

EXHIBIT G

ORIGINAL

Supreme Court

★ 91-239

VOLUME IX of XXI

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

 *
 THE STATE OF NEW HAMPSHIRE *
 *
 v. *
 *
 PAMELA SMART *
 *

90-S-1370
 90-S-1371
 90-S-1372

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 JUN 25 1993

TRANSCRIPT OF TRIAL PROCEEDINGS

Held before the Honorable Douglas R. Gray, Presiding
 Justice, at the Rockingham County Superior Court, Exeter, New
 Hampshire, commencing on March 5, 1991.

APPEARANCES:

For the State: Paul A. Maggiotto
 Diane M. Nicolosi
 Assistant Attorneys General

For the Defendant: Mark L. Sisti
 Paul J. Twomey
 Attorneys at Law

Court Reporter: William N. Wojtkowski, CSR

I N D E X

Opening Statements:

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State's Witnesses:

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
1. Paul Dacier	41	55	-	-
2. Gerald Scaccia	60	79	86	-
3. Mark Myrdek	88	131	-	-
4. Guy W. Kimball	137	144	-	-
5. Patrick Randall	147			

MARCH 5, 1991 - TUESDAY MORNING SESSION - 9:29 A.M.

P R O C E E D I N G S

THE COURT: Good morning. Ladies and gentlemen, before we begin, you all have note pads on your seats. You may take notes during the trial. Do not take notes, however, during either openings or closings. Do not take notes to the exclusion of testimony. In other words, don't take so many notes that you don't pay attention to what the witnesses are saying. And, lastly, if there's a discrepancy during your deliberations between your notes and your recollections, you are to take your recollections and not your notes. Other than that you may take notes, but be rather cautious about it.

All right, counsel.

MS. NICOLOSI: Thank you, Your Honor.

STATE'S OPENING STATEMENT

MS. NICOLOSI: Good morning everyone. Nice to see you all returned.

Ladies and gentlemen, my name's Diane Nicoloci. We've been introduced before. Again, this is Paul Maggiotto.

On May 1st, 1990, at about 9:30 Gregory Smart came home from a late business meeting. He turned on the lights -- he opened his front door, he turned on the lights, and called for his dog. But his dog didn't respond that night. Instead, the response came from a 16-year-old boy named William Flynn, who jumped out from behind the door and grabbed Greg. A second boy named Patrick Randall helped pull Greg into the condo and shut the door behind him and then turned out the lights.

Once the two had Greg inside, they ordered him to his knees. Greg pleaded with them not to hurt him and he asked them what they wanted, but they said, "Shut up. Shut up."

After they had him on his knees, Patrick Randall held Greg by the hair, with a knife in front of his throat. Bill Flynn stood off to his side, with a gun in his jacket, and they robbed him. But, ladies and gentlemen, robbery was not the motive that night; murder was.

After they robbed him, Bill Flynn tapped his jacket pocket and looked to Patrick Randall,

and Patrick Randall nodded yes. Bill Flynn took a .38 caliber revolver from his inside jacket pocket, pulled the hammer back, pointed it at his kneeling victim and fired one fatal shot into the head of Gregory Smart.

Gregory Smart, the man that was killed that night, was the defendant's husband. William Flynn, the 16-year-old boy who pulled the trigger, was the defendant's lover. And, ladies and gentlemen, it was that woman (indicating) who initiated, orchestrated and directed William Flynn to kill her husband.

Now, how did it happen that the defendant convinced William Flynn to kill Gregory Smart on May 1st? Well, this case really begins back in the fall of 1989. The defendant lived in Derry with her husband. He was 24 years old. His name was Gregory Smart. He was an insurance salesman for Metropolitan Life Insurance. They had been married just since the prior May. Greg worked at Metropolitan. He followed in the footsteps of his dad. The defendant was the media director at the School Administrative

Unit or SAU 21. Her office building was located across the parking lot from Winnacunnet High School.

William Flynn was a sophomore at Winnacunnet High. When he met the defendant, he was 15 years old; she was 22.

In the fall of every year, Winnacunnet High offers a three-day drug prevention/self-awareness program called Project Self-Esteem. Bill participated as a freshman and then as a sophomore. They asked him to come back and be a student facilitator. The defendant volunteered to be an adult facilitator, and their relationship began innocently enough. The defendant showed him pictures of herself with Eddie Van Halen, the lead guitarist in a group named Van Halen. That was Bill's favorite group. She drove a car that bore the license plate HALEN, and even her dog was named Haley. Bill was attracted to this 22-year-old woman whose interests were so similar to his. He started visiting her at her office, sometimes alone, sometimes he'd go with other students. Another

student named Cecelia Pierce would be there when he went.

Cecelia also met the defendant as a student intern -- excuse me -- as a student facilitator. After that, she became the defendant's student intern at the media center. She went over two periods every day and worked with the defendant. They became very, very close friends.

At some point in the early fall -- late fall, early winter, the defendant decided she wanted to enter an orange juice video commercial contest, and she asked Bill and Cecelia and a couple other friends to help her. And so every day Bill and Cecelia began to work on this video with the defendant, sometimes during school periods, sometimes after school and on the weekends, and that went along.

Sometime in February, the defendant revealed her attraction to Bill. She said to him, "Do you ever think of me when I'm not around because I think of you all the time." And she began immediately to characterize her relationship with Gregory Smart as a lousy one. They didn't get

along, he didn't treat her well. She even went so far as to show Bill bruises that supposedly Greg had caused her. She said she didn't know what to do about Greg.

At first, Bill couldn't believe it. He didn't believe she was serious. He didn't know what to think. He was confused and a little thrilled by the thought that this woman that he'd come to admire and liked so much would actually be interested in him.

But in the next days she reiterated her feelings for Bill, and Bill began to take her seriously. But it seemed so simple to Bill. Why didn't she just get a divorce? If things were so bad, if Greg treated her poorly, if she didn't love him, why didn't she just divorce him? But the defendant responded that Greg would never leave her alone, she'd lose her dog, condo, all her furniture.

From there, Bill's entanglement with the defendant quickly progressed, both emotionally and physically. Not only will you hear about this involvement directly from Bill, but

close friends and associates will tell you about seeing them together. And Cecelia Pierce will tell you about them being together at the Derry condo when Greg was away. But, in addition, you'll hear about love letters she sent to him, and you'll even have an opportunity to hold one of those letters and read it, one that escaped Bill's attempts to destroy all his links to his lover prior to his arrest. But most of all, you'll listen to the defendant's own taped -- own voice on a tape, expressing one of her greatest fears, that the police might find one of those notes. She herself acknowledges the affair; says if she has to she'll admit the affair but not her involvement in the homicide. And you'll learn that as Bill's attachment to the defendant grew and grew, she convinced him to murder her husband.

At first, she said that he had to find someone to do it for her. When he repeatedly told her he didn't know anybody who could do such a thing, she said, "Well, you'll have to do it yourself."

One weekend when Greg was away, the defendant had Bill stay over. On the way home, as she was returning him to his mother's house in Seabrook, she said to him that they could no longer see each other anymore; that Greg was getting suspicious of her working late. That was the first time the defendant had sexual intercourse with Bill. He was a virgin, a boy, way over his head in this relationship. On the way home, she was unequivocal; she said that the only solution was to kill Gregory Smart.

On that ride Bill began to cry, too, because he knew that he would no longer be able to have her in his life if he didn't kill her husband. If there had been any question in his mind before, he knew she was serious about the ultimatum.

After that, the defendant began to plan will Bill in earnest. If he said, "We can't do this, it's not going to work, I don't have a gun or a car," she'd get angry. She said, "Ask your friends for help." So he turned to his two closest friends, Vance Lattime and Patrick

Randall. At first they said he's nuts, crazy, you'll never get away with it, you'll get caught. They kept talking about it, talking about it, so they finally understood he was serious.

Bill told the defendant, "Nobody's going to do this for nothing." So she said, well, they could have anything in the condo, take anything, VCR, stereo. When Bill promised his friends a thousand dollars for their assistance, she said, all right, she'd pay, but not a thousand dollars. She'd only pay \$500.00. And as he talked it over with his friends, the defendant talked it over with Cecelia Pierce on a daily basis, who was her confidante.

This was the defendant's plan: She told Bill to bring black clothes to change into behind the shopping plaza that is adjacent to her condominium so they wouldn't be seen as they went from the shopping plaza across the field to her unit. She told Bill to park in the front of the plaza, not the back, because the police patrolled every hour. She told Bill she would leave the bulkhead open and the back door so he

could enter freely. She told Bill to go inside and ransack it so it looked like a burglary had taken place. She told Bill to wear gloves so that they wouldn't leave fingerprints. She told Bill to put Haley in the basement so he wouldn't bark -- it wouldn't bark. She told Bill not to turn the lights on because it would scare Gregory Smart away. She told Bill to hide in the closet at the bottom of the stairs so that when Greg hung his coat, as she knew he did every night, Bill could jump out at him. And, ladies and gentlemen, she (indicating) told Bill to murder her husband.

Now, this wasn't a passing idea or thought. The defendant tried to put her plan into action on two prior occasions. She said to Bill once she had a meeting and that Greg would be home late. She instructed him to find a gun and a car, and she said that that was the night that he had to do it. But Bill didn't take her seriously enough, so he didn't do anything. Instead, when that night came he called her and said he couldn't kill Greg that night because he

couldn't find a car. And Bill will tell you that the defendant flipped out and started yelling at him. She said that if he wouldn't do it then they couldn't see each other anymore, and Bill began to cry. And when he hung up the phone he believed that night that they were over. But the next day the defendant said everything was okay, because she had another meeting and he had another opportunity to kill for her.

Well, this next time Bill got a little closer. He asked an older Seabrook friend named Raymond Fowler to help him. Fowler, enticed by the stuff that he could take from the apartment and from -- by the money, agreed to go along. But they had the same two old problems -- no gun and no car. They searched, to no avail, for a gun, and finally the two decided that they would stab Greg instead, and the defendant came through with the car. She promised she would leave the keys in her car while she was in her office building attending that meeting.

So a few weeks before May 1st, William Fowler, Patrick Randall, Vance Lattime --

Raymond Fowler, Vance Lattime, Patrick Randall, William Flynn and Danny Blake went to the Newington Mall, and they were driven there by a kid named Chris Gosselin, to buy concert tickets. On the way back, Raymond Fowler and William Flynn were dropped off at Smart's car. Not only will William Flynn tell you about this, but the other boys in the car will corroborate it. As planned, the defendant left the keys in the car. On the car stereo she left a tape set to play a Van Halen song, the song she had played for Bill the first time they had had sex. It's named "Black and Blue."

With Fowler driving, they stopped to pick up a bag with black clothes and two pairs of sneakers. They stopped at Freedom Drug to buy latex gloves. Then they headed to Darry. But Bill got cold feet. He didn't think he could go through with it. So he directed Fowler to take a wrong turn. When they finally arrived at the condominium, Greg was already home. So they couldn't carry out her plan. They called -- Bill called the defendant from the shopping plaza near

the condominium, and she said hurry back because she was hiding in her office and was afraid she would be seen.

When the two boys returned to Winnacunnet, to her office building, she asked to see the gun, and when Raymond Fowler showed her the knife she got upset. She said stabbing was too messy. And after they dropped Raymond off, she turned her anger and disappointment to Bill. She said he never intended to kill her husband; that he had intentionally gotten lost on the way. If he wasn't going to do it, then they couldn't see each other anymore. Bill got upset, and he assured her that he would do it; that it was an error, and that he had gotten lost because he had never gone out to the condominium in the dark, even though she had shown him the way. He said, "Why would I have gone up there in the first place if I wasn't serious?" And you'll hear from Cecelia and Bill that the defendant, prior to this, had driven them around the area and had actually provided Bill with written directions of how to get to the condominium.

But not only Bill will tell you about the disappointment that the defendant expressed. Cecelia Pierce will tell you that she was angry and annoyed at Bill's failure, and the defendant told both Cecelia and Bill that Bill had one last opportunity to kill Gregory Smart. Her last meeting was on May 1st, 1990.

After this failed attempt, Bill knew that he had to do it, and it was understood that Patrick Randall and Vance Lattime would help him. Vance Lattime arranged to borrow his grandmother's car, and he also got his father's gun, a Charter Arms .38 revolver. The defendant gave Bill money to buy bullets for that gun, and it was decided that Patrick and Bill would go into the condominium on the night of the murder, but otherwise the plan was the same plan. It was her plan.

On May 1st, the boys were all set to go, but there was just a little, little glitch. The defendant got a little closer to the action than she'd planned. Vance's grandmother couldn't bring the car to Seabrook so they needed a ride

to Haverhill to pick it up. So Bill called the defendant, the only adult, the only one who owned a car. That was the first opportunity, on the drive to Haverhill, that Patrick had to discuss the plan with the defendant. He said he wanted to go over it one more time. She said she would leave the back door and the bulkhead open, not to turn the lights on and not to hurt her dog. She said in the car ride that she left some jewelry in a box upstairs that they could take, and she questioned how she should react when she came home and found her husband dead on the floor. Should she scream, run door to door to the neighbors for help? And when she was asked by Pete if she would mind seeing a lot of blood, because he would rather stab Greg than shoot him because it was quieter, she said no, she didn't want blood on her furniture, it was too messy. But Bill assured her they'd shoot him, and at some point he showed her the gun.

After they returned to Seabrook from Haverhill with JR's -- JR is the nickname for Vance Lattime -- grandmother's car, the defendant

left. The three boys went to Bill's house to get the duffel bag with the black clothes, the sneakers and the latex gloves, and they picked up Raymond Fowler at Ralph Welch's house. From there it went exactly as the defendant had planned.

The boys arrived at the shopping plaza and they waited till dark. Bill and Patrick changed behind the plaza. They entered the condo by the bulkhead door and they went in and ransacked it and waited from Gregroy Smart to come home, and when he did they grabbed him, they pulled him inside, they got him on his knees, and while Pete held him by the hair with a knife in front of him, Bill Flynn shot him once in the head, and then they fled and Vance and Raymond picked them up behind the shopping mall and they all returned to Seabrook.

For the defendant's participation in the premediated and deliberate murder of her husband she is charged with the crime of accomplice to first degree murder. We'll prove that the defendant, with the purpose of facilitating and

promoting the first degree murder of her husband Gregroy Smart, she aided Bill in the planning and commission of the murder and that William Flynn purposely caused the death of Gregory Smart by shooting him in the head.

She is also charged with conspiracy to commit murder. We'll prove that the defendant, with a purpose that the murder of her husband be committed, she agreed with William Flynn to cause the murder to be committed, and in furtherance of that conspiracy at least one overt act was taken by one of her co-conspirators that were listed in the indictment that was read to you by the clerk of court yesterday.

Now, after the murder, you'll hear about the cover-up and the defendant's attempts to ensure that she wasn't found out. She collected \$140,000 of insurance money that was available due to the death of her husband. As the police investigation progressed, she kept her co-conspirators, accomplices informed through Bill. As the police investigation progressed, there were no apparent suspects, and she continued

her illicit affair with her juvenile lover, all as she had planned.

But in June, almost a month and a half after the death of her husband, something happened that the defendant didn't plan for. Raymond Fowler began to talk, and Ralph Welch, a boy who lived with the Lattimes, heard and he confronted his two very good friends, Vance Lattime and Patrick Randall, and they told him what they had done on May 1st. Ralph, devastated by what he had learned, went to Lattime's parents. And Mr. Lattime went and retrieved his .38 caliber revolver from his drawer of the bureau where his son had returned it, and he and his wife, despite the apparent involvement of their own son, brought the gun down to the Seabrook Police Department for a ballistics test, and the defendant's perfect murder began to unravel. Within two days, William Flynn, Vance Lattime and Patrick Randall turned themselves in and were arrested by the police.

Each of the boys were charged with first degree murder after their arrest. In January

of 1991 they decided to admit their involvement in the homicide and they pleaded guilt to second degree murder. All three have agreed to tell all that they know about the killing of Gregory Smart, and they will tell you. In exchange, we allowed them to plead guilty to second degree murder, and some day we'll recommend that they receive a lesser sentence than they would have had they been convicted of first degree murder, the greater offense. But these agreements are conditioned on them truthfully testifying, and if they do not truthfully testify, then we have the right to charge them and try them for first degree murder.

The police, at this point they had spoken with Cecelia Pierce once before early on. They questioned her again. The defendant told Cecelia to lie about her involvement in the murder of her husband, and she told Cecelia to lie about her affair with William Flynn. She instructed Cecelia on how to beat a polygraph test, although she said -- encouraged her not to take it. She said if her mother forced her to, she told her

how to beat it. She manipulated and lied to her, told her she'd get in trouble too because she knew about the murder plan before it took place.

On June 14, after twice denying any knowledge of the homicide, Cecelia Pierce would keep her secrets no longer. She told her mother first, then told the police about the defendant's involvement in the homicide of her husband and her involvement in the planning and the cover-up. And during the trial she'll tell you.

For her actions with Cecelia Pierce, the defendant is charged with witness tampering. We will prove that the defendant, knowing that an official proceeding, an investigation into her -- to the death of her husband was pending, she purposely attempted to induce Cecelia Pierce to withhold information and provide false evidence to the police. And those are the three charges.

Well, after Cecelia Pierce told the police all she knew, and after she cooperated and she wore a body wire to tape conversations between she and the defendant about the homicide, and after the defendant was arrested for first

degree murder, you'll hear that the press just went wild in this case, and you'll hear that Cecelia Pierce was deluged with requests for interviews and appearances from the media -- none of her own doing -- and she did two network programs and eventually she entered into an agreement with a production company to tell them what she knew for money, and someday, maybe they might make a movie of this someday, but all of that happened after Cecelia Pierce came forward and before she ever imagined or anyone else that this case would get the kind of attention that it has.

But you won't just have to rely on Cecelia Pierce to know the contents of those secret conversations, the secrets she (indicating) kept from her friends and family, because when Cecelia wore that body wire there was a tape recorder that preserved them all. You'll hear the tapes. Listen carefully to them. Listen to the defendant's tone of voice. Listen to the sound of it. We'll play them completely for you.

Now, as you can well imagine, surveillance

tapes aren't recorded under the best of acoustic circumstances, but if you listen carefully you'll hear the defendant admit that nothing was going wrong with her plan until Vance and Patrick told Ralph Welch. You will hear her admit her affair with William Flynn; that if she had to she would admit the affair but never her involvement in the homicide. You will hear in her own voice how she tries to persuade Cecelia Pierce not to tell the truth to the police, because if she tells the truth she'll send Vance, Patrick, William Flynn and the defendant to the slammer for the rest of their lives.

Ladies and gentlemen, we are sure that when you hear the words of the defendant on that tape -- on those tapes, when you hear the testimony of William Flynn, Patrick Randall, Vance Lattime and Cecelia Pierce, and all of the other witnesses that we will present to you at this trial, that you'll come to the only possible verdicts in this case. At the close of the trial Paul Maggiotto will stand before you and he will ask that you

return three verdicts of guilty. Thank you.

THE COURT: Mr. Sisti.

MR. SISTI: Thank you, Your Honor.

DEFENDANT'S OPENING STATEMENT

MR. SISTI: Good morning. I'm going to be a little while with you, too. Let me start off by telling you that it should be obvious by now that we don't agree with much of what the prosecution has to offer with regard to their opening statement or the evidence that they claim they are going to place before you. I'd like to give you a little overview of what we plan to have presented before you, how it's going to be presented, through what individuals it will be presented, and I'd like to characterize some of the evidence just like the prosecution has.

I suppose the best way for me to explain this is that what will be coming before you from prosecution witnesses right off that stand, who take an oath and who have made deals with the prosecution, will probably be one of the most

vile concoctions ever assembled in one courtroom in the State of New Hampshire. Essentially, it will be one of the most toxic soups that you will have to engulf and drink to believe what the prosecution has to offer. It's a case based on primarily innuendo and speculation, guesswork on the part of these so-called witnesses, making major logical leaps from one point to another, and I'll get into that with you in a moment.

What really is happening here is that you have a series of witnesses that not only conspired and acted together to slaughter a young human being on May 1, 1990, but now, ladies and gentlemen, they've conspired and plotted to save their hides. But not only save their hides, because it gets even more pungent. Pamela's fate really rests with you folks in separating what has been called the wheat from the chaff. And what happens and what has happened in history when you separate the wheat from the chaff is that the husk and so forth is blown off the wheat and that kernel of wheat falls to the ground because it's heavier than

that disposal, that garbage that's around it. In fact, the garbage, the chaff is cast into the wind and it flies away from that which is the kernel, and in this particular case the kernel will be the truth, and that kernel will be obtained not when the prosecution places these witnesses on that stand and asks them about direct testimony, but, no, the kernel will be obtained during cross-examination. And why is that? The reason is that each and every one of the prosecution's star witnesses has something to gain or lose big time from that stand. The names Randall, Lattime, Flynn, Pierce, just to name four, have something to gain or lose, whether it be liberty, their freedom, whether it be an interest in a mega-thousand-dollar film production. That's how low and soap operaish this particular case presentation will be. That's the level that you're going to be dealing with when you deal with these star witnesses. These poor, young boys that the prosecution claims have been led around by the nose by Pam. These poor, young boys that must not have a

conscience or a mind of their own and only follow directions from somebody.

Well, folks, you've heard their characterization of these poor, young boys. Let me characterize them for you. In fact, you know, in some cases the defense and the prosecution fight over everything in a case. I'm going to tell you right now I agree wholeheartedly with the prosecution's position that William Flynn is a cold-blooded murderer, and that his buddies, who are closer than brothers, Lattime and Randall, are just as cold. I'm going to tell you right now that when they are subjected to cross-examination you're not going to see the whimpering puppies that have been characterized by the prosecution. But you're going to see thrill killers, young thrill killers. Pay particular attention to details.

Folks, during voir dire there was some discussion about two friends going to a social event and coming back and giving you different, you know, different observations and so forth of this particular social event. You all remember

it in the context of jury selection. Well, folks, the details with regard to the planning and the execution of Greg Smart will differ among the major players here, Randall, Lattime, Flynn and Pierce, among others, and those details, quite frankly, are going to give rise to a reasonable doubt by the time the end of this case comes around. And I'll tell you why. If they were telling the truth about what they claim, they would never ever forget details like those which they're going to claim they forget when they hit that stand. The one inescapable conclusion you're going to come to is that they're hiding something from you and that they're conspiring yet again. And have they had the opportunity to put a story together? You bet they have. And that will come out before you, too.

Now, during the course of this case, I suppose you all understand, you know the basic legal principles and all the concepts that we're dealing with, but we have to rely on this throughout the entire course of this case and

sometimes, you know, people would sit here and wonder whether we can. We can. We've been through the voir dire and know each and every one of you folks, and you've all made a promise to us, made a promise to the Court, made a promise to God that you're going to deliver a fair trial, that you're going to force the prosecution to put on a case beyond a reasonable doubt, that you're just not going to sit back and idly watch trained dogs jump through hoops because of their own little personal agenda on the stand.

Young men committing a murder, yes. Defense will tell you that this isn't just any old day in the park for these kids. These people are sick. These people are obsessed. And these people aren't the innocent little manipulated boys. It's a cold-blooded killing, ladies and gentlemen, but, of course, they've cut a deal with the prosecution. It's a first degree murder, but, of course, they've cut a deal with the prosecution. I mean the very individual that placed a .38 caliber revolver

two inches from Greg Smart's head and unleashed a hollow point round into his skull gets a reduced charge and a reduced sentence, and you're not to sit there and can't sit there and just say, "Well, gee, that's okay."

Earlier when I was talking about the wheat from the chaff analogy, one of the sidelights here that seemed to be dwelled on for ten minutes by the prosecution in the opening is this affair, so-called. You're going to hear all about it. Don't let it cloud you when you're focusing in on the real issue. Again, we know you're not going to allow that to happen. You've all been selected as a -- as to not let that cloud you. If that offends you in and of itself, we all know none of you would be sitting where you are. That question was asked. Couldn't have been asked any more directly. So let me tell you something about this affair.

It was an affair wherein Pam repeatedly attempted to break it off with an obsessed, infatuated 16 year old. It is an affair that had nothing to do with Pam's involvement in any

killing. Did it trigger Flynn to go on his little fantasy and his little thrill kill? You bet it did. Did he think everything would be okay if he killed this woman's husband? You bet it did. Did you hear anything with regard to Pam talking to Lattime or Randall, making deals about a thousand dollars here, five hundred dollars here if they go out and do the job? No. Isn't it funny, you think it's just going to be a coincidence that this contract and this deal is communicated by Bill Flynn? The guy with the most to lose, by the way. Now it's a killing that's fueled by sex, obsession, jealousy, mental illness.

Did Pam engage in the planning of the killing of her own husband? Absolutely not. I suppose a lot of us will sit back and will think, well, geez, these are just kids, 16 years old, 17 years old, 18 years old. The wonderful thing about this trial is that you are going to be able to assess the sophistication, the deviousness, the cold-bloodedness of those individuals yourself. That's the wonderful

thing. You know, the prosecution just can't stand up and allege something. They've got to prove it.

Now, if you think that they are just little babies led around at the end of the case, well, so be it. It won't happen. It won't happen.

The cock and bull stories continued throughout --

MS. NICOLOSI: Objection, Your Honor.

THE COURT: Basis?

MS. NICOLOSI: Argument.

THE COURT: It is a bit argumentative, Mr. Sisti.

MR. SISTI: I'll attribute to a specific witness, Your Honor. Thank you.

You'll hear the cock and bull stories coming from William Flynn throughout his testimony. Quite frankly, you should be repulsed.

Tapes have been mentioned. Are there tapes? Were they surreptitiously taken? Were their words and conversations taken? Yes, darn right they were. Was Cecelia Pierce wired? Yep, she was wired. And was there a conversation, were

there conversations? Yes, there were. And, folks, if that would be the end of the case for you, again, you wouldn't be sitting here.

You've all promised to keep an open mind. You've all promised to hear it all before you come to a conclusion. We want you to listen to the tapes. Listen to everything, and listen to it all in context. Don't take little bits and pieces and say, "Aha, I've got the kernel of truth." You've got to take it all now. Take it in context. Take it from whom it comes and why it's coming from that person. Take it, for instance, in the context of a woman that's been shut out of an investigation, where the police won't even talk to her. Take it in the context -- these tapes in the context of a confused woman, an upset woman. Take it in the context of a person that doesn't know what's going on with the police investigation or what they're doing to solve her husband's murder. Take it in the context of the affair, if you want. But take it in context. That's the important thing. If you take it in an isolated

sphere in and of itself, then you'll come to the wrong conclusion. I can't be any more frank and honest with you there.

Now, the prosecution discussed a little bit of the background with regard to Cecelia Pierce and this movie deal and so forth. What wasn't discussed with you, ladies and gentlemen, is that Cecelia Pierce herself, herself was intimately involved with attempting to procure a firearm for Willam Flynn. Cecelia Pierce has not only a monetary gain or lose situation, but, in fact, in fact, she, along with the pack of Lattime, Flynn and Randall and others, were attempting to kill Greg Smart.

Now, I can't get into each and every minute detail with you in an opening statement. We have to allow the witnesses to speak. Obviously, we have to allow the process to take its course, but I'm going to have to ask you now that you got to be patient. This is not going to be a quick trial. Not going to be the longest trial in the world, but it's not going to be a quick trial, and what you can't do is jump to early

conclusions. If you jump to early conclusions and you just lock in on it, you won't be giving us a fair trial. You've got to let the process play out before you. That's all we're asking you to do, be patient. You promised Pam that you could give her a fair trial and we believe each and every one of you, and if you do give her a fair trial, you in fact give her a fair trial, you'll return with not guilty verdicts. You'll return with those verdicts because the State has failed in their proof. And the reason that they've failed is the Constitution of the United States and the fact that Pam had nothing to do with the planning of the killing of her husband. So please pay particular attention to details, all the testimony, both the direct and the cross-examination, and we will be back at the end of this case and we'll be asking for acquittals in this particular case. So, thank you.

THE COURT:

Now, ladies and gentlemen, we're going to start the testimony now. Before we do, we'll take a short recess. Before that recess, I want to discuss with you briefly your consideration of the evidence in this case.

Keep in mind that in any trial there are no State's witnesses or defense witnesses. Each witness is simply a witness. There are no property rights in witnesses. So the minute a witness takes this witness stand, that witness is not a State's witness or a defense witness, just a witness for your consideration, because evidence comes to you by direct examination and by cross-examination.

As I said to you earlier and will say to you again, you're free to believe everything each witness tells you, nothing of what each witness tells you, or as much of what each witness tells you as you choose to believe. And conversely, you may reject all or any portion of any witness' testimony.

The fact they all take an oath to tell you the truth is not binding on you, and I do not

suggest that any witness will take this witness stand and lie. I simply point that out to you to impress upon you the complete freedom you have in believing or disbelieving witness' testimony.

In evaluating that testimony, you use the same tests that we all use everyday when someone is asking us to believe something that they're telling us. Some of the things you may consider are, did the -- was the witness candid with you; how did the witness appear on the witness stand; was that witness worthy of belief; what was the demeanor of the witness on the witness stand; did the witness have an interest in the outcome of this trial; did the witness have any reason to lie to you or any reason to tell you the truth; did what the witness said seem reasonable or probable to you; did the witness have some motive to testify as he or she testified to you; did the witness have any friendship with other witnesses or any animosity with other witnesses or friendship or animosity with the defendant or the state; was the testimony of the witness consistent with other testimony from other

witnesses or was it inconsistent with that other testimony or was the testimony of the witness consistent or inconsistent with any prior testimony of that witness. That prior testimony would be statements made before the statement on this witness stand. If you find that any witness made any consistent statements prior to trial, you may use that inconsistent statement only in deciding whether to believe the witness' testimony on the stand.

In short, you use your common sense. That's the best tool you have and that's the one we use everyday. If there are differences between witness' testimony, it is your duty as jurors to resolve that inconsistency or that difference, I mean.

You are to treat all the witnesses the same. No witness is entitled to any special degree of belief or disbelief because of who or what that witness is. For example, if a police officer testifies, the fact that this person is a police officer does not entitle that person to any greater or lesser degree of belief in your mind.

The same with a physician, for example, if a physician testifies. So it doesn't matter who the witness is. The fact that that witness is who that witness is does not entitle that witness to any greater degree of belief or disbelief in your mind. You treat them all the same and you evaluate their testimony using those tests that I just gave you and any other tests that you normally use in your everyday lives.

This is not a pleasurable trial. No criminal trial is. If there is any pleasure at all to be taken in this trial, I'll tell you it is in fact that both the defense and the State are represented by very highly trained and highly skilled lawyers who know how to try a case, and because of that the evidence will come into this case I think rather smoothly. And we'll take a short recess and then we'll resume.

- - -

[Recess taken at 10:18 a.m.]

- - -

THE COURT: State can proceed.

MR. MAGGIOTTO: Thank you, Your Honor. We'll call to the stand
Paul Dacier.

Excuse me. Approach the bench for one
second.

- - -

[Bench conference - no record.]

- - -

IN OPEN COURT BEFORE THE JURY:

THE COURT: Good morning, sir.

MR. MAGGIOTTO: Mr. Dacier, would you raise your right hand.
Miss Nicolosi will swear you in.

PAUL DACIER,

called as a witness, being first duly sworn, was examined and testified as follows:

MR. MAGGIOTTO: May I proceed, Your Honor?

THE COURT: Yes, you may.

DIRECT EXAMINATION BY MR. MAGGIOTTO:

Q Would you please state your name and in a nice clear voice so that everyone in the jury box can hear.

A Paul Thomas Dacier.

Q Could you spell your last name for the benefit of the reporter.

A D-a-c-i-e-r.

Q Mr. Dacier, where do you live?

A Derry, New Hampshire.

Q And who do you live with?

A My wife Kimberly Dacier.

Q And are there any children living with you?

A Yes, Jessica.

Q Now, Mr. Dacier, what do you do for a living?

A I'm an attorney.

Q And who do you work for?

A ENC Corporation.

Q Where is that?

A Hopkinton, Mass.

Q I'd like to call your attention to May 1st, 1990. Do you recall that day?

A Yes.

Q Could you tell us where you were living at that time?

A 4-D Misty Morning Drive in Derry.

Q And can you tell me where 4-D Misty Morning Drive is in relationship to 4-E Misty Morning Drive?

A It's right beside 4-E.

Q And who were you living with at that time?

A Kimberly.

Q Now, what is 4-D Misty Morning Drive, a one-family residence, two-family residence?

A It's a one-family condominium.

Q How many floors did it have?

A Two.

Q Was it similar to the design of 4-E Misty Morning Drive, as far as you knew?

A As far as I know, yes.

Q Now, can you tell us what time you came home that evening?

A Yes. I came home at 7:32.

Q And can you tell us what you did once you came home?

A I went into the house and I had dinner.

Q And after you had dinner, can you tell us what happened after that?

A Yes. I turned on a portable stereo that I had in the living room and I read the paper.

Q Now, Mr. Dacier, if it's more comfortable, I think you can sit back and the microphone will pick it up.

A No, I'm fine.

Q If you want to lean forward, go right ahead.

A I'm fine. Thank you.

Q Okay. Now, did you receive any phone calls that evening?

A Yes, I did.

Q Do you recall about what time that was?

A About 20 minutes to 9.

Q And who was on the phone?

A Kimberly had called me.

Q Now, was there anyone else home with you at that point?

A No.

Q After Kimberly called you -- do you know where she was, by the way?

A Yes, she was in Derry at the Wendy's Restaurant on Crystal Avenue.

Q After speaking with her -- where were you at this time?

A I was in the kitchen.

Q What happened after that?

A Well, after I hung up with her, I then went back and kept reading the paper, and then I decided I was going to hook up our stereo system, and I walked around the house looking for some speaker wire and for an extension cord.

Q And where did that search take you?

A I went upstairs into the master bedroom, and I was in the walk-in closet that's off the master bedroom.

Q Did you hear or notice anything at that time?

A Yes, I did.

Q Can you tell us what you heard or noticed?

A I heard a car door slam as I was walking out of the walk-in closet, and I happened to walk over beside the bed and I looked out the window and I saw Greg Smart walking away from his pickup truck.

Q And what caused you to look out the window at that time?

A Well, when Kimberly had called me, she said they were running late on their errand and that they would be home soon, and I had presumed that that was Kim coming home.

Q How do you know that was Gregory Smart?

A I had seen him on several occasions and I recognized him.

Q Now, as you're looking out this window -- at the front or back of your unit?

A I was looking out the front of the unit.

Q Was anyone with Greg Smart at that time?

A No.

Q What did you then do?

A I glanced out, I saw him, and then I went downstairs and started to either hook up the speakers or I went down into the basement looking for some more speaker wire. I don't remember exactly.

Q About what time was it that you saw Gregory Smart?

A Between 8:50 and 9:15 that evening.

Q How is it that you recall the time?

A Well, I happened to be listening to a particular program on the -- on our portable stereo, and after the incident I was recounting in my mind the time, and I have pinpointed it to be about that.

Q Now, was there a stereo playing in your house at this time?

A Yes.

Q Now, was the stereo separate from the stereo for which you were hooking up the speakers?

A Yes.

Q So what kind of stereo was on?

A I had a small portable Panasonic stereo.

Q Commonly referred to as a boom box, something like that?

A Something like that, yes.

Q Okay. And what was on the stereo?

A I was listening to a classical radio program on WCRB out of Boston.

Q And after you went to get this additional speaker wire, what happened?

A Well, when I was looking for the wire, I heard a brief shuffle and a bark, and I thought what is that, and then I presumed it was the -- a door being slammed.

Q You say "presume." What did it sound like to you?

A Sounded like a door being slammed.

Q And this shuffle of feet, can you tell us where it was coming from?

A Yes, it was the front of the condo adjacent to us.

Q Would you mean the Smarts' condominium, 4-E?

A Yes.

Q Where were you in your condominium unit when you heard those sounds?

A I was either in the living room or down in the basement. I don't remember exactly.

Q Now, how long after you saw Greg in the window was it before you heard this shuffling and this loud bang, the sound of a door slamming?

A It was a few minutes. Not very long.

Q And after you heard the shuffling of feet and the loud bang, what did you do?

A I wondered what it was and then I -- I felt it was the front door being slammed and I continued to look for speaker wire and an extension cord.

Q So you didn't do anything to investigate?

A No.

Q Now, what happened next?

A I then had some speaker wire and I started to hook up the speakers to the stereo. And then I heard a similar noise.

Q When you say "similar noise," what do you mean?

A I heard shuffling on the floor and I heard another bang.

Q And did this bang -- how did it compare in sound to the first bang you heard?

A It sounded exactly the same.

Q And when you heard this shuffling sound or similar sound, could you describe it again for us?

A Yes, it was very brief. It was a shuffle of feet moving very quickly on a slate floor.

Q Why do you say "a slate floor"?

A Well, in the front of our condo, and I believe in most of the condos, they have slate or tile floors.

Q And where were you in the -- in your apartment when you heard this second shuffling and sound?

A I believe I was in the living room.

Q When you heard this loud bang, was it loud enough to shake your walls, was it muffled?

A Well, in that instance I did notice that the wall shook a little.

Q And when you heard that loud bang -- I'm sorry -- that loud bang, what, if anything, did you do?

A Nothing. I presumed again that it was the front door being slammed.

Q So you never went to any window to look out to -- to check what was going on?

A No.

Q And this second shuffle and loud bang was coming from next door as well?

A Yes.

Q Now, after you heard the second sound, did you go back to hooking up your speaker?

A Yes.

Q And did there come a time when Kimberly came home?

A Yes.

Q What time was that?

A Around 10 o'clock.

Q Did anything else unusual happen that evening?

A Yes. After -- well, Kimberly and I were upstairs in the master bedroom talking. We were sitting on the couch.

Q Excuse me. Was Jessica home as well at this time?

A Yes, she came home with Kimberly.

Q Okay.

A Jessica was upstairs in her bed. She had just gone to bed. Kimberly and I were in the bedroom talking, and then we heard this banging. Well, the doorbell rang and then there was banging at the front door.

Q Beside hearing the banging at the front door, did you hear anything else?

A Yes, I heard a woman yelling out for help.

Q And about what time was this?

A Around 10 o'clock, 10:15.

Q Okay. When you heard this woman crying out for help, and banging on the front door, what did you do?

A Well, Kimberly said, "Paul, she needs help. Something is wrong." We ran down the stairs, and I saw that the storm door, which is the outer door to the front entranceway, was being pulled back and forth constantly, and somebody was banging on it.

Q Was it open or was it locked?

A No, the storm door was locked.

Q When you say "pulling it back and forth," you mean just tugging on it?

A Yes.

Q And was your door open, the second door inside, was that open and you were looking through it or was your door shut as well?

A No, the main door was shut.

Q So both doors were shut?

A Yes.

Q So what happened next?

A I was afraid that somebody was trying to come through the door, so I was leaning up against the door to keep it shut, and Kimberly wanted to go out, and I said, "No, call 911."

Q Now, did you know who was at your door?

A Yes.

Q Is that person in the courtroom?

A Yes.

Q Would you point her out.

A Yes, it's Pamela Smart.

MR. MAGGIOTTO: Indicating the defendant, Your Honor.

Q Now, what happened after you told Kimberly to call 911?

A She ran over to the phone in the kitchen and called 911, and I stayed at the door, leaning on the door, and Jessica was upstairs screaming because she was afraid.

Q Now, what was your relationship with the Smarts at this time?

A They were neighbors.

Q All right. Did you have any social contact or anything along those lines?

A No.

Q Now, as Kimberly was on the phone and Jessica was screaming upstairs, what did the defendant do?

A Well, she was still banging on our door and ringing the doorbell, and it happened for quite a while in rapid succession. Then there was a pause and then she came back and did the same thing.

Q Now, how long was she at your door for?

A Oh, for about a minute or so, and then there was a pause, and then she came back and it started again.

Q How long did it continue for the second time?

A Very briefly.

Q What happened next?

A Well, after Kimberly got off the phone, she came back and kept insisting that I run outside or both of us run outside to find out what's going on, and I was not about to go out-

side or let Kimberly outside, and I said to her, "No, we're going to wait for the police. Go back and call 911 again."

Q What happened then?

A I don't believe she did, and finally with her being upset and with Jessica being upset, I decided that I might as well go outside and take the risk, so to speak, to find out what's going on and defend myself if something was wrong outside. So I reached into my briefcase to get something to protect myself with, and I pulled out my portable umbrella, and opened the door and went running out the door.

Q Good luck.

A Good luck is right.

Q So you went out the door with your umbrella, and what did you find?

A Well, I ran over towards the 4-E Misty Morning Drive and I saw there were several people outside. There was a patrolman walking up the stairs, and I also saw a squad car in the cul-de-sac, and that -- I believe I turned around and I came back and I was now standing at the top of our stairs at 4-D.

Q Now, when you came out your door finally, was the defendant still on your porch?

A No, she was not. She was at 4-C Misty Morning Drive.

Q Where would 4-C be in relationship to your unit?

A Well, if you're facing out our front door, it would be the condominium adjacent to us on my right.

Q What was she doing at that time?

A She was standing at the top of the stairs or at the edge of the stairs leaning on the railing, and I believe the neighbors were out. They had just -- the neighbors in 4-C had just come out the door.

Q Now, how long was it from the time you first heard the banging on your door until you finally went outside, would you say?

A Oh, two or three minutes. Not very long.

Q Now, what was Kimberly doing during this time?

A She was extremely distraught, and we were also trying to keep Jessica calm. So when I first went out the door, Kim stayed inside, and then when I came back to the top of the stairs Kim stood on the top of the stairs with me.

Q Did you hear the defendant do or say anything else at this time?

A Yes, somehow the -- it came up to call Greg's parents, and Pam was still at 4-C, and she yelled out, and Kim yelled out, "Well, what's the number?" And Pam yelled out Greg's parents' telephone number.

Q Well, what caused Kimberly to yell out, "What's the number"?

A Because I believe Pam yelled out, "Call Greg's parents. Contact Greg's parents."

Q Now, when you came outside you said a squad car was already there, is that correct?

A Yes.

Q Did you ever go into Apartment 4-E?

A No.

Q Besides that, did you have any conversations with the defendant that night?

A No.

Q How long did it take -- let me withdraw that.

Prior to hearing the shuffling sound and the loud bangs that you heard in apartment 4-E, did you hear any other noises when you first got home until that time inside apartment 4-E?

A No.

Q Now, how long did it take the police to arrive from when you first heard that banging?

A Oh, it was about an hour and a half, hour and 25 minutes.

Q It was an hour and a half for the first time the defendant came to your door until the police arrived?

A I'm sorry, I misunderstood the question. Ask it again.

Q The question was, from the first time you heard the defendant pounding on your door and you said to Kimberly to call 911, how long was it before the first police officer actually arrived?

A Oh, not more than ten minutes.

MR. MAGGIOTTO: Just one moment.

- - -

[Pause - Mr. Maggiotto and Ms. Nicolosi conferring quietly.]

- - -

MR. MAGGIOTTO: No further questions, Your Honor.

CROSS-EXAMINATION BY MR. TWOMEY:

Q Good morning, sir. You're an attorney, right?

A Yes.

Q How do you like being up there on the other side? Little kinder to witnesses in the future.

A Beg your pardon?

Q Nothing. I wonder if I can talk to you a little bit about these noises, okay? First of all, can you tell us how good is the soundproofing between the different units on Misty Morning Drive?

A I really have no way to gauge that.

Q Well, you mentioned you heard some shuffling along the

tile floor.

A Yes.

Q Was that something you were able to hear on other occasions as people walked in the house along the tile floor?

A There may have been, but not to the intensity that I heard it that night.

Q Okay. Do you recall telling one of the Derry police that that pitter-patter was something you'd heard in the past?

A Yes, the pitter-pattering was more when people would be walking up the stairs, and there's carpeting in the condo and if you're near the wall you can hear somebody walking, running up the stairs, or a pattern.

Q Let me ask you a question. Did you then hear the bang, the first bang -- well, the first bang's the car -- the first bang in the house, okay, which you presume is the door?

MR. MAGGIOTTO: Objection, Your Honor. Mischaracterization of the witness' testimony.

MR. TWOMEY: Let me strike that. I'm asking a new question.

THE COURT: All right.

BY MR. TWOMEY:

Q After the point where you hear -- you've heard the first bang of the car, looked out the window, then hear a bang and a shuffle that you presume is the door closing, are you

at that point --

A I didn't hear a bang with the car door closing. I heard the car door closing.

Q Get to the point where you hear the first bang. From there until you hear the two bangs in the house, did you hear any voices, any conversation?

A No.

Q Anything else you can tell us about the nature of the sound you heard in those two bangs? Was there a difference in, say, the sharpness of the sound? You know, something's just a real rap as opposed to a sort of muffled sound. Anything you can tell us about that?

A No.

Q Did you hear anyone inside the house scream or say anything?

A No.

Q Can you give us an estimate of the time between the first bang that you think's the door closing, house door, and the second bang?

A Several minutes.

Q Okay. What do you mean by that, two, three or five, ten or

--

A I can only say several minutes. I can't give you more than that.

Q Okay. When -- after that point in time, an hour or so, whatever, goes by and then Pam Smart's at your door, at that point in time would it be fair to say she was screaming, what you hear was screams?

A No.

Q Okay. I noticed on your direct examination you used the word "yelling."

A Yes.

Q And have you thought over the difference between yelling and screaming in the last couple of days?

A No.

Q Okay. The night this happened, you wrote out -- right after it happened, when it was fresh in your mind, you wrote out a statement.

A Right.

Q Okay. Have you had an opportunity to look at this recently?

A No.

Q Let me give you a --

- - -

[Pause - Mr. Twomey showing document to Mr. Maggilotto.]

- - -

Q I've highlighted an area down the bottom.

A [Witness reading.] Yes.

Q Okay. Would you agree with me that back almost, what, eight, ten months ago when this happened, when it was fresh in your mind, the word you used to describe Pam Smart was screaming, not yelling?

A Yes.

MR. TWOMEY: Nothing further. Thank you, sir. If I could just get that back from you.

THE COURT: Redirect?

MR. MAGGIOTTO: No questions, Your Honor.

THE COURT: You may step down, sir. Thank you.

- - -

[Witness excused.]

- - -

MR. MAGGIOTTO: Call to the Stand, Your Honor, Officer Scaccia.

Would you please administer the oath.

MS. NICOLOSI: Would you raise your right hand.

GERALD SCACCIA,

called as a witness, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. MAGGIOTTO:

- Q Good morning. Nice clear voice, would you please state your name so that everyone in the jury can hear, and would you please spell your last name for the stenographer.
- A My name is Gerald Scaccia. That's S-c-a-c-c-i-a.
- Q Mr. Scaccia, are you employed?
- A Yes, I am.
- Q By whom are you employed?
- A The Town of Derry.
- Q What is your job with the Town of Derry?
- A I'm a patrolman for the police department.
- Q How long have you been a police officer with the Derry Police Department?
- A Approximately four years and seven months.
- Q And calling your attention to May 1st, 1990, were you working that day?
- A Yes, I was.
- Q What shift were you working?
- A I was working the 3 to 11 shift. That's 3 in the afternoon to 11 at night.

Q Did you have occasion -- let me rephrase that.

Calling your attention to around 10 o'clock that evening, did you have occasion to take any official police action?

A Yes, I did.

Q What action was that?

A I was called to go to Misty Morning Drive, section 4.

Q About what time did you receive that call?

A It was 2215. 10:15 at night.

Q And who was with you at that time?

A I was by myself, alone in a cruiser.

Q Now, how far from 4-E Misty Morning Drive were you when you received this call?

A I believe I was only about 30 to 45 seconds away. I wasn't too far away.

Q Can you tell us what happened when you got there?

A When I arrived at the section, the section of 4's at the condo unit, I was met by a small crowd right in front of the section of 4.

Q When you say "section of 4," what do you mean?

A They're condo units, but they're grouped together and -- in like four or five condominium units in one section and they're grouped -- say, 1-A would be one section; 2-B would

be another section, and so forth.

Q Now, when you say you were met by a small group of people, how many people were you met by?

A Approximately 15 or 20.

Q Where were they all standing in relationship to this group of four condominium units?

A They were standing -- as I pulled in the parking lot, they were off to my right, if I was facing the unit, in the walkway area in front of the units.

Q Now, did anyone in particular approach you?

A Yes, a female approached me.

Q Did she identify herself?

A She identified herself as Mary Jane Woodside, a neighbor.

Q What happened next?

A She told me there was a man lying in unit 4-E.

Q What did you then do?

A I, in a hurried fashion, went up to unit 4-E.

Q And when you went to unit 4-E, was there anyone with you?

A Mary Jane Woodside was just behind me.

Q When you got to unit 4-E, what happened next?

A As I approached the front doorway, the door was open. I looked in and I saw a man lying on the floor.

Q Now, when you say you approached the doorway and the door

was open, how many doors were there, do you recall?

A There were two.

Q Were both doors open?

A The front door was wide open, the inner door, and the screen door was closed.

Q When you got to apartment 4-E, were there any lights on or off?

A There was one light on.

Q Do you recall which light that was?

A The foyer light. Just as you walk in, the light above that small hallway.

Q Now, I'd like to show you what's been marked as State's Exhibit Number 1 --

MR. MAGGIOTTO: May I approach the witness, Your Honor?

THE COURT: All right.

Q -- can you tell us what that is?

A That is the section of 4-E Misty Morning Drive of 4.

Q Which one of the four sections of Misty Morning Drive did you respond to?

A The one furthest to the right, 4-E.

Q Is that a fair and accurate representation of the layout of the condominium unit as you saw it that night?

A Yes, it is.

MR. MAGGIOTTO: Your Honor, I'd like to move this into evidence as State's Exhibit Number 1.

THE COURT: Hasn't it been marked?

MS. NICOLOSI: Yes, all of the pictures at that point have been moved into evidence.

MR. MAGGIOTTO: I'm sorry. I thought it was just marked for identification.

With the Court's permission, I'll just walk it by the jury.

THE COURT: All right.

- - -

[State's Exhibit 1 displayed to the jury by Mr. Maggiotto.]

- - -

BY MR. MAGGIOTTO:

Q Now, Officer, as you got to the front door, were you able to see the body from the front door?

A Yes, I was.

Q As you looked into the apartment, was there anybody else inside the apartment at that time?

A No, there was not.

Q I'd like to show you what's been introduced as State's Exhibit Number 3, and ask if you recognize it?

A Yes, I do.

Q What do you recognize that to be?

A That is the view looking from the front door into the unit 4-E.

Q Fair and accurate representation as you saw it that night?

A Yes, all except for one small item.

Q When you say, "one small item," let me clarify. Is that -- is there something in this picture that wasn't in this picture when you first got --

A Yes, two pens placed on the foyer floor that Patrolman Twist placed there later. There were some smudge marks.

Q You wanted to preserve them by putting the pens down to warn --

A That's correct.

MR. MAGGIOTTO: Your Honor, I'd like to walk this by the jury as well. Court like an opportunity --

- - -

[State's Exhibit 3 displayed to the Court by Mr. Maggiotto, and then displayed to the jury by Mr. Maggiotto.]

- - -

MR. MAGGIOTTO: Is there a glare when I do this? If there is, let me know.

JUROR NO. 8: No.

MR. MAGGIOTTO: Can you see that?

JUROR NO. 15: Yes.

MR. MAGGIOTTO: Need to see it?

MR. TWOMEY: Let me see it.

- - -

[State's Exhibit 3 shown to Mr. Twomey by Mr. Maggiotto.]

- - -

BY MR. MAGGIOTTO:

Q Now, Officer, this mat that is in the bottom of the photograph, that's the position you found it in when you first walked in? I'm sorry, I'm not being fair to you.

- - -

[State's Exhibit 3 shown to the witness by Mr. Maggiotto.]

- - -

Q Is that basically how you recollect it being?

A I'd -- I have to say basically I recall it being in this area, yes.

Q And the billfold at the bottom of the stairs?

A Yes, that's exactly where I found it.

Q Now, can you tell us what happened when you proceeded -- well, let me rephrase that.

What'd you do next?

A After going through the front door, I went up and I felt for a pulse, see if I could obtain a pulse on the man lying on

the floor.

Q And who was with you at this time?

A As I said earlier, Mary Jane Woodside was right behind me, just a step behind me.

Q Why was Mary Jane Woodside with you?

A She just came in right behind me.

Q Can you tell us after you felt his pulse, what happened next?

A I didn't feel a pulse, and Mary Jane Woodside stated she knew CPR and she would assist. She then got behind the man lying on the floor, and I started to roll the person backwards as if I was going to put him on his back. At that time I noticed a severe head wound to the top of the man's head, and I put the person back, I would say, as close to the position as I could as where I found him, and I told Mary Jane Woodside to leave the building.

Q Now, when you felt that individual's pulse, what part of his body did you feel?

A The right wrist.

Q Now, where were you standing in relationship to the body when you took this pulse?

A I would have been still in the foyer area in front of the body.

Q At the time that you were standing at the door looking at this body, were you able to notice any wound of any kind?

A No, I wasn't.

Q When you walked up to this body and you knelt down and reached out to its -- the right wrist to feel its pulse, were you able to notice at that time any movement?

A My attention was drawn to his nose. There was blood coming from the nose and there was some on the floor just beneath him.

Q Could you see that nosebleed from the door?

A I don't recall seeing it from the door, no.

Q And after you felt no pulse, you then rolled the body over?

A Yes. I got behind the body. I repositioned myself. I was now in what would be considered the dining room, and I knelt down behind the body and, as I said, I only moved the body three inches at the most.

Q Was there anyone else with you at this time?

A Just Mary Jane Woodside.

Q I'd like to show you what's been introduced into evidence as State's Exhibit Number 5, ask if you recognize it? Do you recognize that?

A Yes, I do.

Q What do you recognize it to be?

A The man I found lying on the floor the night in question.

Q Okay. I'm going to make sure everybody hears you. Speak in the microphone even though I'm standing next to you.

Officer, is that the position you found him in when you got there?

A Yes.

Q Now, I notice that there's a paper towel, and appears to be a blue towel in this photograph. Are those items in the same position as when you responded?

A Exactly, yes.

Q This is the position you started from when you first started to turn him over?

A Yes, I knelt behind him at this point.

Q Now, it appears that under his head there's a red stain of some sort. Were you able to see that red stain as you approached the body?

A No, I was not. I was more keyed into the small stain beneath his nose.

Q When was the first time you noticed that stain?

A As soon as I started to roll the subject back.

MR. MAGGIOTTO: Your Honor, with the Court's permission, I'd like to publish this to the jury as well.

THE COURT: All right.

MR. MAGGIOTTO: Show it to the Court.

- - -
[State's Exhibit 5 displayed to the Court by Mr. Maggiotto,
and then displayed to the jury by Mr. Maggiotto.]

- - -
MR. MAGGIOTTO: If I have it pictured in such a way that the
glare is bad, please let me know.

- - -
[Pause - Mr. Maggiotto and Mr. Twomey conferring quietly.]

- - -
BY MR. MAGGIOTTO:

Q After you noticed this head wound, Officer, what happened
next?

A I advised Mary Jane Woodside to leave the condo unit.

Q And after you advised her to leave the condominium unit,
what happened next?

A She left, and just as she was leaving, Patrolman Twist, my
backup, showed up with two EMT's.

Q When you say "EMT's" --

A Emergency medical technicians.

Q What happened when the two emergency medical technicians
showed up?

A They came up and they -- they also felt for a pulse, and
they advised me that the person was deceased.

Q And when they felt for a pulse, did they disturb the body to any extent?

A No, they didn't.

Q How long did it take for the EMT's to come in and feel for a pulse?

A Seconds. It wasn't very long.

Q After the EMT's felt for a pulse, what happened next?

A They also left, and I secured the front door.

Q When you say you secured the front door, what do you mean?

A By that time Sergeant Toki had showed up and he stood by the front door, and I shut the front door and -- just shut the door. He guarded it by -- you know, on the outside of it.

Q Who was left inside?

A Myself and Patrolman Twist.

Q Now, besides you and Patrolman Twist and Sergeant Toki, were there any other law enforcement personnel there that you knew of?

A I believe there was. I'm not sure who it was, but I believe there was another patrolman in the rear of the condo on the outside perimeter.

Q What did you and Officer Twist then do?

A We conducted a search of the condo unit.

Q When you say you conducted a search, what were you looking for?

A A possible perpetrator or anybody that would be in the condo at the time.

Q So was there a search for evidence or a search for safety purposes?

A Safety at that time.

Q Now, you were in uniform, is that correct?

A Yes.

Q Officer Twist in uniform?

A Yes.

Q Now, when you conducted this search, were your guns drawn or undrawn?

A Drawn.

Q So both your guns were out?

A Yes.

Q Where did you start your search?

A We did a search of the first floor first.

Q When you say the first floor, is that the floor you walked into?

A Yes, that's correct.

Q Can you tell us what you noticed about the first floor as you walked around at that time?

A We could observe it apparently had been ransacked. There were items strewn about, items on the floor. It was in disarray.

Q How long did it take you to search the first floor?

A It's a small area. It probably took no more than a minute or two.

Q After you searched the first floor, what did you then do?

A We went to the second floor.

Q The second floor?

A Yes.

Q Can you tell us what you noticed about the second floor?

A Again, we found like the master bedroom to be in disarray. Items were taken out of drawers. Items were found on the floor. We searched the second floor at that time.

Q Now, when you searched the second floor and the first floor, for that matter, did you disturb any of the things that you saw there?

A No, we did not.

Q You have to open any doors or anything along those lines?

A Yes, we did. We opened up a few doors to gain entry into rooms and also closets.

Q Now, when you searched the first floor, did you happen to notice whether or not there were any entrances or exits on

the first floor?

A Yes, I did.

Q And which ones did you notice?

A Excluding the entryway that I came into, there was an exit going out the living room that would go out into the back area, back porch.

Q Was that opened or closed?

A It was open approximately four to five inches.

Q Now, after searching the first floor and the second floor, where did you then go?

A Patrolman Twist took a quick look in the attic, poked his head up through, and we went downstairs into the cellar.

Q Can you tell us what happened when you opened the door on the way to the cellar?

A Yes, as I opened up the cellar door, the door opened away from my body, and as I stepped on the -- what would be the platform of the cellar stairs, there was a small dog hidden behind the door as I opened it.

Q And how small? Can you give us an idea with your hands?

A Like a Pekingese type of dog. I'm not sure what type, but it was a smaller dog.

MR. MAGGIOTTO: Let the record reflect the witness held his hands about 15 inches apart or so.

Q What was that dog doing when you found it behind the door?

A Wasn't doing actually anything. It was very quiet. I didn't even know it was there at first.

Q After you opened up the cellar door, what did you then do?

A We searched the cellar.

Q When you searched the cellar, did you open any doors?

A Yes, I opened up a door that led to the bulkhead area.

Q In searching that door that led to the bulkhead area, was it opened, closed, locked, unlocked?

A It was closed, and I don't believe there was a lock on the door. I can't say for sure, but I know it was unlocked.

Q After going through that door, did you check the bulkhead door?

A I just checked to see what condition it was in. It was closed at the time. I do not know if it was locked or unlocked.

Q So you didn't try to open the door?

A No, I didn't.

Q Now, after checking the cellar, what did you then do?

A I went back upstairs and stood by the body.

Q When you say you stood by the body, what for?

A To make sure that it wouldn't be disturbed.

Q And what was your function at this point?

A Just to guard over that body and make sure that the scene would be preserved.

Q Now, during this time, did you make any notifications to the Derry Police Department?

A Yes, I was recording -- do you mean did I call anybody or --

Q Yeah, I guess that's a fancy way of saying did you call back and say you got a problem here?

A Yes, that was done right in the beginning when I came.

Q Did there come a time when other people arrived?

A Yes.

Q How long after you got there and made this call was it before people started arriving?

A I believe the detectives and such, they came in approximately 40 minutes after I was there.

Q And after detectives came in, what did they do?

A They just walked through the scene, walked through the area observing it.

Q What was your role or function at this point?

A To record the people that are coming in and out of the complex and to again make sure nobody touched anything.

Q Now, as these detectives came in, did you observe them, were they touching the items thrown about the room or coming in and just seeing the layout?

A Not that I saw.

Q Were you inside the entire time?

A I was inside until 2:25 in the morning.

Q So from the time you started watching the body till 2:25 in the morning, you were inside, is that correct?

A That's correct.

Q During that time, you were doing what?

A Just watching over the body and recording who was coming in and out.

Q Now, as you were doing that, did anyone else beside law enforcement personnel come into the condominium unit?

A Not until 2:25.

Q Did any medical personnel come in?

A Yes, Gino Nigro.

Q What happened at 2:25 -- did you say p.m. or a.m.?

A A.m.

Q So you're talking about four and a half hours?

A Yes.

Q What happened at 2:25 a.m.?

A I turned the scene over to the State Police Task Force.

Q When you say the State Police Task Force, what are you referring to?

A They have a crime unit, major crime unit that deals with

these certain situations, and they responded to the scene.

Q It was your understanding they were going to process the crime scene?

A Yes.

Q Anyone from Derry, to your knowledge, process that crime scene before that time?

A No.

Q Now, after you turned over the crime scene to the State Police, what did you do?

A I then just stood on the front steps until 4 o'clock in the morning, again just watching over who was coming in and out of the complex.

Q Now, did you have occasion to see the defendant that night?

A I can't -- I can't testify as I saw her. I was told that it was her later, but I can't testify that I actually saw her.

Q Well, did you see anyone matching her description?

A I can't even say that.

Q Well, what was the person doing that you thought or later on was told was the defendant?

A I heard her screaming. I heard a person scream, a female.

Q Where was she?

A I believe two doors down, 4-C, in front of 4-C.

Q Anything particular said when you heard her screaming?

A No, I was inside.

Q How long did that process take you to get inside?

A Five seconds at the most.

MR. MAGGIOTTO: Just one moment, Your Honor.

- - -

[Pause - Mr. Maggiotto and Ms. Nicolosi conferring quietly.]

- - -

MR. MAGGIOTTO: No further questions.

CROSS-EXAMINATION BY MR. TWOMEY:

Q Good morning, Officer.

A Good morning.

Q Just to follow up on that a little bit. In fact, the reason you were there at all was because you got a report there was a woman screaming outside those apartments?

A Exactly.

Q The very first thing you observed when you got there before being met by this crowd or the other woman you mentioned was you saw a woman screaming in front of those apartments?

A That's correct.

Q That was the woman later identified -- you were told was Pamela Smart?

A I was told that it was her.

Q And she was screaming as you were there and other times, correct?

A Pardon me?

Q Did you hear her screaming later on?

A No, I was involved --

Q You were inside?

A Yeah.

Q Okay. As you go in, there was a towel there -- I'm not sure if this picture, which is State's Exhibit Number 5 -- there was a towel there, correct?

A Yes, there's a blue towel, a bath towel and like a paper towel also.

Q Now, this particular picture was taken after you had already moved Greg Smart, correct?

A That's correct.

Q Can you describe for the people on the jury how it appeared, the placement of the towel, how it appeared to you when you first got there before you moved him?

A Before I moved the body it appeared that the towel was pushed up against the head, and it was up against the back side of the head.

Q It appeared that somebody had actually pressed it against

the head, didn't it?

A It looked that way.

Q Okay. You also -- in this picture there's a gold candlestick by his foot, do you recall that?

A Yes.

MR. TWOMEY: If you bear with me for a second. May I have this marked for identification, Your Honor?

THE COURT: All right.

- - -

[Defendant's Exhibit C, being a candlestick, marked for identification.]

- - -

MR. TWOMEY: That for the record is State's Exhibit C for ID.

BY MR. TWOMEY:

Q Does this appear to you to be the -- consistent with the candlestick you saw? Why don't you hold it, I'm not sure it will stand.

A Okay.

Q I'll get you the picture if it helps you.

A It does appear to be the one that was found.

Q I'll take that back.

First of all, describe that candlestick, what shape it's in now.

A It's loose.

Q It appears to be broken in a sense that it's shaking and may not stand up?

A Yes. Loose.

Q The base is loose?

A Yes.

Q Okay. I'll take it back. Could you hold up the picture and show the people in the jury where this broken candlestick was found, where you first saw it.

A [Displaying photograph to the jury.] Just for testimony, I found it underneath his foot on the foyer floor just beneath the tile area.

Can you see this?

- - -

[Witness resumes stand.]

- - -

Q Let me go back to that towel for a second. Did you ever determine where that towel came from?

A No, I didn't.

Q Did you ever check the upstairs bathroom to see if it was consistent with the towels hanging in the upstairs bathroom?

A I checked the bathroom but I didn't make note of that.

Q Do you know whether anyone else did?

A Excuse me?

Q Do you know whether anyone else did?

MR. MAGGIOTTO: Object.

MR. TWOMEY: I'll withdraw that. Withdrawn.

THE COURT: All right.

Q What -- there's some paper toweling you found somewhere?

A Yes, I found that on the dining room floor by his leg.

Q By his leg near the candlestick?

A On the opposite leg.

Q Okay. Did you ever make any effort to determine where that paper toweling came from?

A No, I did not.

Q Okay. When you rolled Mr. Smart over and saw that wound, did you know that was a gun wound?

A No, I didn't.

Q Was it consistent with anything else, in your training?

A No, it wasn't.

Q But did you think it was a gun wound? Perhaps I should say is that the conclusion you came to?

A At the time I -- at that initial point, I didn't try to determine what kind of a wound it was, just that it appeared that it was a large wound.

Q Okay. You mentioned earlier that there was another officer,

I think his name was Twist.

A Patrolman Twist, yes.

Q He came -- he was dispatched at the same time you were dispatched and got there, what, a minute or two after you?

A Correct.

Q He came with two EMT's?

A Yes.

Q Was the original dispatch that sent you there, did that tell you that somebody was injured?

A The original dispatch was just go to unit 4 reference a woman screaming.

Q Okay. Why the EMT's, I guess is my question?

MR. MAGGIOTTO: I would object.

THE COURT: Basis?

MR. MAGGIOTTO: I think counsel is trying to get into the nature or the substance of the communication, which would be hearsay.

MR. TWOMEY: I'll rephrase it, Your Honor.

THE COURT: All right.

Q Is it normal everytime you get a call out for EMT's to go? What's the practice with the Derry police? When do EMT's get sent out?

A I would assume -- I can only assume that it was -- if they

were sent before I had radioed in that there was a man lying on the floor, that they might have received a 911 from a neighbor stating the same thing, that there was a person injured.

Q Okay. Just so we're clear, do you have your report with you, by any chance?

A I have a --

Q Just happen to have it, huh? I guess it's page 2 of the report you wrote that night.

Can you tell us when the EMT's got there -- exactly when you got there and exactly when they got there?

A You want to know the exact times they came?

Q Yeah, Patrolman Twist and the EMT's. How soon after you get there does he get there?

A I can't say exactly. I would say it was approximately about a minute.

Q Right. You've got one minute down on your report, correct?

A Yeah.

Q And you've got the EMT's coming into the house one minute after him, correct?

A Let me find this.

Q I'm sorry, I thought you had it. Let me show you mine.

A Did you say page 2?

Q Quite frankly, I can't read your writing. Maybe 3. Why don't you let the jury know what you wrote down that night in regard to when people went to the house there?

A Yes, I put Patrolman Twist at 2216 and the two EMT's at 2217.

Q And you were 2215, so you're there 10:15; Twist at 10:16 and EMT's at 10:17?

A Yes.

MR. TWOMEY: Thank you, sir. No other questions.

REDIRECT EXAMINATION BY MR. MAGGIOTTO:

Q Patrolman Scaccia, just for clarification purposes, these notations you make into your log, do you stop in the middle of the action whenever you see somebody, check your watch and write them down or is it something you reformulate when it happens?

A I did that later when I have time to. Right at the beginning I didn't have the time to do that.

Q Okay. When the defense attorney asked you did you make any attempts to determine what kind of wound this was or any attempts to find where the paper towel came from, is that part of your job in watching the scene?

A No.

Q Is it standard practice for the Derry Police Department or

other police departments to call in the State Police to process a crime scene?

A Yes, it is.

Q Was it your responsibility or function or anything along those lines to secure this candelabra or the candelabra that was in the photographs?

A No, not for myself.

MR. MAGGIOTTO: No further questions.

MR. TWOMEY: Nothing further.

THE COURT: You may step down, sir.

- - -

[Witness excused.]

- - -

THE COURT: We'll take a brief recess.

- - -

[Recess taken at 11:23 a.m.]

- - -

- - -

[During the recess, State's Exhibits 48, being a diagram, and 49, being a diagram, marked in evidence.]

- - -

MS. NICOLOSI: State calls Mark Myrdek.

MARK MYRDEK,

called as a witness, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MS. NICOLOSI:

Q Have a seat. All set?

A All set.

Q Would you state your name and spell your last name, please.

A My name is Mark Myrdek. M-y-r-d-e-k.

Q How are you employed?

A I'm employed by the Department of Safety, Division of State Police.

Q What's your rank?

A My rank is trooper.

Q Trooper, how long have you been employed with the State Police?

A Approximately eight years.

Q What's your present assignment?

A I'm currently assigned to the Major Crime Unit in Concord.

Q And what was your assignment back in May of 1990?

A I was assigned as a troop detective out of Troop B in Milford.

Q And are your duties different in these two assignments?

A They're slightly different. As a troop detective, I covered

a wide variety of crimes up to homicide. Basically, in a major crime unit we deal with just that, major crimes, most oftentimes homicide.

Q Okay. I'm going to draw your attention to May 1st, 1990.

A Yes.

Q Actually, May 2nd, 1990.

A Right.

Q Did you have any involvement in the processing of a crime scene on that day?

A Yes, I did.

Q What time did you arrive at the crime scene?

A Approximately 2 a.m. on May 2nd.

Q Where was it?

A It was on Misty Morning Drive in Derry.

Q Who was present when you arrived, what was going on?

A Present at the time that we arrived as a unit was mostly the Derry Police Department, and members from the Attorney General's Office were there at the scene on Misty Morning Drive.

Q How many State Police officers were there?

A There was myself, Corporal Eastman, Corporal Kimball, and Lieutenant Barthelmes arrived about the same time or short time after.

Q What did you understand the role of the State Police was going to be that night?

A We were there to process the crime scene.

Q What do you mean by processing a crime scene?

A We're there to make sure that it was secure and to gather any evidence of any type that would be related to this crime.

Q Trooper Myrdek, have you had any training in the processing of crime scenes?

A Yes, I have.

Q Just very briefly, tell us what your training is.

A I attended the Mass. State Police Homicide School, which is a two-week course, at the Massachusetts State Police Academy. I attended a course, 40-hour course put on by the FBI at Police Standards and Training in Concord dealing with the processing of crime scenes, diagramming, collecting physical evidence of all kinds, latent prints, and I've had what I call on-the-job training or in-service training with the department in photography and diagramming, as well as being involved in processing approximately ten or so crime scenes itself.

Q Whose investigation -- the homicide investigation, whose was it, the State Police or Derry?

A Derry.

Q And was the function, as I understand it, just for the State Police to come in and do the crime scene processing?

A Yes, ma'am, it was.

Q Is that typical of them to do with local police departments?

A That oftentimes happens, yes.

Q What was your assignment on the night -- morning of May 2nd?

A I was assigned to gather evidence, collect the evidence, document that, and to write an overview, as we call it, of the scene, a general description of what the scene looked like that day.

Q Who was your superior on the scene?

A Would have been Corporal Eastman.

Q When you say write an overview, tell me a little bit more what you mean by that.

A What I do is basically put on paper in a report form describing the scene as it was that night as particular as it can be done. That's done to later on refresh our memory and to describe it for the case as to what it was.

Q And I assume it's done before anything is moved, as you find the scene?

A Yes, it is.

Q When you say gather and document all the evidence, what's

the purpose and how do you go about doing that?

A Evidence is determined by either finding it by some means, either latent prints or observing it in some way was determined to be pertinent, at the time is noted, it's photographed and then it is documented as evidence by either initialing it, and in this case with my initials and a number, then maintaining its custody for a later date to be presented in court, if needed.

Q You said originally that you wanted to make sure the scene was secure. What do you mean by that, and why would you do it?

A We want to make sure that the integrity of the scene is maintained at all times in that we don't want it to be destroyed or altered in any way. We want that to maintain that we know who is on the scene, at what time, if anything was touched or moved, who did that so that basic integrity of the scene is not damaged at all, if possible.

Q Did you make that determination on this crime scene?

A Yes.

Q What did you determine?

A We determined that upon arrival the Derry Police Department had secured that scene until we arrived at approximately 2 o'clock in the morning.

Q After you determined it was secure, what was the next thing that you did?

A The next thing that I was involved in was being briefed by Corporal Eastman as to what was entitled or what we were going to be handling at that scene, which was, first of all, the assignments were handed out. We were given a brief description of the residence, as he saw it, and as it was described to him. And with that information, the first thing that's done is photographs are taken, and I remained outside the residence until pretty much all of that initial documentation had been done.

Q All right. What time would you say you first entered the premises?

A Approximately maybe 2:30 or 3 o'clock. I'd have to refer to my notes. Exactly, I'm not sure.

Q I don't think we need to as long as you're comfortable with that approximate time.

A I am. Corporal Eastman was with Captain Jackson at the time.

Q Okay.

MS. NICOLOSI: If I might approach the witness and go behind and get this diagram, Your Honor.

Q I'm going to show you a diagram that has been marked State's Exhibit 48. Can you tell me what it is that we're looking at?

Let me get it right side up.

A Yes. This would be an overview of the residence, the lower level of the residence as it would have been that evening, May 2nd.

MS. NICOLOSI: Your Honor, the parties have agreed to admit this, and if I might set it up at this time.

THE COURT: All right.

MS. NICOLOSI: Can all of the jurors see it from their seats okay?

BY MS. NICOLOSI:

Q Trooper Myrdek, basically, just roughly describe what we're looking at for the jury.

A Well, starting where it says "entryway," that would be the entryway into the condo, which there was number 4-E which would have been the last of a set of five in that building complex at Misty Morning Drive.

You enter into that residence into a foyer, a hallway. To the left is a stairway with a landing to the top or upper level of the residence. Straight ahead is what I call an open-concept living room and dining area which was wall-to-wall carpeted. As you move off to the right, the kitchen area, and there was a small bathroom as well off the entryway to the hall.

Q Does this fairly represent where all the -- of the entryway and walls partitioning rooms when you saw it that night?

A Yes, it does.

Q When you look at the doors as they appear to be opened, does that represent the direction accurately as they open and close, as best you recall?

A Yes. Yes, it does.

Q Just briefly describe for me when you entered into that area marked "entryway" what you saw there.

A Again, this was -- the entryway is described as a hallway or foyer, if you will. It's covered by a light-colored tile flooring. Straight ahead as you went into the residence where a wall breaks where it says "closet" and about half way down the wall to the staircasing, somewhere in that area, it broke from the tile to a wall-to-wall carpeting section of the living room and dining area.

Q Why don't I just point. Is that (indicating) the general area that you're talking to?

A Somewhere in that area there, yes.

Q Okay.

A Directly ahead, as you looked into the residence standing in the entryway as you came in, was a floor mat as you entered into the residence. To the immediate left of that

near the landing of the stairway that went upstairs was a brown portfolio, business portfolio. There were two pens that marked what appeared to be footprints left in that tile flooring. They were left there so no one disturbed those. They were difficult to see real quickly without looking at them. Moving again into the room partially, just onto that carpet, was what was the body of a male dressed in a gray type business suit laying face down.

Q Okay. I'm going to show you a picture that's been admitted as State's 5. Is that the position of the body as you recall it when you entered the foyer?

A Yes, ma'am.

Q Between the legs of this person I see something that's brown. What was that?

A It would have been a brown leather wallet, man's wallet.

Q Okay. Is that a piece of evidence that you collected?

A Yes, it was.

Q Okay. And did you ever have an opportunity to look inside that wallet?

A Yes. Yes, I did.

Q Was there any money in it?

A No, there was not.

- - -
[State's Exhibit 5 displayed to the jury by Ms. Nicolosi.]
- - -

BY MS. NICOLOSI:

Q When you entered the condominium, did you inspect the doorway area at all?

A Yes, I did.

Q Why did you do that?

A To look for any signs of any forced entry or damage to that doorway.

Q And did you observe anything?

A No, there was nothing. The doors were intact, both doors.

Q Tell me what you might observe that would indicate to you that there was some kind of forced entry.

A You would normally see what I would identify as pry marks or scratchings or dents, if it was caused by a heavy object, usually in the area of either the deadbolt lock or the door-knob, and sometimes that might even been seen on the storm door which was present in this residence, but there were no markings of any type like that.

Q Now, as you moved into the living room area, can you describe for me briefly what you saw in that area?

A Moving on past into -- the living room area was basically

to the -- what I would call the east wall or to the left side bottom of the living area was a home entertainment center with small table to the left side of that home entertainment center, as I described it would have been a shelf for TV, VCR and stereo, is what I referred to as a home entertainment center. There were items on the floor in front of that home entertainment center. The VCR had been removed from a -- appeared to be the middle shelf was on the floor with the cord still attached to the back of this entertainment center, if you will. In front of that was one empty compact disc holder, which the door appeared to have been either broken off or fallen off. That was empty. And there were -- just a drawer with numerous items also laying on the floor in front of that home entertainment center.

Q How would you generally describe the condition of the entire downstairs area, that living room-dining room area?

A I would describe -- it was mused or messed in some way.

Q Okay. I'm going to show you a bunch of pictures that have been marked State's Exhibits 7 through 15, and they've been admitted by the parties. Will you just flip through them and give me a brief description of what they are?

A The first one, which would be --

MR. TWOMEY: Could we ask the State show us the exhibits before they show the witness.

THE COURT: All right.

MS. NICOLOSI: Sure, we can do that.

MR. TWOMEY: So we know what's up there.

MS. NICOLOSI: I'll take those back.

- - -

[Photographs shown to Mr. Twomey by Ms. Nicolosi.]

- - -

BY MS. NICOLOSI:

Q Let me give those back to you, and I'll ask you again, just a brief description of what you're looking at.

A First photograph, marked Exhibit 7, would be the area described as the stairway or the landing, as you enter in to the left of that hallway.

Exhibit 8 is a photograph of the living area as it was that evening.

Exhibit 9 is another photograph standing in the hallway looking into the living and dining room area, which depicts that well.

Exhibit 10 is a photograph standing in the dining area looking into the living area.

Exhibit 11 is another photograph standing from the

dining room area just opposite the view of the living area.

Exhibit 12 is a photograph of some items in the living room area that appeared to have been placed by the atrium door which entered out onto the back deck.

Exhibit 13 is a photograph depicting that home entertainment center, as I described it, with those items on the floor.

Exhibit 14 is again another picture of that living room area.

And 15 is another photograph of that living area.

Q Okay, thank you.

MS. NICOLOSI: Your Honor, would you like to see the pictures before I show them to the jury?

THE COURT: No, let them look at them and pass them along.

MS. NICOLOSI: Okay, if you could look at them -- start one bunch on this end -- just look at them quickly. The witness will be speaking about them individually.

- - -

[State's Exhibits 7 through 15 displayed to the jury.]

- - -

MS. NICOLOSI: All set? Thank you, sir. Thank you, sir.

If the witness would approach the diagram

with me, with Your Honor's permission. There's a pointer right near you. Maybe we can move the diagram to go up just a little bit farther.

BY MS. NICOLOSI:

Q Hand you what is State's Exhibit Number 14. Quickly show it to the jury.

The couch, the two couches and the door that we see in this picture, could you just show on this diagram where those pieces of furniture are located?

A This couch here located in the photograph was along this wall. This couch or love seat, as I described it as, was located here in this area which divided the dining area and the living room area, as I would look at it, the atrium doors as they're described would be here leading out onto the back deck.

Q Now, we see in this photograph some white stuff near one of these couches. What was that material?

A It appears to be -- to be some type of stuffing that would come from a pillow that was located right here in this area in front of the couch.

Q Why was it that appeared it came from a pillow from that couch?

A Located in this pile of stuffing, as I recall it, was -- I

notice black strands of thin fiber mixed in with that white stuffing. If you look at the photograph of the couch directly on, I notice there was some pillows on this couch that I described as color coordinated, black, blue and pink, leading from the arms towards the middle. I notice that a black pillow was missing from this side. It would appear to have been missing from this side as it was color coordinated, and I took note of that.

Q As you searched through the house, did you ever find a matching pillow that matched the black pillowcase on this couch?

A No, I did not.

Q In the front of the doorway in State's Exhibit 8, what is that pile of material sitting there?

A This material here in this photograph is what I described as compact discs. Mixed in with that was, I believe, a cassette tape, and right out in front of that group of compact discs and items on the floor was a gold earring laying on the floor, a single earring lying on the front, right in front of that -- that area was right in here.

Q Okay. Again, on State's Exhibit Number 14, can you show where the speakers that show in this picture are on the diagram?

A Okay, they would have been located right here in front of an end table of some type just as you proceed out the door.

Q What is the object that you see located behind those speakers, right behind those speakers?

A In this area, again, is a pillow case. That is what -- a striped color pillowcase of one of those colors.

Q Let me show the jury what's State's Exhibit 13. Can you demonstrate on the diagram where this is located?

A This is what I described as that home entertainment center located right along this wall in this area here.

Q In the front of this picture, I see something located on the floor. What was that? Can you show on the diagram where that was?

A That would have been right in this area here. That is what I described as the VCR that had been removed from the middle shelf, and there was an empty compact disc holder laying there as well.

Q Was that VCR completely detached or was it still connected somehow?

A It was still connected to the back of that home entertainment center, to the television or the wall in the back.

Q I'm going to show the jury State's Exhibit 12 just quickly so they know what we're talking about.

Where were those speakers located?

A Again, right here in the same area as I pointed out before.

Q So those are the speakers that were sitting right by the door?

A Yes, ma'am.

Q Now, the pillowcase that's shown in this picture, did you see that pillowcase any place else in the residence, that pattern?

A Yes, I did.

Q Where did you see this?

A In the upstairs bedroom, master bedroom on the bed. It was actually still on a pillow.

Q All right. I'm going to show the jury what's been marked as State's Exhibit 10.

What is that that we see behind the couch?

A That is another pillowcase of flower patterns, a different pattern than the other pillowcase in the living area. Lying on top of that is a small stuffed doll of some type that was right here in the back of that love seat, which I pointed out earlier.

Q Okay. And that love seat is right here --

A Yes.

Q -- is that correct? And the dining room area, the table

area?

A Directly behind that.

Q Did you ever make any determination on where that pillowcase came from?

A This pillowcase here appeared to also match a similar pillowcase still on a pillow in the upstairs master bedroom.

Q I'm going to show the jury quickly what State's Exhibit 9 is.

The location of the body as shown in State's Exhibit 9, is that the location that you originally saw the body when you entered into the condominium?

A Yes, it is.

Q Can you mark for the jury, please, on the diagram just with a stick figure where the body was located?

A [Witness complies.] In this area right here.

Q Okay. Thank you.

A Larger?

Q Maybe make it a little larger. It always looks bigger to you than it does the jury.

A [Witness complies.] Okay.

Q You can just leave it. Just go over it.

A [Witness complies.] Okay. This area here.

Q Okay. Thank you. And the last picture I'm going to show the jury just once again is State's Exhibit 7.

Can you point out to the jury what doorway this picture represents?

A This photograph represents this entryway looking out from the hallway or foyer, and it represents this landing area with this closet door here.

Q So the full door is the door at the bottom of the stairway?

A Yes, ma'am, right here.

Q Okay. The towel that was seen in State's Exhibit 9, picture with the body, did you ever notice whether that towel matched other towels in the house?

A Yes, I did.

Q Where was that?

A In the upstairs bathroom, which was off the master bedroom.

Q Thank you, Trooper. You can take your seat.

- - -

[Witness resumes stand.]

- - -

MR. TWOMEY: Could we ask that the cardboard thing be moved so we can see the witness now, if the State's done.

Q Okay, moving to the kitchen area. Can you describe what the kitchen looked like when you arrived?

A The kitchen area is off the dining area. The kitchen is

a longer, smaller, thin kitchen, as I describe it. It had linoleum, wooden cupboards on two sides, your left and right, with refrigerator on your immediate left. You travel down with cupboards and counter tops on your left side, and on your right side would have been counter tops, cupboards and a sink. I'm sorry, straight ahead would have been a window looking out to the front of the residence.

Q What was the condition of the kitchen?

A It was fairly neat. There were some items that appeared to have been disturbed from the cupboards. As you entered into the kitchen to your immediate left after the refrigerator was the lower cupboards that appeared to have been opened, and possibly some items sitting on the counter, Tupperware, pots or bowls had been sitting on the top of the counter. On the opposite side was a large Pitzza Hut cup, plastic cup that was half filled with water sitting in the sink, with an empty paper towel tube also in that area.

Q Let me show you two pictures that have been marked as State's Exhibits 17 and 18. In a sentence, tell me what they are, please.

A They're pictures that represent the kitchen area that evening.

Q And is that how you saw the kitchen the night that you

processed the crime scene?

A Yes, ma'am.

Q That's an accurate representation?

A Yes, it is.

Q Okay.

MS. NICOLOSI: May I show the pictures to the jury, Your Honor?

THE COURT: All right.

MS. NICOLOSI: First show them to defense.

MR. TWOMEY: Thank you.

- - -

[State's Exhibits 17 and 18 shown to Mr. Twomey by Ms. Nicolosi, and then displayed to the jury by Ms. Nicolosi.]

- - -

BY MS. NICOLOSI:

Q Was there more than one window in the kitchen or just one?

A Just one.

Q Where did that window look out to?

A It would have looked out of the front of the residence onto a front lawn area and to the driveway or entryway into that cul-de-sac.

Q Was there a door in the living room?

A Yes, there was.

Q Where was it leading out to?

A It led out onto a deck out in the back of the residence.

Q When you began processing the crime scene, was the door open or closed?

A It was partially open.

Q About how much was it open?

A Probably an inch or so, maybe a little more than that. It was obvious that it was open.

Q I'm going to show you three pictures that are marked State's Exhibits 19, 20 and 16. Starting with 19 and 20, can you tell me what they are, please?

A These two photographs show that atrium door door leading out onto the deck. This would be from the deck looking at the residence.

Q What is it that you see in the top of the picture at the door?

A That's the curtain on the inside of the door that seemed to have gotten stuck inside that door, holding it open that small distance.

Q Was that like that when you first arrived on the scene?

A Yes, it was.

Q I'm going to show you State's 16. What is that that we're looking at?

A That is a white piece of fiber that was similar to the fiber

that was located in the living room, as I describe, possibly from the pillow with the black strands of another fiber hanging from that off the deck, the west side of the deck.

Q Okay. Thank you.

- - -

[Pause - State's Exhibits 16, 19 and 20 shown to Mr. Twomey by Ms. Nicolosi.]

- - -

MS. NICOLOSI: Your Honor, may I show them to the jury?

THE COURT: All right.

[State's Exhibits 16, 19 and 20 displayed to the jury by Ms. Nicolosi.]

- - -

BY MS. NICOLOSI:

Q Going back to the kitchen area for just a moment. Did you collect any evidence from the kitchen area when you processed the scene?

A Yes, I did.

Q And what evidence did you seize?

A It was described as a butcher block knife set. It was a butcher block with a set of knives that would be held in that. It was a set of knives with one knife missing, and that set also included a pair of scissors.

Q The missing knife that matched the rest of that set, did you find it anywhere in the condominium unit?

A No.

Q Wasn't anywhere in the kitchen?

A No, ma'am.

Q Okay. Let me show you what has been marked as State's Exhibit 47 for ID, and ask you to tell me what's in the bag, please. You don't need to pull it out.

A It would be that butcher block set of knives with one slot missing, a knife.

Q And all of the knives that were present in the apartment that day are in the butcher block?

A Yes.

MS. NICOLOSI: I'd ask that State's Exhibit 47 be admitted into evidence.

MR. TWOMEY: No objection.

THE COURT: May be marked.

- - -

[Identification stricken from State's Exhibit 47.]

- - -

MS. NICOLOSI: I'd just like to show it to the jury, Your Honor.

- - -

[State's Exhibit 47 displayed to the jury by Ms.]

Nicolosi.]

- - -

BY MS. NICOLOSI:

Q Now, what is it that I now have all over my hands that was on that butcher block?

A It's latent dusting print powder.

Q Was that on it when you first arrived?

A No, it was not. It was clean.

Q At some point they dusted for fingerprints, and that was one of the items --

A Yes.

Q -- is that right? Okay. Where was that butcher block actually located in the kitchen?

A As I described the kitchen earlier, standing in the entryway looking in, it would have been to the left-hand side on the countertop, probably half way down that counter along the back. There were some -- a photograph of some Tupperware bowls. It would have been just behind that area.

Q Did you at some point go up and search the upstairs?

A Yes, I did.

Q Okay. And can you describe for me the general layout, just very briefly, to the jury?

A Travel up the stairway from the entryway to a landing.

Directly to your immediate center or to the left would have been the entryway to the master bedroom. To the right, moving down the hallway, would have been the entryway into the bathroom, which also had an entryway to the master bedroom, and as you continued down the hall, to the right there was a small linen closet and what I described as a spare bedroom to the front of the residence at the end of the hallway.

Q Okay. Now, speaking about the master bedroom, what was the condition of the master bedroom?

A It was again a mess. It appeared to have been ransacked or gone through.

Q All right. I'm going to show you pictures that have been marked State's 21 through 24, and just in a line go through all of them, please, and tell me what they are.

A These photographs depict the master bedroom as it was that night.

Q In those photographs we see clothing and drawers open. Is that the condition that it was in when you first saw it?

A Yes, it was.

Q All right.

- - -

[Pause - State's Exhibits 21 through 24 shown to Mr.

Twomey by Ms. Nicolosi.]

- - -

MS. NICOLOSI: May I show them to the jury, Your Honor?

THE COURT: All right.

- - -

[State's Exhibits 21 through 24 displayed to the jury by
Ms. Nicolosi.]

- - -

BY MS. NICOLOSI:

Q State's Exhibit 24, see two pillows on the bed that appear
not to have pillowcases on them.

A Yes.

Q And the other two pillows that are on the bed do appear to
have pillowcases on them.

A Yes.

Q Do the two with pillowcases, do those cases match the two
that were found in the living room area?

A Yes, they do.

Q And going to the bathroom area, can you describe the
condition of the bathroom?

A The bathroom is divided into two section. There's a front
section with a sink and a linen closet. The back section

divided by a door, is a toilet area, a sink and a shower-bath combination with linoleum floor.

Q What was the general condition of the bathroom?

A It was disheveled. There were some items that appeared to have been out of place there.

Q Did you see anything that was located on the sink area?

A Yes, I did.

Q What was that?

A It was a jewelry box that was open.

Q Was there anything in the jewelry box?

A It was empty, for the most part.

Q I show you what's been marked State's Exhibit 25 and ask you to tell the jury what's in that picture.

A This would be the entryway to the bathroom off the master bedroom.

Q Okay. And what is shown in State's Exhibit 26?

A This would be the jewelry box that was sitting on the sink in the first half of the bathroom area.

Q Okay. In both of these pictures we see some blue towels. Did those match any other towel you saw in the house?

A There were some blue towels on the floor just under the doorway, and those appeared to be similar in color and in design as the one on the floor downstairs near the victim.

Q Where downstairs was the one on the floor we're talking about?

A Near the victim's head and shoulder area.

- - -

[Pause - State's Exhibits 25 and 26 shown to Mr. Twomey by Ms. Nicolosi.]

- - -

MS. NICOLOSI: May I show the jury, Your Honor?

- - -

[State's Exhibits 25 and 26 displayed to the jury by Ms. Nicolosi.]

- - -

BY MS. NICOLOSI:

Q And the third room. What was that upstairs?

A I'm sorry, did you say the third room?

Q The third room, yes.

A That would have been the spare bedroom to the front of the residence.

Q Okay. And what condition was that spare bedroom in?

A It was neat. Nothing appeared to be out of place in the room.

Q I'm going to show you State's Exhibit 28, and can you tell me if that represents the condition of that room?

A Yes, it does. That would be a photograph taken standing inside the room.

Q Thank you.

- - -

[Pause - State's Exhibit 28 shown to Mr. Twomey by Ms. Nicolosi.]

- - -

MS. NICOLOSI: Your Honor, may I show the jury?

- - -

[State's Exhibit 28 displayed to the jury by Ms. Nicolosi.]

- - -

BY MS. NICOLOSI:

Q Okay. And finally, did you also do a search of the basement area of the house?

A Yes, I did.

Q Okay. And what was the condition of the basement?

A It was not -- didn't appear to be messed in any way. It appeared to be a storage area for other items, as a basement would be.

Q If you were going to enter this condominium unit from the outside into the basement, describe the path that you would take from the outside to in.

A On the west wall of the building, condo 4-E, which would

have been at the end, there's a bulkhead which opens both doors, and you would have had to have entered through that bulkhead. It -- if it was unlocked. It would have been locked from the inside, down a stairway, wooden staircase to a wooden door, hollow wooden door with no lock, into the basement area.

Q And then if you were to proceed from there up into the condominium unit, what would you pass through?

A Pass through the main portion of the basement area, which was a clear path, up to a stairwell, wooden stairwell that led to the top landing area, through a door with no lock, into the dining area and living area.

Q So of those three doorways that you would pass through, the only one that you observed that had a lock would have been the bulkhead?

A Yes, ma'am.

Q Did you make a determination whether the bulkhead was locked or unlocked?

A It was unlocked.

Q I show you three pictures that are State's 30, 31 and 29, and just tell me quickly what they are, please.

A Photographs of the basement in different areas that day.

Q Okay. And do those represent all of the entrances from the

bulkhead door up to the condo unit itself?

A Yes, they do.

MS. NICOLOSI: May I show the jury, Your Honor?

- - -

[State's Exhibits 29, 30 and 31 displayed to the jury by
Ms. Nicolosi.]

- - -

Q Did you examine the entryways into the cellar?

A Yes, I did.

Q Again, why did you do that?

A I was mainly interested in signs of forced entry, again.
I concentrated that first search on the doorway from the
bulkhead area.

Q And did you see any kind of forced entry, marks that would
indicate forced entry?

A No, there were none. That door did not have a lock on it.
There were some scrape marks or what appeared to -- might
have been pry marks of some type on the door casing to the
left, but they really had no value because there were no
marks on the door itself.

Q We're talking about the door that you reach as you come
into the bulkhead and go down the cement stairs?

A Right. It's a hollow door. Cheap-type door.

Q It did have a lock or did not have a lock?

A It did not have a lock.

Q I'm going to show you two final pictures that are marked State's Exhibits 32 and 33. Can you tell me what they are, please.

A They are photographs that depict the outside of building 4-E with that bulkhead.

Q All right. Both of them are?

A Both of them, yes.

Q Okay.

MS. NICOLOSI: Your Honor, may I show them quickly to the jury?

- - -

[State's Exhibits 32 and 33 displayed to the jury by Ms. Nicolosi.]

- - -

Q All right, after you completed -- well, let me ask you this. How long did it take you, would you say, from the point you began the processing of the crime scene until the point you ended?

A It took most of the day. Again, I'd have to look at the notes for the time we left the residence, but I believe it was sometime after 4 o'clock May 2nd in the afternoon.

Q Okay. Did you participate at all in another portion of

processing the crime scene?

A Yes, I did.

Q And what was that?

A It was a search of the outside of the residence and of a field area that led up a slight embankment to a professional building.

Q Why was it that you were assigned to search that area?

A Some evidence had been located a distance away from the condominium in this parking lot area which was across that field, so it was important that we covered that area in the field.

Q Did you actually see that evidence in place?

A No, I did not.

Q Was it described to you or were you to understand where it was?

A I knew its position because it was marked after it was collected, so I knew the position of the evidence.

Q What was found in that area?

A There was a jewelry box in two parts. There were some tissue or paper towel type items, and I believe there was a knife of some type found also in that area.

Q Okay. Let me show you what's been marked State's Exhibit 49 and ask you what that is.

A That is an accurate diagram of the outside of that entire area of Misty Morning Drive and the professional building and Peabody Road annex.

MS. NICOLOSI: Your Honor, the parties have agreed that will be admitted into evidence as a full exhibit as well.

THE COURT: May be marked.

MS. NICOLOSI: All right.

THE COURT: We'll break for lunch now, ladies and gentlemen, and resume around quarter of 2.

Please don't discuss the case in the jury room or among yourselves.

- - -

[Luncheon recess at 12:28 p.m.]

- - -

MARCH 5, 1991 - TUESDAY AFTERNOON SESSION - 1:42 P.M.

THE COURT: Good afternoon.

- - -

[Mark Myrdek resumed the witness stand.]

- - -

MS. NICOLOSI: Your Honor, may we continue?

THE COURT: Go ahead.

DIRECT EXAMINATION BY MS. NICOLOSI [Continued]:

Q Trooper Myrdek, when we broke we were talking about the search of the crime scene. Since the break, since lunch I've put up this diagram. If you could approach and explain to the jury what that represents, quickly.

A [At the diagram.] This is the area of Misty Morning Drive as it was that day or that morning that we arrived in Derry. This would be condominium 4-E at the end of this row of buildings here.

Q Where would the plaza be on this? Can you point out Derry?

A Hood Plaza would be over on this side of the diagram here.

Q And how about the school that's in the area, where would that be?

A School would be down in this area here below the diagram.

Q And the Derry Meadows Professional Building is where?

A Would be here.

Q Before you take your seat, can you just show the jury what area you searched?

A The area we searched would have been around this set of condominiums, out the back, and in this area of the field, and an "L" shaped type pattern out this way.

Q Okay. Take a seat. Thank you.

- - -

[Witness resumes witness stand.]

- - -

Q Did you locate anything during your search?

A Yes, we located numerous items in that field area.

Q Is there anything in particular that you have since learned is of some relevance?

A Yes. At one point while doing the search of that field, we walked along in a line pattern. There was some Derry officers and myself. To cover that area, we did what I call a grid search. We walked in a line to cover that field and any items that might have been seen. The plan was that if an item was located, we would stop, I would look at the item to see if it was pertinent. If not or if it was, we would collect it or move on, depending what the item was.

Q What if somebody else found something pertinent, then what would happen?

A The whole line of police officers would stop where they were and I would go over and make a determination and look at the item to see if it was pertinent.

Q Who was in charge of the search?

A I was.

Q How many officers would you say, just approximately, were searching with you?

A Approximately six.

Q How many items did you actually, either yourself stop at or other officers stopped at?

A There were only two items that I recall we stopped at, paid particular attention to.

Q What were those items?

A One was a cigarette. That was located towards the parking lot area of the Derry Professional Building. And the other was a surgical -- a latex rubber glove.

Q Where approximately was the surgical latex glove located?

A If it's easier, I'll point it out.

Q Why don't you come up.

A [At the diagram.] I located the glove in the -- this field has a section of tall grass and a section of cut grass closer towards the parking lot. The area that I found the glove was in this area here in the short grass area of the

parking lot, next to the parking lot or adjacent to the parking lot.

Q How wide was that cut grass, would you say?

A Approximately, and I'm only guessing, maybe 20, 20 feet.

A And the grass that you described that was beyond the cut grass, how high would you say the grass was that day?

A It was probably ankle high or little more. It was matted field type grass.

Q Approximately where did you find the latex glove?

A It would have been right here in the short grass area along the parking lot. There was a dumpster located in this area, and it was off to the grass -- grassy side of it.

Q Was there anything located near the glove?

A No, there was not.

Q Was there any item located -- was there a trash receptacle some place in this area?

A Yes, the dumpster, the trash dumpster was located on the parking lot of the professional building alongside the grassy area.

Q Would you please make a rectangle to represent the dumpster and an "X" with a circle, say, to represent the glove.

A [Witness complies.] Dumpster would have been in this area.

Q Why don't you color it in for us.

A [Witness complies.] And the glove would have been found in this area, here in the grass area.

Q Okay. Take a seat.

- - -

[Witness resumes witness stand.]

- - -

Q You said that -- well, let me go back. Did you locate the glove or did some other officer that was searching?

A Another officer located that glove.

Q Did you at some point observe it?

A Yes, I did.

Q How was it that you were brought over to see the glove?

A The officer stopped the line and called me over to take a look at the glove.

Q What did the glove look like?

A It was a rubber latex type surgical glove that you commonly see doctors using in hospitals, or EMT's using in their treatment of emergency victims, or whatever.

Q Okay. And what other -- what else did you observe on it other than --

A The glove was -- it was wet. It was either due to a dew maybe that night or mist or it had rained lightly that night very, very lightly, and it was wet possibly because of that.

It had sand on it. It was sandy, but it was not buried in the dirt, so to speak.

Q What did you do after you first saw it?

A I observed it laying in its position. I then looked at it to see if there was any other type marks on it, any stains of any type, and made a determination at that point being that it was near the medical building -- there was a medical building located at the professional building and a gynecologist's office and dentists' offices were there and in its close proximity to the dumpster, I had no other information at that point, I determined it was not pertinent.

Q When you made a decision it wasn't pertinent, what did you do with it?

A I discarded it in a trash receptacle. It was either a plastic bag or a paper bag, I don't recall which.

Q Other than the glove, did you pick up or the officers pick up any other items as you went through the field area?

A Yes, we did.

Q What did you do with those?

A They were discarded if they were not pertinent. There was cans, bottles, glass and paper that had blown, I would say, through this field over a course of time, and those were picked up so that we would not go over the same things

again and again, and we went through that field because we went one way back and then a different direction because we wanted to make sure we'd covered that field as good as possible.

Q What time were you doing this search on May 2nd?

A I don't know exactly. It would have been late morning, in the daylight hours probably before noontime.

Q Did you ever have occasion to write a report that related to that glove?

A Yes, I did.

Q When was that?

A It was in July of last year.

Q Why did you write a report on it?

A I was contacted by Corporal Eastman, who was my supervisor. He asked me if I recalled locating a glove.

Q Let me stop you. When he asked you that question, did you have a clear recollection of the glove?

A I had to think about it, and I thought for a few minutes, thinking about the scene that day, and I did recall picking up this glove.

Q Okay. Go ahead.

A He asked me if I recalled that, and I did explain to him what I'd done, that I did recall picking up the glove, that

it was not pertinent at the time, and that I discarded it. He then asked me to write a report on that so that that was documented, and I did that. On July 31st I believe I signed that report.

Q Before he asked you the question about whether you recalled the glove, did he tell you why he wanted the information?

A No, he did not.

- - -

[Pause - Ms. Nicolosi and Mr. Maggiotto conferring quietly].

- - -

MS. NICOLOSI: I have nothing else.

CROSS-EXAMINATION BY MR. TWOMEY:

Q Good afternoon.

A Good afternoon.

Q Now, as I understand it, your primary job was collecting the evidence?

A Yes, sir.

Q There are a number of police officers at the scene, and so it doesn't get too confused, one person is designated to sort of mark in the evidence and make sure everything is marked in correctly?

A That's correct.

Q If I could take you back to the scene in the foyer of the

house for a moment.

A Uh-huh.

Q Talk about the things you found there. You found a towel, blue towel, I believe?

A Yes, that was in the dining room area on the carpet.

Q Okay. Is that the towel that's shown in State's Exhibit Number 5 next to Mr. Smart's head, under it?

A Yes, it would have been.

Q Okay. And as I understand it, you took that towel and later at some point in time compared it to towels in the upstairs bathroom?

A I observed the towels in the upstairs bathroom, along with that one.

Q Okay. And you came to the conclusion that they were the same color and same style of towels?

A Yes, sir.

Q Did you compare it to the towels in the downstairs bathroom to eliminate those as a source?

A Yes, the towels in the downstairs bathroom were a different color. They were a maroonish color. Coordination of that bathroom was different. It was maroonish or a light red color, if I recall.

Q As an investigator, would you feel comfortable saying the

most likely conclusion is that that towel's part of the set in the upstairs bathroom?

A I would say that's a possibility.

Q Now, what did you do with that towel, do you know?

A That towel was placed in an open paper bag so that it could dry, be allowed to air dry, and that's how it probably would have been transported to the lab that way.

Q Okay. Did you send it up to the state lab?

A That's where the evidence was logged in, yes.

Q The state lab has a fellow who does blood deposit analysis up there, don't they?

A Yeah.

Q Kevin McMahon, I believe, is his name?

A There are a couple, yes.

Q Do you know if anyone asked Mr. McMahon to take a look at that towel to come to conclusions about how the blood was on that towel or --

A I know as we signed the evidence in, and I don't recall the person signing it in, it might have been Kevin, I would have to check the log, that would have been explained to him. We try to go over every piece of evidence to explain what it is, what it represents so they have an understanding where it came from. So that would have been discussed at

some point with whoever took that in.

Q I guess my question is, do you know whether or not a blood deposit analysis was done on that towel?

A No, sir, I do not.

Q There was also a ring found on the ground?

A Yes.

Q I believe you took that into evidence?

A Yes, sir.

Q I'm going to show you two things. One is Defendant's Exhibit A, which is a photograph. And the other is Defendant's Exhibit B, which is a small bag. I'm going to ask you to take a look at those, then tell the jury what they are.

A Photograph would have been a photo taken after the body was removed. This -- the wallet was between the legs, which I identified earlier. The ring and the keys were under the body. They were not observed until the body was removed.

Q Were they in the position as they are in that photo there?

A Yes, sir.

Q Okay.

A And this ring would represent the ring that I collected as evidence with my initials that day.

Q Okay. That is the ring you collected, and the photo

depicts the area as you saw it once the body was removed?

A Yes, sir.

Q Okay.

MR. TWOMEY: I'd move those into evidence at this time.

MS. NICOLOSI: No objection.

THE COURT: All right, may be marked.

MR. TWOMEY: I'd like to publish the photograph. Just ask the members of the jury to pass it around.

- - -

[Defendant's Exhibit B displayed to the jury by Mr. Twomey.]

- - -

BY MR. TWOMEY:

Q There were some paper -- we'll go on while the jury looks at this -- there was some paper towels you mentioned. Can you tell us where that was?

A It was a paper towel to the right side of the body on the carpet, was in close proximity to that. That was the only paper towel that I actually observed.

Q If I were again to go to State's Number 5, I believe it is, and show you the picture, is this where you saw it as it is in this photograph?

A Yes, that should be the paper towel.

Q Was it crumpled up in the manner it is right here?

A Yes, sir.

Q Okay. Did you folks do anything with the paper towel?

A I believe that was collected as well and marked as evidence.

A Again, my question is -- I understand it was collected afterwards -- do you have any knowledge whether anyone at the lab tested it for gunshot residue, blood, whether it had been used to wipe something like that?

A I don't know exactly what tests were done on that particular item.

MR. TWOMEY: Okay. Thank you. No further questions.

THE COURT: Redirect?

MS. NICOLOSI: No, I have no further questions.

THE COURT: You may step down, sir. Thank you.

THE WITNESS: Thank you.

[Witness excused.]

MS. NICOLOSI: State would call Guy William Kimball.

GUY WILLIAM KIMBALL,

called as a witness, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MS. NICOLOSI:

Q Have a seat. What's your name, sir?

A Guy W. Kimball.

Q Spell your last name for the record, please.

A K-i-m-b-a-l-l.

Q How are you presently employed?

A Employed by the Department of Safety, Division of State Police for the State of New Hampshire.

Q And how long have you been with the State Police?

A Approximately 18 and a half years.

Q What's your current rank?

A Corporal.

Q What's your present assignment?

A I'm assigned to the Investigative Services, Major Crime Unit.

Q In May of 1990, was that your assignment?

A Yes, it was.

Q Were you involved in processing the crime scene on May 2nd at Misty Morning Drive, in Derry?

A Yes, I was.

Q And what was your responsibility that night?

A It was in conjunction with the initial crime scene search, as well as the secondary crime scene at Derry Meadows Professional Park.

Q Okay. What time were you involved with the part of the crime scene processing that involved Derry Meadows Professional Park?

A It would have been approximately 5 o'clock in the morning.

Q And who was it that directed you to have some involvement in that part of the search?

A I believe that would be Corporal Eastman at the time.

Q What was it you were supposed to do?

A There was evidence along the edge of the parking lot which appeared consistent with the apartment.

Q Now, did you find that evidence or were told that it was there?

A I was told that it was there.

Q And when you went out to where that evidence was located, what did you see?

A Along the outside edge of the parking lot by the building were two cardboard jewelry boxes, open. There was a plastic jewelry box. There were two pieces of napkin which were torn. And there was a plastic handled knife.

Q Okay. And were they visible to the eye when you first saw them?

A Yes, they were.

Q Nothing was covering them?

A The -- the napkins and that were covered by a box. There had been a wind that morning, and I believe the cardboard boxes were covered also to prevent them from moving any further.

Q But those cardboard boxes, as you understand, were placed there, that's what I'm saying?

A Yes, they were.

Q Let me show you a picture marked State's Exhibit 34. Please tell me what that is.

A That would be a view of the Derry Meadows Professional Building from the area of Misty Morning.

Q Okay. And I'm going to give you two that are marked State's Exhibits 35 and 36, and can you please tell me what those pictures show.

A The two pictures denote the jewelry boxes and the knife as they are located off the parking lot.

Q Can you tell me which one is the knife with the number from the back of the picture?

A Number 36 would indicate the knife stuck in the ground.

Q Okay. Now, when you say "stuck in the ground," is that how you located it? Is that how you observed it on May 2nd?

A Yes, that's correct.

Q All right.

- - -

[Pause - State's Exhibits 35 and 36 shown to Mr. Twomey by Ms. Nicolosi.]

- - -

MS. NICOLOSI: Your Honor, may I show them to the jury?

- - -

[State's Exhibits 35 and 36 displayed to the jury by Ms. Nicolosi.]

- - -

BY MS. NICOLOSI:

Q I'm going to show you what's been marked State's 39 for ID. Can you just unwrap it, take it out, and tell me what it is.

A It would be the knife from the crime scene. That was found at Derry Meadows Park.

Q And is that the knife that the jury viewed that is in State's Exhibit 36?

A Yes, it is.

MS. NICOLOSI: I'd ask that the knife be admitted into evidence.

MR. TWOMEY: No objection.

THE COURT: May be marked.

- - -

[Identification stricken from State's Exhibit 39.]

- - -

BY MS. NICOLOSI:

Q If you could approach the diagram with me, Corporal, and there's a pointer -- let's get this pointer right behind.

Can you point out for me on this diagram where it was you located the knife?

A It would have been approximately in this area right here.

Q Okay. And how about the jewelry boxes?

A They would have been just a little bit further into the grassy area from this corner.

Q How about the paper towel?

A Again, in the same vicinity.

Q How far approximately is it from, say, the corner of this parking lot to 4-E Misty Morning Drive?

A Approximately 280 feet.

Q All right. And can you mark for me the spot on this diagram with a circle that you saw the jewelry boxes -- where you saw the jewelry boxes?

A [Witness complies.] Approximately in that area there.

Q And can you mark the exhibit number of the knife in the

area where you --

A [Witness complies.] 39.

Q I think you're going to have to go a little bigger.

A [Witness complies.]

Q There we go. Okay, thank you. Have a seat again.

- - -

[Witness resumes witness stand.]

- - -

Q Other than processing this area and gathering this evidence, did you take part in any other part of the crime scene processing?

A Yes, I did.

Q And what was that?

A There were tire impressions to the rear of the building complex which were documented by myself. I also assisted with the fingerprint processing of the apartment.

Q Okay. Did you take any photographs at the scene?

A Yes, I did. I documented the interior of the scene and exterior by photographs.

Q Did you take any photographs of any of the vehicles that were in the area?

A Yes, I did. The victim's pickup truck was located in a parking space in front of the building, and I documented

that photographically.

Q When did you do that?

A That would have been on the morning of the 2nd.

Q Okay. I'm going to show you what's been marked State's Exhibit 37. What is that?

A That would be a photograph of the pickup truck with his seat folded forward, depicting the materials behind the seat.

Q And what is behind the seat?

A Basically, there are two large, I believe they're homemade speakers in boxes, one on each side of the back.

Q Okay. Describe for me what those speakers looked like a little bit more than that. What color were they?

A It was a kind of a bluish carpet type material covering with wood boxes with the speakers implaced in them.

Q When you say "bluish," bluish gray or a blue?

A Best as I could say, probably a bluish green.

Q Okay. Does this picture fairly represent the speakers and the back seat of the truck?

A Yes, it does.

MS. NICOLOSI: I'd like to show it to the jury, Your Honor.

- - -

[State's Exhibit 37 displayed to the jury by Ms.

Nicolosi.]

MS. NICOLOSI: I have nothing more.

CROSS-EXAMINATION BY MR. TWOMEY:

Q Good afternoon.

A Good afternoon.

Q Did you take the photos inside the house, too, sir?

A Yes, I did.

Q Could you tell the people in the jury when you go to a crime scene, and isn't there like a team that goes down there, essentially, from the Major Crime Unit?

A Normally, yes.

Q Tell the people on the jury how that works. Do you go around taking photos by yourself or are you with somebody as they are collecting evidence?

A We work in conjunction with each other. Each crime scene presents different problems, so that the crime scene team that goes in knows what they had and how we're going to do it.

Q Trooper Myrdek, who testified earlier, told us his job was to gather the evidence, mark it, that kind of stuff.

A That's correct.

Q Would he be -- after you take photos would he then gather the evidence, then you move on to the next area where you

take photos and he gathers evidence?

A Basically, I would go through and attempt to document it completely on a continual basis, as far as photographs and that. As I say, we work in conjunction with each other so as not to disturb evidence prior to collection time.

Q So the collecting guy wouldn't touch anything until he was sure you had taken a photo of it?

A That's correct.

Q Would he be with you when you took the photo?

A Normally would not go through until afterwards.

Q Okay. I'm going to show you what's been marked as State's Exhibit Number 5. Is that a photograph that you took, sir?

A I believe so, yes.

Q I'm now going to show you what's been marked as Defendant's Exhibit C, okay? Can you compare that or have you ever seen this before?

A Yes, I have.

Q Why don't you tell us what that is.

A That is a candlestick holder which came from the apartment.

Q Where was it found in the apartment?

A It was located under the feet of the victim.

Q Okay. Is that again what is shown in that State's Number 5?

A That's correct.

MR. TWOMEY: Okay. No further questions, sir. I'd move that the ID -- this be marked as a defendant's full exhibit.

MS. NICOLosi: No objection.

THE COURT: May be marked as a full exhibit.

MR. TWOMEY: No further questions.

THE COURT: Any redirect?

MS. NICOLosi: No, Your Honor.

THE COURT: You may step down. Thank you.

- - -

[Witness excused.]

- - -

[Identification stricken from Defendant's Exhibit C.]

- - -

MR. MAGGIOTTO: Your Honor, the State calls to the stand Patrick Randall.

THE COURT: All right.

PATRICK RANDALL,

called as a witness, being first duly sworn, was examined and testified as follows:

MR. MAGGIOTTO: May I continue, Your Honor?

THE COURT: Go ahead.

DIRECT EXAMINATION BY MR. MAGGIOTTO:

Q In a nice clear voice, would you please state your name so that everyone in the jury box can hear.

A Patrick Alan Randall.

Q Spell your last name for the benefit of the stenographer.

A R-a-n-d-a-l-l.

Q Mr. Randall, how old are you?

A Seventeen.

Q What's your date of birth?

A December 11, 1973.

Q Where are you currently living?

A Brentwood House of Corrections.

Q How long have you been there?

A Little over a month now.

Q Prior to being in the Rockingham House of Correction, where were you?

A ADC unit for kids in Concord.

Q How long were you in the ADC unit in Concord?

A Little over seven months.

Q When did your period of incarceration commence?

A June 11th.

Q 1990?

A Yes.

MR. MAGGIOTTO: Your Honor, with the Court's permission, I'm going to try and push the microphone down a little bit to be sure he's being heard.

Q Before your incarceration in June of 1990, where did you live?

A 187 South Main Street, Seabrook, New Hampshire.

Q I'm sorry, which town?

A Seabrook, New Hampshire.

Q Who did you live there with?

A My parents.

Q What are your parents' names?

A Patricia Randall and Frank Randall.

Q Did you have any brothers and sisters?

A No, I did not.

Q Where were you attending school, if at all, at that time?

A Winnacunnet High School.

Q What year were you in at Winnacunnet High School?

A Freshman.

- Q How many years had you been attending Winnacunnet High School?
- A That was my second year.
- Q So you were repeating your freshman year?
- A Yes.
- Q Do you know Pamela Smart?
- A Yes, I do.
- Q Is she in the courtroom today?
- A Yes, she is.
- Q Point her out for us, please. Tell us what she's wearing.
- A She's the woman sitting on the end wearing a purple suit.
- MR. MAGGIOTTO: Indicating the defendant, Your Honor.
- Q How did you know Pamela Smart?
- A I was introduced to her by Bill Flynn.
- Q Where were you introduced to her?
- A In school.
- Q At school? Which school do you mean?
- A Winnacunnet.
- Q Now, do you know -- who is Bill Flynn?
- A He's one of my friends.
- Q How long have you known Bill Flynn?
- A Since eighth grade.
- Q And could you describe the nature of your relationship with

Bill Flynn?

A He's one of my best friends.

Q How long has he been one of your best friends?

A Since about the end of eighth grade.

Q How many years would that be for you?

A Three, four.

Q Do you know Vance Lattime?

A Yes, I do.

Q And how long have you known Vance Lattime?

A Since I was in the first grade.

Q What's the nature of your relationship with Vance Lattime?

A He's also one of my best friends.

Q Do you know where Bill Flynn and Vance Lattime went to school?

A Yes, I do.

Q Where was that?

A Winnacunnet.

Q Now, what name are you normally known by to your friends?

A Pete.

Q As opposed to Patrick?

A Yes.

Q Why's that?

A Nickname.

Q And how was Bill normally known to his friends, Bill Flynn?

A Bill.

Q Vance Lattime, Jr.?

A J.R.

Q And are those the names that you use -- well, is that the name you use for Vance Lattime, Jr. was J.R.?

A Yes.

Q You're currently referred to as Pete?

A Yes, I am.

Q Who is Raymond Fowler?

A A friend of ours.

Q And how do you know Raymond Fowler?

A Through Ralph Welch. He's Ralph's cousin.

Q Who's Ralph Welch?

A Another one of my friends.

Q How do you know Ralph Welch?

A I've known him since first grade.

Q And do you know where Ralph Welch lived back in the spring of 1990?

A At the Lattimes' house.

Q That would be J.R.'s house?

A Yes.

Q Now, through Ralph Welch you met Raymond Fowler?

A Yes.

Q How long do you know Raymond Fowler?

A Since about fourth grade.

Q What's the nature of your relationship with Raymond Fowler?

A A friend.

Q Not as close as J.R. and Bill?

A No.

Q What about Ralph Welch?

A He was one of my best friends.

Q Now, how old is Bill Flynn and J.R. and -- well, let's go one at a time.

Do you know how old Bill is?

A He'll be 17 March 12th of this year.

Q And J.R.?

A Is 18.

Q And how old is Ralph Welch?

A Eighteen.

Q Raymond Fowler?

A I believe he's 19.

Q Now, I'd like to call your attention to May 1st, 1990. Do you recall that day?

A Yes, I do.

Q Did you go to school that day?

A Yes, I did.

Q Can you tell me what you did after school?

A I went to Haverhill to pick up J.R.'s grandmother's car in order to go to Derry to kill Gregory Smart.

Q Now, where did you immediately go after school?

A To J.R.'s house.

Q Who was with you at that time?

A J.R., Bill Flynn.

Q And how did you get to J.R.'s house?

A School bus.

Q Was there anyone else with you at that time?

A When I returned home from school?

Q That's correct.

A Besides my friends, no.

Q Now, a moment ago you said you went to Haverhill to get a car to go up and kill Gregory Smart after school that day. Did you know that was your plan for that day?

A Yes, I did.

Q Now, once you got to J.R.'s house after school, what happened next?

A J.R., Bill myself and George Emond went to Big Al's Gun Shop and purchased a case of .38 hollow tip shells for J.R.'s father's revolver.

Q Now, why couldn't you purchase these bullets yourself?

A Because I'm a minor.

Q What is your understanding of how old you have to be in order to purchase bullets?

A Over 18.

Q And after purchasing the bullets, what happened next?

A We went back to J.R.'s house, where Bill Flynn called Pamela Smart and asked her for a ride to Haverhill, Massachusetts.

Q Do you know how you originally were supposed to get to Haverhill?

A We were not supposed to get to Haverhill. The car was supposed to be brought to us to Seabrook.

Q By who?

A By J.R.'s grandmother.

Q Try and let me finish the question. It's hard if we're both speaking at the same time for the stenographer.

So when you got there after school that day, the car wasn't there?

A No, it was not.

Q So Bill Flynn then called Pamela Smart?

A Yes, he did.

Q How do you know that?

A I watched him get on the phone with her. Then I left the

the room and went into the kitchen.

Q When you saw him get on the phone, how do you know he called Pamela Smart?

A He told me that's who he was calling.

Q So that's the basis of your knowledge?

A Yes.

Q After Bill Flynn did that, did there come a time that day when you saw the defendant?

A Yes. She came down to the house to pick us up in order to bring us to Haverhill.

Q When she came down to the house to pick you up, about what time was it?

A 3:30, maybe 4 o'clock.

Q Was there anyone with her?

A She was by herself.

Q Can you tell us what kind of car she came down to pick you up in?

A Silver Honda CRX.

Q And what the license number was on that car?

A It's a vanity plate, HALEN.

Q How was it that you were aware of on that day that you were going up to kill Gregory Smart?

A It had been planned between Bill, myself, Vance and Pam.

Q And for how long had you been planning it?

A Since April, March.

Q Of the same year?

A Yes.

Q Now, once Pam came down to J.R.'s house -- now, by the way, can you tell us where J.R.'s house is?

A 65-B Collins Street.

Q How far is that in relationship to Winnacunnet High School?

A Probably six miles.

Q How long did it take after Bill made the phone call for the defendant to show up in her car?

A Fifteen minutes, maybe 20.

Q Now, this wasn't the original plan?

A No, it was not.

Q Now, once she showed up in the car, what happened next?

A She got in the back with Bill. J.R. drove the car, and I got in the passenger seat, and we went to Haverhill.

Q Now, can you describe what the back of the CRX was like, I mean the Honda, of her car?

A It's a hatchback and doesn't have any rear seat. It lays down. It's flat.

Q Can you tell us how Bill Flynn and the defendant were positioned in the back of that car?

A They were laying down --

Q Where --

A -- with their feet --

Q Where were their heads and feet?

A Their heads were pointed towards the hatchback and their feet were between the seats.

Q So when you say the head was pointed towards the hatchback, you mean the back of the car?

A Yes.

Q And their feet were towards the front?

A Yes.

Q Now, once you all got in the car, what happened next?

A We drove to Haverhill, and on the way I had a discussion with Pam.

Q Can you tell us -- well, let me withdraw that question.

Prior to your ride to Haverhill with the defendant, had you ever had any discussions with Pamela Smart concerning the murder of her husband, you personally?

A No, I did not.

Q Is this the first time you ever had any discussion with Pam Smart on this subject?

A Yes, it is.

Q Can you tell us what you said to the defendant and what she

said to you?

A I asked her could we go over the plan because I wanted to make sure everything was going to work. And she told me to -- that we'd go in through the bulkhead, that she'd leave the bulkhead and the back doors unlocked, we could go in, make sure we didn't turn on any lights, not to hurt her dog, and that we would ransack the apartment, the condo, take what we wanted, and wait for Greg to come home, and when Greg came home, we were to kill him.

Q Now, did she tell you why you shouldn't turn on any lights?

A Because she said Greg was a wimp and he wouldn't come in the house if the lights was on.

Q What was the word she used?

A A wimp.

Q Do you know what her dog's name was?

A Halen or Haley.

Q When she said not to hurt the dog, did she give you any other instructions concerning the dog?

A I'm not sure.

Q You're not sure, you can't recall?

A [Negative nod.]

Q You'll have to say yes or no.

A No, I cannot recall.

Q Now, after you -- why did you ask to go over the plan?

A Because I just wanted to make sure everything would work out.

Q And what else was said at that time?

A I asked her would she freak out if she saw a lot of blood, because I felt that stabbing Greg would be a lot easier than shooting him, considering the gun would make a louder noise, and the fact was the gun was J.R.'s father's and we didn't want to use it if we didn't have to.

Q What did the defendant say when you asked her if she would freak out if you used a knife?

A She said why didn't we just use a goon gun and told me if I was to stab him it would get blood everywhere, and not to get blood on the sofa.

Q At that time did you have a knife in your possession?

A No, I did not.

Q Was there any weapon inside the car as far as you knew it at the time?

A .38 handgun.

Q How do you know that?

A It was on Bill.

Q Where was Bill carrying it at that time?

A In the waistband of his jeans.

Q I'm sorry?

A In the waistband of his jeans.

Q And do you know what, if anything, Bill did with the gun at that time?

A I seen him once reposition it in his pants.

Q Now, when you said to the defendant you wanted to go over the plan, how was it that you were even aware -- you knew what the plan was?

A Bill had told me previously.

Q What did Bill tell you?

A That Pamela Smart wanted her husband killed because she wanted out of the relationship, but she did not want a divorce because that would leave her with nothing.

Q And after Bill had showed her the gun, were there any other conversations in the car on the way down between, let's say, Pam Smart and J.R.?

A Yes, there was.

Q What was that about?

A J.R. was speeding and she told him to slow down because what would it look like getting a speeding ticket in Haverhill, Mass. when she's supposed to be in Hampton with him driving her car and with a handgun in the car.

Q Do you recall how fast J.R. was going at that time?

A About 85.

Q Were you looking at the speedometer or estimated?

A Estimated.

Q Was it a habit of J.R. to drive fast?

A Yes.

Q Now, can you tell us what happened once you got to Haverhill?

A J.R. went into his grandmother's house, got the car keys and gas money for the car. I got in the car with -- J.R.'s grandmother's car with J.R. We drove back in that, and Bill and Pam drove back in her car.

Q When J.R. went to get his grandmother's car and you said gas money, what do you mean?

A Gas money.

Q Who gave him the gas money?

A J.R.'s grandmother gave it to him.

Q Did you go into J.R.'s grandmother's house at that time?

A No, I did not.

Q Did anyone go into J.R.'s grandmother's house at that time?

A Just J.R.

Q How often was it that J.R. borrowed his grandmother's car?

A Pretty much every weekend.

Q Common occurrence for J.R. to borrow his grandmother's car?

A Yeah.

Q What kind of car was it?

A A Chevrolet Impala.

Q Two-door, four-door?

A Four-door.

Q Now, were there other conversations that you can recall on the way down to Haverhill between the occupants in the car?

A None that I can recall.

Q Was everyone quiet or that's just the best you can recollect?

A That's just the best I can recollect.

Q Now, after you picked up the car, did you make any stops on the way down or on the way back to Seabrook?

A On our return trip we stopped and got gasoline, got gas at a gas station.

Q Who got gas?

A J.R. and myself.

Q When you got gas, where was the defendant and Bill?

A I believe they pulled in the gas station behind us.

Q Now, who was driving J.R.'s grandmother's car?

A J.R.

Q Where were you sitting?

A Passenger's side.

Q And who was in the defendant's car?

A Pam and Bill.

Q And who was driving that car, do you recall?

A Pam.

Q Now, after you stopped to get gas, how long did that stop take?

A Five minutes at the most.

Q How long did it take you to get to Haverhill from Seabrook?

A Twenty minutes.

Q So do you have a rough idea about what time it was you were heading back to Seabrook from Haverhill?

A Little past 4 o'clock. Maybe quarter past 4.

Q Now, where do you go when you get back to Seabrook?

A J.R.'s house.

Q And who gets back to J.R.'s house first?

A We do by a little bit.

Q Now, who is "we"?

A Myself and J.R.

Q So when you get back to J.R.'s house, the defendant and Bill aren't back yet, is that correct?

A That's correct.

Q Do you know how long you wait?

A Couple minutes.

Q Are you estimating, did you time it, or --

A I didn't time it. That's about what it was, a couple

minutes.

Q And what happened next?

A Pam dropped Bill off and she went back to the school.

Q And do you know where Pam was going to that night?

A She had a meeting.

Q Now, after Bill got dropped off, what happened next?

A Bill, myself and J.R. took his grandmother's car down to Bill's house and got a school bag that contained two pairs of sweat pants, two sweatshirts, two pairs of sneakers and two pairs of latex rubber gloves.

Q When you went to Bill's house to pick up that bag, how far was Bill's house from J.R.'s?

A Three miles. He lives down the beach.

Q As you went to Bill's house, did you go inside with him?

A No, I did not.

Q Did anyone go inside with him?

A No.

Q How long did it take to get that bag?

A Couple minutes, maybe three.

Q Now, the description you gave us of that bag, how did you know what the contents were in that bag at that time?

Hold on a second. Do you understand the question?

A Yes. I saw -- I had saw them when he put them in there.

When he put the bag in the car, I had looked into it.

Q Did you know what he was picking up when he went to his house?

A Yes, I did.

Q Part of the plan to go to his house and pick up this bag?

A Yes.

Q This bag was already put together, as far as you understood?

A Yes.

Q After picking up this bag, where did you go next?

A To Collins Street to pick up Raymond Fowler.

Q Where was Raymond Fowler at?

A At Ralph Welch's house.

Q What was he doing?

A Helping Ralph's father put a windshield into a pickup truck.

Q Now, once you picked up Raymond Fowler, what happened next?

A The four of us left to go to Derry.

Q Did you have any idea about what time it was at this time?

A Five, maybe.

Q Now, how long does it take to get to Derry, New Hampshire?

A I'm not sure.

Q Did you have any trouble getting to Derry, New Hampshire?

A We missed our exit once. J.R. doubled back and got on the right exit, I guess.

Q Why do you say you guess?

A I'm not familiar with the way to Derry.

Q Were you giving directions at all on the way to Derry?

A No, I was not.

Q Now, where did you go once you got to Derry, New Hampshire?

A We circled -- we went into the plaza, circled around Misty Morning Drive once to get a layout of how the condos were set up, sort of know where we were going to and everything. Then we went back to the plaza.

Q Had you ever been to Misty Morning Drive before this time?

A No, I had not.

Q Now, when you said you went to the plaza, do you know the name of the plaza?

A No, I do not.

Q Okay. Now, when you say you drove around to 4-E Misty Morning Drive, tell us what the route was you took, as you recall it.

A Through a road behind the plaza, around -- around the complex. A road goes completely around, comes back out in front of the plaza again.

Q And who pointed it out, 4-E Misty Morning Drive, to you?

A Bill Flynn.

Q What happened next?

A We went back into the plaza and we sat around waiting until it got dark.

Q Now, can you tell the members of the jury what the plan was, as you understood it to be at that time?

A We were to wait until dark, take the bag full of clothes, go out behind the plaza and change into the sweatsuits, and then we were to go into the -- to Gregory Smart's residence, ransack the apartment and wait for Gregory to return, where we were going to stab him with a knife.

Q Now, who was going to go inside Apartment 4-E?

A Bill Flynn and myself.

Q And what was J.R.'s and Raymond Fowler's role?

A They were to wait outside in the car. When we were done, they were to pick us up.

Q Where in the car were they supposed to wait?

A In front of the plaza.

Q Now, what happened once you parked back in front of the Hood Plaza?

A Excuse me?

Q After you did this loop around and saw where 4-E Misty Morning Drive was and you came back in front of the plaza, what did you do then?

A Raymond went to get a piece of pizza because he was hungry.

Vance, Bill and myself went through stores looking at tapes. Then we went into Ames and bought a roll of Scotch tape.

Q Why do you buy a roll of Scotch tape in Ames?

A We weren't positive if the rubber gloves would be enough to keep our fingerprints off of anything in the house, so to make sure, we taped our fingers with Scotch tape.

Q That was your plan, to tape your fingers with Scotch tape?

A Yes.

Q Where did these latex gloves come from, do you know?

A Bill had them. Bill had them.

Q In the bag?

A Yes.

Q Do you remember -- do you know how many pairs he had?

A To my knowledge, only two.

Q Now, do you have -- is it still light at this time?

A Relatively. Sun setting.

Q And do you have any idea what time it is about?

A No.

Q About how much time do you have to spend or waste at the Hood Plaza?

A I'd say about 45 minutes, maybe.

Q And beside going to Ames and these other stores, and Raymond getting a piece of pizza, did you do anything else at that

time?

A I went to the bathroom in the pizza place, and then we went and sat in the car.

Q What happened next?

A When it got dark enough out, Bill loaded the gun. We taped our fingers up. Then we went -- walked behind the plaza, changed into the sweatsuits, put our normal clothes into the bag, left the bag behind the dumpster, and we went -- we started going up the road to the apartment.

Q When you say Bill loaded the gun, let's back up a little bit.

Where did Bill load the gun?

A In the back seat of the car.

Q What kind of gun was that?

A .38 snubnose.

Q How many bullets did it hold?

A Five rounds.

Q Did you see Bill load the gun?

A Yes.

Q Where did Bill have the bullets?

A To my knowledge, in his pocket.

Q So prior to loading it at that time, it was your understanding the gun was not loaded?

A Correct.

- Q This is occurring inside the car?
- A Yes.
- Q Now, where were you at this time?
- A Sitting in the back seat next to Bill.
- Q After the gun was loaded, you said you grabbed a duffelbag and you left, is that correct?
- A Yes.
- Q Now, where did you go to tape your fingers?
- A Excuse me?
- Q Where were you when you taped them?
- A In the back seat of the car.
- Q Which fingers did you tape?
- A Every finger.
- Q So, all ten?
- A Excluding our thumbs, yes.
- Q Now, did you put the gloves on at that time?
- A No, we did not.
- Q So as you left the car, your fingers were taped and the gun was loaded?
- A Yes.
- Q What else did you have with you, just a duffelbag?
- A Yes.
- Q Now, where did Bill Flynn keep the gun at this time?

A In his waistband of his jeans again.

Q Was this exposed to the public, hidden to the public?

A Hidden.

Q How was it hidden?

A He had a jean jacket on over it.

Q What happened next?

A We went behind the plaza, went behind the dumpster in the back of the plaza, changed into the sweatsuits, put our normal jeans and stuff inside the duffelbag.

Q Now, when you went behind the plaza, you walked there or got a ride there from J.R.?

A Walked there.

Q When you were walking behind the plaza, who was it, you and who else?

A Bill.

Q You left J.R. and Raymond behind?

A Yes.

Q Who carried the bag?

A I believe Bill did.

Q And do you recall which way you went to get behind the plaza; in other words, if you're facing the front of the plaza, to the right, to the left?

A To the right.

Q And was there a lot of -- any cars or a lot of cars parked behind the plaza?

A There was none.

Q So once you got behind the plaza, what did you then do?

A Went behind the dumpster and changed clothes, and then after we changed, we started to go up the road towards the condos.

Q Now, when you say you changed clothes, can you give me an indication of what you put on?

A Put on a gray sweatsuit and a pair of Nike cross-trainers.

Q Whose sneakers were those?

A My own.

Q I'm sorry?

A My own.

Q Why did you change your sneakers?

A Because the sneakers I was wearing I didn't want to throw away, and the ones that I wore to go into Greg's apartment I threw away afterwards.

Q Was that your plan that you would throw this away?

A Yes.

Q Why was that?

A Because we didn't want the clothes after we had committed the murder.

Q Besides having a gray sweatsuit on -- well, does that mean

a top and bottom, is that what you mean?

A Yes.

Q Do you have anything else on?

A No.

Q Can you tell us what Bill had on?

A Same. Pretty much the same thing, but his was a black sweatsuit and a pair of old sneakers.

Q Do you remember what kind of jacket or top he had on?

A Just a sweatshirt.

Q Now, do you recall what time this was about?

A 7:30, maybe. It was getting dark.

Q Were these your clothes or clothes that Bill had gotten together?

A These were clothes that Bill had gotten.

Q Now, as you changed your clothes, what did you do with the clothes you had on?

A Put them in the duffelbag.

Q What did you do with the duffelbag?

A Hid it in a stairwell.

Q Who hid it, do you recall?

A I just set it down inside the stairwell.

Q After that what did you do?

A We proceeded to go to the condos.

Q How do you proceed to go to the condos?

A Up Peabody Annex Road, I believe.

Q And anything occur when you went up Peabody Annex Road?

A Two people were walking down the road, so we pretended we were jogging, jogged by them, jogged around the condo complex and through a trail on the other side of the condo complex.

Q Do you know the name of the road at that time?

A No, I did not.

Q Is that a name that you later learned?

A Yes, it is.

Q All right. And as you were walking up that road, you saw two people doing what?

A Walking down the road towards the plaza.

Q So what did you do?

A We just pretended we were joggers.

Q Where do you jog to?

A Around the complex to the other side of the complex. There was a trail. We went up the trail and that put us behind the condos in a big field.

Q When you say to the other side of the complex, which complex do you mean? Do you mean all the condominiums or just the small --

A All the condominiums.

Q And at which point did you then start heading back towards the condominiums?

A We were on the other road on the other side of the condominiums. There's a trail that we went up.

Q That trail led to where?

A The field behind the condominiums.

Q Was there anything about that field that you noticed?

A A building that looked something like a school.

Q Had you ever been in this area before even though you'd never been to the condominium unit?

A No, I did not.

Q Just going to set up this diagram for one second and ask you a question or two about it.

MR. MAGGIOTTO: With the Court's permission, could the witness get off the stand, Your Honor?

THE COURT: All right.

Q Mr. Randall, could you come down and face the diagram. There's the back of Hood Plaza. Give us an idea, is this the road you're referring to that you went up?

A [At the diagram.] Yes.

Q When you went up this road, were you jogging?

A Yes.

Q And how far did you take it?

A We jogged around down and I believe we went all the way through to here (indicating).

Q When you say you believe, do you know anything about the name of the road or anything along those lines?

A No, I do not.

Q Now, this road comes right behind -- why don't you stand to the side -- which is 4-E. Did you have to go through a lot of condominium units before you got back to the area --

A No.

Q How many did you have to go through? When I say "go through," go by I guess is the word I'm using.

A I couldn't be sure.

Q You're not sure?

A No.

Q All right. Would you return to your seat.

- - -

[Witness resumes stand.]

- - -

Q Now, where did you have your gloves, on your hands at this time?

A No, we did not.

Q And as you were going through this field with this building

that you seen, be a school or something to that effect, above you, is that correct?

A Yes.

Q Is that building to your right, to your left?

A It would be to my left as I was going through the field.

Q How long did it take you to go through that field?

A Couple minutes.

Q And as you went through that field, where did you then go?

A To the back of Apartment 4-E.

Q What happened when you got to the back of Apartment 4-E?

A There was people on the road in front of the complex or inside the complex that were dropping people off in a car, so we just sat and waited.

Q Where did you sit and wait by?

A Right in front of the bulkhead doors, probably maybe 20 feet back from them.

Q What were you standing near?

A We were in between two other condos.

Q Were you in plain view of the windows or next to a building or --

A We were in plain view if somebody looked, but if somebody looked, we were in the shade.

Q Shade of what?

A It was getting dark. The condominiums and stuff made it even darker.

Q How long did you have to wait there?

A About 15 minutes.

Q What happened after that?

A We put on our gloves, went through the bulkhead doors.

Q Who opened the bulkhead doors?

A Bill.

Q How long did it take to get the bulkhead door open?

A About a minute. He had a little bit of trouble at first. Then he opened them.

Q And did you actually time it for a minute or using that as a --

A No, as a guide.

Q -- figure of speech?

A Figure of speech.

Q After the bulkhead door was open, what happened next?

A Went through the -- down through another door into the basement and up a set of cellar stairs into the living room of the condo.

Q When you went down through that door after the bulkhead door, was it difficult to get through that?

A It was just unlocked, just turned the knob.

Q So you just turned the knob and walked through, is that correct?

A Yeah.

Q Then you got to the first floor?

A Yes.

Q And what happened when you got to the first floor?

A Bill got the dog, put the dog in the cellar.

Q And what did he have to do in order to get the dog into the cellar?

A Chase it around the couch.

Q What was the dog doing?

A Barking and running away from him.

Q How long did it take for Bill to catch the dog?

A Few minutes.

Q After he caught the dog, then what happened?

A He put it in the cellar.

Q Were there any lights on inside the apartment unit at this time?

A No, there were no.

Q So what did you then do?

A We went upstairs, ransacked Pamela and Greg's bedroom, took jewelry out of the master bedroom -- bathroom, went down-stairs.

Q Let me back you up a little bit. Where was this jewelry that you took out of the master bedroom?

A It was in the bathroom adjoined to the bedroom in a jewelry box.

Q So what did you do with that jewelry that was in that jewelry box?

A Emptied it into a pillowcase off the bed.

Q How do you get the pillowcase off the bed?

A Took it off the pillow.

Q What did you -- I mean did you just dump the whole thing into a bag?

A Yeah.

Q Now, was this before or after you ransacked the master bedroom?

A After.

Q Can you tell us what you actually did to ransack the master bedroom?

A Took drawers out, tipped them upside down, pulled the bed apart, pulled the nightstands apart. There was a clothes closet over in the corner that we opened up, went through. Pushed the bed a little bit off to the side. Things like that.

Q How long did it take you to do that?

A About 15 minutes.

Q Now, when you got inside the bathroom, what did you do once you were inside?

A Shut the door, turned on the light because there was no windows in the bathroom.

Q How many doors were there to the bathroom, do you recall?

A I believe just one.

Q When you turned on the lights in the bathroom, what did you then do?

A Took the jewelry box and emptied the jewelry from it inside of a pillowcase.

Q Could you describe what the pillowcase looked like that you took?

A Baby blue with flowers on it. Flower pattern.

Q Do you recall how many pillowcases you took from the bedroom?

A I believe I only took one.

Q And after you got the jewelry from the jewelry case, what else did you then do?

A We went down -- shut off the light, went back downstairs, took the VCR out, pulled it off the stand it was on, emptied all the CD's into a bag, took the speakers. There were small speakers on speaker stands that I took and put next to the door, the back door.

Q Now, why did you take those speakers off and put them next to the back door?

A Because I was intending to take them with me.

Q Why didn't you leave out with them now?

A Because we were waiting for Greg to come home.

Q What was the plan when Greg came home?

A To kill him.

Q And then take the stuff out?

A Yes.

Q Now, you said you put the CD's in a bag. What kind of bag did you put them into?

A I didn't like the flower -- the pillowcase. It was too bright. So I took a throw pillow off one of the couches and I cut it upen with a butcher knife I got from the kitchen butcher block, and emptied the stuff out of it and put everything into that bag.

Q What color was this pillow that you took?

A Black.

Q Where did you empty the stuffing out, what room were you in?

A Living room.

Q What did you do with that stuffing?

A Just threw it on the floor.

Q What kind of knife did you get from the butcher block?

A A butcher knife, cutting knife.

Q Long, small?

A Long.

Q Now, what did you put in that bag, discs?

A Jewelry, discs.

Q Essentially, the stuff you had in the other pillowcase?

A Yes.

Q Now, when you were upstairs did you take anything else besides the jewelry from the bathroom jewelry case?

A Just that from the bathroom jewelry case, but we had taken a small portable TV down into the living room also.

Q Where did you put that in the living room?

A In the living room next to the TV, or in between the TV and a sofa.

Q And did you take anything else?

A No, I don't think I did.

Q Do you remember anything about any sunglasses?

A A pair of blue Vuarnets that went into the bag.

Q I'm sorry?

A They went into the pillowcase.

Q Where were they taken from?

A They were taken from the dresser.

Q Now, there was a second room upstairs. Did you do anything

in the second room upstairs?

A No, I did not.

Q Did Bill go in there, as far as you know?

A As far as I know, no.

Q You or Bill didn't ransack that other room, is that correct?

A No.

Q Now, when you came downstairs and you pulled out the VCR, what did you do with the VCR?

A I just slid it off the thing. I was going to reach around and unplug it. It was too much of a hassle.

Q What about the compact discs, where'd you get them from?

A There was a case that you store compact discs that are stored on a rack, and I pulled it right out.

Q Where was this rack?

A Above the TV.

Q Where was the TV?

A The stereo, TV and VCR are all on one entertainment rack. It was on top, above the stereo and the TV.

Q Now, where was that in relationship to the back door?

A Up against the left wall.

Q Facing the back door, if you're facing up against the left wall would be --

A Facing out towards the sofas.

Q That's where the entertainment rack was?

A Yes.

Q Now, besides unhooking the two speakers that you moved to the back door, were there any other speakers?

A No, there were normal Kenwood house speakers that I didn't touch.

Q Why didn't you touch those?

A They were too bulky. They would have been a hassle to carry them.

Q So how long did it take you to remove this stuff downstairs in the living room?

A Another 20 minutes, maybe.

Q Were you timing all of this?

A No, it's just a guess.

Q How are you feeling at this time?

A How was I feeling?

Q Were you pumped up, calm or --

A I was nervous.

Q And it was just the two of you at that point, is that correct?

A Yes.

Q Now, besides getting the knife from the butcher block table to rip open the pillow, was there any other reason you got

a knifa?

A To stab Greg Smart with it.

Q How come you were still planning to stab Greg Smart even though in the car the defendant had talked to you about using a gun?

A Because it was J.R.'s father's gun and it was too loud, and didn't want to use it.

Q What were you afraid would happen if you used J.R.'s father's gun?

A That we wouldn't be able to get rid of it because it was his father's gun and he would notice it missing.

Q How did you know you were able to find a knife inside of Apartment 4-E?

A I just figured every house has knives.

Q Were your gloves on at this time?

A Yes, they were.

Q I may have asked you this. Where did you put on your gloves?

A As we were coming up to the house.

Q Now, what was the point of even wearing gloves?

A Not to leave any fingerprints in the house.

Q Whose idea was that?

A Agreed upon. Everybody's, I guess. Common sense.

Q Now, how long after you were done going through the downstairs living room area did you do anything in the kitchen?

A Pulled it apart a little. Nothing much. Just went through it.

Q After you were doing this, what happened next?

A We sat around and waited for Greg Smart to get home.

Q During that time, did you have any discussions about what you were going to do when Greg Smart came home?

A We had different -- we went over different ways of once he came to the door getting him into the house.

Q Can you tell us about some of the ways you discussed?

A At one point we had taken a bathroom towel from one of the bathrooms, a big, blue bath towel that we were going to wrap around his head and pull him in with.

Another idea was, Bill took a candlestick holder off the table that he was going to hit him over the head with.

And another plan we went over was that I was going to hide behind the front door, Bill was going to hide on the landing to the stairs in front of a closet, and when he came in I was going to shove him into the house.

Q Now, as you walk in that front door, Apartment 4-E, where was that landing?

A Maybe three, about three feet in.

Q Was it to the left or to the right?

A To the left as you come in.

Q And were you all discussing this at this time?

A Yes.

Q Now, for how long did you have -- discuss it before anything happened?

A I don't know, maybe a half an hour or so, if I was to guess.

Q You're guessing at the time?

A Yes.

Q Now, what ever happened with that towel, did you use the towel?

A No, we just discarded it, left it on the floor.

Q Why did you discard it, left on the floor?

A Just didn't want it anymore, so we left it there.

Q Did you ever finally determine what your plan would be?

A Yes, I was to stand behind the front door, Bill was to stand on the landing. When Greg came in, I was to pull him into the house and we were to both jump him.

Q Now, why was it that you were going to be behind the door and Bill was going to be on the landing, any reason for that?

A I was a little bit stronger than Bill.

Q How would that affect the plan?

A It was that I'd be more capable of getting him into the

house.

Q Now, did there come a time when Gregory Smart came home?

A Yes.

Q How did you first know that Greg Smart had come home?

A Bill was in the kitchen looking out the kitchen window.

Q Where were you?

A In the living room -- well, sitting at the dining room table.

Q What happened next?

A We got up, and as he came -- before he was coming through the door, the roles switched. I got on the landing and Bill got behind the door.

Q How did that happen?

A We were nervous and we just jumped to -- to whatever the closest places.

Q Now, did you have anything in your hands?

A No, I did not. Oh, yes, I did. I had a knife.

Q Anything wrapped around the knife?

A Paper towels from the kitchen.

Q Why did you wrap the handle of the knife with paper towels?

A Paranoid about fingerprints.

Q Do you know how many paper towels you wrapped around, pay attention when you did that?

A Not really.

Q Do you know whether or not Bill had anything in his hands?

A He had nothing in his hands.

Q What happened to the candlestick holder?

A He had just dropped it on the floor.

Q So what happens next?

A Bill's standing behind the door, I was standing on the landing, and when Greg came into the door, he opened up the door and called to his dog, and Bill grabbed him, pulled him into the house, and he was screaming and trying to run out. At the time I was just standing on the landing watching it all happen. Then I stepped around off the landing and around both of them, pushed Greg into the house and shut the door.

Q And did you have any trouble shutting the door?

A The house mat got caught underneath it so I had to kick it free of the door.

Q Any lights on or off?

A I'm not sure.

MR. MAGGIOTTO: Your Honor, maybe we could take the afternoon break.

THE COURT: We'll take a short recess.

- - -

[Recess at 2:57 p.m.]

MR. MAGGIOTTO: May I continue, Your Honor?

THE COURT: Go ahead.

BY MR. MAGGIOTTO:

Q Okay, when Gregory Smart first opened the door, how much time, if any, elapsed before Bill grabbed him?

A Few seconds.

Q Was there a pause of a few seconds?

A Long enough for him to call for the dog and stuff.

Q After Bill grabbed him and you came down off the landing and grabbed him, what happened next?

A I pushed him in, I shut the door, and when I turned back around they were up against the wall where the stairs go up and Bill was hitting him and Greg was like throwing his hands up to block his face and stuff. And I reached over, I came across from him and reached over and grabbed him by the hair and hit his head against the wall and told him get down on his knees.

Q When you say they were up against the wall, was the back of Gregory Smart up against the wall or his face?

A His back.

Q Now, the wall behind him was the wall that -- behind the

stairs going up?

A Yes.

Q And Bill was in front of him?

A Yes.

Q Do you know what -- was Bill touching or grabbing any part of his body?

A He was throwing punches at him, I guess.

Q Were these punches, as far as you knew, leaving any bruises or cuts on Gregory Smart?

A I didn't pay attention.

Q Now, when you grabbed Gregory Smart, using your own head as an example, show us how you grabbed him.

A With my left hand by the top of his hair.

Q What'd you do with his hair?

A I pushed his head back up against the wall once, hit his head on the wall, then told him get on the ground.

Q Why'd you do that?

A Because I wanted it so we had control of the situation so he couldn't run.

Q Was he saying anything at this point?

A He was telling us not to hurt him, please don't hurt him, please don't -- you know, he was begging for his life.

Q How loud or low was this going on?

A Couple minutes. Then he stopped and he -- it wasn't that loud. You know, I mean he was yelling but not loud.

Q Now, when you say took a couple minutes, are you saying this whole business of struggling with Gregory Smart at the stairs took a couple of minutes, or throwing that out as a figure of speech?

A Well, he switched and started asking about his dog. Just told him his dog was okay, don't worry, no one hurt your dog.

Q Is this when he's standing or kneeling now?

A He's kneeling.

Q I'm talking about how long it took to get him on his knees.

A Maybe a total of three minutes.

Q That long?

A Yep.

Q Now, you grabbed him by the hair and you banged his head up against the wall. Did you ever let go of his head?

A No, I did not.

Q So as he got down on his knees, what were you doing?

A I was still holding him by the hair with my left hand.

Q What were you doing with your right hand?

A I had a knife in it.

Q What were you doing with that knife that was in your right

hand?

A I had it underneath his chin -- well, in front of his face.

Q Where was Bill standing at this time?

A To the right side and slightly behind him.

Q I'd like to show you what's been marked as State's Exhibit Number 39 in evidence. Does this look at all familiar to you?

A Yes. It looks like the butcher knife I had that night.

Q I'm sorry, you'll have to speak up.

A It looks like the butcher knife I had that night.

Q What is it about this knife that you recognize?

A Blade. Handle.

MR. MAGGIOTTO: With the Court's permission, could the witness just get off the witness stand, Your Honor.

Q Could you stand before the jury and show us how you were standing in relationship to Gregory Smart at this time. Stop right there. Face the jury. Just show us how you had Gregory Smart.

A I was stepped back from him with my left hand in his hair and I had my right hand up in front of his face with a knife.

Q Where was Bill Flynn at this point?

A To the other side and slightly behind Greg. Right there.

Q All right, you can take your seat.

MR. MAGGIOTTO: May the record reflect that the witness with his left hand reached out and had in a downward fashion clenched fist showing how he had Gregory Smart, and with his right hand, let the record reflect, he reached out and putting it a few feet from his other hand, demonstrated how he had the knife on Gregory Smart.

Q Once you had Gregory Smart down in this position, what, if anything, did you say to him?

A I asked him for the chain he had around his neck and the ring he had on his finger.

Q Did he have a chain around his neck?

A Not to my knowledge.

Q Why did you ask him that?

A I figured if he had one he'd give it to me. If he didn't, he wouldn't.

Q What did he say when you asked him for the chain around his neck?

A He told me he didn't have one.

Q What happened next?

A Asked him for the ring on his finger.

Q What kind of ring was it?

A At first I thought it was just a normal gold ring, but it turned out to be a wedding ring.

Q What happened at that time?

A Told me he couldn't give it to me.

Q Why?

A Said his wife would kill him.

Q What else was said at that time?

A He kept on just pleading for his life, and we were telling him be quiet.

Q When he said, "My wife will kill me, I can't give you the ring," what did you say to him?

A I didn't say anything.

Q Did you push for the ring?

A No.

Q Do you know whether or not he had any other rings on?

A No.

Q What about his wallet?

A Told him give us his wallet. Bill took the wallet and took the money out of it.

Q What happened to his wallet?

A Bill just dropped it on the floor.

Q Do you know how much money was in that wallet?

A No, I do not.

Q Why were you all doing this to Greg Smart at this point?

A To make it look completely like a burglary.

Q And after you had gone through his wallet, and after the chain that he didn't have around his neck, and the ring, what happened next?

A I was supposed to stab him.

Q And how were you supposed to stab him?

A I was supposed to cut his throat.

Q Did you at that time?

A No, I did not.

Q Why not?

A I couldn't do it.

Q Why couldn't you do it?

A Because of some of the things he said, and because I couldn't do it.

Q But prior to coming into that hallway, at that time it was your plan to use the knife on Gregory Smart?

A Yes, it was.

Q Why did you bring and load the gun? Why did Bill load the gun and bring it in with you?

A Just as a safety precaution.

Q When Gregory Smart was down on his knees and you had the knife before him in his neck, you didn't use it?

A No, I did not.

Q What happened next?

A Bill motioned to the gun.

Q Could you stand up and show us how Bill motioned to the gun.

A The gun was in Bill's waist, in his left pants waist, and he went like this (indicating).

Q Just tapped it with his hand?

A Pointed towards the gun.

MR. MAGGIOTTO: Let the record reflect the witness is taking his left hand and patted to the area around his waist where he said the gun was.

Q Could you see the gun at this point?

A No, I could not.

Q Was it in a line of vision of Gregory Smart?

A No, it was not.

Q What happened after that?

A Bill took the gun out and shot him.

Q Can you tell us how long it took Bill to take out the gun and shoot him?

A A guess would be two minutes, three minutes.

Q Okay. Now, when Bill took out the gun, I mean did Bill hold the gun for two, three minutes in front of Gregory Smart -- what was going on at that time -- or did he take

it out and shoot him?

A He motioned towards the gun. I nodded my head yes. He took the gun out. Greg couldn't see the gun. He held the gun a couple inches from his head. He said, "Forgive me, God," and shot him.

Q Who said, "Forgive me, God"?

A Bill.

Q What were you doing at the time that Bill pressed the trigger?

A Still holding Greg's head.

Q And what happened after Bill pressed the trigger?

A I let go of his head.

Q What did you do?

A I turnt and run.

Q Where did you run to?

A Towards the back doors.

Q And who went out the back door first?

A Bill.

Q Followed by who?

A I stopped, grabbed the jewelry, the bag that was on the floor, jumped over the rail and I went after him.

Q Now, where was the knife at this time?

A In my hand still.

Q Now, you stopped to pick up the bag?

A No, I just stuck my arm down and grabbed it.

Q Did you grab anything else?

A No, I did not.

Q Why not?

A I didn't feel like stopping.

Q Can you tell us what kind of sound the gun made at that point?

A To me, just a loud shot.

Q Was it louder than you expected?

A Yes.

Q How long after the gun went off did you guys take off for the back door?

A Probably a second after the gun went off.

Q When Bill pressed the trigger, did the shot hit Gregory Smart?

A To the best of my knowledge, yes.

Q What did you do then?

A As soon as I heard the shot go off, I let go of his head, and Bill was already turning to run, and I just followed him out.

Q Now, was the back -- where is this back door that you're referring to that you went out?

A To the right of the entertainment center along the back wall.

Q And was that door, was it a sliding door, an opening door, do you recall?

A It was an opening door with glass panels in it.

Q Was that door tough to unlock it to get out?

A No, when we had first entered the house, Bill had opened the door slightly ajar because he knew that's how we were leaving the house.

Q Is that, in fact, how you left the house?

A Yes.

Q Once you go through that door, where are you?

A On a little back balcony-porch?

Q What happened at that back balcony-porch?

A Jumped over the rail.

Q From there, is that where you fled?

A Yes.

Q Now, I'd like to show you what's been marked State's Exhibit Number 5 in evidence. See the blue towel that's in that photograph?

A Yes.

Q What can you tell us about that blue towel?

A That's the one we had taken from the bathroom.

Q And how did that blue towel get in the position that it's in now, do you know?

A No, I do not.

Q I'd like to draw your attention to what appears to be a white paper towel to the right of Gregory Smart's right hand. Can you tell us how that got there?

A It was part of the paper towel wrapped around the knife.

Q How did it get off?

A I repositioned the paper towel I had around the knife and wrapped new paper towel around the knife.

Q Why was that?

A Because the other one was getting sweaty.

Q So the entire time you had the knife, you had paper towel with you?

A Yes, I wrapped it around the handle.

Q By his left foot there appears to be the candelabra. Let me show you this Defendant's Exhibit Number C. Does that look like the candelabra that was taken by Bill Flynn?

A Yes.

Q Does that -- and this is the one that you stated he discarded before Greg Smart came in?

A Yes.

Q Now, I'd like to show you State's Exhibit Number 5 that we

were referring to earlier. There appears to be a candelabra to the left of Gregory Smart's foot. Do you know how that candelabra got there?

A Bill had just dropped the candlestick holder after.

Q When you say "after," what do you mean by after?

A After we had discussed the idea of using it and hitting him over the head.

Q So at the time he attacked Greg Smart, it wasn't used?

A No, it was not.

Q Can you tell us what this little black thing is up here?

A Speaker stand.

Q Is that the speaker stand from which you took one of the speakers?

A Yes, it is.

MR. MAGGIOTTO: With the Court's permission, Judge, I'd like to walk this past the jury after that description, briefly.

[State's Exhibit 5 displayed to the jury by Mr. Maggiotto.]

Q I'd like to show you what's marked as State's Exhibit Number 18 in evidence. Do you recognize where in this

photograph you got the knife that you referred to?

A Yes, from the butcher block behind the bowls.

Q Is this the butcher block that's represented in this picture?

A Yes.

Q And did you go through all the knives before you decided which one to take?

A I picked up one before the one I had taken.

Q Does this appear to be -- excuse me, may I rephrase that.

I'll now show you what's State's Exhibit Number 47 in evidence. Does this appear to be the butcher block?

A Yes, it does.

Q How is it that you recognize it?

A The knives are the same and it looks the same as it did that night.

Q And this is the knife that you took from this butcher block?

A Yes, it is.

Q And would have been in the position that is vacant in this butcher block at this time?

A Yes.

Q So when you originally got to the apartment, this knife was in that butcher block like that?

A Yes, it was.

Q Where'd you get the paper towel from, do you recall?

A A paper towel holder that was in the kitchen.

Q Now, after you jumped off the porch in the back, which way did you go?

A Towards the plaza. Across the field towards the plaza.

Q Were you walking, were you running?

A We were running.

Q Anyone bump into anyone or see anyone at this time?

A No, we did not.

Q And who was in front of who?

A Bill was in front of me until he fell into like a hole, and then I ran past him, and I was halfway up -- halfway through the field, I threw the knife down.

Q Why do you throw the knife down?

A I didn't want it.

Q When you threw it down, do you know what happened to it?

A It stuck into the ground, I know that much.

Q When you threw it in the ground, do you know where you were at this time, or were you just running?

A I was just running.

Q And the time that Bill fell, was he in front of you, behind you?

A He was in front of me when he fell.

Q Then what happened, did you pass him or did he get up before you passed?

A I passed.

Q What did you do?

A I kept on running until I got near the road. J.R. was coming up the road, and then I fell.

Q Which road did you see J.R. coming up?

A The road, Peabody Annex.

Q Was that the plan that J.R. would meet you on Peabody Annex?

A No, it was not.

Q What were the plans?

A That we were to go behind the dumpster again and change back to normal clothes, throw the clothes we had worn into the house into the dumpster, and then go back around the plaza and get into the car and leave.

Q Now, when you were running across this area behind the condominium towards the plaza, were there lights on, was it bright, was it dark?

A Relatively dark.

Q And were you guys saying anything to each other as you were running?

A No.

Q And you threw the knife. What was -- what, if anything, did you notice Bill doing with the gun?

A I didn't notice anything. He was behind me.

Q So after you saw J.R.'s car, what did you then do?

A I jumped in the back seat, and few seconds after me Bill jumped in.

Q What, if anything, did you say at that time?

A Told him go grab the clothes.

Q What did J.R. and Raymond do?

A We went back around the dumpster and grabbed the clothes.

Q As you grabbed the clothes, what, if anything, did you do at the plaza?

A I just grabbed the clothes, got back in the car and left to go home.

Q You grabbed the clothes?

A Yes, I did.

Q Now, could you describe how Bill appeared at this point?

A Shaken up, nervous, scared.

Q He still have the gun?

A Yes.

Q Now, after you grabbed the clothes, where did you go next?

A We had taken the back roads home from Derry, so we went

back up Peabody Annex and took a left, and that's where I started losing the way we were going.

Q You started what?

A I couldn't follow the way we were going.

Q Were you in the back seat?

A Yes.

Q Now, on the way back to Seabrook -- excuse me, let me rephrase that.

Were you going back to Seabrook?

A Yes.

Q Using the back roads?

A Yes.

Q Did you stop anywhere along the way?

A No, but along the way we changed back into our normal clothes and threw the clothes we were wearing out of the car.

Q You threw all of the clothes you were wearing out of the car?

A Yes.

Q Why is that?

A We didn't want them.

Q Were you familiar with the area you were in when you threw the clothes out of the car?

A No.

Q And what happened to the duffelbag, do you remember?

A I believe we threw that out with the clothes.

Q Why do you say you believe; you're not sure?

A I'm not sure where it went, but I never saw it in the car again.

Q What happens next?

A We go back -- we went back to Seabrook.

Q And what did you do that night?

A We dropped Raymie off first, then either myself or Bill off. I can't really remember which one of us got dropped off first. I went in my house, went through the stuff that was in the bag. I'm pretty sure we gave Raymie the CD's because when I went in my house all I had was the jewelry. I went through that, and then Raymie came down my house a little bit later that night and me and him walked to Hampton Beach.

Q Now, when you and Raymond went to Hampton Beach, what were you doing?

A First, just walking, then decided to go down to Hampton Beach.

Q Now, did you see J.R. again that night?

A No, I did not.

Q Did you see Bill again that night?

A No, I did not.

Q Now, did there come a time in this case when you were arrested?

A Yes.

Q When you were first arrested, were you arrested as an adult or a juvenile?

A As a juvenile.

Q Come a time when you went through a certification process?

A Yes.

Q What was the result of that certification process?

A After my District Court certification, I pleaded out and waived off the rest of my certification.

Q So, in other words, you were treated as an adult, is that correct?

A Correct.

Q And at the time, May 1st, 1990, when you committed the crime, how old were you?

A Sixteen.

Q And now you're 17?

A Yes.

Q When you say you pleaded out, you entered into a cooperation agreement with the State?

A Yes, I did.

Q Do you remember about when you entered into a cooperation agreement?

A Late January, I think.

Q Of this past year?

A Yes.

MR. MAGGIOTTO: Your Honor, I'd like to have these cooperation agreements, with the consent of the defense, marked as State's exhibits -- I believe we're up to 51 and 52 -- as full exhibits.

MR. SISTI: That's without objection.

THE COURT: All three of them?

MR. MAGGIOTTO: No, just Patrick Randall's at this time, Your Honor.

THE COURT: All right.

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[State's Exhibits 50 and 51, being cooperation agreements, marked in evidence.]

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MR. MAGGIOTTO: So the record's clear, actually, these would be State's Exhibits 50 and 51.

BY MR. MAGGIOTTO:

Q Now, how many agreements did you sign with the State, do

you recall?

A Two.

Q And what was the basis and your understanding of the first agreement?

A Was that after listening to what I had to say, the State would decide whether they were going to accept my plea.

Q And that was an agreement that was read to you by your attorneys?

A Yes, it was.

Q And you discussed it with your attorneys?

A Yes, I did.

Q And is it fair to say you had extensive, detailed discussions with your attorney prior to entering into this agreement?

A Yes, I did.

Q Are these your signatures on the back of State's Exhibit 50?

A Yes, they are.

Q Is that the signature of your attorney, James Moir?

A Yes, it is.

Q And do you recognize the signatures of myself and Miss Nicolosi?

A Yes, I do.

Q And were you present when this was signed?

A Yes, I was.

Q And this agreement was signed before you were ever spoken to, is that correct?

A Yes, it was.

Q And the second agreement was spoken to after -- I'm sorry -- second agreement was signed after you were spoken to, is that correct?

A Yes, it was.

Q Was this agreement explained to you in detail by your attorneys?

A Yes.

Q Did you have an opportunity to read it and read it with them?

A Yes.

Q The last page of what's State's Exhibit 51, do you recognize the signatures?

A Yes.

Q And whose signatures are they?

A They're mine, my lawyer's and Miss Nicolosi.

Q Pete, would you tell the members of the jury what you understand the terms of that agreement to be.

A That I'm to testify openly and honestly, and in return I will -- they will recommend a lesser sentence of 40 years

to life, with 12 deferred.

Q What does that 12 deferred mean to you?

A Means that as long as I don't mess up and don't get in any trouble while I'm in prison that I'll be released 12 years early.

Q So that means the first parole date, as you understand it, is 28 years?

A Yes.

Q If the 12 years are effectively deferred?

A Correct.

Q Is that correct?

A Yes.

Q That is the minimum time you would serve.

A Without getting any sentence reductions, yes.

Q What is the maximum you could serve?

A Life.

Q Now, you said something about without sentence reductions.

Are you aware of a statute in New Hampshire which says you can go before a court and ask for a reduction?

A Yes, I am. My lawyers have told me that every two years I'll be allowed to go in front of a judge, and if I'm doing well and I'm staying out of trouble and trying my best to get back into society, they'll lessen my sentence as time