

EXHIBIT I

ORIGINAL

★ 91-239

VOLUME XII 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

LAW LIBRARY
JUN 25 1993

TRANSCRIPT OF TRIAL PROCEEDINGS

Held before the Honcrable Douglas R. Gray, Presiding
Justice, and a Jury, 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

<u>State's Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
1. Vance Lattime			616	624
2. Karen Knight	631	639	640	-
3. Elaine Flynn	641	660	665	-
4. George Moses	666	682	-	-
5. Janet Dardia	697	703	-	-
In chambers motion to compel and motion to clarify			- p. 705	
6. William Flynn	708			

MARCH 11, 1990 - MONDAY MORNING SESSION - 9:29 A.M.

THE COURT: Good morning.

Mr. Lattime, you realize you're still
under oath?

THE WITNESS: Yes.

THE COURT: All right. You may proceed.

- - -

[Vance Lattime, Jr. resumed the witness stand.]

- - -

MR. SISTI: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. SISTI (Resumed):

Q Vance, you've had a few days over at the lockup with your
friends, right?

A Yes.

Q Did you talk about the case?

A Yes.

Q What'd you talk about?

A Different articles that were in the newspapers.

Q And you talked with Bill, right?

A Yes.

Q And Pete?

A Yes.

Q Who else? Anybody else?

A I don't think so.

Q You don't think so. They were watching you on TV, I guess, when you were testifying?

A I'm not sure.

Q Did you ask them about it?

A No.

Q No? That didn't come up during the course of conversation or what?

A It's possible. I don't -- that would have been Friday, maybe.

Q Friday, maybe?

A Yes.

Q And then you talked about certain articles in the paper. What papers?

A Union Leader, Daily News, Boston Herald, Globe.

Q And these had to do with this case, of course?

A Yes.

Q Had to do with your testimony?

A Some did, some didn't.

Q And this was the conversation you had with Pete and Bill?

A Yes.

Q When we left off on Friday, you were talking about theft of ammunition from a storage area, do you remember that?

A Yes.

Q Again, just to pick up on that, where was this particular storage bin?

A Salisbury.

Q In Salisbury, Massachusetts, right?

A Yes.

Q Okay. And the folks that went with you for this burglary were Pete and Bill?

A And Ralph Welch.

Q And Ralph? Okay. And all three of those folks break into the place, I take it?

A No.

Q Who goes in?

A Ralph and Pete.

Q Ralph and Pete go in?

A Yes.

Q What was the plan down there?

A There was no plan. It was Ralph's idea. He asked if I'd give him a ride. I agreed. Him and Pete went in. Me and Bill waited back in my house.

Q You waited back in your house?

A Yes.

Q Then what happened? What'd you do?

A Rode by after a certain length of time that I was supposed to pick them up. They weren't there, so I had Bill go into the place, tell them to come on. Pete came out where Bill went in. Pete came out, told me to pick him up in back of the place?

Q What'd they pull out of this storage place?

A Quite a bit of stuff.

Q What was it?

A Microwaves, TV's, cross bow, ammunition, tool boxes.

Q Now, with regard to this ammunition, this was .38 caliber ammunition?

A No.

Q What was it?

A .44, .45, .12 gauge, .20 gauge, .16 gauge, .22.

Q And how much ammunition are we talking about?

A Well, there's enough to fill a tackle box.

Q Where was this ammunition stored?

A It was kept in Ralph's Subaru first, then moved to the camper.

Q The camper at your house?

A Yes.

Q And this was in March of 1990?

A No.

Q When was it?

A I'd believed up until the weekend that it was in April. Then over the weekend in the Daily News I read an article which said it was on May 5th.

Q So now you're reading the newspapers to figure that out?

A Yes.

Q So now it's after you guys killed Greg that you do this burglary, is that what you're saying?

A If the paper's correct, yes.

Q Well, I'm not asking about the paper, okay? I'm asking you when did you do the burglary?

A I'd thought that I'd did it before Greg Smart's death, but I'm not sure.

Q So now you just read a paper and you change your mind, is that what goes on?

A Well, I figure the paper could have more accurate information than my memory of such a long period of time.

Q There were attempts in April to find a firearm, right?

A Yes.

Q And again for the jury, what were those attempts that you knew about, you were involved in with regard to procuring a firearm?

A There was one attempt that I knew about at the time that I

wasn't involved in with Raymond, Pete and Bill looking for Raymond's father's gun. I was told the same day that they'd went looking for it.

Q When was this?

A I'm not sure which month.

Q Okay. Go on.

A And then there was two attempts, one with me and Bill, Bill relying on information that Cecelia had given him -- well, I'd been told that Cecelia had given him, so I dropped him off at a house where he tried to get a gun.

Q This was Cecelia who?

A Pierce.

Q This would have been in what month?

A I believe April.

Q With regard to that particular episode, that was information that you and Bill were acting on?

A Yes.

Q From Cecelia Pierce?

A I was told from Cecelia.

Q An attempt to procure a firearm?

A Yes.

Q To kill Greg Smart?

A Yes.

Q And that would have happened in April of 1990?

A March or April. I believe April. I'm not positive.

Q Okay. Well, were you to break into a house? What was supposed to go on?

A Bill just asked me to drop him off. He'd been told a car that had the gun in it, so I dropped him off and I went home.

Q There was supposed to be a car with a gun in it?

A Yes.

Q And he was supposed to, what, break into the car?

A I guess. I don't know whether -- I mean, he must have been supposed to break into the car to get it.

Q What was the plan? You were there, you heard things, right?

A I dropped him off. That was the extent of the plan with me. I dropped him off and went home.

Q Now, was this before this so-called first attempt?

A I believe so.

Q So this would have been as early as March of 1990?

A Yes.

Q This would have been Cecelia Pierce's idea?

A Yes.

Q What other attempts to procure firearms did you go through?

A I had went through one other one with Bill where we'd went

to Papa Gino's where Cecelia worked and asked her -- well, Bill had asked her about the gun that she'd told him about, and she said what car out in the parking lot was supposed to have it, and he went out and looked. I went around, drove around the back and picked him up when he come back.

Q What did he do, rip through the car?

A I'm not sure what he did with the car.

Q But this is the conversation you had with Cecelia and Bill.

Let me go through every one of these incidents here with regard to going to the house and trying to get a car -- I'm sorry -- trying to get a firearm. That would have been a conversation between Cecelia, Bill and you?

A Which -- what do you mean? With regard to going to the house to get the firearm?

Q Well, didn't you say that Cecelia had information about a firearm at a house?

A No, I said she had information about a firearm in a car.

Q And that the car was at a particular house?

A Yes.

Q So that was information between you and Bill and Cecelia?

MS. NICOLOSI: Objection. This witness has testified that the information he received was from Bill. Mr. Sisti is trying to change his words.

THE COURT: Objection sustained.

Q With regard to the firearm to be found in an automobile at Papa Gino's, was that information given to you through Cecelia?

A Yes.

Q With regard to obtaining Fowler's father's firearm, that was information between Fowler, Bill and yourself?

A I was told by Bill that they'd tried to find the firearm.

Q Any other attempts to procure a firearm?

A Not that I know of.

Q Did you attempt to procure a firearm through any street dealers?

A No.

Q Did you know of any attempts?

A No.

Q You knew of no such attempt?

A No.

Q Did you ever have conversations with Pete and Bill over at your house about planning and carrying out a murder?

A Yes.

Q Would you say there were over 20 of these conversations?

A Yes.

Q And can you tell the jury what the subject matter was with

regard to these conversations?

A There was talk about whether they were going to make it look like a botched burglary attempt, what the layout was at the apartment, the land around it, and how they'd planned to kill Greg.

Q Okay. Now, with regard -- now -- I'm sorry. Now, at the house that would have been you, Bill and Pete?

A At my house?

Q Yeah.

A Yes. Sometimes Raymond.

Q And sometimes Raymond. How about Daley, was he there, too?

A No.

Q So it would have been you, Bill, Pete and Raymond, and it had to do with -- did it also have to do with wearing certain kinds of clothing?

A That was mentioned. That was never really talked about. It was just said at the beginning and just was kept as a sense (sic).

Q Was said at the beginning by who?

A I believe Bill.

Q With regard to making it look like a burglary, who said that?

A Bill told me.

Q Okay. And with regard to different ways of killing Greg, who was mentioned that?

A Bill and Pete.

Q Let me just stop there a second. Where does Pete fit into this thing? I mean, how does he get to be the individual that goes in with Bill to kill Greg?

A I'm not sure.

Q Well, is it your information that Pete always had this need to know how it would be to kill somebody?

A I'd heard him talk about that before. I don't know if he really wanted to or that was a desire of his.

Q You heard him talk about it. What do you mean?

A He had talked about being in the Army airborne ranger, and wondered -- he'd asked me -- well, talked about before what he thought it would be like to kill somebody, yes.

Q He talked about it more than just a couple times, didn't he?

A No -- around a couple of times. I mean, not extended amount of time.

Q Well, it was kind of a big thing for Pete to see if he could actually kill somebody?

A To me, I don't know if it was such a big thing through my conversations with him. He'd told me about that years ago, and just -- I had known of it since.

Q He wanted to know how it felt to kill somebody?

A That's how -- the first time he had told me he had said, yes.

Q Did he tell you of aggression, death, how that feeling was?

A No.

Q Didn't discuss that with him?

A No.

Q No? Other than how to kill Greg, there were other conversations with regard to fingerprints, weren't there?

A Yes.

Q And those conversations with with both Bill and Pete, right?

A Yes.

Q And what was decided among you folks with regard to fingerprints?

A Wear gloves.

Q Had you worn gloves before this particular event? I mean, had those guys ever used gloves before?

A Pete had used them once or twice.

Q Who did?

A Pete.

Q For what?

MS. NICOLOSI: Objection.

Q If you know.

MS. NICOLOSI: Objection.

THE COURT: Basis?

MS. NICOLOSI: May we approach, Your Honor?

THE COURT: All right.

AT THE BENCH:

MS. NICOLOSI: It's my expectation that Mr. Sisti is about to head into the discussion with this witness about prior bad acts and prior incidents of stealing. It's the State's contention that such prior bad acts have no relationship at all to this homicide, that he's simply trying to damage the witness by bringing in all incidents of prior bad acts. It's not admissible under the rules of evidence, and, therefore, the State would object to him leading into this area of cross-examination.

MR. SISTI: Let me answer that specifically. First of all, the question that's out there --

MR. MAGGIOTTO: Excuse me, Mr. Sisti, but your voice is kind of loud.

MR. SISTI: The question out there and the answer that's been given has to do with acts other than those having anything to do with Lattime, period. It

has to do with prior knowledge with regard to Bill and Pete utilizing gloves in any crime or prior criminal incidents. So with regard to that part of the prior bad acts objection, I think that speaks for itself.

The relevance I think is readily apparent. They're trying to make out for the jury the orchestration of this murder being from the mind and planning of Pam Smart when it is obvious that these kids are brainstorming and utilizing experience that they've been involved in and utilized before. Specifically, things like the gloves. These were the ideas of both Pete and Bill through prior experience. That's all the question was designed for, and that's what it elicited.

MR. TWOMEY:

One thing, Your Honor, just to follow up. Under Part I, Article XV, I think we have the right to produce all proofs favorable, and I think in this particular case, besides the things Mark said, we want to show that these particular kids, through all their prior burglaries, had the ability and knowledge on their own to stage

a burglary. I think we should be allowed to go into all prior burglaries.

MS. NICOLOSI: Your Honor, they're asking questions what Bill was doing, what Bill did in a prior bad act. In the first instance, they can't prove it extrinsically through this witness. What this witness knows about Bill's behavior is not a prior bad act. The rules of evidence say you can't prove such a thing extrinsically.

THE COURT: Well, he can answer that question. I don't think -- we're not going too far down this road. If we do, object and I'll rule on it.

IN OPEN COURT BEFORE THE JURY:

MS. SISTI: Could the reporter read back that question.

- - -

[Question read.]

- - -

A Yes.

BY MR. SISTI:

Q And by gloves, I'm talking about -- I'm not talking about gloves so you go out and play in the snow or anything. I'm talking about rubber gloves or plastic gloves or surgical gloves.

A No, they'd never used surgical gloves before. They've used baseball gloves.

Q For what?

MS. NICOLOSI: Objection.

THE COURT: He may answer that question.

A They'd used them in thefts.

Q Now, did covering the hands come up again as part of the planning over at your house with you and these guys when you were talking?

A Yes.

Q And who came on the idea of using surgical gloves?

A I believe Bill.

Q Had you ever seen a map to Derry, New Hampshire?

A No.

Q Were there such maps being circulated by Bill or Pete or anybody?

A Maps to get there?

Q Yeah.

A Bill had said he had directions. I never seen them, no.

Q And you would be the driver, right?

A Right.

Q And did he attribute these directions as coming from Pam?

A He never told me where he got the directions.

Q He never told you where he got the directions, but he claimed to have had written directions?

A Yes.

Q And you never saw them?

A Right.

Q Can you tell me whether or not Frank Daley ever lived in Derry, New Hampshire?

A I don't know.

Q You don't know. You know Frank, though, right?

A Yes.

Q To the best of your knowledge, was Frank born and raised in Seabrook, New Hampshire?

A Not that I know of.

Q Now, last week while you were being questioned through direct testimony, you stated to the jury that Pam told you, and correct me if I'm wrong, that Pam told you that extensive gold chains would be left in the jewelry box, right?

A Yes.

Q Good gold chains would be left in the jewelry box?

A Yes.

Q Is this a conversation you claim took place between Seabrook and Haverhill, Massachusetts?

A Yes.

Q Just want to get that cleared up.

Now, I just want to get a couple background facts out for the jury.

After, after Greg was killed, you drove everybody back to Seabrook, right?

A Yes.

Q You didn't really even care about the killing, did you?

A Yes, I did.

Q You did?

A Yes.

Q Well, tell the jury how you cared about the killing?

A Well, I -- like I said before, I didn't think they were going to go through it and I was pretty shocked when they did. I tried to block it out of my mind. I didn't want to hold something against Bill and Pete. They were real good friends, but it's hard to think that, you know, they'd actually went through with it. I didn't believe they were going to.

Q So did you feel scared, upset? I mean, tell the jury what was going through your mind.

A I was scared, yes. Nervous, yes. Upset, yes. It's not an easy thing to go through.

Q Uh-huh. The reason I asked that question is because you

had a conversation in a -- and you had this conversation with a detective from the Derry Police Department, an Officer Pelletier. Do you remember having a conversation with him?

A I had a couple conversations with him, yes.

MR. SISTI: Well, I'll refer to page 888 for the State.

Q Do you recall having a conversation with the detective and telling the detective that when you returned to Seabrook, taking Route 101, Route 51, and that while driving along they were singing Shoofly Pie to calm Flynn and Randall down, do you recall that?

A Yes.

Q Do you remember "Lattime stated that it did not bother him that Flynn and Randall had just killed somebody as he did not know the guy?" Do you remember?

A Yes, that was as I was talking that night, the first night it hadn't sunk in. Over time it started to. I mean, you're talking the first night. You said was I scared and everything. The first night you're scared, nervous. Doesn't hit exactly what they'd done, and as time goes on you start to realize what's been done.

Q So the first night doesn't bother you, and then over time it bothers you, is that what you're saying?

A The first night, the actual fact somebody had been killed didn't even sink in. I was, like I said, scared, nervous. We tried to get back -- like I said, we went back to Seabrook. I dropped everybody off and I went right home and went to bed.

Q Didn't bother you because you didn't even know the guy?

A At first that night that's how I used to try to block it out myself. I used to, you know, think well, I didn't know him. It's just like, you know, if you see somebody kill, you know, on TV, like if you see it on the news, but more and more -- I thought about it more and more, it started to bother me.

Q The more and more you thought about it, the more and more it bothered you. Did it bother you when you went to Greg's wake?

A Yes.

Q Do you remember kneeling down over his casket?

A Yes.

Q Did it bother you then?

A Yes.

Q Did it?

A Yes.

Q Did you express that to anybody?

A At the time, no.

Q The fact of the matter is that Flynn and Randall themselves have told you two different stories about what happened inside the apartment, right?

A Yes.

Q Why don't you tell the jury what they told you first?

MS. NICOLOSI: Objection to what Mr. Flynn might have told him. Mr. Flynn hasn't testified at this point.

THE COURT: Want to respond to that?

MR. SISTI: Sorry?

THE COURT: Want to respond to that?

MR. SISTI: I'll respond to it, yeah. First of all, we don't think anything that comes out of Flynn's mouth or Randall's mouth should be considered for the truth.

MS. NICOLOSI: Objection, Your Honor. May we approach?

THE COURT: Objection sustained. The jury will disregard that and make its own determination of each witness' testimony.

MR. SISTI: Co-conspirators' statements, Your Honor.

THE COURT: He may answer the question on that basis.

A Well, will you repeat the question?

Q Yeah. They told you two different stories themselves about

what happened in the apartment.

MS. NICOLOSI: Your Honor, I'd object. May we approach?

THE COURT: All right.

- - -

[Bench conference - no record.]

- - -

NOW AT THE BENCH ON THE RECORD:

MS. NICOLOSI: Your Honor, I'd object to the question. Mr. Sisti is asking the witness what Bill and Pete said after the homicide, after the homicide has been completed. These statements are not in furtherance of the conspiracy. The conspiracy has been completed at the time. There is nothing left to complete. The hearsay exception that Mr. Sisti's trying to validate the statements on does not apply because they are not in furtherance of the conspiracy.

Mr. Flynn hasn't testified so this witness cannot be an impeachment witness as of this time. If there's something that Mr. Randall said that he thinks he can elicit an inconsistent statement for, then that's fine. But that's not what he's attempting to do.

MR. MAGGIOTTO: I'd like to add one thing, Your Honor. He can't impeach Pete Randall about what Pete Randall said unless he first confronted Pete Randall, "Did you make this statement to Vance Lattime?" I don't believe he's done that with Pete Randall. He's trying to skirt the rules of evidence to try and set up all sorts of impeachment of these witnesses. You have to do it by the rules. I don't think Mr. Sisti's laid the proper foundation to ask Vance Lattime about what Pete Randall said to him.

THE COURT: Mr. Sisti?

MR. TWOMEY: First of all, there's a continuing conspiracy among these guys to get away with this. These statements were made in the course of that conspiracy.

Why don't you do this.

MR. SISTI: All right. Well, first of all, I agree with what Paul has just said, that being Paul Twomey. This is a co-conspirator's statement I'm trying to elicit the statement for. Also state that it goes to multi-faceted stories that are coming out of these individuals. One

is even considered an excited utterance with regard to the first story, as that was told immediately to Mr. Lattime I believe upon getting in the car and driving to Seabrook after the murder goes down. After that, the story changes, wherein Flynn claims that it was accidental, that the killing itself was accidental, and again that would be in furtherance of the conspiracy. We believe that he was then planting that story out there for Lattime with regard to the second story, and, you know, the bottom line is, yes, it does go to the credibility of these individuals. I'm not backing off that. It certainly is designed to question the credibility of these individuals telling multiple stories with regard to the same event I think does do that, necessarily. I don't think there's any question that these stories were told and that they were different, substantially different. This is information that the Attorney General's Office is aware of. We know that because it's in the contents of the police report. It's also a proof favorable

with regard to Part I, Article XV. It's this kind of information from a co-conspirator that is quite damaging with regard to their credibility, I agree, but it is quite favorable with regard to our theory of defense. That's why it is being elicited at this time.

If I could add, Your Honor, one small point. One of the State's small points was Mr. Flynn hasn't testified. Even if you were to disregard all the other reasons, it's admissible Mr. Flynn is expected to testify today. The Court -- if that were the only basis for not allowing it in, the Court could allow it in provisionally. Mr. Flynn --

MR. MAGGIOTTO: No, you ask him first.

MS. NICOLOSI: Mr. Sisti is going on the representation of some sort of conspiracy occurs after the death. What conspiracy? There is no crime to get away with something, no charge of conspiracy. There has been no agreement shown at this point. I mean, that's absurd. The conspiracy these people committed was a conspiracy to kill Gregory Smart. At the time that man dies, the

conspiracy ends and there can't be any statements in furtherance. You can't allow somebody to provisionally impeach someone before the person takes the stand. There are specific foundational requirements before someone's impeached, and they haven't met them.

THE COURT: State's objection is sustained.

IN OPEN COURT BEFORE THE JURY:

BY MR. SISTI:

Q On the way back from Derry to Seabrook, was there laughing and singing going on in the automobile?

A What had happened --

Q Was there laughing and singing going on? Then you can answer the question any way you want.

A Yes, there was laughing and singing. What had happened was we'd all been sitting there, and we started back. Bill was real upset, we were all real nervous. Me and Raymond heard the song in the parking lot. Raymond started to sing it first, and I just followed up with him, and Bill started to laugh, not as in like he was laughing at something funny, but sort of just laughing out of control. Pete was not laughing. Pete asked us if we could stop singing it, it was irritating. So then we stopped then. We're not

singing it as a joke. It was a song we'd heard waiting at the mall, me and Raymond.

Q So you and Raymond were singing the song?

A Yes.

Q And Bill was laughing?

A Yes.

Q Last week there was some talk about the day, May 1, when you got the firearm from your father's top drawer. Remember that?

A Yes.

Q And when you pull the firearm from the top drawer, where do you place it?

A I walk out and place it on the kitchen table.

Q The purpose for that is what?

A So Bill and -- well, or Pete can pick it up and take it out of the house.

Q You knew Bill picked it up?

A No.

Q You didn't know that?

A No.

Q You're positive of that?

A Positive.

Q When did you finally find out that Bill picked it up?

A I don't know who picked it up.

Q You don't know.

MS. NICOLosi: Objection, Your Honor. It's been asked and answered four times.

THE COURT: It's been asked and answered.

Q Did you find out in Derry, New Hampshire?

MS. NICOLosi: Objection, Your Honor. He's asking it again.

THE COURT: Well, he can answer that question.

A No.

Q No?

A No.

Q You never saw the firearm on Bill on May 1, 1990?

A I seen it on him, yes.

Q Where, when?

A In Derry.

Q In Derry. That's the first time you saw it on Bill was in Derry?

A Yes.

Q All right. I wanted to make that clear because you didn't see the firearm on Bill between Seabrook and Haverhill, right?

A Right.

Q Did you watch Bill get any ammunition to put in that

particular firearm?

A No.

Q Did you direct him as to where the ammunition would be?

A He knew.

Q And how would he know, can you tell the jury?

A He was there when it was about and where it was put.

Q He knew where it was bought and he knew where it was put?

A Yes.

Q And this would have been out where, in your trailer?

A Out in the camper in my yard, yes.

Q Out in the camper. Did you watch Bill go out to the camper to get ammunition for the firearm?

A No.

Q Did you see anybody going out to get the ammunition for the firearm?

A No.

Q No out, not nothing. After Greg is killed you go to school on May 2nd, 1990, right?

A Yes.

Q And at some point in time you're called into the guidance office?

A Into a small room in the office area, yes.

Q Who calls you in there?

A Miss Kinsman.

Q What does she tell you?

A She tells us that Greg has been killed.

Q Does she tell you how he was killed?

A No.

Q Well, does she tell you when it happened?

A Yes. She'd said that he'd died of a head injury, but not how or what had killed him.

Q Okay. A head injury?

A Yes.

Q And this is when you act shocked?

A Yeah, act shocked. I mean, Bill the next morning was still a little bit upset. We were both still a little upset, but we acted shocked as into finding out this news.

Q Finding out what news?

A That Greg had been killed.

Q Well, you knew that, right?

A Yes.

Q Okay. So that was just faking, right?

A The shock part, yes.

Q Yeah. And you said something about Cecelia. How did she react?

A She reacted shocked. I don't know whether it was true

shock or if she knew in advance that Bill had did it that night.

Q You don't know one way or the other?

A Not for sure, no.

Q What did you observe? What was she doing?

A She was saying like, "Oh, my God," and asked how it had happened, is Pam doing all right.

Q Okay. Sometime in May, was it the middle or the end of May, that you want the speakers from Greg's truck?

A Probably about the middle.

Q The middle. You know a lot about stereo equipment, do you?

A Yes.

Q Do you consider yourself kind of a, I don't know, a connoisseur or something of stereo equipment?

A Yes.

Q How much are these things worth, anyway?

A Now I don't know. They were worth about \$200.00.

Q For a pair?

A Yes.

Q Why'd you give Pam a bargain on this? Why'd you make them worth two hundred fifty bucks to pay off the bill?

A Because I didn't really care much about the money itself.

Q You didn't care about the money itself?

A Right.

Q That had nothing to do with anything you did, right?

A Right.

Q Why don't you tell the jury why you drove Bill and Pete to Derry, New Hampshire on May 1, 1990.

A I'd, like I said, didn't believe they were going to do it, and then wanted part of the stereo equipment out of the house.

Q You didn't believe they were going to kill anybody on May 1, 1990, right?

A Right.

Q This is after 25 plus planning sessions, right?

A Right.

Q This is after a ride from Hampton to Haverhill to pick up your grandmother's car, right?

A Right.

Q This is after driving back to Seabrook, right?

A Yes.

Q This is after going over last-minute plans, correct?

A Yes.

Q And then driving to Derry, right?

A Yes.

Q Having discussions on how and when to pick up Bill and Pete

after they kill Greg?

A We didn't discuss how to pick them up. We were going to wait right at the mall.

Q Well, that was discussed, right?

A Well, I had known.

Q This is after having dark clothing distributed to Bill and Pete?

A I wasn't there when they distributed it.

Q Knew about it, right?

A Yes.

Q This is after changing into different footwear, different sneakers, right?

A Yes.

Q Taping up fingers and putting gloves on the hands, right?

A Yes.

Q And you didn't believe they were going to kill anybody?

A No.

Q The fact of the matter is that Bill felt like killing yet again after Greg's death, right?

A No.

MS. NICOLSI: Objection.

THE COURT: Basis?

MS. NICOLSI: Hearsay.

THE COURT: Sustained.

MR. SISTI: It's an admission, Your Honor.

THE COURT: Sustained.

MR. SISTI: Admission, Your Honor.

THE COURT: Sustained.

BY MR. SISTI:

Q What was your relationship with Raymond Fowler like prior to him going to the police?

A We weren't getting along that good.

Q You weren't getting along very well?

A Right.

Q And what was the basis for this disagreement that you were having?

A He had messed around with my girlfriend when I wasn't around one weekend.

Q And then -- when was this, anyway? When did he do that?

A Sometime in May. I'm not sure of the date.

Q Was it certainly after Greg's death, right?

A Yes.

Q Did you and Fowler get together and plan on how to keep information about this crime from getting spread around?

A No.

Q No. Did you and Bill get together and plan on keeping

information about this crime away from the public?

MS. NICOLOSI: Objection, Your Honor. Same basis as our discussion at the bench.

MR. SISTI: Your Honor, this certainly has to do with an ongoing conspiracy with regard to the murder of Greg Smart.

THE COURT: Objection sustained.

BY MR. SISTI:

Q What information did you have with regard to the motivation; in other words, why did Bill go out to Derry to kill Greg Smart?

A He had told me he was -- wanted to kill Greg Smart for Pam.

Q He wanted to kill Greg Smart. Did he tell you that Greg was mistreating Pam, was that the story?

A That was part of it, yes.

Q Well, that it had to do with beatings?

A He told me that, yes.

Q Did he tell you, this being Bill, that he'd seen bruises?

A I believe so, yes.

Q Did he tell you when he saw these bruises?

A No.

Q Do you recall when you had this conversation with Bill?

A Exact date; no.

Q Wasn't it always Bill's intention from the very beginning when he first met Pam to somehow or another end up with Pam?

A He had said that, yes.

Q I mean, from the -- we're talking the fall of 1989, right?

A Yes.

Q September, I think, of 1989?

A Whenever the first Project Self-Esteem meeting was.

Q He was already, back then, talking about how he was in love, right?

A Yes.

Q How he wanted Pam more than anything in the world, right?

A Yes.

Q And he talked to you and he talked to Pete and he talked to all his friends about this quite a bit?

A Back in the fall he'd just mentioned it, really, the first meeting, and then gradually it picked up. He never -- when he first seen her, he didn't talk about it constantly, no.

Q When did he start talking about it constantly?

A As he seen her more and more and got to know her better and better.

Q He's talking constantly around February of 1990?

A That's -- in February is when he starts to really talk about him and Pam together, yes.

Q Okay. February, March, April, right?

A Well, he continues on from February, yes.

Q Right. Okay. And also during these conversations he tells you how much he hates Greg, right?

A He starts to as the conversations come about March, yes.

Q And these would have been conversations that you were present for; in fact, you were engaging in these conversations with him, right?

A Yes.

Q You yourself were saying, "Come on, Bill, relax, will you? Don't go so nuts about that," right?

A Yes.

Q You thought he was acting kind of strange because he was talking about this so often, right?

A Yes.

Q Being one of his closest friends, you were trying to even relax Bill, right?

A Yes.

Q But it just kept going and going and going, right?

A Yes.

Q Now, you don't know anything about the actual scene in Derry, New Hampshire, 4-E Misty Morning Drive?

A What do you mean? What it's actually set up, where the

condominium and stuff is?

Q Right.

A No.

Q You never had that opportunity to check that out?

A Right.

Q In fact, when you were trying to show where it was on the map, you couldn't even find that, right?

A Right.

Q Just something that you did that night, and you really don't have a lot of recollection with regard to it or what?

A Yes.

MR. SISTI: If I could have a moment.

- - -

[Pause - Mr. Sisti, Mr. Twomey and the defendant conferring quietly.]

- - -

Q I've only got a couple other areas to discuss with you, all right?

A All right.

Q One of them has to do with your ride to YDC. Do you remember going to YDC?

A ADC.

Q Who was in the car with you then?

A We were in the back of a van, me, Pete and Bill.

Q This would have been right after your arrest?

A Well, we were arraigned in Hampton, then went from Hampton to the Derry police station, then from Derry to ADC.

Q You were laughing on that ride, too, right?

A On that ride?

Q Yeah.

A Yes.

Q That would have been you, Pete and Bill?

A Yes.

Q This is after being arraigned for a first degree murder?

A Yes.

Q It's a first degree murder then, but it's a second degree murder now, right, accomplice to second degree murder?

A Yes.

Q And that's because you made a deal with the prosecution?

A Yes.

Q Now, the reason you made a deal with the prosecution is because you didn't want to be subjected to an accomplice to first degree murder charge, right?

A No.

Q Tell the jury why you made the deal.

A When it come down to the time when I decided to plead guilty

to second, there was a switch in my case and the evidence that was up against me. Then I didn't feel I had much of a chance at trial anymore.

Q So you didn't want to go to trial on first degree murder?

A Yes.

Q But you would have gone to trial on first degree murder and risked your life in jail if your buddies didn't plead, right?

A Yes.

Q That's how close you are to Pete and Bill?

A Yes.

Q That you would risk every waking moment of your future in a prison for your two friends?

A Yes.

Q And you discussed this with Pete and Bill, right?

A Pleading guilty to second?

Q Not pleading at all, first of all. Not testifying against your buddies, right?

A Yes.

Q And you all had this worked out way back, right?

A No.

Q Well, when did you work it out?

A We had -- I first talked to Pete about it sometime between

January 4th and the 16th after Bill had been moved, because we had thought Bill was going to make a deal without us, so me and Pete had a talk and then we decided, well, Bill wouldn't do that, and it was left at that, and then it was not brought up again until I had moved to Rockingham.

Q Well, let's go back a few months, okay? Let's go back to when you were arrested back in June. Do you have discussions about pleading guilty back then?

A No.

Q And why was that?

A Because we were going to go to trial. We didn't want to testify against each other, and we didn't want to plead guilty.

Q That was June of 1990, right?

A Yes.

Q Okay. And that was because you guys talked about it, right?

A Because we talked about what?

Q Not pleading guilty and going to trial.

A Yes.

Q And not wanting to testify against each other.

A Yes.

Q And that holds true in July, right?

A Yes.

Q And August, right?

A Yes.

Q September?

A Yes.

Q October?

A Yes.

Q November?

A Yes.

Q December?

A Yes.

Q And you're talking to each other in December a lot, right?

A We just get the court order released and -- on the 24th, Christmas Eve, and we started talking, yes.

Q You're talking about all for one and one for all, basically, right?

A Not -- we weren't really talking about the case at all.

Q You were talking about hanging together, weren't you?

A We had been talking about sticking together, but not taking it to trial and stuff on that basis, no.

Q You were talking about not pleading against each other -- not testifying against each other, right?

A No.

Q You didn't discuss that?

A No.

Q The fact of the matter is you had a meeting set up with your lawyers and Pete's lawyers, right?

A And I said that was in January, not December, after Bill had left.

Q You had a meeting, right?

A Yes.

Q All right. And that had to do with whether to plead or not to plead?

A Yes.

Q And that had to do with not wanting to testify against each other, too, right?

A Yes.

Q And you were concerned, you were concerned about Pete having to do a first degree murder, right?

A Yes.

Q And you were willing to cut deals with the State as long as you knew Bill was coming along with you?

A What do you mean by I was willing to cut deals as long as I knew Bill was coming along with me?

Q Well, you don't mind this particular plea agreement as long as you don't have to testify against Bill, right?

A Right.

Q And you don't mind that particular plea agreement as long as you don't have to testify against Pete, right?

A Right.

Q And you were happy that Bill got a deal, right?

A No.

Q You think he should have gone to trial for first degree murder?

A I think we all should have.

Q You all should have?

A Yes.

Q Why don't you tell the jury why you accepted a deal to second degree murder?

A I -- like I said before, there was a turn where it ended up the evidence in my case was switched within a weekend, and I decided to follow -- Pete had signed to an agreement and I decided to follow along with him and Bill.

Q Just to follow along with the pack?

A Well, I decided to side with them, yes.

Q But you'd much rather go to trial for first degree murder?

A At that time in January, yes.

Q How about right now?

A Now I wouldn't.

Q And the only charge really against you is accomplice to

second degree murder, right?

A Yes.

Q Even though you conspired with Bill and Pete to kill?

A Yes.

Q And even though you went through all the planning and even though you've been honest with the State, you've told them about other crimes?

A No.

Q And your deal basically is 18 years at the state prison?

A In the long run, yes, after the 12 deferred, and that's what the recommendation would be.

Q And then sentence reduction hearings, right?

A Them come up. It's not part of the deal.

Q No, every two years you can come in and ask for a reduction in your sentence?

A Yes.

Q And that was explained to you?

A By my attorney, yes.

Q And that's important to you, right?

A Yes.

Q Is that another reason why you entered into this particular plea agreement?

A No.

Q That had nothing to do with it?

A In this particular plea agreement here, no.

Q So the reason you entered into this thing basically is because you and your buddies are going to stick together?

A That overall would be the main reason, yes.

- - -

[Pause - Mr. Sisti, Mr. Twomey and the defendant conferring quietly.]

- - -

MR. SISTI: Thank you.

MR. MAGGIOTTO: One moment, Your Honor.

- - -

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

- - -

REDIRECT EXAMINATION BY MS. NICOLOSI:

Q Mr. Lattime, let's start backwards and talk about the subject you just left off with the defense attorney.

What's the maximum that you could serve on the agreement that you entered into with the State of New Hampshire?

A Life.

Q And what is the deferral period?

A It means that after I'm released I have to go back to the

prison one year from when I'm released, and if I have any charges, any problems, then I'm sent back to prison for 12 years.

Q What's the minimum actually on that deal?

A Eighteen years.

Q Whose control over it is it whether you get out in 18 or 30?

A The judge's.

Q I want to clarify a question Mr. Sisti asked you. The question was, have you been honest with the State and told them everything about your crimes.

I want to make it now into two questions. Have you been honest with the State of New Hampshire?

A Yes.

Q Have you told them about all your crimes?

A No.

Q Now, you said that over a weekend when you were considering entering into an agreement with the State that evidence switched. What did you mean by that?

A I meant Pete had thought me and Bill were behind him on pleading guilty to second and to the agreement, and he had signed into it and told the State what he'd known, so instead of leaving him, what he'd told, he wouldn't have testified against me and Pete -- I mean me and Bill, so we

followed him. We figured he'd hurt himself or hurt us if he had to testify against us.

Q Okay. If you had entered into an agreement with the State of New Hampshire like you did, what's your obligation with regard to testifying about Pete -- against Pete, Bill or anybody else who is charged with the homicide of Gregory Smart?

A We have to testify against them.

Q And what's your understanding of the agreements that Pete and Bill entered into with regard to that?

A Same as mine. They'd have to testify against anybody.

Q When that switch happened that weekend and you thought Pete had entered into an agreement, what would the effect of that agreement and his testimony have been on the strength of your case?

A It would have greatly reduced the strength of my case.

Q Okay. The meeting that you had in January that you spoke about with Mr. Randall's attorneys and Mr. Randall, what was discussed, if anything, about the actual substance, the facts of the case, if anything?

A Nothing.

Q Now, the laughing that was going on that you testified about in the vehicle as you were being transported to ADC. Did

you think this whole thing was a joke, is that why you were laughing?

A No, we didn't think it was a joke. We just didn't -- at the time we had woke up, I mean, not much sleep. We just weren't in the mood to sit around depressed.

Q Were you laughing about the fact that Gregory Smart had gotten killed and you were charged?

A No.

Q Let's talk about ADC for a moment. What were the rules at ADC, setting aside the court order, regarding talk amongst the people who live there, juveniles that live there?

A There was to be no communication through any juvenile at the facility without a staff present. If you had to ask to go to the bathroom, there was no talking in the bathroom. There was always staff in the rooms. You were kept in level one rooms, level two rooms, which are the two rooms. At the tables, there was staff. So you always had to have staff present for any communication.

Q And what was the court order?

A The court order stated that we were supposed to be kept separated, but at this facility they couldn't do that, so what they had did was said no communication whatsoever, including hand gestures, sitting near the person, verbal

communication, none.

Q Well, when you were in the same room with either Pete or Bill, where did you -- where were you located?

A In the level one room, they had couches on both sides. We had to sit at least two people between us or on one side of the other, and level two room, it was set up different. We -- one had to be at one end of the room at all times, unless there was staff present, like if both of us was watching TV.

Q What happened if you were found violating those rules, sitting next to each other or talking?

A We'd get a restriction.

Q How many times did you get restrictions?

A I got one once, on my first day there.

Q How many times would you say that you had an opportunity to talk with Bill or Pete and you didn't get a restriction?

A There was several times that we would get to speak. As in the conversation, there was one time, but as in speak, say hi or more or less just see if we could get away with it, throughout the week. If staff would turn their back we'd wave or something like that, but that's it.

Q So you might get snatches of words?

A Yes.

Q In December, after that court order was lifted, how many times were you able to have a conversation with Pete and Bill before Bill was moved to Brentwood?

A We had quite a few conversations, but we were held different from the rest of the juveniles there. We had to have staff within like so many feet of us for us to even talk, because they still considered us high security.

Q How many conversation did you have about the case?

A After the court order's removed, none.

Q Now, in Brentwood these rules don't apply, right?

A Right.

Q All right. Now, you can talk about anything you want; there isn't a staff person there, right?

A Right.

Q The conversation you testified to about the ride to Haverhill, when you spoke with this defendant, did you and Bill and Pete sit around in Brentwood and make that story up?

A No.

Q The conversation you testified to that took place in the defendant's office about a \$50,000 policy and a \$90,000 policy, did you and Pete and Bill sit around in Brentwood and make that up?

A No.

Q The conversation you testified to about Greg Smart's truck speakers where you would get -- she would get a \$250.00 reduction from the \$500.00 she owed you, did you make that up with Bill and Pete and -- Bill and Pete in Brentwood?

A No.

Q The conversation that you testified to that you overheard on a speaker phone between this defendant and her husband, did you make that up with Bill and Pete in Brentwood?

A No.

Q You could have, sitting around in Brentwood, made up a lot of things, but you didn't, right?

A Yes.

Q When Bill spoke with you about seeing -- about his relationship with the defendant, about what his feelings were for her, did he also tell you about what Pamela Smart felt about him?

A Yes.

Q And what was that?

A He'd said that Pam told him that she'd loved him, and that was basically it, as they said -- he'd said they had a good relationship.

Q Have you and Bill and Pete ever gotten together and gotten

your stories straight to testify at this trial?

A No.

Q Now, you knew that Bill and Pete said something different about the bullets than you remember, right?

A Yes.

Q And you could have changed your story if you wanted to, right?

A Yes.

Q And you didn't?

A Right.

- - -

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

- - -

Q At the time Bill Flynn was talking more about Pamela Smart, was he also seeing her more and more during that period of time?

A Yes.

Q How do you know?

A I was seeing her myself more and more, getting -- dropping off Bill and at Project Self-Esteem, different things.

MS. NICOLOSI: Okay. Thank you.

MR. SISTI: If I may, Your Honor.

RE-CROSS-EXAMINATION BY MR. SISTI:

Q Page 616 through and including 618. Vance, can you tell me what that is?

MS. NICOLOSI: If we could just have a moment, Mr. Sisti.

A [Witness reading.]

MS. SISTI: Got it?

MS. NICOLOSI: Not yet.

Q Can you tell me what that is, Vance?

A Yes, it's a letter that I wrote to my ex-girlfriend.

Q Your ex-girlfriend. Can you look through it and tell me whether or not that's a true and accurate copy?

A I would say yes. I mean, I wouldn't remember word for word if it was --

Q Look okay to you?

A -- accurate.

MS. NICOLOSI: We'll stipulate it's a copy.

THE COURT: All right.

MR. SISTI: Your Honor, I'd like this as a full defense exhibit.

MS. NICOLOSI: Object to that, Your Honor.

THE COURT: Basis?

MR. NICOLOSI: The use of this letter was to reference a particular line of Mr. Lattime's testimony on

direct. It was for impeachment. And the remainder of that has no relationship and should not go before the jury. We'll stipulate to the line read to Mr. Lattime in his cross-examination.

THE COURT: Why don't you mark it for ID at the moment.

- - -

[Defendant's Exhibit D, being a letter, marked for identification.]

- - -

BY MR. SISTI:

Q In Defendant's Exhibit D for identification you make it abundantly clear with regard to you and Pete and Bill talking, right?

A Yes.

Q And again you make it abundantly clear by saying "We're always talking when staff is not looking," right?

A Yes.

Q And this would have been at the ADC in Concord?

A Yes.

Q As early as July of 1990?

A Yes.

Q When you were being redirected by the prosecution, you'd agree with me that one of the questions had to do with the

actual capability, the actual opportunity for you, Pete and Bill to make up a story in the environment where you're being housed right now?

A Yes.

Q And it's absolutely clear that you could make up a story at the Rockingham County Jail, right?

A Yes.

Q You have every opportunity in the world to make up a story at the Rockingham County Jail, right?

A Yes.

Q There's nobody there to stop you from making up a story at the Rockingham County Jail, right?

A Yes.

Q You can talk about anything you want at the Rockingham County Jail, right?

A Yes.

Q And in almost the privacy of your own cell, right?

A Yes.

Q And nobody can stop you?

A Right.

Q And the fact of the matter is that on yet another follow-up question you were reminded that Pete and Bill have a different story with regard to the bullets, right?

A Yes.

Q How do you know that?

A How do I know that?

Q How do you know that?

A It had been talked about before.

Q Between who?

A I'd seen -- for one, I'd seen Pete's direct. That's how I knew Pete did, and it had been talked about with Bill.

Q So you've been talking about the case, right?

A Yes.

FURTHER EXAMINATION BY MS. NICOLOSI:

Q When you wrote that letter --

MR. SISTI: I'm sorry.

THE COURT: Just a moment. He's not done yet.

MS. NICOLOSI: I'm sorry, Mr. Sisti.

- - -

[Pause - Mr. Sisti, Mr. Twomey and the defendant conferring quietly.]

- - -

BY MR. SISTI:

Q Now, it's interesting that that's the particular subject matter that came up, the bullets, right?

A There was other subject matters that come up.

Q There were other ones, too?

A Yes.

Q You're talking about problems in the case?

A Not problems. Things that had been said in the newspapers. Things, like I said, that Pete had said on direct examination.

Q Watching Randall in his direct examination?

A Yes.

Q Live and on television, right?

A Yes.

Q Who was with you, anyway?

A Probably the other 24 people on the bottom tier that I'm at.

Q Including Bill Flynn?

A Yes.

MR. SISTI: Thank you.

- - -

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

- - -

FURTHER EXAMINATION BY MS. NICOLOSI:

Q The letter that you wrote to your girlfriend that was discussed, what did you mean by talking about it all the time. What did the words "talk" mean?

A Talk means, you know, saying hi, anything we could get out

in the time that we had out, as in saying hi, stuff like that. Nothing about the case.

MS. NICOLOSI: I don't have anything else, Your Honor.

MR. SISTI: We move to strike the ID on that particular exhibit.

MS. NICOLOSI: State's objection stands.

THE COURT: I'll take it under advisement.

MR. SISTI: Thank you.

THE COURT: You may step down, sir.

- - -

[Witness excused.]

- - -

THE COURT: Ladies and gentlemen, we're going to take a recess, but before we do I want to clarify a point of law with you.

You may recall some testimony regarding petitioning the Court every two years for a reduction in sentence. That is never part of any cooperation agreement by a defendant and the State. That is granted to every prisoner at State Prison by state statute. They can apply two years after the commencement of their sentence, any prisoner, for a suspension of

their sentence, and they may do so not more frequently than once every two years thereafter. So every two years anyone in State Prison may apply for a sentence reduction. That's a matter of state statute passed by our legislature.

MR. SISTI: I'm sorry, Your Honor, could we approach before the jury leaves?

THE COURT: Yes.

- - -

[Bench conference - no record.]

- - -

IN OPEN COURT BEFORE THE JURY:

THE COURT: Members of the jury, counsel reminded me people in prison for first degree murder do not have that option of petitioning every two years. That's the only offense -- first degree murder related offense is the only situation where they cannot apply every two years.

Thank you. We'll take a recess.

- - -

[Recess at 10:41 a.m.]

- - -

THE COURT: Go ahead.

MR. MAGGIOTTO: Call to the stand, Your Honor, Karen Knight

- - -

[State's Exhibits 55, being a note, and 56, being a note, marked for identification.]

- - -

KAREN E. KNIGHT,

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 and spell your last name for the benefit of the stenographer.

A Karen E. Knight. K-n-i-g-h-t.

Q Miss Knight, where do you live?

A 152 Ocean Drive, Seabrook Beach.

Q Who do you live there with?

A My husband and three children and father-in-law.

Q What is your husband's name?

A Ken Knight.

Q How old are your children?

A Ten, six and three.

Q And what do you do for a living?

A I run a one-hour photo lab.

Q Who do you run it with?

A My husband.

Q That's your husband, Kenny?

A Yes.

Q Do you know Bill Flynn?

A Yes, I do.

Q How do you know Bill Flynn?

A They rent the downstairs apartment from us.

Q When you say "the downstairs apartment," who lives down there?

A Bill Flynn, his mother and his two brothers.

Q What's his mother's name?

A Elaine Flynn.

Q What's your relationship with Elaine Flynn?

A We're friends.

Q How long has Elaine Flynn and her children lived downstairs from you?

A Three years, going on four.

Q Now, I'd like to show you what's been marked as -- for

identification purposes as State's Exhibit 54-A through I.

- - -

[Pause - photographs shown to Mr. Twomey by Mr. Maggiotto.]

- - -

BY MR. MAGGIOTTO:

Q Now, showing you what's been marked as State's Exhibits for identification 54-A through I. Look through those and tell me if you recognize those.

A Yes, I do.

Q How do you recognize them?

A Bill Flynn brought them in last winter.

Q When you say "Bill Flynn brought them in last winter," what did he bring in to you?

A He brought an undeveloped disc negative and a roll of 535 millimeter film.

Q Would you explain what an undeveloped disc negative is and undeveloped roll of 535 millimeter film is?

A It's undeveloped. It hasn't been processed, hasn't been printed.

Q What did you do with that disc?

A I developed, I processed the disk and then I printed it.

Q After printing it, what do you do?

A I went through the pictures, as I usually do, to check

colors, make sure there are no extra lines, that the paper cutter cut properly and corrected whatever needed to be corrected.

Q Now, when you went through this roll of 15 pictures that you got the disc from Bill Flynn, did you make any duplicates?

A There were extra pictures.

Q How many were there?

A Approximately nine.

Q And why were there duplicates made?

A On some of these they're a little dark. On others, part of the disc carrier and it also could be the fact if I was printing the disc and the phone rang, I would automatically reprint whatever frame I was on.

Q What do you mean by some of these were reprinted because of the disc carrier?

A The disc itself is only about this big (indicating) and you have to use a magnifying glass when printing them to see the actual negatives because the negatives are so small, so it's hard to keep track of which pictures you've printed just beyond and keep track of how many pictures you've printed.

Q Does the disc carrier end up on the photograph?

A Yes.

Q What is on these pictures would be from the disc carrier that shouldn't have been there?

A The pink lines on the side.

Q Now, after you'd made corrections, what did you then do?

A I put them in the envelope along with the negatives and gave them to Bill and his friends when they came back.

Q Now, did this all happen in one day?

A Yes.

Q Now, what did you do with the duplicates?

A Most of my corrections stay on the back of the machines until the end of the day. Then I usually throw them in the trash.

Q What did you do on this particular day?

A After looking through them -- I looked through all of them all the time to see what corrections I've made in printing, so when I saw these I decided to bring them home and show Elaine.

Q All this printing you're doing, is that on a machine?

A Yes.

Q Typical machine you notice in a Photomat or a photo store?

A Yes.

Q And you operate it?

A Right.

Q How long had you been operating the machine for back in the winter of 1990?

A Approximately five months.

Q Now, when you saw these pictures, the duplicates you'd made, why did you bring them to Elaine Flynn?

A Because Billy was only 15 at the time. I thought they were very seductive poses.

Q What did you do with them when you brought them to Elaine Flynn? Tell us how that happened.

A She came upstairs and I told her I had something to show her, so I showed her the pictures, and she left to go back downstairs, and I threw the pictures in a drawer.

Q Now, when was this conversation with Elaine, do you recall?

A I believe it was mid February.

Q Of 1990?

A Yes.

Q Is there anything on those photographs which would indicate a month of development?

A On the back of the print there should be a date.

Q Could you check and see if there's anything on those photographs?

A There is. It appears to be February, '90.

Q And why did you throw them in the drawer after you showed

them to Elaine Flynn?

A Just no reason. I just threw them in the drawer. I didn't know whether she'd want to confront Billy or not. I just kept them.

Q Did you ever see these photographs again?

A Not until after Billy was arrested.

Q What made you see the photographs at that time?

A I thought to myself that I might still have the pictures, so I went looking for them.

Q What did you do when you went looking for them?

A When I found them I gave them to Elaine.

Q And when you originally processed this disc, how many photos were there?

A Fifteen.

Q And were all 15 photos essentially the same thing?

A Uh-huh. Two girls posing.

Q And you only had nine duplicates that you'd made?

A That's what I have here, yes.

Q And after Bill was arrested and you went back to look for the photographs, did you find them?

A Yes, I did.

Q What did you do with them?

A I gave them to Elaine.

- Q Do you have any idea about when that was?
- A It was one, maybe two days after Billy had been arrested.
- Q Do you know Pamela Smart?
- A Yes, I do.
- Q How do you know her?
- A I've seen her pick up Billy from the house.
- Q How was it that you'd see her pick up Billy at your house?
- A My kitchen window overlooks the parking area for Billy's part of the house.
- Q Could you point her out in the courtroom, if she's here?
- A Right there (indicating).
- Q Could you tell us what she's wearing?
- A Purple dress.
- Q Now, how often would you say Pamela Smart came up and picked up Billy when you were living there?
- A Quite often.
- Q And what time of day was it when you normally saw him?
- A In the afternoon, like about three-ish, four-ish. After school.
- Q And from what time period was this going on, do you recall?
- A All through the winter into the spring months.
- Q Do you know what type of car the defendant was driving at that time?

A It's a small Honda. I believe a Honda hatchback.

MR. MAGGIOTTO: I don't have any further questions, Your Honor.

CROSS-EXAMINATION BY MR. TWOMEY:

Q Ma'am, as I understand it, Billy Flynn brought those pictures in to you?

A Bill, J.R. and Pete.

Q After Bill gets arrested, about two days later you give them to Mrs. Flynn?

A Yes.

Q Why do you do that, as opposed to giving them to the police?

A Because I believe they should go to her attorney.

Q Did it at any point in time -- well, that was back in June last year, correct?

A Uh-huh.

Q Any point in time in June did you tell the police about these photos?

A No, I did not.

Q July?

A No.

Q August?

A No.

Q September?

A Never.

Q October?

A No.

Q We can keep going, correct?

A Correct.

Q You knew these photos were -- the police would have found these important in this case?

A Correct.

Q You chose to keep that to yourself?

A I chose to give them to Elaine to do what she thought she should do with them.

Q Did you ever get any letters from Mrs. Flynn after Billy was arrested or right around that time?

A Letters from Mrs. Flynn?

Q Letters, documents, anything like that?

A No, not that I recall.

MR. TWOMEY: Okay. No further questions, ma'am. Thank you.

REDIRECT EXAMINATION BY MR. MAGGIOTTO:

Q And, Miss Knight, you thought it was appropriate to give those to Elaine Flynn to give to Billy's attorney, is that correct?

A Yes, I did.

MR. MAGGIOTTO: No further questions.

THE COURT: You may step down. Any recross? You may step

down. Thank you.

- - -

[Witness excused.]

- - -

MR. MAGGIOTTO: Call to the stand Elaine Flynn.

Would you remain standing and raise your
right hand.

ELAINE FLYNN,

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

MS. NICOLSI: . . Have a seat.

DIRECT EXAMINATION BY MR. MAGGIOTTO:

Q Get you a glass of water, Mrs. Flynn.

Mrs. Flynn, in a nice clear voice would you tell us
your name and where you live, and spell your last name for
the court reporter so he can get it down.

A Elaine Flynn. 152 Ocean Drive, Seabrook, New Hampshire.

Q Could you spell your last name for us.

A F-l-y-n-n.

Q How long have you lived in New Hampshire?

A About four years, five years.

Q Are you a little nervous?

A Yes.

Q Take a moment.

Who do you live with at that address?

A Myself and my sons.

Q Can you tell us the names of your sons and how old they are?

A Jim Flynn, 14; Larry Flynn, ten; and Bill.

Q How old is Bill?

A Sixteen.

Q Is Bill Flynn the same Bill Flynn that has been arrested and charged with and pled guilty in the murder of Greg Smart?

A Yes, he is.

Q Now, do you know Karen Knight?

A Yes, I do.

Q Do you know Kenny Knight?

A Yes, I do.

Q How do you know them?

A They are my landlords, and Kenny I went to school with.

Q When you say you went to school with Kenny, what do you mean?

A We went to the same school, Pentucket Regional.

Q I'd like to show you what's been marked as State's Exhibit for ID 54-A through I, and ask if you recognize these?

A Yes, I do.

Q What do you recognize these to be?

A Pictures that Karen Knight showed me.

Q Do you recall when Karen Knight showed you these photographs?

A I believe it was sometime in February.

Q Where was it that Karen Knight showed you these photographs?

A Upstairs at her -- in her home, in her kitchen.

Q And do you know what time of day it was when she showed you these photographs?

A I believe it was afternoon.

Q And after being shown these photographs, what happened next?

A I went downstairs and confronted Billy with my knowledge of them.

Q Did you have the photographs with you at that time?

A No, I did not.

Q To your knowledge, where had the photographs been left?

A Upstairs at Karen's.

Q When you confronted Billy with these photographs, what happened?

MR. TWOMEY: I'm going to object. I think the answer calls for hearsay.

MR. MAGGIOTTO: I think it goes, Your Honor, to his state of mind at the time.

THE COURT: Well, it may or may not call for hearsay at this point. I'll allow the answer.

BY MR. MAGGIOTTO:

Q You can answer, Mrs. Flynn.

A I asked Bill how he got ahold of these pictures, and I asked if he had taken those pictures.

Q What'd he say?

A He was very upset with me. He said, no, he had not taken time, and he had done Pam a favor by having them processed at Kenny's One-Hour Photo because he could probably get a discount, and that they were for a modeling portfolio.

Q Now, at this time did you know who Pam Smart was?

A Yes, I did.

Q How did you know who Pam Smart was?

A She'd been at the house on several occasions.

Q Do you recognize her in the courtroom?

A Yes, I do.

Q Could you point her out, please.

A (Indicating.) In the purple dress.

MR. TWOMEY: I'll stipulate.

Q Now, after Billy denied any involvement in these photographs, did you ever see these photographs again?

A Yes, I did.

Q Can you tell us when that was?

A It was after Billy was arrested.

Q Do you remember when Bill was arrested?

A On the 10th. On a Monday.

Q And when was it that you saw these photographs again?

A Up at Karen's home again.

Q And how did they come into your possession?

A Karen remembered that she may have stashed them and may still have them in the house, and she went to find them and found them.

Q Once you got these photographs, what did you do with them?

A I called my lawyer.

Q And who is your lawyer?

A James Murberg.

Q Once you got these photographs, did they remain in your possession?

A For about a week, a week and a half.

Q And where were they during that time?

A I had given them to my brother because the lawyer said to put them in a safe place, and he had a safe.

Q And who is your brother?

A Bill Atwood.

Q Where does your brother, Bill, live?

A In Haverhill, Mass.

Q How long did he have the photographs for?

A About a week.

Q And then did you ever see them again?

A Yes.

Q And what'd you do with them when you got them back?

A I had an appointment with James Murberg in Boston, and I took them to his office.

Q Mr. Murberg was Bill Flynn's lawyer?

A Yes.

Q Now, when did you first learn Bill was in trouble?

A Ninth.

Q June 9th?

A June 9th.

Q How was it that you learned?

A Diane Lattime called me and told me that she thought I should come up to her house because we had a major problem that she needed to discuss with me and didn't want to discuss it over the phone.

Q Were you friends with Diane Lattime?

A No, I was not.

Q Did you know who she was?

A Yes, I did.

Q Now, did you know J.R.?

A Yes, I did.

Q And did you know Pete Randall?

A Yes.

Q How did you know them?

A They were friends of Bill's and they were at the house often.

Q What about Raymond Fowler?

A I did not know him.

Q And Ralph Welch?

A I knew him.

Q Had Ralph ever been to your house?

A Yes, he had.

Q A lot, little?

A A lot. Then there was a period when he wasn't for a while because he had a girlfriend.

Q What about Cecelia Pierce, did you know her?

A Yes, I do.

Q How do you know Cecelia Pierce?

A Cecelia was involved in the video and she was at my home several times.

Q Now, when Cecelia was at your home, who was she with?

A She was with Bill and Pam. On one occasion, she was with Tracy, I believe a friend of Pam's, and Rachel, another girl

from school.

Q I missed the last part of your answer. I didn't know you were still talking.

A Rachel, another girl from school.

Q Cecelia Pierce ever at your home without Pam?

A No, not to my knowledge.

Q So after Diane Lattime told you you had a problem, what happened next?

A I got off the phone and I went up to her house, and she sat me down and told me that Ralph had overheard the boys talking and it looked as though they may be involved in the Smart murder case.

Q Now, where was Bill at that time?

A He was with J.R. and Pete.

Q Where were they?

A Diane told me they were on their way to Connecticut.

Q Now, up to this point had you talked to Bill at all about this? In other words, once you got the call from Diane Lattime, did you ever talk to Bill about the big problem?

A No, I did not.

Q Did you ever see Bill again that day?

A I saw him later on that night.

Q Where did you see him later on that night?

A He was dropped off at home.

Q And about what time of night was that?

A I can't recall exactly. I think it was 7 or --

Q Excuse me. Why don't you wait a second. Go ahead. Why don't you repeat that answer for us. Tell us -- let me finish the question -- when you saw Billy again that night.

A I can't recall the exact time, but I believe it was dark out.

Q What happened when you saw Billy again that night?

A I heard them drive up and I went outside and met him and told him I wanted him to come upstairs with me to talk to Kenny.

Q Why did you want him to talk to Kenny?

A Because Bill and I weren't very close. He did not confide in me, and I thought not having a father maybe he could talk to Ken.

Q And where was Bill's father?

A He died.

Q How long ago?

A Five years ago.

Q Now, before -- are you okay?

A [Affirmative nod.]

Q Before taking him up to Kenny's, did you have any

conversation with Bill?

A No.

Q Now, after he talked to Kenny, what happened next?

A Kenny called a lawyer, James Murberg, for us.

Q After talking -- who talked to the lawyer, do you know?

A Kenny.

Q Did you speak to the lawyer at all?

A Not at that time.

Q Do you know how long Bill talked to Kenny for?

A Hour.

Q Then what happened?

A James Murberg recommended, based on the facts that Kenny gave him, that I -- I take Billy out of town somewhere until he saw what was going to happen.

Q And where did Bill go that night?

A He went to my brother's.

Q That's your brother, Bill --

A Yes.

Q -- Atwood, who you mentioned before?

A Yes.

Q Now, before Bill went to your brother's house, what else happened that night?

A Diane had told me that there was a search warrant and they

may be coming to search our homes. I remember telling Bill if there was anything that looked bad to go and get it and get rid of it.

Q What do you mean by "looked bad"?

A Well, at this point I didn't know what was going on. I didn't know if he was involved or being set up to look like he was involved or what. I just said anything that looked bad. I didn't have anything on my mind specifically.

Q So what happened?

A Billy went down into his room and did that.

Q Did you see at all what Billy had done in his room?

A No, I saw a bag and I saw a shoe box with a lot of notes in it.

Q What did you do with that stuff?

A It was thrown away.

Q Do you know how it got thrown away?

A I can't recall who specifically threw it away, but it was put in the trash.

Q Are you sure it was put in the trash?

A Yes.

Q Now, did you go through Billy's room at that time with Billy, or is this something he did himself.

A Something he did himself.

Q And how long did it have for him to do that?

A How long did it take?

Q Right.

A Not very long.

Q And after Billy had gone through his room and gathered up his stuff, what happened next?

A I took him to my brother's.

Q And how did you get to your brother's?

A Kenny's car.

Q Why'd you take Kenny's car?

A I think at the time we thought we might be followed.

Q By who?

A I don't recall.

Q Were you afraid, you mean?

A We were in a panic.

Q Why were you in a panic?

A Because this was all mind boggling.

Q Were you worried about being arrested?

A No.

Q Billy being arrested?

A Yes.

Q So you took Kenny's car to Haverhill. How long did it take you to get there?

- A Takes about 20 minutes.
- Q And you dropped Billy off then?
- A Yes.
- Q And what did you do?
- A I came home.
- Q When did you see Billy again next?
- A The next day in the afternoon I went to get him.
- Q In Haverhill?
- A In Haverhill.
- Q What happened after that?
- A On the way home, I dropped him off at J.R.'s house.
- Q What happened at J.R.'s? Well, let me rephrase that. What did you then do?
- A I believe I went home.
- Q Now, when you were in the car with Bill, did you have any discussions about what was going on or what happened?
- A No.
- Q Did you try to talk to Bill about it?
- A I don't believe I did.
- Q Why not?
- A Again because Bill and I weren't very close, because I didn't know how to deal with this, and I suppose I didn't want to deal with it at the time. I didn't want to know.

Q So after you dropped him off at J.R.'s house, what happened after that?

A He called me later and asked if he could go to the movies with the other two boys.

Q What did you say?

A I believe I said, yes, if the other parents were in agreement.

Q What happened after that?

A I got a call from Diane Lattime later on, saying that the police had been to her house with arrest warrants and that she had gone down to the movies to get the boys and they were now at the police station and that I might need to go down there.

Q And did you?

A Yes, I did.

Q And has your son Bill been incarcerated ever since?

A Yes, he was.

Q After Bill was arrested and incarcerated, did you ever have occasion to go in his room again?

A Yes, I did.

Q What was the purpose of that?

A To see if I could find anything to link him with this or anything that would give me --

Q Anything that would give you any what?

A Answers.

Q What answers were you looking for?

A How he could get involved with something like this.

Q When did you go back into his room?

A The next morning after he was arrested.

Q And who did you go into his room with?

A My brother.

Q What did you do once you were in his room?

A We opened up the speakers, we looked in all kinds of places that -- that we felt if somebody was hiding something they would put things. Looked in books, we looked in discs.

Q I'd like to show you what's been marked for identification purposes as State's Exhibit Number 55. Would you take a good look at this.

MR. MAGGIOTTO: Just bear with me one second.

- - -

[Pause - Mr. Maggiotto examining documents.]

- - -

Q Do you recognize that?

A Yes, I do.

Q What do you recognize that to be?

A A note that I found in a book, I believe.

Q And how did you find that note?

A I was turning books upside down and flipping the pages.

Q Now, is that note in your son's handwriting?

A No, it is not.

Q What did you do with that note once you found it?

A I believe I called my lawyer and told him I had found a note.

Q And what happened to that note?

A I brought it to my lawyer in Boston.

Q Do you know when that was?

A It was a couple of weeks afterwards when I had my first appointment with him.

Q Now, beside finding that note that you found in Bill's room -- where do you think you found this note?

A I think I found it inside a book or a notebook.

Q What kind of book was it, do you remember?

A No, I do not.

Q Beside finding this note, did you find anything else in the room at that time?

A I don't recall now.

Q Why did you give all this stuff to Bill's lawyer instead of to the police?

A Because my lawyer told me not to talk to anybody else but

him.

Q When you say "my lawyer," you mean Bill's lawyer?

A Bill's lawyer.

Q So you gave it to him?

A Yes.

MR. MAGGIOTTO: Could I have this marked for identification as State's 56 for identification.

- - -

[State's Exhibit 56, being a note, marked for identification.]

- - -

BY MR. MAGGIOTTO:

Q I'd like you to take a look at what's been marked as State's Exhibit 56 for identification and ask if you recognize that?

A Yes, I do.

Q What do you recognize that to be?

A It was a note that came in the mail along with a cassette, addressed to Billy in care of me.

Q And what type of cassette came in the mail with it?

A It was just a regular cassette that you record on.

Q And did you ever listen to that cassette?

A My brother listened to it.

Q Tell you what was on it?

MR. TWOMEY: Objection. Calls for hearsay.

THE COURT: Sustained.

Q Was it music?

A Music.

MR. TWOMEY: Objection. Hearsay.

MR. MAGGIOTTO: Not offered for the truth, but what the substance of the tape was.

MR. TWOMEY: That's the truth of the matter.

THE COURT: I sustained the objection once.

Q Was this letter signed in any fashion?

A Just "A friend." It was just signed "A friend."

Q What did you do with this tape and letter?

A I gave it to Bill up at YDC. Actually, I gave it to my brother, who gave it to Bill, after he'd listened to it to see if it seemed all right.

Q And did you ever see the tape again after that?

A No, I did not.

Q Now, after Bill had been arrested, did you ever have occasion to talk to the defendant?

A One occasion.

Q When was that one occasion?

A It was the morning after Bill was arrested.

Q How was it that you talked to the defendant, Pamela Smart?

A She called me.

Q She called you where?

A At home on the phone.

Q She called you on the phone?

A [Affirmative nod.]

Q Did she say where she was calling from?

A No, she did not.

Q Can you tell us what happened at that time?

A She was hysterical. She was yelling on the phone and asking me what was going on.

Q When you say, "She was hysterical, yelling on the phone," what was she yelling?

A She was yelling, "What's going on? I heard Bill was arrested."

Q What do you mean by hysterical?

A Her voice was high pitched and -- and like screaming.

Q I'm sorry?

A Like screaming.

Q And how long did this conversation go on for?

A A short -- very short period.

Q What did you say to her?

A I told her that I couldn't believe she didn't know what was going on and that she better get a lawyer.

MR. MAGGIOTTO: I don't have any questions -- further questions.

CROSS-EXAMINATION BY MR. TWOMEY:

Q Good morning, ma'am. I just have a few things to go over with you.

When you first saw those pictures and confronted Bill, what he told you was those were pictures from a modeling portfolio?

A That they were for a modeling portfolio.

Q Now, this Attorney Murberg, he still represents your son, is that correct?

A Yes, he does.

Q And he told you when you called him that night to -- number one, to get Bill out of town, is that correct?

A Yes.

Q Okay. That was so the police wouldn't talk to him or anything like --

MR. MAGGIOTTO: Objection, Your Honor. I don't believe she stated that.

THE COURT: Sustained.

Q Did he say why?

MR. MAGGIOTTO: I don't even think she talked to --

THE COURT: Why not let her answer, see if she did.

A I didn't talk to him personally. Kenny did.

Q Kenny did?

A But it was to see if this would blow over, if it was just --

Q Now, the pictures themselves, who told you that you should take them from wherever they were and put them in a safe place? Was that from the attorney in Boston, too?

A Yes.

Q Okay. The same man, I take it, your son's present attorney told you not to talk to the police, don't talk to anyone but him?

A Correct.

Q Now, you had a couple meetings with the Lattimes and the Randalls, I think, is that right?

A I had one meeting with Diane prior to the arrest.

Q Okay. And Diane told you what Ralph Welch had said that he'd overheard. I'm not going to ask you to go through everything because I understand it's difficult for you, but she went into some details about what Ralph had to say, isn't that true?

A Yes.

Q And when you went to the police station you knew the arrest warrant for your son was for actually being the trigger person, actually committing the deed here, isn't that correct?

A Yes.

Q And, in fact, when you were at the police station they had to give you -- since your son was a juvenile, they had to give you a copy of the actual charge?

A Yes.

Q And you knew what he was charged with and what the other two boys were charged with?

A Yes.

Q Now -- so you had that information. Can you recall the date that was, ma'am?

A June 10th we were in the police station in the evening.

Q Okay. So on June 10th you had the information that your son was the one accused of actually committing the act of killing Greg Smart?

A Yes.

Q Now, what was the date that Pamela called you that you just told us about?

A The morning after that, the 11th.

Q The 11th. On the 11th when Pam called you, wasn't the first thing she asked for -- didn't she ask for Bill originally?

A She said -- identified herself and said, "What's going on? I heard that Bill was arrested."

Q Are you sure she said, "I heard Bill was arrested," and

didn't ask you who was arrested?

A To the best of my recollection --

Q Yes.

A -- she said that she heard Bill was arrested.

Q Okay. Do you recall talking to police officers a long time ago about this conversation?

A I -- I can't recall.

Q No? Okay. You can't recall then, you wouldn't know whether or not you told them originally that she wanted to know who had been arrested and had asked for Bill originally?

If you don't recall it, I don't want to put words in your mouth.

A I don't recall.

Q Okay. Would you agree with me that your memory of the conversation way back then when you -- right after it happened would have been a little better than today?

A Right after it happened?

Q Right.

A Yes.

Q Okay. Now, the bag with the notes and the shoe box that were put in the trash by someone. Again, that was something that your son's attorney told you to do, tell you to get rid of evidence?

A I don't believe so.

Q Okay. Was that Mr. Knight's idea?

A It was a collective idea, yes.

Q Now, you understand that you're not supposed to do that?

A At the time I didn't understand. I wasn't thinking.

Q No, I understand that and I appreciate that, but you do understand now?

A Yes.

Q That's not something you're supposed to do.

You discussed this with the Knights prior to doing it, correct?

A Did I discuss what?

Q With the Knights prior to throwing away that evidence, destroying it, discuss that with the Knights?

A I don't think it was a discussion. It was just a statement made.

Q Okay. And it was a collective -- I think you just told me, though, it was a collective decision.

A Everybody agreed.

Q Everybody agreed that that's what you should do. Just one minute, please, ma'am.

- - -

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

MR. TWOMEY: I don't have any more questions. Thank you,
ma'am.

REDIRECT EXAMINATION BY MR. MAGGIOTTO:

Q Was it your purpose to try and protect your son at that time
Mrs. Flynn?

A I suppose so, because I didn't know what was going on.

MR. MAGGIOTTO: No further questions.

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

MR. TWOMEY: Nothing further, ma'am. Thank you.

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

[Witness excused.]

MR. MAGGIOTTO: Judge, we underestimated the morning session.
We thought it would go until noon, so we'd ask
for an early lunch.

THE COURT: All right, we'll adjourn until 1 o'clock.

[Luncheon recess at 11:38 a.m.]

MARCH 11, 1991 - MONDAY AFTERNOON SESSION - 1:00 P.M.

THE COURT: Good afternoon. State can proceed.

MS. NICOLOSI: State calls George Moses. Excuse me, Your Honor. Go stand by the witness chair.

George, could you raise your right hand, please. Put your hat on the witness table. Raise your right hand.

GEORGE MOSES,

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

DIRECT EXAMINATION BY MS. NICOLOSI:

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

A George Moses. M-o-s-e-s.

Q Where do you live, George?

A Billerica, Mass.

Q What's your street address?

A Pond Street, 167.

Q How long have you lived in Billerica?

A Since July.

Q And who do you live with there?

A My aunt and uncle.

Q What are their names?

A Bob and Georgette Mitza.

Q Bob and Georgette Mitza?

A Right.

Q Is Bob's correct name Robert?

A Yeah.

Q Prior to living with the Mitzas, who did you live with -- where'd you live?

A I lived in Hampton, New Hampshire.

Q Who'd you live with?

A With my stepmother, Mary Ann Moses, and my father, Joseph Moses.

Q How long did you live with Mary Ann Moses in Hampton, would you say?

A About a year approximately.

Q Total, how long did you live with Mary Ann Moses, would you say?

A About five years.

Q Where does Mary Ann Moses live now?

A She's in a correctional facility in Goffstown, New Hampshire.

Q So she's at a New Hampshire prison for women.

A Right.

Q What is the charge that she is in on?

A Fraud, I believe.

Q When you lived with Ms. Moses, where did you go to school?

A Winnacunnet.

Q How long did you go to Winnacunnet High School?

A For a full school year.

Q Was that the last school year, the 1989-1990 year?

A Yes.

Q When did Mary Ann Moses go to prison?

A The summer of 19 --

MR. MAGGIOTTO: 1990.

A 1990. Last summer.

Q How often have you visited your stepmother while she's been in prison, would you say, since she arrived in the summer?

A About two to three times.

Q How often have you spoken with her on the telephone, would you say?

A Three or four times.

Q Do you know the defendant?

A Yes.

Q How do you know her?

A I seen her at school and at the prison.

Q What school did you see her in?

A Winnacunnet, the school I went to.

Q What's the defendant's name?

A Pamela Smart.

Q Do you see her in the courtroom?

A Yeah.

Q Could you just point her out for us.

A That lady with the purple dress right there (indicating).

Q Thank you. When you saw the defendant at Winnacunnet High School, did you ever have a conversation with her?

A No.

Q Have you ever spoken with her?

A Yes, I have.

Q When was the first time you had a conversation with her?

A I went to visit my mom one time and she was at the prison and I talked with her for about five minutes.

Q So you went to visit Mary Ann Moses at the prison and you saw the defendant there?

A Right.

Q Where did this conversation take place?

A In the visitors' waiting room.

Q Tell me the procedure when you go to visit your stepmother at the prison. What do you have to do?

A Well, when you come in the front door, there's like a guard office and you announce that you're there and tell

them who you're there to visit and they check and make sure you're on the visiting list, and you give them your license and I guess -- well, you go through the door, and there's like a door on the left that you go to, and you walk in and give them your license and they, you know, make sure you don't have a gun or anything with the metal detector, and they go and they get the person you're there to visit, and then they let you in.

Q So when you visited, the inmate goes into the visiting room first, then you go in after, is that right?

A Yes.

Q Describe for me the layout of the visiting room that you visited in.

A Well, when you come through the door, right on the right-hand side there's some vending machines and some change machines, and on the left there's tables that go all the way down, and they go like this (indicating), and on the right there's like windows and there's a table that goes this was (indicating), and then there's several other tables that go like that (indicating).

Q Is there anything that separates the tables from each other?

A No, everything is basically out -- pretty much out in the open.

Q How many tables approximately would you say?

A About ten, nine or ten.

Q When you visit your mother at those tables, are you alone with your guest -- excuse me -- with your visitor, or are there any inmates and their visitors sharing a table with you?

A No, you're not allowed to share a table with other inmates.

Q Why aren't you allowed to?

A I don't know why.

Q Is it a prison rule?

A Yes.

Q Now, you said you had a conversation with the defendant when you visited your mother. Describe how that conversation happened.

A I went in to see my mom, and I was sitting down at the table and Pamela had been walking towards where we were sitting, and my mom said, "That's Pam Smart," and I said I recognized her because I seen her in school.

Q Then what happened?

A And she come over and they were talking, and then there was the other lady, Brigette, who came over, and my mom was talking with her. Pam went and sat at another table. My mom said, "You can go talk to her if you want," and I got

up and went over to her table and we, you know, talked. We, you know, said, hi, how are you, just conversation lasted --

Q What else did you talk about other than hi, how are you?

A She had told me why she was there and what was going on. She said she had talked to her lawyers and she was waiting to get out.

Q And what other conversation, if any, took place?

A There was another conversation on the phone that I --

Q Well, let's stick with this conversation before we move on.

A Okay.

Q When you were sitting with the defendant in the prison, what did she tell you she was charged with?

MR. TWOMEY: I object to leading questions, Your Honor. The witness hasn't discussed anything else at this point in time.

MS. NICOLOSI: Your Honor, the witness stated that she told him her charge. I'm asking what was the charge that she told him about.

THE COURT: He may answer.

A She told me that she was charged with conspiracy to commit murder.

Q What else did she tell you, if anything?

A And she said there was a girl, Cecelia Pierce, that had been

there as one of the big witnesses.

Q How long did that conversation take place?

A About five minutes.

Q Then what happened?

A And then the -- one of the matrons, one of the guards who worked in the prison came over and said, "You're not allowed to," you know, "be talking with him because he's not your visitor," so I got up and went back over and sat down with my mom, and she had went over and sat down and her family came in.

Q Now, when you say "her family came in," who are you talking about?

A Well, I'm not sure if it was her family. It appeared to be. But --

Q Whose family, though?

A Pamela Smart's family.

Q Okay. When, approximately, did this conversation with the defendant take place?

A Mid August.

Q Did you ever speak to the defendant again?

A Yes.

Q When was that?

A It was a while after, a short period of time, about two

weeks after I got a phone call from my mother, and she had got on the phone and we were talking, and she said, you know, "Will you do me a favor?"

MR. TWOMEY: Object at this time and ask to approach, Your Honor.

THE COURT: All right.

AT THE BENCH:

MR. TWOMEY: The witness appears to be about to relate the substance of a phone conversation. It hasn't been authenticated at this point in time.

MS. NICOLOSI: I was about to stop him and ask him for the proper foundation before he can relate what he heard in the phone call. Do that right now.

MR. TWOMEY: I would ask after that is done that the Court bring us back to the bench and we be able to argue that it's not properly authenticated. He has to establish that he's familiar with the voice and able to make a voice identification under the rules of evidence. My understanding is the only other time he claims ever to have spoken to my client was a very brief conversation we heard about, and that does not appear to be a sufficient foundation to make a voice

identification over the phone.

THE COURT: All right.

IN OPEN COURT BEFORE THE JURY:

BY MS. NICOLOSI:

Q I want to back you up and say, who was it who actually placed the phone call to you?

A My mom.

Q And what happened after your mom got on the phone? Did somebody else speak with you?

A Yes.

Q All right.

A And that was Pamela Smart.

MR. TWOMEY: Object. Move to strike it at this point, Your Honor.

THE COURT: Well, on the basis of foundation?

MR. TWOMEY: Yes.

THE COURT: Want to respond to that?

MS. NICOLOSI: Your Honor, I'm about to lay the foundation.

THE COURT: All right.

Q Did you recognize the voice of the person who got on the phone after you spoke with your mother?

A Yes.

Q How did you recognize that voice? Had you heard it before,

if you had?

A I had heard it once at the prison.

Q And who was it that you heard on the telephone?

MR. TWOMEY: Objection, Your Honor. Ask to approach.

THE COURT: All right.

AT THE BENCH:

MR. TWOMEY: Again, the foundation is not sufficient to allow a voice identification and hearsay to him in -- that could have been anyone in the world that he was talking to on the phone. He had one very brief conversation with my client, nothing special about it, nothing to stand out. He hasn't indicated any voice characteristics that were special. He hasn't indicated any ability whatsoever. That's like me saying that you talked to somebody weeks ago in this courtroom, chance encounter, couple sentences, and you could identify their voice on the phone. We all know that it often happens we get phone calls that we've known for years and years and years and not able to determine who it is.

The basis -- the foundation for a voice identification at this point in time has not

been laid.

THE COURT: Objection's overruled. I think that can be covered on cross-examination.

MR. TWOMEY: Okay.

IN OPEN COURT BEFORE THE JURY:

BY MS. NICOLosi:

Q Describe for me the voice that you heard on the phone after you spoke with your mother.

A It was kind of a soft, sweet voice.

Q Okay. Did she speak quickly or slowly or what?

A Little in between. Medium, average.

Q Okay. After she got on the phone, what did she say?

A The person said that she wanted me to lie for her, if I would do her a favor and lie for her.

Q Did she identify herself?

A Yes.

Q How'd she identify herself?

A She told me her name.

Q What'd she say?

A She said, "This is Pam."

Q Then what did she say? "This is Pam," and what from there?

A She said, "I need you to do me a favor. Will you lie for me?" And I said, "I don't know. What do you want me to do?"

Q What'd she say?

A She told me she wanted me to say that I overheard a conversation between Cecelia Pierce and another woman who worked at the school; that --

Q What was the conversation that you were supposed to have overheard?

A And that was that everything that Cecelia had given to the police was a lie.

Q Okay. Anything else that she asked you to do?

A She just said that her attorneys might call me and just to tell them that story.

Q The defendant said her attorneys might call you, and what did you expect to do or what did she say to do when her attorneys called you?

A To tell them the story that -- to tell them that story.

Q And did you expect to have to do anything else after you spoke with the lawyers?

A Possibly testify in court or --

Q What would you have testified to?

A To the fact that -- well, to the story that Cecelia had lied.

Q Did the defendant tell you why she wanted you to lie for her?

A She thought it might help her case or --

Q What did you say in response to the defendant's request?

A I said, "I don't know." I said, "I don't know." Kind of left her on like maybe, maybe not, I don't know.

Q So you didn't say yes or no, you said maybe?

A Right.

Q Why did you say maybe?

A I didn't -- I didn't say I said maybe. I said I said I don't know.

Q Okay. Why did you say, "I don't know"?

A I don't know. I just said, "I don't know." I was thinking -- you know, I just wasn't thinking.

Q Did you ever speak with the defendant again?

A It's possible, but I don't remember.

Q Did you ever speak with anybody else about this at any later time?

A Yes.

Q Who was it that you spoke with?

A My mother.

Q When did you speak with your mother?

A It was a long time after.

Q And did you ever speak with anybody after you spoke with your mother about this?

A Yes.

Q Who was that?

A I spoke with Detective Pelletier about that.

Q Anybody else?

A And you and --

Q Can't recall that person's name?

A I can't recall the last person's name.

Q Okay. When you spoke with your mother, what did she say?

A She told me to tell the truth.

Q Okay. What else did she say?

A She said, "Don't lie about anything. Some people are going to call you and ask you about it, and just tell them what happened."

Q How close to the time between the time you spoke with Detective Pelletier did you speak with your mother?

A How close was it?

Q How close in time was it?

A It was a short period of time, no more than a couple of days.

Q When your mother calls you from the prison, how is the call received?

A Collect. You have to accept the collect call in order to speak with her.

Q If you wanted to call your mother, how would you call her?

A I can't, and I usually don't.

Q When you received the two phone calls that we're talking

about, where were you at the time?

A I was at my aunt and uncle's house.

Q And the number that you gave us before, was that the number of the telephone that you received the calls?

A Yes.

- - -

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

- - -

Q What was the number at the residence that you were at when you received these phone calls?

A 671-9522.

THE COURT: What is the area code?

THE WITNESS: 508. 671.

Q Do you know Cecelia Pierce?

A No. I couldn't tell you who she was or what she looks like.

Q George, when you came into the courtroom, you were hiding your face. Why?

A I don't want my picture in the paper. I'm not here to make a worldwide appearance. I'm just here to give my testimony and to tell the truth. That's the only reason I'm here.

Q You're uncomfortable with all this media attention?

A Right.

Q When was the last time you visited with your mother at the State Prison?

A It was a long time ago. Last year.

MS. NICOLOSI: Thank you.

CROSS-EXAMINATION BY MR. TWOMEY:

Q When was the last time you talked to your mother, George?

A Last time I talked to her?

Q Yeah.

A It was a while ago.

Q What's "a while"? A week, couple weeks?

A I'm not sure.

Q Okay. The prosecutor just asked you if you know Cecelia Pierce. Do you know a fellow named Billy Flynn?

A Yes, I do.

Q Do you know Vance Lattime?

A Only by name.

Q Do you know J.R.?

A No.

Q Do you recall going on television on the day they were arraigned in District Court -- one of them was taken down to District Court?

A No.

Q Do you recall ever being interviewed by somebody holding a

television camera, those things that you hold your hand up?

A No.

Q You don't recall that? You don't recall saying, "They're all good kids"?

A No.

Q Were you at the Salem District Court when those kids had court at any point in time -- Hampton, I'm sorry, Hampton District Court?

A Yeah.

Q Okay.

MS. NICOLOSI: Your Honor, may we approach?

THE COURT: All right.

AT THE BENCH:

MS. NICOLOSI: I just want the Court to be aware that this boy had a juvenile proceeding in District Court of which he was acquitted, and I just want to ensure that the defense attorney is not going to go into a discussion about that, anything to do with the charges that he faces in a juvenile proceeding and it's confidential.

MR. TWOMEY: I don't intend to. What I intend to do is ask him if that helps him remember being on television because he was in fact, and said

the things I said he said, okay?

THE COURT: You can ask him if he had another matter in court that day.

MR. TWOMEY: I wasn't going to ask him why he was there at all. I was going to say, "Does that help you remember going on television."

THE COURT: All right.

IN OPEN COURT BEFORE THE JURY:

Q George, when I direct your attention to the day you were in Hampton District Court, the boys, or one of them was also there. Does that help you remember going on television?

A I don't remember ever being on television.

Q Do you remember being interviewed by any press people there and asked what you thought of the kids?

A Yeah, I talked to one of the guys that was there.

Q Did you tell the person from the press they were good kids?

A I don't remember exactly what I said. I -- he asked me something and I just told him.

Q Okay. Now, your mother, the woman that you say told you to tell the truth. Your mother's in there, I think you told the jury, for fraud, is that correct?

A Yeah.

Q It's not one count of fraud, correct?

A I'm not sure.

Q Okay. Well, your mother's there because she milked the State of New Hampshire for \$47,000 in welfare fraud, isn't that why she's there?

A I'm not sure.

Q You don't know anything about why she's in prison?

A No, I just know it's fraud. I didn't know the --

Q Okay. Do you recall when your family was getting assistance for dependent children?

A No, I had no idea.

Q Do you recall -- you don't know anything. If I said something about your mother owning four to seven brand new vehicles --

MS. NICOLOSI: Objection, Your Honor. May we approach?

THE COURT: What's the basis of the objection?

MS. NICOLOSI: Your Honor, this witness testified he doesn't know the basis of his mother's charges. It's been asked and answered. To go through all of this is not going to get any more information before the jury.

MR. TWOMEY: This is cross-examination, Your Honor.

THE COURT: Wasn't that easy without approaching the bench?
The objection is sustained.

BY MR. TWOMEY:

Q Your mother often told you to tell the truth, is that the way she raised you?

A To be honest, yes.

Q Okay.

Q Now your mother's serving a fairly lengthy prison sentence, correct?

A I believe so.

Q You don't know how long she's serving?

A Two to four years, I think. I believe.

Q Okay. You want your mother to get out of prison, don't you?

A Yeah.

Q Your mother wants to get out of prison, doesn't she?

A Well, I don't know how she feels, but I'm sure she would.

Q Now, your mother is the one -- the day that you had this very brief conversation with Pamela Smart at the visiting room, your mother's the one that came to you and said you can go over and talk to Pamela, correct?

A Yes.

Q Okay. Pamela Smart didn't come up and say, "I'd like to talk to you," did she?

A No.

Q And your mother was the one that called you when you

supposedly had this phone conversation, correct?

A Yeah.

Q Now, did your mother tell you that she wanted you to lie for Pamela Smart?

A No, she asked me if I would do it.

Q So your mother asked you to lie?

A Yes, sir. This was after Pamela had asked me.

Q But did you talk this over with your mother, what Pamela supposedly wanted you to do?

A Did I talk it over with her?

Q Right.

A Can you be more specific?

Q Okay. You told us a story about Pamela wanted you to claim that you'd seen or overheard Cecelia Pierce talking to another person who -- teacher or something who works at Winnacunnet. Okay?

A Uh-huh.

Q Did you tell your mother that that's what Pamela wanted you to say?

A No, I never told my mother that.

Q Did Pamela ever tell you to say that you knew Cecelia and Cecelia directly told you that she was lying?

A She told me to say that I knew Cecelia and I had overheard

a conversation saying that Cecelia was lying.

Q Can you think of any reason why your mother would tell a different story and say it was that Cecelia had told you directly?

A I don't know. I'm not sure why.

Q Now, let's talk a little bit about this supposed woman that Cecelia's talking to. Who was it supposed to be?

A A student at the high school.

Q A student. Are you sure it wasn't somebody who was a lady that worked in school in the AV room?

A I'm not sure. I --

Q Do you remember back in November when you talked to Detective Pelletier that that's what you told him then, that supposedly you overheard a conversation between Cecelia Pierce and one of the ladies that works in the school, possibly in the AV room? Did you tell Detective Pelletier that?

A I'm not sure. I may have.

Q That would be different than a student, correct?

A Yes.

Q Now, is it your testimony today that you didn't agree to do this on the phone?

A Yes, I did not agree. I said, "No, I'm not doing it."

Q You said, "No, I'm not doing it," or "I'll think it over,"

or "maybe," which one of those?

A I said, "No, I'm not going to do this," the second phone conversation I had.

Q Let's talk about the first phone conversation. Did you agree to do it the first conversation or not agree to do it?

A I didn't agree to do it. I said, "I don't know."

Q So if your mother were to testify or to say that you agreed to do it, she would be wrong?

MS. NICOLOSI: Objection.

MR. TWOMEY: What's the basis of the objection?

MS. NICOLOSI: Objection to what his mother might testify to or not. She hasn't testified in this trial.

THE COURT: Well, I'll allow the question.

Q If your mother were to say that you agreed on that phone conversation, she would be wrong and you'd be right?

A I'm not sure.

Q You're not sure who would be right?

A I'm not sure who -- to say who's right and who's wrong.

Q Did this conversation ever take place?

A Can you --

Q The conversation on the phone, did it ever happen?

A Yes.

Q Then why can't you tell us who's right or who would be wrong

about it?

A I don't remember. I'm getting confused. Can you be clarified or be more specific?

Q Why don't we just move on. Were you getting offered anything to do this?

A No.

Q So a woman that you had only talked to for minutes -- seconds, minutes, whatever, briefly once in your life gets on the phone and asks you to jump right into a first degree murder case, come into court, commit perjury, lie -- raise your right hand and lie, and you say you're going to think it over? You're not getting any more out of it.

A I never said I would think it over. I said, "I don't know."

Q Why didn't you just say no?

A At the time I didn't know.

Q When I say that to you, when I say that question, a woman you don't know comes into -- asks you to get involved in a murder case and to lie, doesn't the word "no" just rush out, "Why should I do this? No"? What is it about you that made you have to think this over?

A I don't know. That was just my response at the time.

Q Now, you know that your mother's planning on filing a motion to get out of prison soon?

A No, I didn't know that.

MS. NICOLOSI: Objection.

THE COURT: Sustained. Jury will disregard that.

MR. TWOMEY: If I could approach and be heard on the objection. I think it goes to motive, fabricating. Like a record on it.

THE COURT: Bill.

AT THE BENCH:

MR. TWOMEY: I'd like to know the basis of the objection.

MS. NICOLOSI: I see no relevance of what's going on in his mother's case to his testimony in court.

MR. MAGGIOTTO: Just -- may I also be heard for a second? And also what's objectionable is that the defense counsel is trying to make statements to the jury through questions through this witness. He's not asking this witness if he's doing this for any particular reason, just trying to impeach Mary Ann Moses by asking questions he doesn't care what the answer really is. I think that's inappropriate to do this with this witness. I think it inappropriate to impeach Mary Ann Moses through this person.

MR. TWOMEY: The last objection is not a legal objection.

I don't know what -- you know, Mr. Maggiotto cares to ascribe for our intentions and motives is just not a legal objection. I asked this gentleman, you know, your mother's planning to file a motion. I know his mother's planning to file a motion. I presume his mother will talk to him and tell him she'd testified in court, that she expects to get out July -- to file a motion and to have a hearing to get out in July. The fact she wants to get out and intends to file a motion and this could possibly benefit her, his cooperation, as well as possibly herself in this particular case is certainly a motive to fabricate and something I have a right to bring to the attention of the jury. It's cross-examination.

MR. MAGGIOTTO: I'd like to add, the question was, you know your mother's doing this. It's assuming a fact and it's true.

MR. TWOMEY: Cross-examination.

MR. MAGGIOTTO: Let me finish. If he wants to ask the witness, "Are you aware of your mother's plans? Have you talked to your mother? Know anything about it?"

But he can't ask a question assuming a fact not in evidence.

MR. TWOMEY: It's known as a leading question, and I can on cross-examination.

THE COURT: That's testimony on your cross-examination, "You know your mother's filing a motion." The proper question is, "Do you know whether or not your mother's planning to file a motion?"

MR. TWOMEY: If that's the way the Court rules I have to ask the question, I'll ask it that way, but, quite frankly, I don't have to accept his answer. I'd like to test him. I don't have to accept anything he says. I have to say, "You know this don't you?" That's basically cross-examination.

MS. NICOLOSI: With the "don't" in there?

MR. TWOMEY: I think I did say something like that.

THE COURT: I've ruled.

MS. NICOLOSI: If we're going to argue in front of the jury, I would ask that defense counsel not make comments on -- with their opinion of the evidence or opinion of the witness. I understand we have to give short-cut arguments to the Court, but

tell the jury I'm asking this to test his credibility is --

MR. TWOMEY: I didn't say that. I said "a motive to fabricate." That's three words, and I have to put it on the record.

MS. NICOLOSI: We can do it at the bench.

MR. TWOMEY: Ask the State to give reason for objecting and not --

THE COURT: That might be nice.

MS. NICOLOSI: I'll give a reason.

THE COURT: That's what the rules call for.

IN OPEN COURT BEFORE THE JURY:

BY MR. TWOMEY:

Q Mr. Moses, do you know whether or not your mother plans to come into this courtroom next July and file a motion to have her sentence suspended?

A No, I wasn't aware of that.

Q That is nothing she's ever discussed with you?

A Not that I can remember.

Q She's never -- then I take it she's never discussed with you that your cooperation here with the State could help her in that motion? Never?

A No.

Q Never came up at all?

A No.

MR. TWOMEY: Just one second, sir.

- - -

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

- - -

Q Just one more thing, Mr. Moses. You claim in this conversation with Pamela Smart that she told you something to the effect that her attorneys would be in contact with you?

A Uh-huh.

Q Do you recall that?

A She mentioned you and Mr. Sisti.

Q You've never spoken a word to me in your entire life before I stood up here to cross-examine you, isn't that true?

A Of course.

Q Pardon me?

A Yes.

Q You've never spoken a word to Mark Sisti in your entire life before -- you still haven't said a word to him, right?

A Yes.

Q You've said a word to him?

A I mean, no, I haven't said anything to him in my entire life.

Q No. Neither one of Pamela Smart's attorneys ever contacted you, is that correct?

A That's correct.

Q No investigators we sent out ever once came to talk to you about this story, is that correct?

A That's correct.

Q Had no contact whatsoever with Pamela's attorneys or anyone working for them, correct?

A That's correct.

MR. TWOMEY: Thank you, sir.

MS. NICOLOSI: No more questions.

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

- - -

[Witness excused.]

- - -

MS. NICOLOSI: State calls Janet Dardia.

JANET DARDIA,

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

DIRECT EXAMINATION BY MS. NICOLOSI:

Q Have a seat, please. What is your name?

A My name is Janet Dardia.

Q Spell your last name, please.

A Surely. D-a-r-d-i-a.

Q How are you employed?

A I'm employed by New England Telephone.

Q What's your position with New England Telephone?

A I'm a service representative.

Q What are your job duties as a service representative?

A As a service representative we are keepers of records, so to speak, billing, service, toll claims, local calling.

Q Okay. Did you bring anything with you today?

A I did.

Q What'd you bring?

A I brought records that were subpoenaed.

Q Can I see those records, please?

A Surely.

[Documents handed to Ms. Nicolosi by the witness.]

MS. NICOLOSI: I'd ask the Court to allow us to get these marked.

THE COURT: For ID?

MS. NICOLOSI: For ID.

MR. TWOMEY: They can be marked as full exhibits. They're coming in anyway.

THE COURT: All right.

[State's Exhibits 57 and 58, being telephone records, marked in evidence.]

[State's Exhibits 57 and 58 shown to Mr. Twomey by Ms. Nicolosi.]

BY MS. NICOLOSI:

Q Miss Dardia, I'm going to hand you what's been marked as State's Exhibit 58 and ask you to identify what those are, please.

A Sure. This is a copy of a customer's bill and toll statement.

Q Whose toll statement customer bill is it?

A It's for the name of a Robert Mitza.

Q And where is the address of Robert Mitza?

A Actually, there are two names on the billing, Robert Mitza and Georgette Mitza, 167 Pond Street, Billerica, Mass.

Q And what are those documents?

A The one I'm looking at currently is an October 20th, 1990 billing.

Q Okay. What are the others that follow the first page, what dates do they relate to?

A Okay, this is an October 20th, would go from September 21 to October 20, and the one underneath it is the November 20th bill.

Q All right. I'm going to show you what's been marked as State's Exhibit 57 and ask you to identify those two sheets of paper, please.

A These are customer records that indicate the location of a certain telephone number.

Q All right. And what's the second page?

A Second page is the same thing for a different telephone number.

Q What are the two telephone numbers that show on those pages?

A The first one is area code 603 623-3125.

Q And what is the second one?

A Area code 603 625-6297.

Q What is the location of those two telephone numbers?

A Okay, the location on the first one is Hillsborough Women's State Facility, RFD #2, Goffstown.

Q What's the second one?

A The second one is also New Hampshire State Prison, RFD #2, Goffstown.

Q Who asked you to bring these records?

A We were subpoenaed.

Q Okay. What period of time was the subpoena for and what was it for?

A Okay, it was toll statements and -- I don't -- I don't have the subpoena with me to give you the exact dates, but it went, I believe, from September 1st to October 30th. There were two subpoenas, actually.

Q Okay.

A The particular records I have in hand here, as you can see, incur those dates.

Q Okay. Let me ask you to take a look on page 2 of State's Exhibit 58, and ask you what period of time is shown on that.

A Okay, these particular calls run from August 26th to September 5th, and these appear on the October bill.

Q Can you look through those records that you have, the

telephone bills, and tell me if you see anywhere on those bills the two numbers that we just talked about.

A Yes.

Q What's the first one that you see?

A Okay, the very first one I'm looking at is on August 26th, and that's the telephone number 625-6297.

Q What type of telephone call does it indicate it is?

A These are collect calls.

Q Do you see any other telephone calls with that number?

A With that same number, yes.

Q How many?

A There's one on August 30th, August 31st and September 5th.

Q How long are the telephone calls?

A Okay, the first call on August 26th is five minutes; August 30th is three minutes; August 31st is 16 minutes; and September 5th for 13 minutes.

Q Are they all collect phone calls?

A Yes, they are.

Q Do you see that number anywhere else on those records?

A Not that number, no.

Q How about the second number that we spoke about?

A There's a call on October 30th.

Q And what time and how long was that phone call?

A That was at 8:34 p.m. It was a 25 minute call.

Q Do you see that telephone number anyplace else on those records?

A No, I do not.

Q I'm going to show you a copy of a subpoena and ask if you've ever seen that before.

A Yes, I have.

Q If you could take a moment to read it.

A [Witness reading.]

Q Does that refresh your recollection at all on the beginning period that the subpoena referenced?

A Yes.

Q What was that?

A August 1st right through September 21st.

Q I'm going to hand you a second subpoena and ask you to read it quickly and ask you the same question. Does that refresh your recollection as to the ending period that you were asked to bring records for?

A [Witness reading.] Yes.

Q What was that?

A October 1st through October 31st.

Q The October 30th phone call that we were talking about, which number was that relating to?

A October 30th was from the number 623-3125.

Q Where is that number located at?

A That's at Hillsborough Women's Facility, the dayroom.

Q Is that also a collect call?

A Yes.

MS. NICOLosi: Thank you. No more questions.

CROSS-EXAMINATION BY MR. TWOMEY:

Q Couple questions, ma'am.

A Sure.

Q Could I take a look at those for a second, please?

A Certainly.

Q Do you have any other copies so I could look at one?

A Yes, certainly.

- - -

[Documents handed to Mr. Twomey by the witness.]

- - -

Q Thanks. I'm not sure, I didn't hear one thing you said. Just so it's clear, on some of these copies of these bills, part of it's blacked out?

A That's correct.

Q That was because different subpoenas for different days?

A For certain information, that's correct.

Q Basically, they're different copies of the same bill, and

if you put them together you can see the whole bill?

A That's correct.

Q Are there on any of those bills any calls on either October 26th or October 27th from the prison, or October 29th?

A No, not that I show in these statements.

Q Okay. Now, as I understand, the last August calls and one at the beginning of September, on the 26th and 30th there are two short conversations, five and three minutes?

A That's correct?

Q Then on the 31st and the -- of August and the 5th of September there are two much longer conversations, 16 and 13 minutes?

A Yes.

Q Is that correct?

A Uh-huh.

Q No more questions. Thank you for coming, ma'am.

A Sure. Okay, thank you.

THE COURT: Redirect?

MS. NICOLOSI: No, no more questions.

THE COURT: You may step down. Thank you.

THE WITNESS: Thank you.

- - -

[Witness excused.]

- - -

MR. MAGGIOTTO: State calls to the stand Bill Flynn.

MR. SISTI: May we approach for a moment, Your Honor?

THE COURT: All right.

- - -

[Bench conference - no record.]

- - -

IN OPEN COURT BEFORE THE JURY:

THE COURT: Ladies and gentlemen, we'll take a short recess.

- - -

[Recess at 1:49 p.m.]

- - -

IN CHAMBERS - 1:56 P.M.:

THE COURT: This is an in chambers hearing regarding motions filed by the defense, a motion to compel and a motion to clarify regarding the testimony of William Flynn.

The Court indicated prior to counsel in here that the Court saw no reason to rule otherwise on Mr. Flynn's motion than I did on Mr. Lattime's motion, which would be to allow

him to take the Fifth on matters that might incriminate him.

MR. SISTI: Again, I will just make the offer that there is, one would hope, the same ruling with regard to the subject area if we lay a sufficient basis for -- concerning events leading up to the homicide of Greg Smart.

THE COURT: I see no reason for any other ruling than that which I made in Mr. Lattime's.

I don't know, Mr. -- counsel for Mr. Flynn is here. Anything you want to say, sir?

MR. MERBERG: Yes, Your Honor. Good afternoon. My name is James Merberg. I represent Mr. Flynn in association with Jeffrey Kaye of the New Hampshire Bar.

Your Honor, having discussed the matter at length with my client, I don't believe that there will be any need to rule on any of the motions. I suspect he will answer all questions today without objection. It would not be my intention to raise any of his constitutional objections on his behalf during the proceedings, and I don't know if the State will or not, but

it will not be my intention to do that.

MR. MAGGIOTTO: Well, we would just obviously object to the rules of evidence, impeachment by prior bad acts, which are not relevant to the murder of Greg Smart. I don't think we're opening up a total door to any and all crimes he's ever committed.

THE COURT: All right.

MR. MAGGIOTTO: The other motion, I believe, is a -- I always say it wrong.

MR. SISTI: Motion to clarify.

MS. NICOLOSI: It's a motion to clarify. I'm not sure what's being asked to clarify.

MR. SISTI: The plea agreement. It's whether or not there's any agreements between the State and Mr. Flynn with regard to a number of those uncharged criminal acts.

MR. MAGGIOTTO: There's no agreement, Your Honor.

THE COURT: All right. That's all, Bill.

- - -

[In chambers hearing concluded at 1:59 p.m.]

- - -

IN OPEN COURT BEFORE THE JURY - 2:05 P.M.:

MR. MAGGIOTTO: Mr. Flynn, I'm going to ask you to stand, raise your right hand.

Miss Nicolosi, would you please swear him in.

WILLIAM FLYNN,

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

MS. NICOLOSI: Have a seat.

DIRECT EXAMINATION BY MR. MAGGIOTTO:

Q In a nice clear voice so that everyone in the jury can hear, would you please state your name.

A William Flynn.

Q How do you spell your last name?

A F-l-y-n-n.

Q Mr. Flynn, I'm going to ask you to do pretty much what you're doing, sit up close and speak into the microphone so we can all hear you.

How old are you, Mr. Flynn?

A I'm 16.

Q What's your date of birth?

A March 12, 1974.

Q Where do you currently live?

A Brentwood. Rockingham --

Q What's Brentwood?

A Rockingham County House of Corrections.

Q Prior to living at Rockingham County Correction, where were you?

A Prior to that I was at juvenile holding facility, ADC.

Q And how long were you in the juvenile holding facility?

A Seven months.

Q How long have you been in Rockingham County Jail?

A Two months.

Q Prior to your incarceration in Rockingham County Jail and the juvenile holding facility, where did you live?

A Seabrook Beach, New Hampshire.

Q What was your address?

A Corner of Ocean Drive and Pembroke. 175, I believe.

Q Who did you live with?

A My mother and my two younger brothers.

Q What are your brothers' names?

A Larry Flynn and Jimmy Flynn.

Q 1989 through 1990, where do you go to school?

A 1989-1990, Winnacunnet High School.

Q What year were you in at that time?

A Sophomore.

Q How old were you when you started school in 1989?

A 1989? Fifteen.

Q Do you know Vance Lattime, Jr.?

A Yes, I do.

Q How do you know him?

A I met him at Seabrook Junior High, like a year after -- well, eighth grade, I believe it was.

Q How long have you lived in Seabrook?

A In Seabrook? Four years.

Q Where'd you live before that?

A With my grandmother when we first moved out here from California.

Q Now, what's the nature of your relationship with Vance Lattime, Jr.?

A Best friends.

Q Do you know Pete Randall?

A Yes, I do.

Q How long have you known Pete Randall?

A Approximately four years.

Q How'd you meet Pete Randall?

A Seabrook Junior High, eighth grade.

Q Ralph Welch?

A Yes.

Q How do you know Ralph Welch?

A Well, he wasn't attending school when I met J.R. and Pete, but I met Ralph through J.R. and Pete.

Q When you say "J.R." you mean Vance Lattime, Jr.?

A Yes.

Q Is that his nickname?

A Yes.

Q Pete Randall's first name is really Patrick?

A Yes.

Q Who is Frank Daley?

A Another one of my friends.

Q How'd you meet Frank?

A At Winnacunnet High School, freshman year.

Q Do you know someone by the name of Cecelia Pierce?

A Yes, I do.

Q How do you know Cecelia Pierce?

A Winnacunnet -- well, she was in Seabrook Junior High, and it's a small junior high, so you pretty much know everybody there, so that's how I met her.

Q Was she part of your crowd?

A Not really, no.

Q Who was part of your crowd?

A J.R., Pete, Ralph, Frank.

Q Do you know a Pamela Smart?

A Yes, I do.

Q Is she in the courtroom here today?

A Yes.

Q Point her out, please.

A Right there (indicating).

Q Tell us what she's wearing.

A Purple dress.

Q How did you meet Pamela Smart?

A Through Project Self-Esteem.

Q What was Project Self-Esteem?

A Well, Project Self-Esteem is a mandatory -- I don't know if you call it a class or not, but what it is is it's all the freshmen in their freshman year go, you know, some place where it's being held. Freshman year it was at Luka's Greenery, Greenhouse, or whatever, Restaurant, and it's just you go there and it's like drug awareness, alcohol awareness, and it teaches you how to feel good about yourself.

Q What was your function at Project Self-Esteem?

A Well, freshman year I was, you know, it was mandatory, I was there to, you know, partake in it. But sophomore year I was facilitated to help with it and to help with everything.

Q And was any of your other friends involved in it?

A Yes, Vance Lattime.

Q You mean J.R.?

A Yeah, J.R., and my friend, Kevin Mort.

Q Kevin who?

A Mort. M-o-r-t.

Q Was Cecelia Pierce part of Project Self-Esteem?

A Yes, she was.

Q What was the defendant's role in Project Self-Esteem?

A Pam? She was a facilitator, same thing as I was, but she helped Miss Kinsman. She was like one of the people in charge.

Q When you first started Project -- in Project Self-Esteem, how often would you meet?

A How often? Oh, roughly twice a month. That's when I was a facilitator, not --

Q I'm talking about during sophomore year.

A All right. Yeah, about two or three times a month.

Q And when you met two, three times a month, did you see the defendant?

A Yes, I would.

Q Did you have contact with the defendant during Project Self-Esteem?

A Yes, I did.

Q Can you explain what that contact was?

A All right. Well, I'd go to the meetings. Me, J.R. and Cecelia Pierce was there. And I'd say about the third, fourth meeting, right around there, Pam came walking in. Miss Kinsman had told us that, you know, there was someone that wanted to help out. She was Media Director at the SAU 21 building across the street. So that's when I first met, first saw Pam.

Q Now, after that time when you first saw Pam, did you ever spend any more time with her in Project Self-Esteem?

A Yes. During the meetings we'd break into small groups, and -- well, I made sure I was in her group, and -- well, what group exercises was was to tell about yourself, to get comfortable with expressing, telling about yourself, and like that.

Q Why did you make sure you were in her group?

A Well, I thought she was attractive.

Q And when you were in the small group with Pamela Smart, who else was part of your group?

A That time I think Cecelia Pierce, Tim Sheridan, myself and Pam.

Q And during these small group sessions, did you ever talk

with the defendant?

A Yes, I did.

Q What things did you talk about?

A Well, the group exercise, like I said, was to tell about yourself a little bit, and -- well, Pam said, you know, her favorite group was Van Halen, that she used to be a DJ in Florida, and that she's met Motley Crue before. That's my favorite group, Van Halen, White Snake, and I -- you know, I told about myself and my favorite group is Motley Crue and I like Van Halen, and all of my favorite groups.

Q What do you mean by "met Motley Crue"?

A Backstage passes because she was a DJ. I guess when you're a DJ you can obtain backstage passes to interview or take pictures.

Q What is White Snake?

A It's a group that I like.

Q Van Halen, Motley Crue, White Snake are all rock groups?

A Yes.

Q Have you met them?

A Yes.

Q And how did you know the defendant had met these groups?

A Well, first she told me, and she told me she had pictures

of herself with them and asked me if I wanted to see them.

Q Did you ever see them?

A Yes, I did, over at her office at the Media, at the --

Q Her office where?

A SAU 21 building, the Media Center.

Q The one across from the high school?

A Yes.

Q Now, these Project Self-Esteem meetings were not in the SAU 21, is that correct?

A No, they were in the high school.

Q During this time were you spending any time in the SAU 21 building?

A Yes, I'd go over during my study periods, sometimes at lunch, just to talk.

Q When you'd go over to talk, who would you be talking to?

A Pam.

Q What were your feelings towards her at this time?

A Well, I thought she was attractive and, you know, she seemed like a really nice person. I liked to talk to her. We had a lot in common.

Q When you went over to the Media Center, who would you go with?

A Back then it was me and my friend, Kevin Mort, who would

usually go over.

Q And what happened with Kevin Mort?

A He moved.

Q When did he move?

A Right around the time that we started making the orange juice commercial. I couldn't really give a date.

Q What was this orange juice commercial?

A Oh, all right, it was -- well, Pam had asked me if I wanted, you know, to be involved in an orange juice commercial, that it was a contest, Florida Orange Juice Corporation. They held it like every year, and what it was, you make a commercial and then you send it in as a class project and win Hard Rock Cafe jackets, trip to Disneyland, Disney World in Florida, whatnot.

Q When did you first hear about this contest?

A Through Pam right around the time Kevin moved.

Q I'm going to ask you to speak up a little bit. I'm missing a few things you're saying. Okay?

A All right.

Q Now, when did she ask you to help out in the OJ commercial?

A After I'd been going to the Media Center for a while talking to her, getting to know her better, she asked me when I was at the Media Center one day.

Q Can you tell me what time of year this was?

A What time of year? Sophomore year.

Q Before Christmas, after Christmas?

A Before Christmas.

Q And who was helping you on this OJ commercial besides the defendant?

A Well, Cecelia Pierce, Rachel Emond and her friend, Tracy, would help sometimes.

Q Do you know what Tracy's last name is?

A I can't remember now.

Q Now, were you good friends with Cecelia Pierce at this time?

A Not really, no.

Q Did you ever hang out with her outside of school or anything?

A No, not without -- well, there was a couple of times when Pam was there, but that was it.

Q When you were with Cecelia Pierce the defendant was there?

A Yes.

Q How much time did the filming the OJ commercial take?

A Probably about three or -- a few months.

Q How much time each day or week would you spend on it?

A Well, first it was just a brainstorming type of thing. We'd think about it. Then once we got our idea down what we were going to do, like after school, sometimes on the weekends, like that. Not usually everyday, like.

Q Now, was this something you were getting class credit for?

A No.

Q So this wasn't anything that was being put together by Winnacunnet High School?

A No, it wasn't.

Q And when you said it started out with brainstorming ideas, where would the brainstorming take place?

A Usually at the Media Center.

Q Who would be present for those brainstorming ideas?

A Myself, Pam and Cecelia.

Q And how much were you going over to the Media Center at this time?

A At that time? Like once a day.

Q And when you went over there once a day, did you see the defendant?

A Yes, I did.

Q How would you get over to the Media Center from Winnacunnet High School?

A Well, it's like 50 yards across the parking lot, so I just walked.

Q Did you need any permission to go over?

A Oh, yes, I'd ask Pam for passes to go over to the Media Center because you have to have a pass to leave the school

or leave study. So --

Q Beside brainstorming in the Media Center, what other time or contact would you have with the defendant in planning or doing this orange juice commercial?

A Can you repeat the question, please?

Q Sure. Beside the brainstorming at the Media Center, what else did it require?

A Well -- all right, after we'd got our idea down and everything, Pam wrote song lyrics to it and we'd go out filming.

Q What was your responsibility?

A I was basically just cameraman.

Q Cameraman?

A Yes.

Q Did you have any acting responsibilities?

A Very few.

Q Music responsibilities?

A Well, I was in electronic music class that year, and we used -- I asked my teacher if we could use the Media -- not the Media, the music room because it had all the equipment that we'd need.

Q Now, when you said "we went out filming," where would you go out filming?

- Q When you went out filming this, who would go?
- A It was usually me, Pam, sometimes Tracy, Rachel and Cecelia.
- Q Now, when you say "sometimes Tracy, Rachel and Cecelia," did they -- did Cecelia always go?
- A It was sometimes Tracy and Rachel and Cecelia were almost always there.
- Q Who was going to go to Disney World with the prize if you won?
- A All of us.
- Q "All of us" meaning?
- A Rachel --
- Q The five of you?
- A Cecelia, Pam and myself, Tracy.
- Q Did it cost any money?
- A I think the prize paid for everything.
- Q During this filming of the OJ commercial, December, January, when it first started, what was the nature of your relationship with the defendant?
- A December, January? Good friends.
- Q How'd you feel about her?
- A I was -- I was attracted to her. I liked her.
- Q Did you know whether or not she was married at that time?
- A Yes, I did.

Q Do you know who she was married to?

A Yeah.

Q Who was that?

A Greg Smart.

Q Did the nature of your relationship ever change?

A Yes, it did.

Q Can you tell us when it changed?

A All right. February 5th -- well, February 4th Cecelia told me Pam had something to tell me, so I went over to the Media Center after school and I didn't have a ride that day so I had to take the bus so I only had 15 minutes until the bus left, and she didn't tell me then. I don't know, kind of -- well, she didn't tell me then.

Q Now, when you say "Cecelia told you," where were you when Cecelia came up and gave you this message?

A In school by my lockers.

Q She just came up to you and said, "Pam wants to talk to you"?

A "Pam has something to tell you," yeah.

Q You went over there and what happened?

A The 4th or the 5th?

Q On the 4th.

A The 4th. What I just said. I went over there but she

didn't tell me then.

Q Okay. How is it that you remember it was February 4th?

A Because I remember February 5th very well.

Q Can you tell us what happened on February 5th?

A All right. Went over to the Media Center during one of my study periods, and Pam asked --

Q Mr. Flynn, it's my understanding we're having a hard time hearing you. Talk a little louder into the mike.

A All right. Well, Pam -- I went to the Media Center. Pam was there, just me and Pam, and she asked me -- well, she wasn't going to tell me at first. She was nervous about it, but I kept asking her.

Q What do you mean by "she was nervous"?

A She was nervous.

Q How was she acting?

A Wouldn't make eye contact, kind of "I don't want to tell you, I'm embarrassed."

Q Okay I'm just going to try and see if I can adjust this mike a little bit easier for you so we can hear you. Just talk into it a little bit more. Is there a volume switch? I don't know. Why don't you sit a little closer to it.

A My feet are right against the --

Q I'm sorry, that's the best we can do. Then try and talk

louder.

A All right.

Q Now, comfortable?

A Yeah.

Q So what happened? She was nervous, and what happened after that?

A All right. Well, she said -- first she asked me if I ever thought about her when she wasn't around, and I said, "Yeah." She said, "Well, because I think about you all the time."

Q What'd you say to her?

A That time then not much. I was -- I don't know, I was kind of shocked. I was just listening.

Q Why were you shocked?

A Well, I hadn't expected it. It was kind of out of the blue.

Q You had no inclination this might be coming?

A No.

Q Did you say anything to her beside just listening?

A Well, she said she thought about me all the time and she didn't know what to do because she was married.

Q How'd you feel about this?

A Well -- well, when I left I was pretty happy.

Q Why were you happy?

A Well, you know, it's not everyday a 16 -- well 15 at the time -- year old kid, you know, gets this 22 year old woman

A Well, just -- you know, she told me, you know, how she felt about me and everything, and I felt the same way, and it just come out of the blue like that sort of. The next day when I go over during lunch and period six and period three, it was awkward for a while.

Q What do you mean by period six and three?

A Well, I had study period six and study period three, and I'd go over to the Media Center, and sometimes at lunch.

Q Now, what does it mean to go over to the Media Center?

A Well, from school during my study period I'd have a pass from Pam, give it to my study teacher, and I'd go over to the Media Center, talk to Pam, and we'd go out to lunch or something.

Q Now, the Media Center is right across the parking lot from Winnacunnet High School, right?

A Yes.

Q Now, when you go into that building, are you going up or down? Where are you going into the Media Center?

A Directly across the parking lot.

Q I'm sorry. Once you're in the building.

A I'm sorry. You walk in the front door, go downstairs, and her office is to the left.

Q Beside Pam, who works downstairs there?

- A Patty, her secretary.
- Q Where did Patty work?
- A Right there. Her office is right next to Pam's.
- Q Beside Patty and Pamela, was there anybody else who worked down there?
- A Cecelia Pierce. She didn't -- well, I guess you can call it work. Student intern. She helped Pam out.
- Q Every time you went over there, was Cecelia there?
- A Every time?
- Q Yeah.
- A No, not every time. Most of the time.
- Q Now, was Cecelia present when Pam told you her thoughts about you?
- A No, she wasn't, but I guess Pam had told her before that.
- Q Now, when Pam told you these things, where were you? Were you in her office, somewhere else?
- A In her office.
- Q Is her office a one-room office, three-room office?
- A You walk in the door. She has a desk right there, and there's a computer in there. She has a book shelf, and it's a one-room office.
- Q Now, outside of her office, there's a large rectangular area, is that correct?

A Yes.

Q What's that area used for?

A I don't really know, to tell you the truth, but what we used it for, the table that's sitting right there is like to have these fliers that would come in SAU 21 and you have to put the addresses on them, little sticker, and I'd go over and help her do that and we'd do that there.

Q Now, did there ever come a time when your relationship got physical?

A Yes.

Q Can you tell us the first time it was ever physical?

A Well, the first time it ever got physical was the first time we ever kissed.

Q Can you tell us where that was?

A In my bedroom in my house.

Q What were you doing in your bedroom at your house?

A Well, we'd go over my house a lot and tell my mom we were working on the OJ commercial and -- the orange juice commercial there. So we went in. We were in my room. I have a lock on my door so I just locked my door all the time. We put on music on my stereo and it was when Cecelia was there and stuff, we talk about the OJ commercial and other stuff.

Q I'm talking about this time that you said you first kissed.
Who was there that time?

A Just me and Pam.

Q Was your mother home?

A I think she was, yes.

Q Where was she in the house?

A Kitchen, her bedroom, living room. I don't know.

Q Now -- so you were in your room and the door was locked?

A Yes.

Q What happens next?

A All right, well, I had Motley Crue Starry Eyes playing on my stereo, and I remember it really good because -- not just because it's the first time we kissed, but because my disc player doesn't have single repeat, but it was repeating Starry Eyes over and over and over, and it wasn't supposed to do that. Right when it stopped, went to the next song, and that's when we kissed.

Q Now, when you say "Starry Eyes," that's a song?

A Song from Motley Crue's first album.

Q First album?

A Yes.

Q You're an aficionado of Motley Crue, I take it?

A Yes.

Q Okay. How did the first kiss come about?

A We were laying on my bed and, I don't know, I guess we were talking about it and --

Q What do you mean you were talking about it?

A She was saying, "Well, are you going to kiss me?" And I said, "Yeah." And she said, "Yeah, well, do I have to come over there and rape you?" And I said, "Yeah," just kidding around, and, I don't know, we just kissed.

Q Was it a one kiss thing, or what happened?

A Well, yeah, we kissed once, and then after that we started making out.

Q On your bed?

A Yeah.

Q That's the first time you ever made out?

A Yes.

Q How long did that go on for?

A I don't know, half an hour.

Q And then during that time was music playing?

A Yeah.

Q You were on your bed?

A Yes.

Q Anything more happen than just make out?

A No. I don't think so, no.

Q And what happened after that?

A That day or --

Q No. Did you ever have another opportunity to be with the defendant alone?

A Alone? Well, yeah, I spent the night over her house one time.

Q Do you know when that was?

A Couple times. Well, the first time? I want to say around Valentine's Day, February, but I'm not positive.

Q Sometime in February?

A I believe so, yes.

Q Now, this would be within a couple weeks of the times time she told you she had feelings for you?

A Yes.

Q And where was her house?

A Derry, New Hampshire. Misty Morning Drive.

Q Tell us about that. What was the circumstances of your being there?

A Well, all right. She said -- I think Greg was going on a skiing trip that particular time. I'm not positive, though. And she asked me if I was going to -- if I wanted to come up and spend the night that day and I said, yeah. So -- well, that night I went over to J.R.'s house and I told my mom I

was spending the night over there, and she picked me up there, and Cecelia was with us.

Q Now, when you say you told your mother you were spending the night over there, you meant J.R.'s?

A Yeah.

Q And she picks you up at J.R.'s house with Cecelia?

A No, she had -- Cecelia was already with her, yeah.

Q That's what I meant.

A Yeah.

Q And when you say she picked you up, what car did Pam Smart drive at this time?

A The CRX.

Q Honda CRX?

A Yes.

Q Did you know Cecelia Pierce was going to be with her?

A Yes, I did.

Q Why was Cecelia there?

A Well, in case somebody saw us or anything, it wouldn't look as suspicious if it was just me and her. If Cecelia was there then it would look less suspicious.

Q Can you tell us what happened after that?

A All right. Well, we drove up to her house. We rented a few movies, about three movies. Nine and a Half Weeks was one.

I can't remember what the other two were.

Q Why is it you remember Nine and a Half Weeks?

A All right. Well, before that day, Pam had asked me if I've ever seen Nine and a Half Weeks, and I said, no. She said, "Because there's one scene in there where Kim Basinger dances for Mickey Rourke."

Q Now, who is Kim Basinger and Mickey Rourke?

A Two actors in the movie.

Q Had you seen Nine and a Half Weeks before this?

A No.

Q So when Pam asked you if you ever seen that scene where Kim Basinger dances for Mickey Rourke, what'd you tell her?

A I told her no.

Q What's she say?

A She said she's always wanted to dance for somebody like that but there's never anybody she would for.

Q What happened?

A She told me she was going to dance for me like that.

Q Sorry?

A She told me she was going to dance for me like that.

Q What did "like that" mean, do you know?

A Like provocative. Like a striptease type thing.

Q So did she tell you this that day, a couple days before?

A Before I spent the night?

Q Yeah.

A It was before that. Few days, at least. Probably more.

Q Any particular outfit involved?

A Yes. She told me she was going to go to the mall to pick out an outfit to wear, but I wasn't with her then. But I went to the mall with her. Tracy and Cecelia one time and we were in a clothing store and there was an outfit on the wall. She said, "Do you see that?" And I said, "Yeah." And she goes, "Do you like that?" I said, "Yeah." "Because that's pretty much what I bought only it's turquoise and white."

Q When pointing to an outfit, what kind of outfit had she pointed out?

A Lingerie, lace type.

Q After having these conversations with her, did there come a time when you saw Nine and a Half Weeks?

A Yeah, at Pam's house that night that I stayed there.

Q And who was with you when you saw Nine and a Half Weeks?

A Pam and Cecelia.

Q Where was it that you were watching Nine and a Half Weeks in the defendant's house?

A Downstairs living room.

Q And there's a TV down there?

A Yeah. Me and Pam were on one couch and Cecelia was on the other.

Q Was there a scene in the movie where Kim Basinger dances for Mickey Rourke?

A Yes.

Q What happened after you watched the movie?

A Well, after the movie was over we went upstairs.

Q Who went upstairs?

A Pam and myself.

Q And what happened when you got upstairs?

A First thing is she -- well, she didn't -- she got on the outfit and everything. I was sitting on the bed, and she was embarrassed and everything to come out and everything.

Q When you say "embarrassed to come out," where was she?

A She was in the bathroom.

Q When you were on the bed, how were you dressed?

A I don't think I was.

Q So when you say she was embarrassed to come out, how did you know?

A Because she told me.

Q What'd she say?

A She said I'd think she was fat, and I said, "No, you're not

fat, I'm not going to think you're fat," and she was just embarrassed.

Q Were you saying this to her face or through the door?

A Well, she stuck her head out the door.

Q Well, what happened after that?

A All right. Then -- well, she came out and she was standing there and -- well, she still -- was still embarrassed to dance and everything, but she did.

Q And was there any music involved?

A Yeah. Black and --

Q I'm sorry. Go ahead.

A A song from Van Halen, Black and Blue.

Q Now, how was the music being played?

A On a stereo. There was a stereo in the guest bedroom but we brought it into her bedroom.

Q When you say "there was a stereo in the guest bedroom," talking like a rack system, a big system?

A No, like a portable stereo.

Q You brought that into the room, and it had tape cassette capabilities?

A Yes.

Q Did she dance for you?

A Yes, she did.

Q What was she wearing when she danced for you?

A The outfit that she picked out.

Q What happened after this?

A We had sex.

Q By that you mean intercourse?

A Yeah, we made love.

Q Where in the room were you making love?

A Where in the room? Like everywhere?

Q Well, yeah, like where?

A Like on the bed, on the floor.

Q Anywhere else beside those two places?

A I don't -- no.

Q And where was Cecelia during this time?

A Cecelia was downstairs watching the other movies that we rented.

Q And had you ever made love to another woman before?

A No, I hadn't.

Q That was the first time?

A Yes, it was.

Q Is that what you told Pam?

A No, it wasn't.

Q What did you tell Pam?

A I told Pam that it wasn't the first time.

Q You said you had sex with other women before?

A Yeah.

Q Now, what about birth control?

A Pam's on the pill.

Q How do you know?

A Well, I'd seen her take it before, and she told me.

Q You'd seen her take it before that day?

A Yeah. Well -- no, not before that day, I don't think, but that day and times after that.

Q So that's something you eventually learned?

A Yeah.

Q Now, beside the dance routine that you got from Nine and a Half Weeks, anything else happen that you got from Nine and a Half Weeks?

A Yeah, when we were upstairs, one time I went downstairs and went to the freezer and got a glass of ice out of the freezer, brought it back upstairs.

Q Why'd you do that?

A Well, to use it while -- to use on her body when we were upstairs.

Q What gave you that idea?

A It was in Nine and a Half Weeks.

Q Can you just briefly describe the scene you'd seen?

A The scene in Nine and a Half Weeks?

Q Yeah. You don't have to get too graphic. Just give us an idea.

A Well, Kim Basinger was blindfolded and her hands were tied. Mickey Rourke was running the ice down her body.

Q Did you do the same thing?

A Basically, yeah, except she wasn't tied up or anything.

Q Right. Had you ever done anything like that before?

A No.

Q Now, up to this time had you had any discussions with Pamela Smart concerning her husband?

A Up to this time?

Q Up to this point, yeah.

A Not really.

Q Okay. What happened? Did you sleep over that night?

A Yes, I did.

Q What happened the next day?

A All right. Well, the next day we were coming back to my house. She dropped me off and -- dropped Cecelia off first, and as we were driving from Cecelia's house to my house, Pam starting saying, you know, she -- we're not going to be able to see each other like that because, you know, Greg never goes away like that, you know, just once in a great, great

while thing, and she started crying, and she said that she, you know, doesn't know what we're going to do because -- well, yeah, there was conversation about Greg a little bit.

Q Tell us about the conversation before this conversation about Greg.

A Before this conversation? Well, like February 6th or 7th, right after she'd told me on the 5th, she asked me if I remembered one time when -- she'd asked me if I remembered the time when she asked me if I knew anybody that would kill Patty, the secretary, so Tracy could be a secretary, and I think she was just joking around, I didn't take it serious. And I -- on the 6th or 7th of February she asked if I remembered what she said "because I wasn't asking for Patty, I was asking for Greg."

Q When did she tell you this?

A When did she tell me this?

Q Right.

A February 6th, 7th, 8th.

Q Now, beside that conversation about Greg, what -- when she said that to you, what did you do?

A I said, no, I didn't know anybody. I didn't really think she was serious. I thought she was just being kind of figurative.

Q I'm not talking about Patty, the secretary. I'm talking about what did you say, "I didn't mean Patty, I meant Greg"?

A I told her I didn't know anybody that would do that, and I still didn't think she was that serious. I thought she was being figurative.

Q What do you mean "figurative"?

A She saying she didn't want to be with Greg, wanted to be with me, but I didn't think she wanted to kill him.

Q Did you have any other discussions at that point or the preceding days before the night you slept over?

A Yeah, it was -- it progressed from there to the point where it was, "Well, this is the only way that we could be together. If I divorce Greg, everything's in his name. He'll take the cars, he'll take Haley," she won't have any money, she won't be able to move down, you know, closer to me.

Q When you say "move down closer to you," where did she mean by that, do you know?

A Moving closer to where I lived from Derry.

Q How far is Derry from Seabrook?

A Forty-five minute drive.

Q And when she said she wouldn't get Haley, what was she referring to?

A Her dog.

Q What kind of dog was it?

A A Shih-Tzu, something like --

Q I'm sorry?

A Shih-Tzu or something.

Q Big dog, small dog?

A Very small dog.

Q When she said everything was in his name, did she elaborate?

A She just said that she wouldn't get the car, she wouldn't have a car, wouldn't have any money, no furniture, and she'd have to live with her mother because she wouldn't have any money to buy a place. Like that.

Q Say anything else about Greg?

A Yeah. She said that he was abusive towards her; that they didn't get along; that they got married because back then it was the thing to do. She mentioned a couple times in particular, like one time Greg was drunk and she was in a long T-shirt and panties and he had -- he started getting abusive towards her and he grabbed her and threw her down and he threw her out of the house, and it was snowing outside and she had to walk to Greg's mother's and father's.

Q Did you know where they lived in relationship to the defendant?

A Close, but I've never seen the house or anything.

Q Now, these conversations took place before you slept over that one time?

A Yes.

Q Now, can you go -- take us back to her driving you home that night. What happened?

A All right. Well, she started crying, and that got me upset. She was saying that the only way that we're going to be able to be together is if, you know, if we kill Greg, because she can't divorce him, you know.

Q When she said "we kill Greg," what did you understand her to mean?

A That -- that we'd kill Greg.

Q And what did you say to that?

A What did I say? Well, I agreed. You know, I wasn't about to start disagreeing with her. We're both upset and everything, so I didn't really -- you know, I thought she was, I don't know, I didn't really think she was serious, like she said, "This is" -- like, you know, "This is it. This is what we're doing. This is how it's going to be." But I thought she was serious in wanting to get away from Greg.

Q Now, up to that point had you formulated, talked about any plan with the defendant?

A Just if I could find someone to do it.

Q Before that now you're talking about trying to find somebody to do it?

A Right, but it never got down into serious, serious conversation. It was like, "Could you get anyone to do this? How much would it cost to hire somebody?"

Q Why would she think you would know someone like this?

A I don't know. She -- I don't know. Just --

Q Now, during this time had you ever mentioned what was going on with Pam to any of your friends?

A J.R., Pete and Frank Daley.

Q They believe you?

A Yeah. Like around February 5th when I told them, they didn't believe me at all. They said, yeah, right, whatever you say, yeah, but, you know, as I was seeing her more often and everything, she'd come over, it got -- yeah, they believed me after a while.

Q Up to this point had you discussed with any of your friends the defendant's idea to have someone kill her husband?

A Up to this point?

Q Yeah.

A No, I don't believe I did, no.

Q So how did it end that night in the car when she was driving

you home?

A How did it end?

Q Yeah.

Q Well, I don't know, we were both pretty upset. We were -- we parked along an entrance to the beach. Down where I live, there's four, five entrances to the beach. You know, we parked at one of them and we were talking, and she was just saying how, you know, she wants to be with me. I said, you know, I want to be with her, too, and that the only way that she could see for us to be together was if we killed Greg.

Q After that night, what happened?

A After that night?

Q After that night did you ever talk about this again?

A Yeah, a lot more often. More -- much more often.

Q When you talked about it again, where would you talk about it?

A Most of the times at the Media Center in her office.

Q Beside seeing her at the Media Center, where else were you seeing her?

A Well, she came down on the weekends once in a while and I would go like to Salisbury Beach. They have arcades and there's like a dance club called Sneakers down there

we'd go to and I would go drinking.

Q Tell us about some of the discussions you had with the defendant after that night about the plan.

A All right. Well, after that night it started getting to the point where it was serious conversation, and she was -- she had planned -- she told me that, "All right, this is how you could do it, and, you know, we had planned everything out.

Q When you say, "this is how you could do it," what'd she say?

A All right. Well, she said there's a plaza right by her house and there's a road that goes from the front of the plaza parking lot to the back of the plaza, and then it goes down and leads into the condo complex, and she said, "What you could do is park at the plaza and wear black clothes and everything," and I said that it was going to look pretty suspicious parking at the plaza and some kid with black clothes and everything gets out of the car and starts walking behind the building. So she suggested that I get -- I wear normal clothes; put sweat pants, black, dark clothes I was going to wear in a duffel bag, have that with me and change around the back of the plaza.

Q What else?

A All right. She said from there to walk over to the condominium, she's going to leave the bulkhead door open so I could get in, make it look like a robbery, ransack the house. She said anybody that helped me could have anything in the house because she's insured, the stereo system, Bose speakers, jewelry.

Q Where'd the defendant say she'd be?

A At a meeting.

Q What do you mean by "at a meeting"?

A Well, she had a meeting, Center meeting or school meeting, something like that, so she'd have an alibi when it happened.

Q Tell you to do anything about your hair?

A Tie it back in a ponytail, I believe, so if someone did see me I wouldn't be that easy to describe afterwards.

Q Say do anything else?

A Well, she said use a gun.

Q Now, when you were first talking about this, did the plan come out in one conversation, two conversations or something like that, took place over a long period of time?

A Over a series of conversations.

Q As you were having this series of conversations, were you talking to anybody else about --

A Well, Cecelia Pierce was there for some of the conversations.

Q What was Cecelia Pierce saying during these conversations?

A Not much. She was saying, you know, "Why do you waste your time? He's never going to do it." She really didn't say that much. She'd told me where I could obtain a firearm --

Q Okay.

A -- one time.

Q Before we get to that, let me ask you, when she said, "Why are you wasting your time? He's never really going to do it," was she referring to you?

A Yes.

Q Why was she saying that about you?

MR. SISTI: Objection. Speculation.

THE COURT: Sustained.

Q Did she tell you she was saying that about you?

A No, she didn't.

MR. SISTI: Objection.

THE COURT: Sustained.

Q What did Pam say?

A Cecelia was saying, "Why are you wasting your time? He's never going to do it."

MR. SISTI: Object. Hearsay.

THE COURT: Sustained.

Q Was this in the presence of the defendant?

A Yes, it was.

MR. MAGGIOTTO: It's in the presence of the defendant and we have a reaction from the defendant.

MR. SISTI: Maybe we should approach and make an offer.

THE COURT: Well, you don't need to. Same ruling.

MR. MAGGIOTTO: I'm sorry, Judge?

THE COURT: Objection sustained.

Q After this conversation with Cecelia and Pam, did you talk to anybody else about the murder plans?

A Pete, J.R.

Q What was their reaction?

A They thought I was crazy.

Q And when you first were talking to Pete and J.R., did they offer any assistance?

A No.

Q Now, you said a moment earlier that Cecelia had given some information. What information did she give you?

MR. SISTI: Objection. Hearsay.

THE COURT: Sustained.

Q Did you ever look for a gun?

A Yes, I did.

Q And where did you look for a gun?

A At a parking lot, Papa Gino's, where Cecelia Pierce told me

that she knew there was a lady that had a gun, she overheard her talking, in her glove compartment, but if I was going to get it I had to hurry up because she was going to give it to someone to hold for her or something like that.

Q Who was going to give it to someone to hold for her?

A The lady who owned the car and the gun.

Q So who was telling you to hurry up?

A Cecelia Pierce.

Q Where was all this taking place that she was telling you this?

A Media Center.

Q About what time of year was it?

A What time of year?

Q Was it close to May 1st, close to April 1st, Close to March?

A March.

Q If you know.

A March sometime, I believe.

Q With that information, what did you do?

A Well, J.R. drove me over to Papa Gino's. I got out of the car, and Cecelia told me it was a cranberry colored car, so I found the car and I opened the door, opened the glove compartment, and there wasn't a gun in there. I looked under the seats. There wasn't a gun there, so I just left.

Q Did you ever look anywhere else that Cecelia had directed you?

A No, but she told me that her father had guns at his house and I could break into his house, but I never did that.

Q Now, did you ever attempt to kill Gregory Smart?

A Yes.

Q Can you tell me about the very first time?

A All right. Well, Pam had a meeting that night, and she told me, "All right, I have a meeting and you can do it tonight because I'll be at the meeting." All right, and she told me Greg got home around 9 o'clock.

Q I'm going to ask you to slow down, speak a little more into the mike. You're starting to drift.

A She said he got home around 9 o'clock. You know, went through the plan again. But I didn't have a car, I didn't have a gun. Right, so -- and I told her that. She said, "Well, hurry up and get one by tonight so you can do it tonight." I wasn't -- I didn't think she was -- you know, I thought she wanted me to do it, but I didn't think she -- if it never happened, I didn't think she'd be mad or something like that. It's just that it never happened.

Q Where was she telling you tonight was a good night to do it? Where was this conversation taking place?

A It's not something I wanted to do, for one thing, and I didn't think she'd be mad or anything if I didn't. I thought it would just -- things would go on as they always had.

Q When you say "things would always go on as they always had," what do you mean by that?

A She'd be coming down on weekends to see me. I'd be able to go up to her house when Greg was away.

Q Did you ever express to her that you had no intention to kill Gregory Smart at that time?

A No.

Q What were you saying to her?

A I was saying, "All right, I'll go ahead. I'll do it."

Q So after you said that to her, on that day -- by the way, do you know what day this was?

A What day this was?

Q Yeah.

A No, I don't.

Q Do you know what month it was?

A March, I believe.

Q Why do you say "I believe"?

A That's just what comes to mind.

Q Okay. And what happened that night?

A Well, I didn't go up or anything. And she's at the Media Center, and I was supposed to call her after I'd gone up and come back. I didn't go up and come back, so I just called her and said --

Q Where'd you call her from?

A My house. She's at the Media Center.

Q You never went to Derxy?

A Oh, no.

Q You just went home?

A Yeah.

Q How long did you wait before you called her?

A Until my mother was in bed.

Q How late was that?

A I don't know. It was dark out. 9 o'clock, 10 o'clock, right around there.

Q So what'd you do?

A And the meeting was over and she was in her office typing on the computer. She was by herself.

Q What did you do?

A Well, I called her and I said I couldn't get a car so, you know, I didn't go up, and she snapped on me. She started getting extremely angry.

Q When you say you didn't have a car, did you have a gun?

A No.

Q Do you have any weapon at all?

A No.

Q When you say "she snapped," what do you mean?

A Well, she snapped. It was -- I said, "Well, I don't have a gun," you know, "and I don't have a car so I didn't do it, I couldn't go up," and she started yelling at me. She's she was saying, "You don't love me and if you do you'd do this for me because it's the only way we can be together, if you love me and you want us to be together," and she said that "I know you're never going to do it." She goes, "You don't have any intention of doing this and I can't go on seeing you like this when I know that we're never going to be able to be really together." And -- and I'd gotten really upset at this point, and she said, "So that's it. It's over between us," and she hung up.

Q What do you mean by you got really upset at that point?

A Well, I was upset, I was crying.

Q And what was Pam's tone of voice like?

A She was mad, angry.

Q Had you ever seen her like that before?

A No, not at all.

Q Did you ever hear her like that before?

A No.

Q So after you hung up on the phone, what did you think was going on?

A Well, I thought that was it between me and Pam. I thought she didn't want to see me again.

Q So tell us what happened after that?

A All right. Well, I went to school the next day and I -- Cecelia came over, said, "Pam wants to talk to you," so I went over to the Media Center, and she said, you know, "Don't worry about it. I've got another meeting coming up. You can do it then. So everything's all right. You don't have to worry about it."

Q Now --

A She said she was sorry.

Q I'm sorry?

A She said she was sorry she got mad.

Q When was this conversation with her?

A This one here?

Q Yeah.

A The day after I'd called her that day.

Q Did you have school that day?

A Yes, I did.

Q So the night of the meeting was a school night?

A Or a Sunday.

Q Night before there was school?

A Yeah, yeah, it was a school night.

Q Now, how did you know she wanted to talk to you?

A Cecelia told me. She came over -- Cecelia came over to my locker and I was standing there. She said, "Pam wants to talk to you after school." So -- because I hadn't gone over during my study periods that day.

Q Why didn't you go over during your study periods?

A Because she said that was it, she didn't want to see me anymore.

Q How did that make you feel when she said, "I don't want to see you anymore"?

A Not very good.

Q What do you mean by "not very good"?

A I don't know. Sad and surprised.

Q I'm sorry?

A Surprised.

Q After she told you there was another meeting, what, if anything, did you do?

A I said I'd do it. I said all right.

Q All right what?

A I said, all right, I'd do it.

Q So what'd you do?

A Well, at this point, that's when I started getting serious about it because I thought that if I'd -- I do something like not go up, anything, again, she's going to leave me and that's going to be it. So this is the time I started really talking to J.R. and Pete about it.

Q Anybody else?

A Raymond Fowler.

Q Now, if you weren't serious about it, why did you go look for a gun at Papa Gino's?

A So I could show her the gun, show her I'm doing something.

Q Why do you want to show her the gun, show her you're doing something?

A So she'd know that I was going along with it, everything, and that I wasn't, you know, just sitting there doing nothing because I didn't want her to get mad at me or anything like that again.

Q When you started talking to J.R. and Pete and Raymond Fowler, what -- what happened with those discussions?

A Well, J.R. and Pete still refused to help me. They still said I was crazy, but I told Raymond, "Pam said you can have anything in the house. She's insured." I told them about the Kenwood stereo and everything, and he agreed to help. He said all right, said he'd do it.

MR. SISTI: Objection. Hearsay, Your Honor.

THE COURT: Sustained. We'll take a short recess.

- - -

{Recess at 3:04 p.m.}

- - -

MR. MAGGIOTTO: May I continue, Your Honor?

THE COURT: Go ahead.

DIRECT EXAMINATION BY MR. MAGGIOTTO (Continued):

Q What did you say to Raymond Fowler to recruit him?

A All right. Well, I told him -- I told him what the situation was, you know, about how Greg treated her, and I told him about Pam and everything, and I told him that Pam said that if he helped me out he can have anything in the house, Kenwood stereo system, all jewelry, speakers, VCR, TV, anything, because she's insured, and he said all right, and he'd help me.

Q Now, did you discuss with Pam that you were involving Raymond Fowler?

A I think I did, yes.

Q How did she react to that?

A How did she react?

Q Right.

A I remember her saying, "What do your friends think of me

like this because they don't know the situation?" I said I explained everything to them so they didn't think bad about it.

Q You said this to Pam?

A Yeah.

Q Now, once you said this to Ralph Fowler -- I mean Raymond Fowler, did he discuss the plan with you at all?

A Did he? Yeah. He said -- he said, first of all, he didn't want me to be there because I'd be the first person that they'd suspect if afterwards I was still seeing Pam and everything, and he said that he -- his father used to be a police officer but he's deceased now and he had a gun that we can use. So we went to his house to look for the gun up in the attic and down in the cellar, and we couldn't find it so we said, well, we'll just use a knife instead.

Q What attempts, if any, did you make to find a knife?

A His brother, Bub, had some knives, and Raymond got one from there.

Q Where was his brother's knives?

A In Raymond's room, because I think Bub's -- all Bub's stuff is in there because I think Raymond had just got back from Brentwood.

Q When you say Raymond had just gotten back from Brentwood,

what do you mean?

A From being, you know, in jail.

Q So Raymond had just gotten out of jail?

A I believe so. I'm not positive.

Q Do you know what he was in jail for?

A Yeah, he was in jail for theft.

Q Now, beside -- well, let me back up.

When he said he didn't want you to even be there, where were you going to be when he was doing this?

A Looking out for him.

Q How were you going to be looking out for him?

A Like making sure no one went to the condominium, being outside there.

Q How were you going to get to the condominium?

A I told Pam, I said, "All right, I've got Raymond. He's going to help me; that his father has a gun we were looking for but we don't have a car," because Raymond didn't have a car either. She said, "If we have to, you can use mine." We didn't want to do that because her car would be recognized.

Q Why?

A Honda CRX and her license plate says HALEN on it.

Q What's HALEN a reference to?

A Van Halen.

Q Music group?

A Yes.

Q How did you feel about using her car?

A At that point? I didn't want to but she suggested it, so I said all right.

Q Now, beside getting Raymond Fowler's knife, his brother's knife, I'm sorry, what other plans did you and Raymond discuss?

A All right. Raymond told me that, "Don't wear any of your sneakers because the police can make plaster molds of feet," you know, sneaker prints. So he had some old sneakers and we each got a pair of those, and about around that time that was about as far as we went in preparation. Oh, we went to my house, too, and got black clothes and stuff.

Q Where'd you put all these clothes that you had gotten?

A In a duffel bag.

Q What kind of duffel bag?

A Black and red duffel bag.

Q What'd you actually put in there?

A Those sneakers, a pair of black sweat pants, a pair of gray sweat pants, a black winter jacket, and like a black sweat-shirt.

Q How soon in time was it after the first attempt where you did nothing was this going on with Raymond?

A How soon after the first attempt?

Q If you know.

A Well, this is -- this was around the end of April with Raymond right here, so it was quite a while.

Q One week, two weeks, three weeks, if you know?

A Maybe a month, maybe less, little less.

Q Do you know what day we're talking about?

A Pardon me?

Q Do you know what day it was?

A What day it was specifically?

Q Yeah.

A I think it was like a week before May 1st. Week and a half.

Q Are you guessing?

A Yes. Well, it's approximate.

Q Now, any other preparations that you and Raymond did before the night?

A Well, that night Pam had told me that she left the bulkhead door open and that she had a meeting that night and she had the keys in her car, and all we had to do was go there, pick up the car there and --

Q She left her keys in her car where?

A In the ignition.

Q I know, but where was her car?

A At the Media Center parking lot. You've got the school parking lot, then the Media Center parking lot, and there's one space where you can park in back of the Media Center. It's right by the back door and the car was right there.

Q Before we get to that night, was there anything else that you and Raymond had done prior to that night?

A Prior to that night? Beside the -- on the ride up, no.

Q All right. Now, let's -- tell us -- tell us about that night. How did you get to Pam's car?

A Well, Vance, Pete, myself, Danny Blake, Raymond Fowler and Chris Martel had gone up to the mall. We went to Haverhill to get some money from Wayne Ackerman because we were buying concert tickets and Wayne wanted us to buy tickets for him, so we went up to get his money. I didn't think he had it, though. And we went to the Newington Mall, I believe it was -- it's right next to the Fox Run Mall -- to get concert tickets.

Q Anything in particular you remember about the ride either there or to the Media Center?

A On the way back from the mall, yeah.

Q What was going on?

A All right. Well, we were driving back and Pete mooned some lady in the IROC or TA. I can't remember what it was.

Q Do you remember a IROC --

A No, I remember a --

Q -- type of car?

A -- Camaro.

Q TA is what?

A Trans Am. Some girl in one of those, he mooned her. I remember that from the way back.

Q So what time of day was it that you were being driven to the car after the mall?

A What time? Say about 5 o'clock.

Q In the afternoon?

A Yeah.

Q So what time did you get to the Media Center, if you know?

A Around 5:30, I'd say.

Q Can you tell us what you did -- well, let me back up.

Who was driving the car?

A Chris Martel.

Q You were all in the one car?

A Yeah.

Q What kind of car was it?

A I don't know, a -- like a Lynx or something like that. It was a small car.

Q Was it crowded?

A Very.

Q Did J.R. and Pete know what was going on that night?

A Yes, they did.

Q So what happened when you got to the Media Center?

A Well, on the way back, after Pete had done that and everything, Pete said -- I mean Raymond said to Chris, "Drop us off at the Media Center because we have to film the meeting for Pam, film something for Pam," something like that. So Chris dropped us off at the Media Center and they left, and Raymond and I got in the car, and I was driving at this point. I got in the car --

Q Well, where was the car parked?

A Behind the Media Center.

Q Did you go into the Media Center at all?

A Did I go into the Media Center? No, but there was -- on the top floor the windows were open and I knew there was a meeting going on because I heard Pam talking.

Q Now, when you go into the Media Center to go to the defendant's office, you have to go downstairs, is that correct?

A Yeah, you go in the door, downstairs, or sometimes I go around back.

Q Now, if you were to go upstairs once you enter the Media Center, what's up there?

A It's not the Media Center. It's -- I don't know -- really know what it is. It's like the school administration office or something like that.

Q So the Media Center only really refers to Pam's offices and a space downstairs, is that correct?

A Yes.

Q Now, when you got in her car, was her car unlocked or locked?

A It was unlocked.

Q Were there any other cars in the SAU 21 parking lot, if you recall?

A Yes, I believe there were.

Q And what happens when you get into Pam's car?

A All right. Well, I got into the car and I turned the ignition, and it was a cassette that I'd made and gave to Pam in the cassette player, in the radio, and it was already playing. All it had to happen was you turn the key for the car. I didn't know the tape was in there. I turned the key and Black and Blue started playing from Van Halen.

Q Is this the same song you referred to before?

A Yes, it is.

Q Now, where'd you get the key from to start Pam's car?

A It was left in the ignition.

Q You were driving?

A Yes.

Q Do you have a license?

A No, I don't.

Q Were you 16 at this time?

A At this time? I believe my birthday just passed, yes.

Q Now, after you started the car, -- Raymond was with you?

A Yes, he was.

Q Where'd you go next?

A From there we drove to my house to get the clothes in the duffel bag, and from my house on Raymond was driving.

Q So you switched at your house?

A Yeah.

Q Now, when you went to your house you got the duffel bag.

Is this the duffel bag you referred to before?

A Yeah, with the sweat pants and everything in it.

Q And then what?

A All right. Well, we started driving up towards Derry, but we stopped at Freedom Drug in Seabrook because part of the

plan was to get some gloves so we wouldn't leave any fingerprints.

Q Whose idea was that?

A Pam Smart's idea. But she said if we did leave any fingerprints she could just say I was there before because I'd gone up one time prior to the time I spent the night, and I believe -- what I remember is that it was to film Greg on the -- his ATV motorcycle for part of our commercial but he never showed up.

Q Now, had you ever worn gloves before?

A Had I ever worn gloves like before in any crime?

Q In doing something criminally?

A No.

Q Any of your friends?

A At this time, no.

Q Pete ever?

A Not at this time, no.

Q You'd seen him after that time?

A Yeah.

Q Now, what kind of gloves did you buy at Freedom Drug?

A Like latex gloves, surgical gloves.

Q How many gloves did you buy?

A I bought like six pairs. I told them it was, you know, for

like a magic trick, I think it was.

Q Who did you tell this to?

A The people that were working there, because they didn't sell them like in a package or anything. They were in a paper bag that I guess they use for when they handle the pills or whatever, because I remember the guy -- there was a guy and a girl there -- and the guy asked the girl, "How much should we charge him for these?" She said, "Ten cents a pair." I said, "I'll take six pairs."

Q Why do you buy so many?

A I don't know. Just not to look suspicious, I guess.

Q Where was the knife at this time?

A Raymond had it.

Q And did Raymond have the knife with him at the mall?

A At the mall, no.

Q So how did you get the knife?

A When we went from his house to my house the first time, not with Pam's car but before that, he had the knife with him and he put it in the duffel bag.

Q So when you grabbed the duffel bag that night after leaving the Media Center, SAU 21 center, the knife was already in the bag?

A Yeah.

Q So after you went to Freedom Drug and bought the gloves, what happened next?

A Well, we started going towards Derry.

Q And what happened on the way to Derry, if anything?

A Well, on the way to Derry I started getting scared because it looked like Raymond was going to go through with this.

Q Why did you think Raymond was going to go through with this?

A Well, we were driving up to Derry.

Q Wasn't the whole point to go through with this?

A Yeah, but I wanted to do it all the way up to the point when I was doing it.

Q Why?

A I didn't want to -- you know, I didn't want to kill Greg.

Q So why did you go through all this planning you told us about?

A Because I was afraid Pam was going to leave me if I said, no, I'm not going to do this.

Q Did Pam ever tell you she would leave you?

A Well, from the first time I called her, she got really mad at me and she said this was it and I sort of assumed.

Q When you thought Raymond was really going through with this, what, if anything, happened?

A On the way up to Derry the road splits in two, and you

go straight you go to Derry, you turn right and you go to Raymond, and I told him to turn right.

Q To go which, toward Raymond?

A Right.

Q Why did you tell him that?

A Hoping we'd get lost.

Q You wanted to get lost?

A Yes, I did.

Q So what happened?

A Well, we started going and he was saying, "I don't see any signs that say Derry or anything." I said, "I don't recognize anything. I guess we're lost." So he said, "All right, we'll stop at a gas station." So we stopped at a Gulf station. I think it was a Gulf station. I know it was a gas station, and asked for directions, and the guy told him how to get to Derry. So he got back in the car and started driving towards Derry again.

Q Now, what was the plan going to be when you got to Derry, or what was the plan when you got to Derry?

A The same one Pam had told us to do, except for we didn't have the gun.

Q Where were you going to park?

A At the plaza.

Q So you were going to take her car and park it in the plaza behind her house?

A Behind her house? No, there's the plaza -- well, yeah, the plaza behind her house, but it's not right behind her house.

Q So after you went to the gas station, what happened next?

A Well, eventually got to Derry. And I said, all right, we'll drive through the complex and make sure he's not there or anything like that. So we drove through the complex. I said -- well, the truck was there. I said, "His truck's there. We can't do it. He's home."

Q When you say "drove through the complex," what complex are you talking about?

A Like where Misty Morning Drive is. The complex where Pam lives.

Q Were you able to find Misty Morning Drive?

A Yeah, I knew where it was.

Q When you drive through the complex, you said you saw Greg's truck?

A Yeah.

Q How'd you know what truck was Greg's?

A Pam had driven it to the -- she'd used it to go to the Media Center. You know, I've seen the truck before.

Q So the truck wasn't a stranger to you?

A No.

Q So when you saw the truck, what happened next?

A Well, I told him, you know, "Greg's home. We can't do it. We're going to have to leave." So he said, "Well, let's make sure, all right?" So he parked at some building across the -- pretty much across the street from Pam's. It's like -- I don't really know what kind of building it is, but -- as we walked to the back of her house, and the upstairs where the bedroom is light was on. I said, "See, the bedroom light's on. He's home."

Q Well, now, you parked at this building across the street from Pam's, is that right?

A Yeah.

Q And could you see -- if you were standing at Pam's doorstep, would you be able to see Pam's car?

A Well, there were trees in front of the parking lot and we parked behind those trees.

Q Now, when you parked behind those trees, what did you do?

A We got out.

Q Did you change or anything like that?

A Oh, no.

Q What did you do?

A Started walking over to Pam's house, went behind Pam's house

and I said, "See, the light's on upstairs. That means he's home."

Q How close to Pam's house did you get that -- were you able to walk around behind it?

A Right behind it.

Q Did anybody bother you or stop you?

A No, didn't see anybody.

Q Was it light or dark out?

A It was dark out.

Q If Greg Smart was already home, how did that thwart your plans?

A Pardon me?

Q If he was already home, how did that thwart your plans?

A Well, if he was home, we couldn't go in and make it look like a burglary or anything.

Q So it was part of your plan you had to get there before him?

A Yeah, that's what Pam said to do.

Q So about what time of night was it at that point?

A At this point?

Q Yep.

A Well, it was 9:30, 10.

Q After you realized he was home, what did you do?

A We drove back to the plaza, and there's phonebooths outside

of it at the grocery store there, and I went in the plaza and changed -- I got some change, and I went back and called her at the Media Center.

Q When you say you drove over to the Plaza, did you first go back to her car?

A Yeah.

Q And then you drove over to the plaza?

A Yeah.

Q And you made this phone call?

A Yeah.

Q And tell us what the conversation was like on the phone at that time.

A Well, she was -- she was nervous because I said -- I said, "We got here and he's home, and we couldn't do it because he's home." She said, "All right, just hurry up and get back here." She didn't sound mad or anything, just kind of nervous. She said come in her office, and in her office there's -- they have an office where you walk in the door, there's file cabinets on the back wall, then there's her office and computers and bookshelf right here and space between the wall and the bookshelf on the opposite side of her desk. She said she'd go behind there, because someone went into her office and went through her desk, I remember

she said, because some letters that we wrote back and forth to each other were in her desk, and I remember her saying that she wondered if anyone had read them because this person just came in and went through her desk.

Q What would be wrong with her being seen at the Media Center if there was a meeting?

A Well, her car wasn't there for one thing, and if we'd gone through with it someone would say she was here and her car wasn't, and if her car was seen in Derry or whatever.

Q What happened after the phone call?

A She said hurry up and get down there and pick her up. So we left Derry and went to the SAU 21 building where Pam was.

Q When you got to the SAU 21 building, anybody else there?

A Just Pam.

Q Did you go inside the building at all?

A No, when we pulled up she came out.

Q When she came out, what happened next?

A Got in the car. Well, I was in the passenger seat, Raymond was driving, and she was in the back middle. It doesn't have any back seats. And we were driving away from there and she asked what happened and everything, and I said, "Well, he was home when we got there. We got lost." So she said, "How'd you get lost? You know the way. You've

been there before." I said, "I don't know, we just got lost." And she didn't seem very mad or anything, so I figured that, you know, this is good. So we dropped Raymond off. Well, first she said, "Where's the gun?" And Raymond held up the knife, and I remember she said, "You were going to do it with a knife?" She wasn't too happy about that.

Q When she said, "You were going to do it with a knife," what did you or Raymond say to her?

A Raymond said, "It was quieter. That's why we were using a knife."

Q What did she say to that, if anything?

A Just, "I can't believe you were going to use a knife."

Q Up to that point had you discussed what weapon you would use that night?

A She said use a gun.

Q Did you ever have any discussion with her whether or not you actually had a gun for that night?

A For that night?

Q That's right.

A I told her Raymond's father had one and we were going to look for that.

Q So what happened after Raymond showed the defendant the

then or that was it.

Q Now, how close does Raymond Fowler live to you?

A How close? About five miles away, four miles.

Q And after dropping Raymond Fowler off, did you stop anywhere before you were dropped off?

A No, she didn't drop me off at my house. She dropped me off at -- on the road that goes up to my house.

Q Why?

A So my mother wouldn't see her, I think.

Q What would be wrong with your mother seeing her?

A Well, she'd know we were together that late at night, and I don't think we'd be working on the OJ commercial that late at light.

Q Did it upset you that the defendant was mad at you that night?

A Yeah. Yeah.

Q Why did it upset you?

A Well, you know, I didn't want her angry at me. You know, just it hurt.

Q Now, you said something about she'd given you directions. Where did that take place?

A In the Media Center, I believe, or at the school library. Those are the two places that come to mind.

Q Could you tell us how that was done?

A Yeah. Well, went over the Media Center. We were talking about directions on how to get there, and she had written them all down for me. She said, "Memorize this and then throw it away," because it was in her handwriting. So I told her that I'd memorized them but I didn't. I just kept the paper.

Q Anybody else present when you had this discussion with the defendant about directions?

A Cecelia Pierce, and it was in the Media Center. I remember that now.

Q You're saying it was in the Media Center?

A Yes, it was. I remember that.

Q Did Cecelia Pierce take part in these discussions at all?

A I think she was just there.

Q Did you try to memorize them?

A Yeah, because I was there, I was reading it over and over and over and over trying to memorize it, but only thing I can -- things I can remember easily sheet music and song lyrics, so I told her, all right, I memorized them and I threw the paper away like the next day because I'd taken it, but I didn't. I kept it.

Q Do you have a lousy memory?

A Yeah.

Q Now, she said there was another meeting coming up on May 1st. What did you say to that?

A That night, the night that she was dropping me off?

Q Yeah.

A All right. I promised her I'd do it then. You know, I told her, you know, I always wanted to be with her and that I'd do this so I could be with her.

Q After that night, what steps did you take in planning for May 1st?

A Well, after this night, J.R. and Pete had agreed to go -- you know, help me out with it, so -- but they wanted -- but I told Pam, I said, they asked, you know, what are -- you know, "What can we have out of this?" And I told them, you know, again anything from the house, and I told them that Pam -- Pam would probably give them like a thousand dollars each from --

Q You said this to who?

A J.R. and Pete.

Q And what had they asked you to make you say that?

A Well, they'd asked me, you know, what are they going to get from this.

Q Now, was this after this second attempt when you found Greg

Smart already home?

A Yeah.

Q Now, when you told them that you'd probably get them --
how much money did you say?

A A thousand dollars each.

Q Why did you come up with that thousand dollar figure?

A I don't know. Just the figure that came up.

Q Was that your figure?

A Yes, it was.

Q Did you ever have discussions with Pam Smart about that
thousand dollars?

A Yeah, like that day or the next day.

Q What'd you say to her?

A I told Pam, I said, "Well, they're going to help me with
this," you know, "and I told them that you'd probably give
them," you know, "a thousand dollars. Is that all right?"
And she said that that wasn't all right because, she said,
people get caught when they hire people, you know, to kill
someone for them because what happens when they get the
insurance money or there will be large amounts of money
taking out of the checking account or whatever that is
unaccounted for and that's how they get cause, and she said
\$2,000 was too much money to have unaccounted for.

Q So what did she say?

A She said \$500.00 each would be all right.

Q And did you convey that information to Pete and J.R.?

A Yes, I did.

Q Now, was there any particular day where J.R. and Pete say okay, we'll help? How did that come about?

A I don't remember how that came about, but they had agreed to help.

Q Now, up to this point had anyone discussed with you what you were trying to do?

A Yeah.

Q Once they said they would help, what planning or conversations did you have with Pete and J.R.?

A Well, they had already known the plan because I had discussed it with them before, but J.R. said -- agreed to let us use his father's gun.

Q Where were those conversations taking place?

A J.R.'s house.

Q Where at J.R.'s house would they take place?

A His room.

Q Who would be present for these conversations?

A Me, J.R., Pete. I think Raymond was a couple times, too.

Q Now, were you as close to Raymond as you are to J.R. and

Pete?

A No.

Q Was there anybody else ever over at J.R.'s house when these conversations are taking place?

A These conversations?

Q Yeah.

A Beside Raymond and Pete and J.R.?

Q Right, yeah.

A Myself. That's about it.

Q I mean, was the defendant ever over at J.R.'s house with the four of you discussing this?

A Well, she was over there. We went over there a few times, but I don't think ever to discuss this.

Q She -- you never discussed it with the defendant, J.R., Pete at J.R.'s house?

A No.

Q Beside discussing it at J.R.'s house, did you discuss it anywhere else?

A At the Media Center, and J.R. was present at that time. He came -- he would come over with me every once in a while. I don't know, once a week, twice a week, maybe like that, because Pam wasn't comfortable talking about it in front of, you know, other people, but she'd talk about it in front of

J.R.

Q What about Cecelia?

A Yeah, from day one she talked about it in front of Cecelia.

Q How did you feel about the defendant talking in front of Cecelia?

A I didn't like it because I didn't trust Cecelia.

Q Why didn't you trust Cecelia?

A I just didn't.

Q Did you ever express that to the defendant?

A Yes.

Q What did she say?

A She said, "Cecelia will never tell anybody."

Q Now --

A Not to worry.

Q What kind of conversations were you having in J.R.'s room with Pete, J.R and sometimes Raymond?

A Well, we'd go over the plan. Say, you know, this is how, you know, it's got to be done. And then like the two problems were getting a car and getting a gun.

Q Now, when you say "go over the plan," whose plan was it?

A The plan, that was what Pam -- Pam had said, "This is how you should do it."

Q Did Pete and J.R. ever offer alternative ideas?

A Yeah.

Q Like what?

A Well, J.R. didn't want his father's gun used, so -- because of ballistics tests, because he said he couldn't get rid of the gun afterwards, have to put it back, so someone suggested the use of a knife.

Q Okay. Now, let's talk about that. What attempts beside what you told us earlier at Papa Gino's and J.R.'s father's gun were made with you to get a gun, or anybody?

A Well, we had discussed where we could get a gun, and someone we knew from Haverhill was brought up.

Q What do you mean by he was brought up?

A He was just brought up as -- he said maybe he can get us a gun.

Q Who was that person?

A Zeppelin was his name.

Q So when Zeppelin was brought up, what happened after that?

A Well, we'd -- Pete and myself had talked to him, said, you know, "You think you can get us a gun?" You know, he was over 18, for one thing, and he could buy a gun legally, and he said, "Well, it's going to cost at least \$200.00," and we didn't have \$200.00, so I said, "Well, all right, I'll talk to you later," and I went to Pam and said, "Well, he

can get us a gun but it's going to cost \$200.00," and she didn't want to pay \$200.00.

Q Where was this conversation taking place?

A Between Pete, Myself and Zeppelin or me and Pam?

Q I'm sorry, between you and the defendant.

A Media Center.

Q I'm sorry?

A Media Center.

Q Do you know if anybody else was present?

A Cecelia Pierce, I believe, but I'm not positive, though.

Q Now, beside Zeppelin, anywhere else?

A I don't believe so, no.

Q What was the plan for clothing?

A Same as before.

Q Where was all this clothing at this time?

A My house in the duffel bag.

Q Everything was the same condition it was in on the last time you tried?

A Yeah.

Q Where was Pam going to be that night?

A Meeting.

Q Where was the meeting going to be?

A Either at the school or at the Media Center. I'm pretty

sure it was the Media Center because I think it was a continuation from last time.

Q How were you going to get into 4-E Misty Morning Drive?

A Well, May 1st, in school, me and J.R. were at my lockers and she'd come up to me and said, "All right, well, I left the bulkhead door open so you'll be able to get in."

Q And was that always part of the plan?

A Yeah.

Q Now, you said a moment ago that there was some discussion about using a knife.

A Yeah.

Q Now, was this discussion taking place at J.R.'s?

A I believe it was, yeah.

Q Why was there discussion about using a knife?

A Because J.R. didn't want to use his father's gun.

Q And what was the reason J.R. gave you for not using his father's gun?

A Because if they did a ballistics check of the bullet and it ever came back to us, they'd know that it was from a .38 and that J.R.'s father has a .38.

Q So why didn't you just go out and buy a gun?

A Didn't have the money. Pam didn't want to give us the \$200.00 because it would be more money unaccounted for.

May 1st, May 8th, Pam had come up to me and J.R. At school was the second time I saw her since it happened, and she had told me, she said, "I can't believe it. There was two insurance policies, one for ninety and one for fifty thousand," and she said, "Don't worry about anything. Everything's going to plan." Because what the plan was afterwards, she was going to move down closer to me so she could be near me.

Q When she told you there was two insurance policies, ninety and fifty thousand, that's a total of one hundred forty thousand?

A Yes.

Q Beside the defendant telling you that things were bad between her and Greg, did you ever hear or see anything for yourself?

A I heard, yes.

Q What do you mean by you heard?

A One time -- Greg usually called her around noontime almost everyday, and one time we were over the school and she'd come over to the school and we were talking and went back to the Media Center. I was there, J.R. was there and Cecelia was there and Pam was there, and Greg called and she put it on intercom.

Q Uh-huh.

A And before the second attempt with Raymond.

Q Now, to your knowledge, had you ever seen J.R. and Cecelia talking about the murder of Gregory Smart?

A No.

Q Were J.R. and Cecelia friends?

A Not really, no.

Q Beside the direct conversation you spoke about and the speaker phone conversation, do you remember any other times when Cecelia was present when you talked about the plans?

A About the plan itself?

Q Yeah.

A There's a -- yeah, there's a great deal.

Q Great deal of one time or great deal of times?

A Great deal of times.

Q You mean a few times, is that what you're trying to say?

A More than a few times.

Q What was Cecelia's role in all these discussions?

A Well, beside the time that she told me, you know, where I could get a gun and everything, there's nothing really.

Q She was just there?

A [Affirmative nod.]

Q Now, you mentioned that you slept over the defendant's

A I believe I saw it the first time I went up, and the second time I went up it was -- there was Easter stuff in the stores, so it was around Easter.

Q Was it before or after Easter, do you know?

A I believe it was after Easter, just like stuff left over from Easter in the stores.

Q And what happened at that time?

A Well, I was going to spend the night over Pam's house, and we went to the plaza to get, I don't know, something, but as we were going through she's saying, "This is" -- you know, "You can change over there and you drive through here," and you know, showing me what to do.

Q Now, who's in the car with you at this time?

A Cecelia, myself and Pam.

Q When you said she could -- when you said she said you could change over here, what was she referring to?

A Behind the plaza there's a bunch of dumpsters.

Q Did she pick out any particular dumpster?

A No, she just said "over there."

Q And what else was said at that time, if anything?

A Oh, yeah, and she said, "You go right up through the field," because there's a field right there that will go right to her house. And that's all, I believe.

Q Tell us about the last time you were at the defendant's house before May 1st.

A Well, it was pretty much like the first time that I spent the night. Rented some movies. I believe we went to the movies, too, saw Pretty Woman.

Q Where was Greg at this time, if you know?

A It's either Atlantic City or Rhode Island.

Q Was this -- why do you say "either Atlantic City or Rhode Island"?

A Those are the two places I remember him going on like business trips or something. Or Connecticut. It's either Rhode Island or Connecticut, I think.

Q Was this during the week or the weekend?

A During the week.

Q And who was with you?

A Well, up at Pam's house?

Q That's right.

A Cecelia Pierce, Pam and myself.

Q When you say it was pretty much like the last time, what did you guys do at her house?

A Well, we rented movies like before and, you know, we watched one movie -- UHF, I think it was -- and Pam and I went upstairs like before.

Q Did you spend the night?

A Yes.

Q Now, do you know how long Greg was away for at this time?

A No, I don't.

Q And how many -- did you stay over just one night, two nights, do you know?

A One night and the next day, but I didn't spend the night because -- no, I think it was just one night because I know I went to school the next day and I called my mom from school because they had a phone booth there, and I told her -- she figured why I didn't come home last night, so I just told her that I went to a party and everyone was too drunk to drive, so I spent the night there.

Q Now, getting back -- do you know how long before May 1st this was?

A It wasn't very long before May 1st at all, so -- but I couldn't give a date.

Q Going back to May 1st. Did you ever finally decide on a gun or a knife?

A I wanted to use the gun, so J.R. got the gun from his father.

Q When was it decided that you would use J.R.'s father's gun?

A I don't know.

Q Months before, weeks before?

A Like a week before.

Q And how was it decided?

A It was -- I don't know, we all decided on it.

Q Had you ever seen J.R.'s father's gun?

A Yeah, I'd seen it before.

Q What kind of gun was it?

A A small handgun.

Q What other kinds of guns did J.R.'s father have?

A .22 target pistol, .357 rifle, muzzle loader, I believe two .30-06 rifles, shotgun. That's about it.

Q And what made you decide on this particular gun?

A Well, it was a handgun. And the .22 had been brought up before, but J.R. said that I'd probably have to shoot him more than once with a .22, and I said that I didn't want to use that, and I'd asked him with the .38 what kind of bullets do you use, and he said, "Well, hollow tip bullets will be quickest and painless," so we decided on hollow tip bullets.

Q What do you mean by painless?

A Well, so he wouldn't just, you know, so it would be just over quick.

Q What transportation were you going to use?

A J.R.'s grandmother's car.

Q And why were you going to use J.R.'s grandmother's car?

A Because that's the only car we had. Didn't want to use Pam's car.

Q Why didn't you want to use Pam's car?

A Because it's too, I don't know, well known in Derry. Didn't want it to be recognized.

Q You used it once before.

A Yeah, but that was because that was our only choice.

Q And when was it decided that you would use J.R.'s grandmother's car?

A I don't know. I guess around the same time as we decided on the gun.

Q Do you have any recollection as to when that was?

A A week before May 1st.

Q And where was J.R.'s grandmother's car normally kept?

A Haverhill.

Q Now, what about bullets, ammunition?

A All right. Well, when we decided on the hollow tips, we needed someone to get them and we didn't have any money, so we needed money to get them, so I told Pam that J.R. had agreed to let me use his father's gun and I told her that I needed money for bullets because we didn't have any money.

So we went to the bank, bank right in Hampton by the movie theater and she got \$30.00. Well, I think it was more than \$30.00 but she asked me how much the bullets would be and I said around \$30.00 because I didn't know how much they cost. I didn't think they'd be more than \$30.00, so she gave me \$30.00 to buy the bullets.

Q When was it that you bought bullets, do you know?

A The day before May 1st.

Q And who bought the bullets?

A George Emond, J.R.'s uncle's best friend.

Q Where did he live?

A Right in front of J.R.'s house with J.R.'s uncle.

Q Why couldn't you pay for the bullets?

A Didn't have any money and I couldn't buy the bullets myself because I wasn't old enough.

Q How old did you have to be to buy bullets?

A Eighteen.

Q What kind of bullets did you end up buying?

A .38 special hollow tip bullets.

Q Who actually bought them?

A George Emond. We told him that -- that we were just going to use -- we gave him the money and said, well, we just want some bullets because we're going to take J.R.'s

fathers gun and go down the pit and go target shooting.

So he bought the bullets.

Q Where'd you buy the bullets?

A Big Al's Gun Shop in Seabrook, Route 1.

Q Do you remember how much they cost?

A Eighteen dollars, I believe.

Q Showing you what's State's Exhibit 41 in evidence. Do you recognize these?

A Yeah, that's -- that's the box -- that's the box of bullets that George bought.

Q .38 special hollow tip?

A Yeah.

Q Can't hear you.

A Yes.

Q After he bought the bullets, where'd you keep them?

A J.R.'s house in -- we had them in his room but I think we moved them to the camper that's -- we had it -- like we had a stereo system in the camper and a microwave and TV. We used to hang out in there.

Q Where was the camper in relationship to J.R.'s property?

A It was in his yard.

Q And you kept them there overnight?

A Yeah.

MR. MAGGIOTTO: Your Honor, the next area is quite substantial and just as soon not break it up if we don't have to.

THE COURT: We'll adjourn for the evening, resume tomorrow morning at 9:30.

Please don't discuss the case, as you know, or read or view anything about this case.

Thank you very much. Have a nice evening.

- - -

[Court adjourned for the day at 4:18 p.m.]

- - -

EXHIBIT J

ORIGINAL

★ 91-239

VOLUME XIII 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
*

LAW LIBRARY
JUN 25 1993

TRANSCRIPT OF TRIAL PROCEEDINGS

Held before the Honorable Douglas R. Gray, Presiding
Justice, and a Jury, 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

In chambers - p. 894

<u>State's Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
1. William Flynn		916	-	-
2. Daniel Houle	975	983	-	-
3. Norman Katner	986	1000	1008	-
4. Fred Engelbach	1010	1017	-	-

MARCH 12, 1991 - TUESDAY MORNING SESSION - 9:30 A.M.

THE COURT: Good morning.

- - -

[William Flynn resumed the witness stand.]

- - -

THE COURT: Mr. Flynn, you realize you're still under oath?

THE WITNESS: Yes, I do.

THE COURT: All right. Go ahead.

MR. MAGGIOTTO: Thank you, Your Honor.

DIRECT EXAMINATION BY MR. MAGGIOTTO (Resumed):

Q Bill, I'd like to call your attention to May 1st, 1990.

Do you remember that day?

A Yes, I do.

Q Did you go to school that day?

A Yes, I did.

Q What happened at school?

A Just I remember being at my lockers and Pam came over and told me the bulkhead door would be open again. Not much happened in school that I can remember that day.

Q Okay. I'm going to remind you, try and talk into the microphone, if you can. Okay?

A All right.

Q Now, how'd you get -- where'd you go after school that day?

A Well, after school, J.R., Pete, myself didn't have a car that day, so I took the bus to J.R.'s house, and from there we were going to get a ride to go to pick up J.R.'s grandmother's car, but we couldn't find anybody.

Q What time did you get home from school?

A 2:30.

Q When you got to J.R.'s house at 2:30, who were you with?

A Pete, J.R. and myself.

Q Anyone else at J.R.'s house at that time?

A I don't believe so, no.

Q And what happened next?

A Well, I called Pam at the Media Center and I told her that if we were going to get the car in Haverhill, we needed a ride, and she agreed to come give us a ride to Haverhill.

Q What was the original plan to get a car?

A I think J.R.'s grandmother was going to bring it down to us.

Q When the car wasn't there, did you try and call anyone else first?

A I don't remember.

Q Now, where did you call the defendant?

A At her office in the Media Center.

Q And who did you speak to?

A Pam.

Q What'd you say to her?

A I told her, I said, "J.R.'s grandmother didn't bring the car down and we need a ride up there to get the car."

Q What did she say to that?

A She said okay.

Q What happened next?

A Well, we waited for Pam to come, and she came down to J.R.'s house and picked us up and we went to Haverhill to get the car.

Q Now, before Pam came down to pick you up, did you do anything else at J.R.'s house?

A Yeah, I got the gun out of the trailer.

Q Where was the gun in the trailer?

A In the trailer?

Q Yeah.

A Underneath one of the cabinets. Like under the sink, I think it was.

Q Did you have the ammunition with you at that time?

A No, I did not.

Q Where was the ammunition?

A In the camper.

Q How long after you called the defendant was it before she arrived in her car?

A Fifteen minutes, 20 minutes.

Q What car did she pick you up in?

A The Honda CRX.

Q When she got to J.R.'s house, what happened then?

A Well, we all got in the car. J.R. was driving, Pate was in the front passenger seat, and me and Pam were in the back, and we drove up to Haverhill.

Q What, if anything, happened on the way down in the car?

A On the way down to Haverhill?

Q On the way down to Haverhill.

A Pam asked to see the gun. I showed her the gun, and there was conversation about payment. I think it was payment, though I couldn't be -- I couldn't swear that it was.

Q Well, don't guess. Are you quessing?

A Yeah.

Q Why don't you tell us what you remember. What do you remember about the conversations about the gun?

A About the gun?

Q Yeah.

A All right. Well, I was laying in the back seat with Pam and I told her that I had it on me and she asked to see it so I showed it to her.

Q How did you show it to her?

A Well, I had a jean jacket on. It was in the inside jean jacket pocket on the left-hand side, and I took it out and showed it to her.

Q Did you give it to her or just flash the gun?

A I just showed it to her.

Q Where in the car were you at this time?

A In the back.

Q Were you in the back -- where were your feet, where was your head?

A Our feet were towards Pete and J.R., and the head was toward the rear of the car.

Q How much room is there in the back of a Honda CRX?

A Not very much.

Q Were you cramped?

A Yeah.

Q Now, were you behind the driver's side or were you behind the passenger's side?

A I was behind the driver's side.

Q So J.R. was in front of you?

A Yes.

Q Pam was next to you?

A Yes.

Q Now, besides the conversation about the gun -- let me backtrack.

Defendant say anything when you showed her the gun?

A Not that I remember, no.

Q Do you remember any other conversation in the car at that time?

A Well, there was conversation between Pete, Vance, myself and Pam, and, like I said, I believe it was about payment but I can't really remember.

Q Why is it that you don't remember?

A I just don't remember. It's been nine months.

Q Who was driving the car?

A J.R. was.

Q How was J.R. driving the car?

A Fast.

Q Did that cause you any problems?

A Not me, no.

Q Anybody say anything about it?

A Pam asked him to slow down.

Q What did she say at that point, do you remember?

A Yeah, she said the last thing we need now is a ticket because the police officers would see we were all together and it was May 1st.

Q How long did it take to get to Haverhill?

A About 20 minutes. Fifteen, 20 minutes.

Q And what happened when you got to Haverhill?

A Well, we drove to J.R.'s grandmother's house and J.R. and Pete got out and got his grandmother's car.

Q Did you see how they got his grandmother's car?

A How they got his grandmother's car?

Q Did you see anybody go in the house?

A J.R. went in the house. Pete got in the car and J.R. came out with the keys.

Q What kind of car is J.R.'s grandmother's car?

A Four-door Impalla.

Q Had you seen that car before?

A Yeah.

Q Had J.R. borrowed that car many times?

A Yes.

Q Once J.R. and Pete got out of the car, what did you do?

A Pam got into the driver's seat of the CRX and I got in the front passenger's seat.

Q What happened after that?

A Drove back to Seabrook.

Q Did you follow each other?

A Well, J.R. was in front of us, but he got there about five,

ten -- well, say about five minutes before we did.

Q Why was that?

A He drives fast.

Q Did you make any stops on the way back to Seabrook?

A Not that I can remember, no.

Q Was there any conversation in the car between you and the defendant at that time?

A I'm sure there was. I just -- I don't recall what any of it was, though.

Q As you sit here today, you can't remember what was said between you and the defendant in the car at that time?

A Not when we were driving back, no.

Q What happened when you got back to Seabrook?

A Well, -- all right, this is where I -- my memory gets bad. I can't remember if what happened was we got to J.R.'s house and she drove to my house and dropped me off or if I did get dropped off at J.R.'s house and I waited for him to come there.

Q You're not sure which happened?

A No.

Q What do you remember specifically happening next?

A Well, I remember either J.R. came down to pick me up and we got the bag of stuff in my room or we all drove down to

my house and got the bag of stuff.

Q At some point you're together again with J.R. and Pete?

A Yeah.

Q And what car are you in?

A The Impalla.

Q What happens at your house?

A All right. Well, we got the duffel bag that had the clothes in it and the shoes.

Q I can't hear you.

A We got the duffel bag that had the shoes and the clothes and the gloves in it.

Q Is that the same duffel bag you referred to the other day when you were talking about Raymond Fowler?

A Yes, it is.

Q What happened to the defendant after she dropped you off?

A She went back to the Media Center.

Q Why did she go back to the Media Center, did she say?

A She was going to wait there until --

Q Until what?

A The meeting started.

Q Do you know what meeting this was?

A What the meeting was for?

Q Did you have any idea, yeah.

A I want to say it was about pay increase, but I'm not positive.

Q Where would you have gotten that information from?

A From Pam.

Q After you picked up the duffel bag, what happened next?

A All right. Well, we drove back to Collins Street, and on Collins Street we picked up Raymond Fowler who was in Ralph Welch's yard helping Ralph's father but a window in a truck.

Q When you say "drive back to Collins Street," where is Ralph Welch's house in relationship to J.R.'s?

A Like right across the street and to the left.

Q Now, the time you got dropped off by the defendant, did you still have the gun?

A Yes, I did.

Q What about bullets?

A We got those at J.R.'s house.

Q When did you get those?

A After we got dropped off and before we went to Derry.

Q Do you remember when it was?

A When it was specifically?

Q Yeah.

A No, I don't.

Q And you got them out of the camper, is that what you said?

A Yes.

Q Now, what was said to Raymond Fowler at the time you picked him up, if anything?

A Well, he already -- he knew what was going on and he knew that he was going to be driving up with us, so he knew why we were there.

Q Had you planned to pick up Raymond Fowler?

A Yeah, J.R. wanted him to come.

Q Why did J.R. want him to come?

A He said he didn't want to sit in the car by himself.

Q Did he say why he didn't want to sit in the car by himself?

A I don't remember why, no.

Q What happened next?

A Well, we drove up to Derry.

Q Where were you in the car?

A Back seat. Me and Pete were in the back seat and Raymond and J.R. were in the front.

Q Who was driving?

A J.R.

Q Anything happen on the way to Derry?

A On the way to Derry, yeah, we got a -- Raymond was giving directions this time on the way up and we got lost.

Q How is it that you got lost after having been to Derry?

A Well, I wasn't paying attention.

Q How is it that you got lost? Where did you end up, do you know?

A No. Raymond said, "I think we missed our exit," and so I looked up and I didn't know where we were. So then Raymond -- I think I said, "Well, turn around and it would be the exit right behind us." Then Raymond was saying, "No, I think it was before that," or something like that, but we turned around and we got to Derry.

Q Was there any other conversation in the car except discussions as to how to get there?

A In the car?

Q Yeah.

A Not that I remember.

Q What happens when you get to Derry?

A When we get to Derry, well, we pulled into the plaza that's by Pam's house and we all got out of the car. We went into Papa Gino's because I had to use the bathroom. J.R. -- not J.R. -- Raymond asked if he could have some money to buy some pizza, so gave him some money, and Raymond stayed in Papa Gino's and me, Pete and J.R. left and that's -- we went into one of the stores to get some tape.

Q When you got to the plaza, where did you park in the plaza?

A Right in the parking lot close to the road that goes into the back of the plaza.

Q Do you have any idea about what time this was?

A Well, it was still light out so, I don't know, 5 o'clock, I guess.

Q Not asking you to guess. You just know it was still light out?

A Yeah, it was still light out.

Q When you went to Papa Gino's, is this the same Papa Gino's you referred to before when you were with Cecelia Pierce?

A Oh, no, it's not.

Q It's a separate one?

A Yeah, this one's in Derry.

Q Why did you go into Papa Gino's?

A To use the bathroom.

Q Anybody else?

A J.R. and Pete, they used the bathroom, too.

Q After you left Papa Gino's, you said you went to what store?

A It's like an Ames or a Zayre's.

Q Why do you go to Ames or Zayre, though?

A Buy Scotch tape.

Q Why do you want to buy Scotch tape?

A Because the latex gloves that we had, they -- push your

finger up against the car window, it leaves a print. So we decided to get tape and put them over the tops of our fingers.

Q Now, where were you when you tested these latex gloves?

A In the Impalla.

Q In the car?

A Yeah.

Q You put your finger up against the window?

A Yeah.

Q And it left a mark?

A Fingerprint, yes.

Q So what kind of tape is it you bought?

A Scotch tape.

Q Did you tape your fingers right then and there?

A No.

Q Did you get anything else that you recall in the store?

A Not that I remember, no.

Q After buying the Scotch tape, what else happened?

A Well, we sort of walked around in front of the stores waiting for it to get dark. Then we went back to the car and sat in there for a little while, and when it got dark we decided to go over.

Q How long did you have to wait before it got dark?

A Forty-five minutes, half an hour.

Q When you decided it was time to go, what did you do in the car?

A All right. Well, when we decided it was dark enough, Pete and myself taped our fingertips up in the car. I took -- I loaded the gun.

Q Can you show the members of the jury what you mean by taped up your fingertips? What did you do to your fingertips?

A All right. Got the Scotch tape and wrapped it around the tips of our fingertips where the fingerprints would be, would be left by --

Q I'm just --

A Then put the gloves --

Q I'm not sure that was heard. You put your face away from the mike. Repeat what you said into the mike.

A All right. We put the Scotch tape around the tips of our fingertips so it wouldn't leave any fingerprints, then put the gloves on top of the tape.

Q Did you put the gloves on in the car?

A No, we didn't.

Q So at this point you just have the tape on your fingertips?

A Yes.

Q When you say you loaded the gun, how do you know how to load a gun?

A Well, when I'd first seen -- not the first time I saw the gun, but the first time I handled the gun J.R. showed me how to open it and so I knew how to open it, so the rest is self-explanatory.

Q Pretty simple process?

A Yes.

Q How many bullets did you load the gun with?

A I can't remember if it held five or six. It was five or six.

Q When you loaded the gun, where was the gun then?

A We were in the car when I loaded the gun.

Q Where do you put it after you loaded it?

A My waistband or whatever you call it. In my pants.

Q What happened after that?

A Well, Pete and I got out of the car with the duffel bag and went around to the back of the plaza.

Q Did you walk around to the back or drive around to the back?

A We walked.

Q Why didn't you just park in the back?

A Because parking in the parking lot, Pam said it would be less suspicious, plus the police station is close to there

and they go through the back road to go towards the condo complex.

Q Now, when you went in the back of the plaza, were there any cars parked back there?

A No.

Q And who was carrying the duffel bag?

A I believe I was.

Q And it was just you and Pete at this time?

A Yes.

Q Where did you go behind the plaza?

A Well, we walked around to the back and we kept walking until we found where the dumpsters were, and we went behind the dumpsters and changed into the black clothes and put our regular clothes in the duffel bag.

Q Did you have a particular dumpster figured out beforehand?

A No.

Q How many dumpsters were there behind the plaza? I mean, was there one, was there more?

A Well, where we were, I'd say I believe there was about three.

Q Now, was there anybody back there when you were doing this?

A No.

Q What exactly did you put on?

A I put on black sweat pants, the shoes Raymond gave us, and

a T-shirt and a black winter jacket. Pete put on gray sweat pants, I think it was like a black T-shirt, black sweatshirt and the shoes Raymond had gave us.

Q Was this your black winter jacket?

A Yes, it was.

Q Why were you wearing a winter jacket on May 1st?

A Because it was black.

Q Where was the gun at this time?

A Well, at that time when I put my winter jacket on, it has inside pocket on the left-hand side, and I put the gun in there.

Q At this time are you intending to kill Greg Smart?

A Yes, I was.

Q What did you do with the clothes you had on?

A We put them in the duffel bag, and there was a stairwell there and we put them down the stairwell.

Q After you put the clothes down the stairwell, what did you do next?

A Started walking towards Pam's condo.

Q When you were walking towards Pamela's condo, did you see anybody?

A Yeah, when we were on that road that goes from the back of the plaza to the complex, two people passed us and we

started jogging so it would look like we were just joggers or something.

Q Where did you jog to?

A Well, we jogged past Pam's condo all the way down that road and went back around -- well, we didn't come back but we went down that road and turned -- there was a trailer in the field and we walked up to that trailer to the back of Pam's house.

Q Now, when you jogged, did you jog past the condominium?

A Yes, I did.

Q How many -- what made you stop jogging? What was the route you took?

A What was the route I took?

Q After you jogged past the condominium, did you stop a few feet past?

A No, we kept going until the road either turned left or right, and we went right and went down there a little bit, and there's a trailer in the field and we walked up there and went around.

Q Now, when you say there was a trailer in the field, what kind of field is this; small field, fairly big field?

A Fairly big field.

Q So your walking through the field. What was on your right

and what was on your left, as you remember?

A All right. On my right-hand side were the condos and on my left-hand side there was a junior high, I think it was.

Q Were there any lights on in this field?

A In this field?

Q Right.

A No, I don't think there were.

Q Was it light out, dark out?

A It was getting dark.

Q Then what happened?

A Well, we went around to the back of Pam's house -- there's like a shed there -- and we were just sitting there, and these people had gone -- came out of their condo, behind -- on the opposite side of the shed.

Q Now, when you say "shed," are we talking about a small shed, fairly large shed?

A Small shed.

Q When you said someone came out of their condominium, where was that condominium in relationship to the defendant's?

A Behind it.

Q What were these people doing?

A Saying goodbye to some friends or something like that, because they were getting into a car and they were talking

and then the car drove off and they went back into the house.

Q Now, what were you and Pete doing at this time?

A Waiting for them to leave.

Q How long did you have to wait for?

A Five minutes.

Q What happened then?

A Well, we went over to the bulkhead and I pulled it up, and I was trying to be quiet, and it didn't go up. So, you know, I pulled it again and I think I twisted the handle and then pulled it up and it went up, and we went down the bulkhead doors.

Q How long did it take you to go down the bulkhead doors? I mean, once you got over to the bulkhead.

A Twenty, 30 seconds.

Q And what about the gloves? What had you done with the gloves?

A Well, we'd put them on before we went down the bulkhead door.

Q Where were you when you put them on?

A By the shed behind Pam's house.

Q Now, you had the tape on your fingers and the gloves over the tape?

A Yes.

Q Where was the gun at this point?

A It was still in my jacket pocket.

Q Now, once you got into the basement, what happened next?

A All right. We were in the basement, and the stairs lead upstairs, and we went up the stairs, and the door that goes to the house doesn't have a lock on it, so we opened the door and went in the house.

Q Now, you said the gun was in your jacket pocket. Earlier you said it was in your waistband. Did you move it?

A Yes, because I was wearing my normal clothes when it was in my waistband. When I changed into sweat pants and stuff, I put it in my jacket.

Q Now, you say the door that leads into the condo was unlocked?

A Yes. It didn't have a lock on it.

Q Okay. Are you talking about the door that leads to the basement?

A Yes.

Q And you just walked through that door?

A Yes.

Q Any lights on in the basement?

A No.

Q What did you then do?

A When we walked in the door?

Q Right, once you were in the basement, where'd you go next?

A We got in the basement and we went upstairs to the door, went through the door.

Q That door lock, have any problems getting through it?

A No.

Q What's the next thing you did?

A Well, Haley started barking and growling, so I walked over to Haley, picked him up and I put him in -- inside the door and shut the door.

Q Which door did you put him inside and which door did you shut?

A Cellar door.

Q Did Haley try to bite you?

A No.

Q Was it hard to get Haley?

A No, I just walked over -- well, yeah, it was. He wasn't running or anything but he was moving away from me as I moved towards him, but I just picked him up.

Q Any lights on in the first floor of the apartment?

A First floor apartment? No, I don't think there was any lights on anywhere in the house.

Q Were you able to see inside?

A After a minute our eyes adjusted.

Q What'd you do next?

A Well, when we went upstairs, Pete and I went right into Pam's room and we started dumping out the drawers and everything so it would look like a burglary.

Q Beside dumping out the drawers, what else happened?

A We got a pillowcase off the pillows and -- on Pam's bed, and then we went into the bathroom, and when we were in the bathroom we shut the doors because there's no outside window in the bathroom and turned the lights on in there.

Q Why'd you turn the lights on in there?

A So you could see better. And the -- it's like a sliding door closet in the bathroom and so that's where Pam's jewelry box is so we dumped that in the pillow, and there was a small TV, like a portable TV type of thing, took that down, and I think that's all we did in the bathroom.

Q How did you know where the jewelry box was?

A Because I'd been to Pam's house before and she showed me.

Q Do you recall what kind of jewelry was in the jewelry box?

A Yeah, bracelets, rings, necklaces, earrings, but she had -- she had worn a lot of jewelry that day, all the best jewelry so it wouldn't be in there when we took it.

Q How do you know that?

A Because I saw her May 1st and she told me -- she showed me. She had like a ring on every finger.

Q Where was it when she showed you?

A Media Center was the first time I -- she mentioned it, I think.

Q So you saw her in the Media Center before you went home after school?

A Yes.

Q After you were in the bathroom, you emptied the jewelry box, took the TV -- how big was the TV you're talking about?

A It was pretty small. It was about 12 inches long and five inches wide.

Q Is that what you mean by five inches wide (indicating)?

A Yeah.

Q What else did you do upstairs?

A We went to the guest bedroom, but I already knew there wasn't anything in there. We were going to throw the stuff around but decided not to and went downstairs.

Q What'd you do when you got downstairs?

A Well, when we got downstairs, Pete was trying to unhook the stereo and the VCR but he couldn't.

Q Why couldn't he?

A I don't remember. I don't think you can -- I didn't think you can get to the plugs. They're plugged, everything, in the wall, wall socket.

Q Did he unplug anything?

A I don't -- I don't think so.

Q What happened to the VCR?

A Well, I remember he took that off the shelf and it was out, and the cord had gotten -- the cord was stuck, the plug, and he couldn't reach the plug, I don't think.

Q What about the speakers?

A Unhooked the speakers and put them by the back door.

Q Why were the speakers put by the back door?

A So it would look like a burglary. We were going to take them afterwards so things would be missing from the house.

Q How many sets of speakers were there in the living room?

A Well, there was two Fisher house speakers and we weren't going to take those because they were too big.

Q Were or weren't going to take those?

A Were not.

Q Why not?

A They were too big, and there was a pair of Bose speakers, house speakers, but they were smaller and I put those by the door.

Q What else did you do downstairs in the first floor?

A Well, we went to the kitchen and there's a butcher -- a butcher block there, and Pete took a knife out of the

butcher block.

Q Why did Pete take a knife out of the butcher block?

A Because he was going to -- instead of using the gun, he was going to cut Greg's -- he was going to kill Greg with a knife.

Q You started to say he was going to cut. What was he going to cut?

A He was going to cut Greg's throat.

Q When did you discuss with Pete about cutting Greg's throat?

A I don't remember.

Q Why was it that Pete was going to cut Greg's throat instead of using the gun?

A Because it wouldn't make any noise and none of the -- we thought that if -- when we fired the gun all the neighbors would hear it.

Q What kind of knife did Pete grab?

A Like a carving knife type thing.

Q Could you hold up your hands and show us how long it was?

A Including the handle, it was about that long (indicating).

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

Q Now, what did you do in the kitchen beside grab this knife?

A Well, we opened the drawers. We were looking for a

flashlight and couldn't find a flashlight.

Q Why did you want a flashlight?

A So we could see better without turning the lights on.

Q Now, what happened to the pillowcase you got from upstairs?

A Well, we still had it at that point, but at that point I was in the kitchen on the counter, sitting on the counter looking out the window waiting for Greg's truck to come, and Pete was in the living room, I think. I didn't see him. It was dark but that's the general area his voice came from. So --

Q How were you looking for Pete -- I'm sorry -- how were you looking for Greg Smart?

A There's a window in the kitchen, has blinds on it. I was looking through the blinds.

Q What was Pete doing in the living room?

A Well, he had -- there was a black pillow on the sofa. There's -- Pam had about six small pillows in her living room, and he -- Pete cut open a black one with a knife and he put the stuff that was in the other pillowcase into that one.

Q Now, after -- well, let me rephrase this.

How long did it take to ransack the first floor?

A First floor? I don't know. Fifteen minutes. Approximately fifteen minutes.

Q What happened after that?

A After the first floor?

Q Right.

A I was sitting in the kitchen and Pete went into the living room.

Q Did you have any conversations with Pete as to what was going to happen when Greg came home?

A Yes.

Q What conversations did you have?

A Well, we were deciding what we were going to do when he came home.

Q What did you talk about?

A Well, Pam had said that it would be a good idea to hide in the coat closet that's right by the door because he always come in, takes off his jacket, puts it in the closet, but, I don't know, I can't remember why, but we decided against that.

Q Where's this coat closet that you were going to hide in?

A As you walk in the door, it's on your left-hand side.

Q Is it right on the left-hand side or do you have to walk in a ways?

A Well, you walk in, you walk in the door, and the stairs are on the left-hand side. They go up there, Like he came

directly down the stairs and didn't turn like to go to the door you'd walk into the closet.

Q So it's right at the base of the stairs?

A Yes.

Q And beside rejecting that idea, what else did you discuss?

A Well, we -- what we said -- oh, all right, there was a -- Pam had two brass candlestick holders on the dining room table, and we had discussed whether we should take one of those off the table and hit him with it when he came in.

Q Hit him where when he came in?

A In the head, knock him unconscious.

Q I'd like to show you what's been introduced as Defendant's Exhibit C. Does that look familiar to you?

A Yeah, that's the -- that's one of the candlesticks.

Q What did you do with this candlestick, if anything?

A Well, when we were talking about that, I took it off the table and I'd had it in my hand, and then we -- we thought about taking the light out of the -- there's a light right above the door. We were going to take a light bulb out of that so he couldn't turn the light on when he came in.

Q Why did you want to take the light bulb out of the light; so he wouldn't turn on the light?

A Yes.

Q Did you?

A No we didn't.

Q Why not?

A Because we thought it would show premeditation.

Q What do you mean by "show premeditation"?

A That it wasn't just a rob -- a botched robbery, it was -- that that's why we were there the whole time.

Q When you decided to take the light bulb out of the socket, what happened to the candlestick holder?

A I put it on the floor and I never picked it up after that.

Q Where'd you put it on the floor?

A It would be right by the cellar door that goes down, probably a little closer to the door on the tile.

Q On the tile?

A I believe so, yes.

Q What else, if anything, did you and Pete discuss?

A Well, what we'd come up with is -- this is what we were going to do. I was going to stand in front of the closet and Pete was going to stand behind the door, and Pete was going to grab him when he came in the door and pull him in, and I was going to shut the lights off and shut the door.

Q And had you had a plan of what to do after you'd pulled him in?

A Well, that was -- we hadn't, and that was before, we knew about that beforehand.

Q You mean just to kill him?

A Yes.

Q So what happened after you had all these discussions? What was the final one you decided on?

A All right. I was going to stand in front of the closet door, because when he walked in the door he wouldn't be able to see me from there. Pete was going to stand behind the -- the entrance door when it swung open so he'd be behind it there, and then Pete was going to grab Greg when he opened the door and pull him in.

Q So what happened after you'd decided on this plan?

A All right. Well, I was sitting in the kitchen.

Q Where were you sitting in the kitchen?

A On the counter.

Q And when you were sitting on the counter, what were you doing?

A I was just sitting there watching out the window.

Q How many windows are in the kitchen?

A One.

Q Were the blinds up or down?

A They were -- they were down.

Q How were you able to see?

A Well, I -- you know, I pulled them down a little bit with my hand and look out every so often.

Q When you looked out that window, what area could you look at?

A Outside the front door area in the parking lot.

Q How long had you been in the defendant's apartment at this point from the moment you walked in the bulkhead till now?

A I don't really know.

Q While you were sitting on the counter looking out the window, was all the ransacking done at this point?

A Yes.

Q What was Pete doing?

A In the living room. He was sitting in the living room.

Q What happened next?

A All right. Well, I saw Greg pull up in the truck and I ran out of the kitchen and I said, "Jesus, Pete, he's here. He's here." Pete said, "Calm down. Let's go." So we went over --

Q How did you know this was Greg?

A Because I'd seen pictures of him and I knew what his truck looked like from before.

Q What kind of truck had he pulled up in?

A A gray mini truck. Toyota, I believe it is.

Q Did you see him get out of that truck?

A I just saw him pull up.

Q So you went over to Pete, and after you said he was there, what happened next?

A Well, we went over -- you know, we ran over by the door, you know, to get ready, but when we went over to the door, I don't know, I don't know why, but I got behind where the door would open and Pete got by the closet, so everything was messed up.

Q When you were over behind the door, did you have anything in your hands?

A I don't believe so, no.

Q Where was the gun?

A In my jacket pocket still.

Q Did Pete have anything with him?

A The knife.

Q What happened next.

A All right. I heard Greg walking up towards the door and I could hear keys jingling outside the door. So he unlocked the door and he opened the door.

Q After he opened the door, what else, if anything, did he do?

A All right. He called -- he turned the lights on and he

called for Haley.

Q How far open was the door at this point?

A It was enough for me to be behind it and it not touching me.

Q How far into the apartment was Greg?

A Like one step.

Q Was he moving at this time, standing still, what was he doing?

A He was standing there.

Q Could you see him at this point?

A No.

Q And what exactly did he call when he called Haley?

A He called Haley.

Q Just once?

A He called the dog, yeah. Haley, the dog.

Q And what happened next?

A Well, he just stood there and I just stood there and Pete just stood there, and --

Q How long was it that you were all frozen like that?

A I have no idea.

Q How long did it seem?

A Like quite a while.

Q Then what happened?

A Then I -- I jumped out from behind the door and I grabbed

him by his shoulders on his suit jacket, and I was trying to pull him in the condo.

Q I'm going to ask you to still speak into the microphone.

When you grabbed him by his jacket at the shoulders, what, if anything, was he doing?

A Well, he started yelling. He was trying to back out of the house.

Q I'm sorry, I can't hear you.

A He started yelling and he was trying to back out of the house.

Q What was he yelling?

A I don't remember.

Q When you grabbed him by the shoulders, started to pull him in, what happened next?

A Pete jumped out from where he was and pushed him in. He -- he shut out the lights and shut the door, but the mat got caught in the door, and then he took the mat out of the doorway and shut the door.

Q After he shut the door -- while he was shutting the door, what were you doing?

A Well, Greg was saying, "What's going on? What's going on?" I was telling him to be quiet, and then Pete shut the door and he came over and we told him to get on his -- on his --

we told him to get down on his knees.

Q How did you tell him to get down on his knees?

A That's what we said. We said, "Get down on your knees."

Q You said it, Pete said it, who said it?

A I think we both said it.

Q Now, where were you just while you were telling Greg to get down on his knees?

A Inside the door on -- like right by the cellar door on the tile.

Q When you say "by the cellar door near the tile," had you moved into the apartment at all?

A Yeah.

Q Which way were you facing, which way was Greg facing as you're -- before he's on his knees?

A Greg had his back to the stairwell.

Q When you say his back was against the stairwell, up against the wall or the open stairs of the stair --

A Well, that's just the way his back was facing. He wasn't up against.

Q And then what happened?

A All right. Pete was talking to him.

Q What was Pete -- was he on his knees yet?

A Yes.

Q How did he get to his knees?

A I think we pushed him down to his knees.

Q Now, as Pete was talking to him, was anybody touching Greg?

A Pete had put his -- Pete grabbed him by the hair.

Q And was Pete still holding him by the hair?

A Yes, he was.

Q Can you show us how Pete was holding him?

A He had his hand like -- like that (indicating).

Q Now, what was Pete saying to him?

A I don't remember.

Q What position was Greg in at this time?

A He was on his knees and I think his hands were in his lap, and Pete was in front of him and I was to his left and a little behind him.

Q Can you come down in front of the jury and show us how Greg Smart was kneeling at that time?

A Yes.

MR. MAGGIOTTO: With the Court's permission, could the witness get off the stand, Your Honor?

THE COURT: All right.

- - -

[Witness standing before the jury.]

- - -