?

A. That's right, except that the last time I saw her she was in a dope house with the Mexicans.

Q. I understand and you didn't want here to be there because you liked her alot and you felt bad about that?

A. Yeah, I liked her.

MR. BALDASSANO: I will pass the witness, Your Honor.

MR. GOODE: May I proceed, Your Honor?

THE COURT: Any questions?

MR. GOODE: Just a couple, Your Honor.

REDIRECT EXAMINATION

BY MR. GOODE:

Q. Ma'am, do you have any physical defects or, rather, did you have any physical defects or deformities of the body at the time of February 18th?

A. Yes, I did.

Q. And what nature?

A. I have a tumor on my right shoulder that was removed (indicating) while I was here at Ben Taub that was this large (indicating).

1 Q. Okay. So, at the time of this occurrence
2 February 18th and 19th, you had a tumor on your right
3 shoulder?

4 A. Yes.

5 Q. Did that limit your movement in any way?

6 A. It impaired feeling. Sometimes I lost the
7 feeling and I couldn't lift heavy objects.

8 MR. GOODE: I pass the witness.

9 MR. BALDASSANO: I have nothing further,
10 Judge, of this witness.

11 THE COURT: You may step down, ma'am.

12 Call your next witness, please, sir.

13 MR. GOODE: Your Honor, the Defense rests.

14 MR. BALDASSANO: Your Honor, at this time I
15 have one other witness. Can we approach the bench
16 regarding that witness?

17 THE COURT: You may.

18
19 (WHEREUPON, there was a discussion held at
20 sidebar, outside the hearing of the court reporter.)

21
22 THE COURT: Retire the jury, please, sir.

23
24 (WHEREUPON, the following proceedings were
25 had outside the presence and hearing of the jury:)

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THE COURT: All right. Call your witness to the stand, please, and this proceeding is being conducted outside the presence of the jury.

MR. BALDASSANO: State calls Ronald Sutherland.

THE COURT: Has this witness been sworn?

THE BAILIFF: Yes, ma'am.

THE COURT: Please take the stand.

You may proceed, sir.

MR. BALDASSANO: Thank you, Judge.

1 RONALD JOE SUTHERLAND,
2 was called as a witness by the State, and after having
3 been duly sworn, testifies as follows:

4 DIRECT EXAMINATION

5 BY MR. BALDASSANO.

6 Q. Please state your name, sir.

7 A. Ronald Joe Sutherland.

8 Q. And do you know the defendant in this case?

9 A. Yes, sir.

10 Q. And I am going to call your attention to a
11 person named Shawnte Collins. Did you know her?

12 A. Yes, sir.

13 Q. And did you ever live with the defendant on
14 a location at Cedar Hill, in Harris County, in Houston?

15 A. Yes, sir.

16 Q. And how long did you live there?

17 A. Approximately six months.

18 Q. And during those six months did you ever
19 see Shawnte Collins come to that location?

20 A. No, sir.

21 Q. Never?

22 A. (Witness nods.)

23 Q. Did you ever sleep with Shawnte Collins?

24 A. No, sir.

25 Q. Sir, do you remember talking to me about

1 this case last week?

2 A. Yes, sir.

3 Q. Okay. And we discussed this case in the
4 jury room; didn't we?

5 A. Yes, sir.

6 Q. Okay. Do you remember me asking you these
7 very same questions about whether or not you slept with
8 Shawnte Collins?

9 A. Yes, sir.

10 Q. And do you remember what your response was
11 then?

12 A. Just the same, that I did not.

13 Q. I'm sorry?

14 A. That I did not.

15 Q. You don't remember telling me that you did,
16 you slept with her just once?

17 A. (Witness nods.)

18 Q. You don't remember that?

19 A. No, sir.

20 Q. It runs in the family.

21 MR. GOODE: Your Honor, I object to sidebar
22 comments of Counsel.

23 THE COURT: I didn't hear it.

24 Counsel, please, no sidebar remarks.

25 Q. (BY MR. BALDASSANO) Do you remember having

1 arguments with your wife over Shawnte Collins?

2 A. Her and I might have brought -- her name
3 may have been brought up, yes, sir.

4 Q. When you say may have been brought up, you
5 remember the name was brought up every time -- every
6 time you got into a fight your wife would bring up the
7 name Shawnte Collins?

8 A. No, that's not true.

9 Q. True she did bring it up very often?

10 A. It was brought up, sir, yes.

11 Q. How often?

12 A. Just on occasion.

13 Q. In your opinion, did your wife like Shawnte
14 Collins or dislike Shawnte Collins?

15 A. She did not care for her, no.

16 Q. Is that somewhat of an under statement?

17 A. No, sir.

18 Q. When you say she did not care for her what
19 do you mean?

20 A. She did not like her.

21 Q. And how do you know that?

22 A. She just brought it up, I mean, as far as
23 the arguments.

24 Q. In arguments she brought it up that she
25 didn't like Shawnte Collins; is that correct?

1 A. Yes, sir.

2 Q. Okay. Did you ever hear Shawnte Collins

3 refer to your wife as "ma"?

4 A. Seem like there was a couple of occasions.

5 Q. Do you remember seeing your wife on the

6 night of February the 19th, 1989?

7 A. Yes, sir.

8 Q. When did you see her?

9 A. About approximately midnight.

10 Q. Where?

11 A. At my residence.

12 Q. Where is that?

13 A. Off of Little York.

14 Q. That was a Sunday morning?

15 A. It would have been Saturday night.

16 Q. Late --

17 A. Or early Sunday morning, yes, sir.

18 Q. Are you sure about that?

19 A. Fairly sure.

20 Q. Well, when you say "fairly sure," how do

21 you know that you saw her that night?

22 A. It was a Saturday night, I know that.

23 Q. Okay. All right. Are you sure it is

24 Saturday night? Are you sure that you saw her that

25 night?

1 A. Yes, sir.

2 Q. No doubt about it?

3 A. Yes, sir.

4 Q. And where was she when you saw her?

5 A. Like I said, she came by my place with a
6 guy named Terry.

7 Q. And were they in a truck?

8 A. Yes, sir.

9 Q. Did they come in the house?

10 A. No, sir.

11 Q. Do you know why she came over?

12 A. Yes, sir.

13 Q. Why?

14 A. She had a shotgun for sale.

15 Q. And she wanted to sell you the shotgun?

16 A. Yes, sir.

17 Q. And did she talk to you about the shotgun?

18 A. Just that she had it for sale.

19 Q. How long did she stay?

20 A. Approximately 30 minutes.

21 Q. Thirty minutes?

22 A. Yes, sir.

23 Q. So, from about midnight to 12:30 or 12:31?

24 A. 12:00 to 12:30, yes, sir.

25 MR. BALDASSANO: I will pass the witness,

1 Judge.

2 MR. GOODE: Just a couple of questions,
3 Your Honor.

4
5 CROSS-EXAMINATION

6 BY MR. GOODE:

7 Q. Sir, your wife -- Shirley is your wife; is
8 that right?

9 A. Yes, sir.

10 Q. Sir, you understand you have a privilege
11 not to be called as a witness by the State against her?

12 A. Yes, sir.

13 Q. Do you want to be called as a witness
14 against her by the State?

15 A. No, sir.

16 Q. Do you want to -- in other words, do you
17 want to assert your privilege not to be used as a
18 witness against her by the State?

19 A. Yes, sir.

20 MR. GOODE: Your Honor, based on that we
21 have an objection to this testimony in front of the jury
22 and we object to their calling him as a witness to force
23 him to invoke that privilege in front of the jury.

24 MR. BALDASSANO: May I continue, Judge,
25 just a couple of more questions?

1
2 REDIRECT EXAMINATION

3 BY MR. BALDASSANO:

4 Q. When you had these fights about that you
5 said on a couple of occasions, you don't really remember
6 how often, but Shirley invoked or used the name Shawnte
7 in a fight; is that correct?

8 A. I wish to exercise my privilege not to
9 testify against my wife.

10 Q. That's not the way the game is played
11 because the jury is gone. You have to answer these
12 questions.

13 A. Okay. Would you re- --

14 Q. Did she use the name Shawnte in arguments?

15 A. Yes, sir.

16 Q. Ever have any of those arguments in front
17 of anybody?

18 A. Possibly.

19 Q. Well, when you say "possibly," was it an
20 argument that was --

21 A. I don't recall the specific instance.

22 Q. Okay. Were these arguments kind of quiet
23 just between the two of you or was it just sort of a
24 yelling kind of thing?

25 A. It got into that, yes, sir.

1 Q. Yelling. You ever remember if your son was
2 there?

3 A. Probably.

4 Q. Probably?

5 A. Yes, sir.

6 Q. Probably there?

7 A. Yes.

8 Q. Okay. And is it possible that other people
9 probably were there one or two times that you argued?

10 A. It's possible.

11 Q. Did you ever tell anybody else: Hey, she
12 keeps bringing the name Shawnte?

13 Did you ever tell Cecil or Larry Patterson
14 or any of your friends that, Robbie Carter that,
15 anybody, that Shawnte keeps bringing up this name?

16 A. No, sir.

17 Q. You never told anybody that you were having
18 marital problems?

19 MR. GOODE: Your Honor, at this time I
20 would object to this for this reason: Since the witness
21 already made it clear he does not intend to be used as a
22 witness for the State this is more of a fishing
23 expedition or discovery deposition by the State.

24 MR. BALDASSANO: I don't know what the
25 purpose of discovery would be at this extent of a trial,

1 but I think the marital privilege is fairly narrow and I
2 am trying to see if this guy fits in.

3 THE COURT: I am going to permit you to ask
4 whatever questions you seek to entertain in front of
5 this jury and then, Counsel, you have an opportunity to
6 object.

7 MR. GOODE: Thank you.

8 THE COURT: Or reurge the objection.

9 Q. (BY MR. BALDASSANO) Did you ever tell
10 anybody about marital problems that you might have been
11 having with your wife? -- or was it a secret?

12 A. Working associates.

13 Q. Okay. And what did you tell them?

14 A. You know, just that we were arguing or, I
15 mean, we were separated. So, it was obvious, you know,
16 at that time we were having problems.

17 Q. Did you ever get around with your friends
18 and say, you know, if she keeps doing this and keeps
19 bringing up that and keeps doing that, I mean, you know,
20 when guys talk about the girls are giving them a hard
21 time?

22 A. It's possible, yes, sir.

23 Q. Well --

24 A. I mean, I don't -- I don't remember
25 specific incidences, why I am answering it like that.

1 Q. Okay. Do you think it's possible that you
2 may have told somebody, you know, she keeps bringing up
3 the name Shawnte, keeps throwing it in my face?

4 A. No, sir.

5 Q. Did she do that?

6 A. She really didn't bring up Shawnte that
7 much to be honest.

8 Q. Okay. Did Shawnte ever go over to the
9 house on Cedar Hill?

10 A. I'm sorry?

11 Q. Did you ever see Shawnte at the house at
12 Cedar Hill?

13 A. No, sir.

14 Q. She never came over to see your son Larry?

15 A. Not that I -- not that I recall. Not while
16 I was there.

17 Q. Where did you meet Shawnte?

18 A. At a residence on Margaret.

19 Q. Okay. Is that where you used to live,
20 also?

21 A. Yes, sir.

22 Q. And how did you meet her?

23 A. Through her boyfriend. I believe she had a
24 boyfriend named Danny, I believe.

25 Q. Did she ever come over to the residence on

1 MARGARETT a lot or a little?

2 A. Not really all that much.

3 Q. Do you know why she came over? Must have
4 had a reason.

5 A. At that time they just would come over to
6 visit.

7 Q. To visit who?

8 A. Well, her and Danny were coming over.

9 Q. Right. To visit somebody at the house?

10 A. Shirley, Larry, myself, whoever.

11 Q. Okay. Asking you again, remember that you
12 are under oath?

13 A. Yes, sir.

14 Q. Ever have any sexual intercourse with
15 Shawnte or did you ever tell anybody that you did?

16 A. No. No, sir.

17 MR. BALDASSANO: I will pass the witness,
18 Your Honor.

19 MR. GOODE: Your Honor, may I state my
20 objection for the record now?

21 THE COURT: Do you have any questions?

22 MR. GOODE: No, Your Honor.

23 THE COURT: You may state your objection.

24 MR. GOODE: Your Honor, based on Rule 5042,
25 general rule of privilege, which states the spouse of

1 the accused has a privilege not to be called as a
2 witness by the State. Mr. Sutherland has invoked that
3 privilege and I ask the State not be allowed to call him
4 or call out his name in front of the jury forcing Mr.
5 Sutherland to invoke that privilege in front of the
6 jury.

7 MR. BALDASSANO: May I respond, Judge?

8 THE COURT: Yes, sir.

9 MR. BALDASSANO: While the rule invoked by
10 the Defense Counsel is Section B of subsection -- or
11 Subsection B of Section 1, it's part of Section 1.
12 Section 1 states: Confidential Communication Privilege.
13 Definition. A communication is confidential if it is
14 made privately by any person to his spouse and it is not
15 intended for disclosure to any other person.

16 This witness, first of all, he can testify
17 as to what he saw. That's not a communication. What he
18 saw is not communication that's privileged between a
19 husband and a wife. This rule applies not at all. I
20 mean, it's not even a near miss. This rule does not
21 apply to what he saw. He can testify to that. In fact,
22 he has to testify to that.

23 The general rule of privilege, Subsection B
24 talks about privileges that are made to the spouse while
25 they are married and not intended -- or Subsection A is

1 not intended for disclosure to any other person. This
2 witness testified they had loud fights; that probably
3 the son heard the fights; that Shawnte's name was
4 brought up during the fights; that he told business
5 associates about his marital problems; that it's likely
6 or it's probable that he might have told them about
7 something Shawnte did.

8 This witness is, first of all, what he saw
9 is not a communication, whatsoever, doesn't fall into
10 the purview of Rule 504(2). Also, any communications,
11 things that he heard from his wife were not made
12 privately and intended -- not intended to be for
13 disclosure to any other person. They were made in a
14 yell fight or probably the son was involved. There is
15 no inkling at all that this witness said these things or
16 heard these things in private.

17 MR. GOODE: Your Honor, may I respond?

18 THE COURT: Yes, sir.

19 MR. GOODE: The rule is a blanket rule,
20 does not require what Counsel is suggesting to the
21 Court. 504(2) plainly says in bold, black type,
22 privilege not to be called as a witness against the
23 spouse. I don't see how it could be any more plain.
24 He's invoked that right. All I can do is suggest,
25 perhaps, that Counsel contact his appellate division

1 once again.

2 MR. BALDASSANO: Judge, absolutely
3 positively, no. I will quit before I contact the
4 appellate section on this Rule 504(2) unless we have
5 different books.

6 THE COURT: Counsel, stop.

7 What is your true and correct name, sir?

8 THE WITNESS: Ronald Joe Sutherland.

9 THE COURT: And do you know the defendant
10 in this case?

11 THE WITNESS: Yes, ma'am.

12 THE COURT: And what is your relationship?

13 THE WITNESS: She's my wife.

14 THE COURT: And when did you marry?

15 THE WITNESS: September of '82.

16 THE COURT: And were you married by a
17 justice of the peace?

18 THE WITNESS: Yes, ma'am.

19 THE COURT: A minister?

20 THE WITNESS: Justice of the peace.

21 THE COURT: And where was that?

22 THE WITNESS: In Freeport, Texas.

23 THE COURT: And has that marriage been
24 terminated or dissolved?

25 THE WITNESS: No, ma'am.

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MR. BALDASSANO: Again --

THE COURT: Attorneys approach the bench.

(WHEREUPON, there was a discussion held at sidebar, outside the hearing of the court reporter.)

THE COURT: Sir, will you voluntarily testify in this case?

THE WITNESS: No, ma'am.

THE COURT: Did you earlier indicate to the Prosecutor that you would voluntarily testify?

THE WITNESS: I was specifically not asked. I don't believe -- did you specifically ask me, sir?

MR. BALDASSANO: I think I --

THE COURT: I am asking you.

THE WITNESS: I'm sorry.

THE COURT: Did you indicate to the Prosecutor that you would be a witness in this case?

THE WITNESS: I think I would be -- I told him that I was going to leave it up to my wife's attorney whether or not he wanted me to come in as a witness.

MR. GOODE: Just so the record is clear, he was subpoenaed by the State. That's the reason he was brought down here. The State subpoenaed him.

1 THE COURT: You understand the State
2 subpoenaed you as a witness?

3 THE WITNESS: Yes, ma'am.

4 MR. GOODE: He was, Your Honor. He was
5 forced to come.

6 THE COURT: You understand the State's
7 subpoenaed you as a witness, sir?

8 THE WITNESS: Yes, ma'am.

9 THE COURT: And not the Defense?

10 THE WITNESS: Correct. Yes, ma'am.

11 THE COURT: Did you know that?

12 THE WITNESS: Yes, ma'am.

13 THE COURT: All right.

14 THE WITNESS: I did, after I came to the
15 courtroom. I didn't know at the time that I was
16 subpoenaed when I got the actual notice.

17 THE COURT: Okay. When you arrived at the
18 courtroom who did you speak to?

19 THE WITNESS: The District Attorney.

20 THE COURT: And at that time did you then
21 discover you were subpoenaed by the State?

22 THE WITNESS: Yes, ma'am.

23 THE COURT: Okay. And did you answer the
24 questions they propounded to you at the time?

25 THE WITNESS: Yes, ma'am.

1 THE COURT: Okay. And at that time did you
2 indicate to the State that you would testify?

3 THE WITNESS: I asked the district
4 attorney, because I was a husband of the defendant, if I
5 would be required to testify. I did not tell him that I
6 would testify for the State.

7 THE COURT: Did you tell him that you would
8 not.

9 THE WITNESS: No, that's when I told him
10 that I was going to leave it up to her attorney if he
11 wanted to call me.

12 THE COURT: You were going to leave it up
13 to --

14 THE WITNESS: Right.

15 THE COURT: -- the defendant's attorney as
16 to whether or not you would testify?

17 THE WITNESS: Right.

18 THE COURT: Okay.

19 You may step down, sir.

20 THE WITNESS: Thank you, ma'am.

21 THE COURT: I want to get one other thing
22 straightened out while we are here. Bring him back on
23 the stand.

24

25

(WHEREUPON, the witness, Ronald Joe

1 Sutherland, resumed the stand.)

2
3 THE COURT: Do you understand that the
4 testimony that you provided outside the presence of the
5 jury has been under oath?

6 THE WITNESS: Yes, ma'am.

7 THE COURT: Do you understand the penalties
8 of perjury?

9 THE WITNESS: Yes, ma'am.

10 THE COURT: Now, one of the attorneys asked
11 you earlier if you saw your wife on the night of
12 February 19th or you said you saw your wife? I can't
13 remember how it came about.

14 THE WITNESS: Yes, ma'am.

15 THE COURT: Do you remember that?

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Okay. Did you say you did or
18 did not see her that night?

19 THE WITNESS: Yes, ma'am, I did.

20 THE COURT: Okay. And what night did you
21 see her?

22 THE WITNESS: It was -- it would have been
23 a Sunday morning between 12:00 and 12:30.

24 THE COURT: Okay. And that would have been
25 what day? February the what?

1 Would you like to see an '89 calendar, sir?

2 THE WITNESS: Yes, ma'am.

3 THE COURT: And what date would that be,
4 sir?

5 THE WITNESS: February 19th.

6 THE COURT: And what year?

7 THE WITNESS: '89.

8 THE COURT: Okay. And are you sure you saw
9 her?

10 THE WITNESS: That morning, yes.

11 THE COURT: And it would be about what time
12 that morning?

13 THE WITNESS: Between 12:00 and 12:30. She
14 was there for about 30 minutes.

15 THE COURT: Did you have a conversation
16 with her?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: And I believe your testimony
19 earlier was it was involving a sale of a shotgun?

20 THE WITNESS: Yes, ma'am.

21 THE COURT: And was there anyone present
22 besides you and your wife?

23 THE WITNESS: Another man named Terry. I
24 don't know his last name.

25 THE COURT: And where did the conversation

1 occur?

2 THE WITNESS: In his truck.

3 THE COURT: And this was located where in
4 Harris County?

5 THE WITNESS: It's at my -- it was at my
6 residence. I don't remember the street address, but
7 it's right off of Little York near the hospital there.

8 THE COURT: So, you did not invite them in?

9 THE WITNESS: No, sir -- no, ma'am.

10 THE COURT: But spoke outside on the curb
11 or in the truck?

12 THE WITNESS: In the truck, yes, ma'am.

13 THE COURT: And when did you last see your
14 wife on that date?

15 THE WITNESS: I don't think I saw her the
16 rest of the day. That's the last I saw her.

17 THE COURT: I mean, when did she leave?

18 THE WITNESS: It was about 12:30.

19 THE COURT: About 12:30?

20 THE WITNESS: Yes, ma'am.

21 THE COURT: And how did she leave?

22 THE WITNESS: By the truck. She left with
23 Terry.

24 THE COURT: And who was driving?

25 THE WITNESS: Terry was.

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THE COURT: Now, are you sure of this?

THE WITNESS: Yes, ma'am.

THE COURT: State have any other questions
to ask?

MR. BALDASSANO: No, Your Honor.

THE COURT: Do you, sir?

MR. GOODE: No, Judge.

THE COURT: You may step down, sir.

THE WITNESS: Thank you, ma'am.

THE COURT: Attorneys approach the bench,
please.

(WHEREUPON, there was a discussion held at
sidebar, outside the hearing of the court reporter.)

THE COURT: Seat the jury, please, sir.

(WHEREUPON, the following proceedings were
had within the presence and hearing of the jury:)

THE COURT: Jury may be seated.

State have any rebuttal witnesses?

MR. BALDASSANO: No, Your Honor.

THE COURT: State closes?

MR. BALDASSANO: State rests and closes.

1 right.

2 You-all drive carefully. Have a very
3 pleasant evening. We'll see you-all tomorrow at 9:30.

4 The attorneys are to remain behind.

5
6 (WHEREUPON, the jury was released until the
7 16th day of March, 1990.)

8
9 (WHEREUPON, the following proceedings were
10 had outside the presence and hearing of the jury:)

11
12 THE COURT: Let the record reflect that the
13 Court has presented to the lawyers a proposed copy of
14 the Court's charge. The defendant has been present at
15 all times, both attorneys have been present, and,
16 further, that the Court was advised in an unrecorded
17 charge conference that the defendant stated that her
18 last name is spelled S-u-t-h-e-r-l-a-n-d, not
19 S-o-u-t-h-e-r-l-a-n-d, and has requested that the
20 spelling be corrected.

21 Is that correct, Counsel?

22 MR. GOODE: Yes, Your Honor, that's
23 correct.

24 THE COURT: All right. The Court is going
25 to so order, then, that Sutherland, the spelling, be

1 changed.

2 Furthermore, I want the record to reflect
3 that when the defendant was arraigned the Court was
4 given the spelling of S-o-u-t-h-e-r-l-a-n-d. But I am
5 not going to quibble. Anyone can spell their name any
6 way they want to, except I am not taking any changes in
7 spelling after this. Fair enough?

8 MR. GOODE: Fair enough, Judge.

9 THE COURT: Now, with respect to the
10 proposed copy of the charge and I am not asking about
11 any requested instructions, but what's there now, State
12 have any objection to Page 1?

13 MR. BALDASSANO: Yes, Judge, and the
14 objection is in Harris County, Texas, is on Page 1,
15 paragraph 1, line 11 -- I'm sorry, Judge, not in the way
16 that's worded. No objection to Page 1, sorry.

17 THE COURT: Defense have any objection to
18 Page 1?

19 MR. GOODE: No, Judge.

20 THE COURT: State have any objection to
21 Page 2?

22 MR. BALDASSANO: Yes, Your Honor, to line 9
23 and 10 on Page 2 and from -- and line 16 and 17 on Page
24 2.

25 THE COURT: And what is the objection?

1 MR. BALDASSANO: The objection is that it
2 states that the State must prove beyond a reasonable
3 doubt that the offense occurred in Harris County, Texas.
4 It is the State's position that that is not an element
5 of the offense according to the Penal Code Section 1.07,
6 Subsection 13, which lists four elements of the offense
7 and the location is not one of those element. Second,
8 2.0 of the Penal Code lists the items that the State has
9 to prove beyond a reasonable doubt, listing each element
10 of the offense the State has to prove beyond a
11 reasonable doubt.

12 It's the State's position that Harris
13 County, Texas, is an allegation of venue and according
14 to the Code of Criminal Procedure the State need only
15 prove the allegation of venue by a preponderance of the
16 evidence. State would cite Article 13.05 of the Code of
17 Criminal Procedure as well as Article 13.07 of the Code
18 of Criminal Procedure.

19 THE COURT: What is your response, Counsel?

20 MR. GOODE: Judge, my response is that
21 since the indictment alleges that the crime was
22 committed in Harris County, it's an element. Whether or
23 not it's an element of the offense, it must be proven.

24 Furthermore, I believe that under the facts
25 of this particular case, in light of the fact that in

1 voir dire the jury was told that it was an element of
2 the offense that must be disproven beyond a reasonable
3 doubt, I think it would, even if Counsel is correct, I
4 think it would greatly mislead the jury in the facts of
5 this particular case.

6 THE COURT: The Court finds as follows:
7 That the Prosecutor is correct that is not necessarily
8 an element. However, the Court further finds that the
9 State is bound by its pleading and once it is plead that
10 then it then becomes an element of the offense and must
11 be proved beyond a reasonable doubt. I hope I have made
12 that clear for the record.

13 MR. BALDASSANO: Its clear.

14 THE COURT: In other words, the State could
15 very well have plead that the defendant was killed at a
16 unknown location and then go on to recite the rest of
17 the allegation and it would be up to the Defense to
18 raise the issue of venue.

19 MR. GOODE: I think that's exactly right,
20 Your Honor, and that is something that must be done
21 prior to trial. Venue is not an issue for a jury to
22 determine, anyway, but a matter of law.

23 THE COURT: Okay. Aside from that the
24 State have any objection to Page 2?

25 MR. BALDASSANO: No.

1 MR. GOODE: No objection from the Defense,
2 either, Judge.

3 THE COURT: Page 3. Any objection to Page
4 3?

5 MR. BALDASSANO: No.

6 MR. GOODE: No, Your Honor.

7 THE COURT: Page 4?

8 I mean the Defense, Page 3?

9 MR. GOODE: No, Your Honor.

10 THE COURT: Page 4 from the State?

11 MR. BALDASSANO: No.

12 THE COURT: Defense?

13 MR. GOODE: No, Your Honor.

14 THE COURT: And the verdict sheet?

15 MR. BALDASSANO: No.

16 MR. GOODE: No, Judge.

17 THE COURT: Now, with respect to the
18 Defense, does this charge contain all your requested
19 instructions?

20 MR. GOODE: Yes, Your Honor, it does
21 contain the alibi instruction we have requested.

22 THE COURT: Do we have a charge, gentlemen?

23 MR. GOODE: Yes, Judge.

24 MR. BALDASSANO: Yes, Your Honor.

25 THE COURT: And I understand that you have

1 made that request and if you want me to note on the
2 record your position to that, even though that's not
3 necessary, the Court will note that, also.

4 How much time for argument?

5 MR. GOODE: Thirty minutes a side, Judge.

6 MR. BALDASSANO: That's fine.

7 THE COURT: That's fine with the Court.

8 My normal procedure and practice is to give
9 the jury a copy of the charge, each member, while they
10 are in the jury box so that they may follow along with
11 the Court as the charge is read to it. If the lawyers
12 want to refer to the charge it's available to the jury
13 at that time. At the conclusion of the argument the
14 copies will be taken up and only the Court's signed copy
15 of the charge accompanies them to the jury room.

16 Any objection to that?

17 MR. BALDASSANO: No, Judge. In fact, I
18 read the appellate opinions commending this Court for
19 that very procedure.

20 THE COURT: The Court further tells the
21 jury that the lawyers have requested whatever period of
22 time they want for argument and that the Court also
23 provides a five-minute warning and if the lawyers need
24 some additional time to complete a thought process the
25 Court grants that request.

1 Any problem with that practice?

2 MR. GOODE: No, Judge.

3 MR. BALDASSANO: No.

4 THE COURT: That's it, then; isn't it?

5 MR. GOODE: 9:30.

6
7 (WHEREUPON, the proceedings were recessed
8 until the 16th day of March, 1990.)
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1 CAUSE NO. 526,673

2 STATE OF TEXAS

IN THE 180TH DISTRICT COURT

3 VS.

OF

4 SHIRLEY ANNETTE

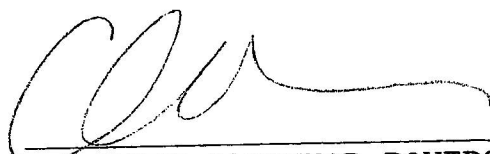
5 MARTIN SUTHERLAND

HARRIS COUNTY, T E X A S

6
7
8 I, KATHLEEN O'CONNOR POWERS, Official Court
9 Reporter of said court, hereby certify that the
10 foregoing pages comprise a true, complete, and correct
11 transcript of the proceedings had in the above-styled
12 and numbered cause.

13
14 WITNESS MY HAND AND SEAL OF OFFICE this the

15 22nd day of August, 1990.

16
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18
19 

20 KATHLEEN O'CONNOR POWERS
21 Official Court Reporter
22 180th District Court
23 Certification No. 2096
24 Expiration 12/31/90
25

1 CAUSE NO. 526,673

2 STATE OF TEXAS

IN THE 180TH DISTRICT COURT

3 VS.

OF

4 SHIRLEY ANNETTE
MARTIN SUTHERLAND

HARRIS COUNTY, T E X A S

5 A P P E A R A N C E S:

6 For the State: Mr. Steve Baldassano
Assistant District Attorney
7 Harris County, Texas

8 For the Defendant: Mr. Ken Goode
9 Attorney at Law
Houston, Texas

10
11
12 BE IT REMEMBERED that upon this the 16th
13 day of March, A. D. 1990, the above entitled and
14 numbered cause came on for Final Argument before the
15 Honorable Patricia R. Lykos, Judge of the 180th District
16 Court of Harris County, Texas; and the State appearing
17 by counsel and the Defendant appearing in person and by
18 counsel, announced ready for Final Argument, and a jury
19 having been selected and duly sworn, and all preliminary
20 matters having been disposed of the following
21 proceedings were had, viz:

1 THE COURT: Ladies and gentlemen of the
2 jury, both sides having rested and closed in the
3 punishment phase of the trial the next step is for the
4 Court to prepare its charge and the attorneys to present
5 their arguments to you. The charge has been prepared
6 and the Court will read it to you at this time.

7 Copies of the charge will be distributed
8 among you so that you may follow along with the Court as
9 the charge is read to you, and as the practice was in
10 the first part of the trial these copies will be taken
11 up and only the Court's signed copy will accompany you
12 into the jury room.

13 Is 15 minutes a side reasonable?

14 MR. BALDASSANO: Yes, Your Honor.

15 MR. GOODE: Yes, Your Honor.

16 THE COURT: Five-minute warning?

17 MR. BALDASSANO: Thank you, Judge.

18 MR. GOODE: Yes, Your Honor.

19
20 (WHEREUPON, the Court read its charge to
21 the jury.)

22
23 THE COURT: Are the attorneys ready?

24 MR. BALDASSANO: State is ready.

25 MR. GOODE: Yes, Your Honor, the Defense

1 is.

2 THE COURT: The State may open.

3 MR. BALDASSANO: Thank you, Your Honor.

4 If it please the Court, Defense Counsel,
5 members of the jury. First of all, I want to take this
6 opportunity to thank you for your verdict. I know it's
7 difficult to come to a verdict of guilty in any case,
8 especially a murder case. It's difficult because you
9 made the right decision and you should be proud of your
10 verdict.

11 I want to talk to you briefly about Shawnte
12 Collins. She was 20 years old when she died. Just a
13 baby. You heard about some of the things in her life.
14 You saw the pictures. Sure she had tattoos. She had
15 needle marks. She was a drug user. You also heard
16 about her father. He was a drug user. Maybe this is
17 not the type of person that you hung around with or the
18 type of person that you have known; but, please, when
19 you decide your verdict on punishment don't hold it
20 against her that she had a difficult life. Her life was
21 as valuable, I submit to you, as valuable to her as your
22 life is. Please don't hold it against her that she had
23 a difficult life.

24 The Defense Counsel will speak to you. I
25 will close the evidence. I can tell you right here and

1 now that when I argue the closing part of the my
2 argument I will ask you to give the Defendant a life
3 sentence. It's the second place where you can sign the
4 verdict. Life and a fine. Life and a \$10,000 fine, and
5 the reason I am asking you to give life and a \$10,000
6 fine, not because I think a fine is particularly
7 relevant or important to assess against anybody; but,
8 because that's the maximum. That's the most you can
9 give and I feel the facts in this case as presented
10 support the verdict in punishment of the maximum. Right
11 now your verdict is just a signature on a piece of
12 paper. It has no meaning. I submit to you to give that
13 verdict some meaning. Give this defendant life in
14 prison and a \$10,000 fine because that's the most you
15 can do.

16 THE COURT: You may proceed, Counsel.

17 MR. GOODE: Thank you, Judge.

18 May it please the Court, Counsel, ladies
19 and gentlemen of the jury. I can assure you mine is not
20 a very enjoyable task right now and I am not going to
21 talk very long with you. You have reached your decision
22 beyond a reasonable doubt that my client committed this
23 heinous murder. I would urge you to remember the voir
24 dire. Remember that each of you promised that you would
25 consider the full range of punishment, not automatically

1 return a sentence of life in prison or life with a
2 \$10,000 fine; but, instead, deliberate, consider the
3 facts, consider the circumstances. I am not going to
4 get up here and say the lifestyle of the deceased should
5 militate against or for any particular punishment. I do
6 suggest that you consider the full range of punishment
7 considering all the facts as they were presented to you
8 and I, on behalf of my client, ask for some leniency, if
9 you can find it within yourself to give it.

10 Thank you.

11 THE COURT: You may proceed, Counsel.

12 MR. BALDASSANO: Thank you, Your Honor.

13 Members of the jury, just as an
14 illustration, you can use this railing in front of you
15 as the full punishment range. Start down at the bottom
16 and five years and go all the way up to life
17 imprisonment and a \$10,000 fine. Well, where do you go?
18 What do you do? How do you make your decision? I
19 submit to you, first of all, the exhibits in the case
20 help. Why do they help? Because it shows that not only
21 the horrible heinous murder that was committed; but, the
22 humiliation that was suffered by Shawnte Collins.

23 Start from five years. You consider, first
24 of all, I think it's a reasonable inference from the
25 photographs, that was an execution-type killing. You

1 heard the medical examiner testify how it was a fairly
2 close range gunshot wound straight to the head. You
3 also know that Shawnte Collins was stripped down. She
4 was thrown in a trash can, a bucket, just discarded like
5 a piece of trash. Just like the defendant said to
6 everybody. Garbage was thrown on top of her.

7 What's the very worst thing? What's the
8 biggest mockery in all of this? What makes it a life
9 sentence case? Crime Stopper's sign. Isn't that the
10 final word from the defendant, how she feels about
11 things. Under a Crime Stopper's sign? That is how
12 20-year-old Shawnte Collins ended up.

13 What else makes you think that this
14 defendant is worthy and has and deserves the full
15 sentence in this case? Well, what about her testimony?
16 She gets up here, first, she, herself, the girl throws
17 her in a garbage can, throws her on the side of the road
18 like a piece of trash. Then she gets up and in the
19 courtroom, says: Shawnte Collins, she's good people.
20 She's good people. Can you imagine the nerve of this
21 defendant when everybody here knows how she felt about
22 Shawnte Collins? She hated the girl. She not only
23 hated her, she killed her, humiliated her, threatened
24 her, and then she comes into court and has the audacity
25 to say she called me mom. She's good people. I was

1 concerned about her.

2 Now, we all know what the defendant is
3 capable of because we heard the testimony in this case
4 and we have seen the photographs. You know and I know,
5 the Defense Counsel knows, everybody that's listened to
6 the case knows what she is capable of; but, that's not
7 true for the rest of the people in Harris County, Texas.
8 I will submit to you that the large percentage of people
9 in the county will never hear about this case, will
10 never know what this defendant is capable of.

11 If this defendant gets anything less than a
12 life sentence that means that some day she can be out
13 walking the streets. And do you know what you would do
14 if you saw the defendant walking on the other side of
15 the street? Well, you would get yourself and your
16 family and anybody you were with and you would probably
17 get to the other side of the street and get away from
18 her. What happens if you see the defendant in the
19 Circle K? Well, you would probably get out of the
20 Circle K as fast as you could because you know what
21 she's capable of. What happens if you see the defendant
22 in an elevator or an alleyway? You would get out of
23 there, because you know and I know what she's capable
24 of; but, unfortunately, all the other people of Harris
25 County, Texas, do not know that. I will submit to you

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1 that you have a responsibility to them. You have a
2 responsibility to keep this defendant off the streets
3 for the maximum amount of time allowed by law and that
4 would be a life sentence, also, again, a \$10,000 fine.

5 Another thing, and this is a possibility
6 from the defendant's own testimony. She told you:
7 Yeah, me and my husband, Ron, well, we have an open
8 marriage. We don't really care who sleeps with whom.
9 Well, if that's true, and her husband does sleep with
10 somebody else, what's going to happen to that person?
11 Don't let this defendant have one free murder.

12 Oh, well, give her a light sentence this
13 time. We'll give her something less than life and then
14 next time we'll really punishment her if she kills
15 somebody. The time is now. The time is now to give
16 this defendant the maximum sentence, life in prison and
17 a \$10,000 fine, because that's the most you can do.
18 It's the second place to sign on the jury form and I
19 will suggest to you that the evidence supports this,
20 completely. Look at the photographs again. Give the
21 defendant what she deserves.

22 THE COURT: Would you please take up the
23 copies of the Court's charge, sir.

24 Ladies and gentlemen of the jury, having
25 found the defendant guilty of the offense as alleged in

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1 the indictment and, further, already having selected
2 your foreman, your sole duty at this time is to retire
3 and to commence your deliberations with a view to
4 reaching a unanimous verdict which the jury deems
5 appropriate consistent with the Court's charge.

6 Now, during the voir dire there was some
7 mention of whether or not a jury would be sequestered.
8 Please be advised that you have all the time that you
9 need to reach a verdict in this case. Do not feel that
10 you are being rushed and this jury will not be
11 sequestered.

12 Mr. Bailiff, here is the Court's charge.
13 Would you please retire the jury so that they may
14 commence their deliberation?

15
16 (WHEREUPON, the jury was retired to
17 commence their deliberations.)

18
19 (WHEREUPON, the following proceedings were
20 had outside the presence and hearing of the jury:)

21
22 THE COURT: Let the record further reflect
23 that the jury is in retirement. This hearing is being
24 conducted outside the presence of the jury.

25 With respect to the last remark the Court

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1 made to the jury, the Court consulted with the Defense
2 attorney prior to making the remarks about sequestering;
3 is that correct, Counsel?

4 MR. GOODE: Yes, Your Honor, that's not
5 only correct; but, we have also already signed a
6 separation agreement.

7 THE COURT: While the jury is deliberating
8 the issue of punishment I want everyone to be aware that
9 I am instructing the Prosecutor of this Court to review
10 the record and the testimony of the defendant and the
11 testimony of her husband with respect to her whereabouts
12 on the night in question with a view to determining
13 whether or not they intend to prosecute someone for
14 perjury.

15 MR. BALDASSANO: Yes, Your Honor.

16 THE COURT: Be at ease.

17
18 (Brief recess.)

19
20 THE COURT: Attorneys ready for the jury?

21 MR. BALDASSANO: Yes, Judge.

22 MR. GOODE: Yes. Judge.

23 THE COURT: Please seat the jury.

24
25 (WHEREUPON, the following proceedings were
0000 0000 2990 1448

1 had within the presence and hearing of the jury:)

2
3 THE COURT: Jury may be seated.

4 Let the record reflect that the defendant
5 is present with her attorney and the State's attorney is
6 present and all 12 members of the jury are present.

7 Mr. Foreman, has the jury reached a
8 verdict, sir?

9 THE FOREMAN: Yes, Your Honor, we have.

10 THE COURT: Is it unanimous?

11 THE FOREMAN: It is unanimous.

12 THE COURT: And is it in writing signed by
13 you, sir?

14 THE FOREMAN: Yes, it is, Your Honor.

15 THE COURT: Would you please hand the
16 charge and the attached verdict sheet to the bailiff.

17 THE FOREMAN: (The Foreman complies.)

18 THE COURT: Thank you.

19 You may be seated.

20 Will the defendant please rise.

21 Cause No. 526,673, styled the State of
22 Texas versus Shirley Annette Martin Sutherland.

23 Having found the defendant guilty of the
24 offense as alleged in the indictment, we, the jury,
25 assess defendant's punishment at life confinement in the

1 institutional division of the Texas Department of
2 Criminal Justice and in addition assess a fine of
3 \$10,000. Signed W. A. --

4 THE FOREMAN: Wothke.

5 THE COURT: I'm sorry?

6 THE FOREMAN: Wothke.

7 THE COURT: What?

8 THE FOREMAN: Wothke.

9 THE COURT: -- Wothke, foreman of the jury.

10 If this be the unanimous verdict of all 12
11 jurors would you please raise your right hand signifying
12 same?

13 Let the record reflect that all 12 jurors
14 have raised their right hand.

15 Do you wish to have the jury polled, sir?

16 MR. GOODE: No, Your Honor, that wouldn't
17 be necessary.

18 THE COURT: Please be seated.

19 Madam Clerk, would you please note the
20 jury's verdict, the time and date and receipt thereof on
21 the Court's docket, record, minutes, and other documents
22 of this Court.

23 Ladies and gentlemen, your participation in
24 this trial is now concluded and the prohibition that you
25 were under earlier not to discuss this case among

1 yourselves nor with anyone else is now removed and you
2 are free to discuss this case with whom you choose and
3 free not to. It is entirely your election.

4
5 (WHEREUPON, the jury was released.)
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1 CAUSE NO. 526,673

2 STATE OF TEXAS

IN THE 180TH DISTRICT COURT

3 VS.

OF

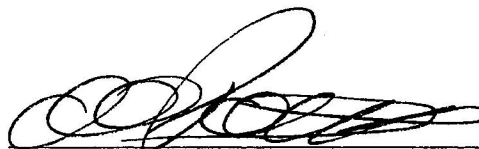
4 SHIRLEY ANNETTE
5 MARTIN SUTHERLAND

HARRIS COUNTY, T E X A S

6
7 I, KATHLEEN O'CONNOR POWERS, Official Court
8 Reporter of said court, hereby certify that the
9 foregoing pages comprise a true, complete, and correct
10 transcript of the proceedings had in the above-styled
11 and numbered cause.

12
13 WITNESS MY HAND AND SEAL OF OFFICE this the

14 11th day of September, 1990.

15
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20 KATHLEEN O'CONNOR POWERS
21 Official Court Reporter
22 180th District Court
23 Certification No. 2096
24 Expiration 12/31/90
25