

COURT REPORTER'S RECORDVOLUME 50 of 57 VOLUMESPUNISHMENT PHASE

TRIAL CAUSE NO. F97-01215-PJ

THE STATE OF TEXAS

IN THE CRIMINAL DISTRICT COURT

VS.

NO. 3

GREGORY EDWARD WRIGHT

OF DALLAS COUNTY, TEXAS

APPEARANCES:

HONORABLE GREG DAVIS SBOT: 05493550

HONORABLE NEIL PASK SBOT: 15556700

HONORABLE RICARDO JORDAN SBOT: 11016550

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ATTORNEYS FOR THE DEFENDANT.

On the 9th of December, A.D., 1997, a Capital Murder Jury-Trial with reference to the above-styled and -numbered cause came on to be heard before THE HONORABLE ROBERT W. FRANCIS, Judge of Criminal District Court No. 3, Dallas, Texas, and the following proceedings were held:

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2 (Court reconvened; jury not present.)

3 (State's Exhibit No. 91

58A 4 was marked for identification purposes.)

10A 5 THE COURT: Mr. Davis, are y'all ready?

6 MR. DAVIS: Ready.

7 THE COURT: All right. Mr. Johnson, are you
8 ready?

9 I'm guessing that's a yes, Jan. Go ahead and
10 line them up.

11 MR. JOHNSON: Your Honor, before the jury comes
12 in, I talked to Mr. Davis about the fact that my client has
13 some family here, and that -- that may testify, and he's
14 agreed to allow them in the courtroom for this.

15 MR. DAVIS: That's correct.

16 THE COURT: Okay.

11A 17 MR. BRAUCHLE: Your Honor, as I told the Court
18 the State dumped about a hundred pages of various reports and
19 documents on me about 15 minutes ago in regard to this.

20 THE COURT: Okay.

21 MR. BRAUCHLE: I need time to read these
22 documents in that I -- it's -- about half of them, apparently,
23 deal with the first --

24 MR. PASK: No, they don't. No, they don't.
25 We're putting on the --

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MR. BRAUCHLE: Look, who's making this motion?

THE COURT: Let me let Mr. Brauchle finish what he's saying.

MR. PASK: All right. I just don't want to -- I was here about 8:00 o'clock. They got here about 8:50.

THE COURT: I'll let you respond. I'll let you respond.

Go ahead, Mr. Brauchle.

MR. BRAUCHLE: Well, the State, about half of them, deal with the first conviction or incident that Mr. Davis intends to put on.

We were provided with copies of what the State stated were certified records in regard to our pretrial discovery, but it appears that these were generated at or about the same time and have been in the State's possession now for about three or four months, and they were just given to us today. I need time to -- to go over these and try and correlate which of these incidents these correlate to, and if they can show that -- that they deal with our client.

The other thing is, is that I think that before any of these witnesses that the State has down here get on the stand and testify as to prior bad acts or convictions of our defendant, we're entitled to a hearing in which they demonstrate the ability to identify that they're talking about the person that's on trial here today, as well as their

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ability to testify to these independently, or what they're testifying to, and none of that's been gone into.

We have, like I say, the State's notice to use certified copies, and I've been provided with that, and I was aware that those were -- those were done in June of '97, and it would appear that all this other stuff that I was just provided with today was also generated in June of '97.

Now, if the Court's -- you know, if the Court is sanctioning trial by ambush, that's one thing. Just let us know now, but I think that -- that I'm entitled to some period of time in which I can read these.

In fact, the Court was present and in chambers last night. The Court recalls that I asked Mr. Pask what he had and what he would show me last night to enable me over this portion of the trial, and, of course, Mr. Pask was too busy and had to go somewhere, but he --

MR. PASK: That's a complete misrepresentation. Just a complete lie. I'm sick of you lying about that. There are a couple of incident reports that go into the first offense.

THE COURT: Mr. Pask, if you'll just --

MR. PASK: I'm just sick of this lying.

THE COURT: -- if you'll just let him finish his objection and I'll --

MR. DAVIS: What's going on here?

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THE COURT: -- certainly let you respond.

MR. BRAUCHLE: Mr. Pask, the Court was present,
He knows

MR. PASK: Yeah, he does know.

MR. BRAUCHLE: -- what you represented to the
Court.

MR. PASK: That's right.

THE COURT: All right. Let's do this.

I'm going to order the attorneys for both sides
not to interrupt anyone at any point further within this
hearing, and if they do, I'll consider that to be contempt of
court.

Anyone have any question about that? If they
do, tell me now and I'll explain it further.

All right. Mr. Brauchle, is there anything else
you want to put in your objection?

MR. BRAUCHLE: Well, the objection that I'm
making is not an objection. I'm just asking for time to read
what they've dumped on me this morning.

THE COURT: Okay.

MR. BRAUCHLE: I think that obviously the -- the
Court can appreciate the problem that I've got in that these
things are not particularly designated to incident or
conviction.

Some of them go to arrests that they don't have

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an officer to, that they don't have a conviction for, and that they can't prove is my client, and I need to go through and figure that out, and I'm asking the Court for about an hour to an hour-and-a-half to do that, and I don't think that's unreasonable.

Mr. Davis, has --

MR. PASK: Let me just --

MR. DAVIS: Be quiet. Neil --

MR. PASK: We got -- first of all, the first incident --

THE COURT: Mr. Pask.

MR. DAVIS: Neil, be quiet, please.

THE COURT: Mr. Pask.

MR. DAVIS: Be quiet, please.

All right. First of all, Your Honor, this morning I gave Mr. Brauchle copies of police reports generated by the Nashville Police Department. Those would normally be provided after direct examination of witnesses.

However, I went ahead and gave them to him this morning, and I told Mr. Brauchle at the time that one report related to a UCW case that occurred on February the 10th, 1989, and I know that that extraneous was listed in our notice.

The other records relate to an aggravated assault conviction that occurred on July the 22nd of 1989.

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Again, those are police reports that normally I would not be required to turn over until I finished direct examination.

We have already provided counsel with a copy of the penitentiary packet from the Tennessee Department of Corrections, and within that packet is the judgment and sentence with -- that is related to the aggravated assault that occurred in Nashville.

Now, those officers are not scheduled to testify first this morning at all. We have several other officers from Memphis that are scheduled to testify, so if Mr. Brauchle or Mr. Johnson wishes to read those documents, they certainly have ample time, because we have several witnesses that we intend to offer before we get to those.

You know, I -- frankly, I don't -- I don't understand the problem here, since we have other witnesses ready to proceed, and if Mr. Brauchle requires a break sometime later today before we present those Nashville officers, we can take that up at that time, but right now we're ready to proceed with our officers from Memphis.

MR. BRAUCHLE: Well, the problem's the same. I got the Memphis reports this morning, and they're the exact same problem. I don't know which are which. I've got to go back and -- and correlate them to the notice that we've got to see if there are any convictions.

I talked to Mr. Pask, and I'm unsure as to what

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resulted in a conviction that they can show, and which officers are present or not. And I think that I'm entitled to that under just fundamental fairness to my client to ask for a brief delay to read these. I'm not asking to shut the trial down, or a continuance, but, you know, we've got like about 30 pages of grand jury testimony.

We've got a bunch of lab reports and other things that were not provided us with before, and all I'm saying is, let me read it now so I don't have to read it later. If I read it now, I can correlate it, which I think I can.

This trial will probably go -- this portion will probably go fairly smoothly, but we're -- we're faced otherwise with three minutes of testimony and 30 minutes of break after every one of these witnesses, and I'm -- I'm trying to avoid that, I'm sure, as much as the Court is.

THE COURT: The problem we encounter is, as I explained to y'all yesterday, we're not going to try it twice. I understand that that was --

MR. BRAUCHLE: I'm not asking for any hearings.

THE COURT: Well, it seems to me a minute ago you were asking for a hearing on every witness that might come in about proving it up.

MR. BRAUCHLE: Well, if they can't -- I think I'm --

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THE COURT: Now I'm talking at this time.

So I understand that that -- that I was quite lenient about that during the -- the guilt-determination phase of the trial, and I'll let everyone know that you might want to review 37.071 before we got here today; that I don't plan to try it twice. I don't plan to listen to all the evidence once, and then listen to all the evidence the second time in front of a jury because the defense doesn't know what the State's witnesses are going to say. I think that's the nature of the trial in a criminal courtroom. I don't make the rules or the laws. That's somebody else's job, but that seems to be how it is.

I believe that the State has complied with -- with the requirements that I can place on them as far as the Rules of Criminal Evidence are concerned, and the associated laws in that area.

I intend to go ahead and bring in some witnesses and start. We'll take a break at some point in time this morning, or our lunch break, and then we'll see where we stand, so that's my ruling.

MR. BRAUCHLE: So the Court's saying that I don't have -- that I'm not going to be given an opportunity to read these documents?

THE COURT: I didn't say that, but I said we're going to start testimony right now.

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MR. BRAUCHLE: Well, reading documents after the witnesses have testified is hardly me being able to provide effective assistance for my -- my client.

You know, the problem that I'm faced with is that I don't know if any of these witnesses can in any way identify independently the person that they're expected to testify about, and I think that's a threshold issue in regard to putting on evidence in regard to my -- my client, because looking through here, and especially from the stuff I was provided, there's no identifiers that show that -- that somebody named Gregory Wright in Tennessee is the same person named Gregory Wright in Texas.

And I -- I think unless the State can -- can pass that threshold, that anything we're attempting to go into this morning is -- is certainly objectionable, I think.

THE COURT: All right.

Jan, bring them in.

MR. BRAUCHLE: Is my objection overruled?

THE COURT: It is.

MR. PASK: Your Honor, so the record is straight, on these first --

MR. DAVIS: Let's go.

MR. PASK: Forget it. I don't need to.

(Jury present)

THE COURT: You may be seated. Good morning,

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1 ladies and gentlemen.

2 Mr. Davis?

3 MR. DAVIS: Your Honor, at this time we have
4 several witnesses that we wish to have sworn, if I might have
5 them all brought in.

6 THE COURT: All right.

23A 7 MR. DAVIS: Just step right up front.

8 THE COURT: Would each of you raise your right
9 hand, please?

10 (15 witnesses were sworn by the Court.)

11 THE COURT: All right. You may lower your hand.

12 Ladies and gentlemen, it appears that 15
13 witnesses, I believe, each of them answering in the
14 affirmative.

15 The rule of evidence has been invoked. That
16 means that if you are not testifying, you must wait outside
17 the courtroom. You can't look in through the windows. You
18 can't be where you can hear what the testimony is.

19 You also cannot talk with people about their
20 testimony, what questions were asked or what they said.

21 You may speak with the attorneys for either
22 side, or their investigators, but don't do that with other
23 witnesses present.

24A 24 Mr. Pask, who will your first witness be?

25 MR. DAVIS: The State calls Charles Tarwater.

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THE COURT: Okay. Mr. Tarwater, you may remain inside, but the rest of you, wait back outside the courtroom.

Sir, once you're seated, that chair doesn't move much. If you'd pull the microphone toward you, please speak loudly, clearly, and slowly into the microphone.

THE WITNESS: Yes, sir.

THEREUPON,

OFF. CHARLES E. TARWATER. JR.

was called as a witness by the State, having been first duly sworn by the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PASK:

Q. Would you state your name and spell your last name for the record.

A. I'm Off. Charles E. Tarwater, Jr. The spelling of my last name is T-a-r-w-a-t-e-r.

Q. And how are you employed?

A. I'm employed by Shelby County Sheriff's Office as a deputy sheriff.

Q. And how long have you been so employed?

A. Since March of 1987.

Q. And where is Shelby County located?

A. Memphis, Tennessee.

Q. All right. Let me ask you if you were employed back on January the 13th of 1988?

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A. Yes, I was.

Q. And what were your duties at that time?

A. I was assigned to the Uniform Patrol Division working District Two, which is in southeast Shelby County.

Q. Let me ask you if on January the 13th of 1988, you had an occasion to respond to a Wendy's restaurant located in the 6200 block of Winchester?

A. Yes, I did.

Q. And what was the nature of that call?

A. It was a complaint call on a suspicious person parked in the rear of the restaurant.

Q. All right. And did you respond to that location?

A. Yes, I did.

Q. And what did you find upon your response there?

A. As soon as I arrived at the Wendy's restaurant, my partner, who was in a separate car, Off. Brown, had pulled in to the back of the restaurant right in front of him. He pulled up to a Ford Granada that was parked in the drive-through, and the vehicle was not in the drive-through lane, but pulled up to the curb beside the drive-through. It was occupied by one male white.

Off. Brown had pulled his squad car up to the car's bumper, the rear bumper. At that point, I pulled my car up behind Off. Brown and I got out and approached the driver's side door with Off. Brown.

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Q. Were you in full police uniform at that time?

A. Yes, I was.

Q. And was Off. Brown in full police uniform?

A. Yes, he was.

Q. And were you in marked squad cars?

A. Yes, we were.

Q. And were you traveling alone, or did you have somebody in the car with you at that time?

A. I had a brand-new officer, Off. Morris, who was riding as my partner in the car with me.

Q. All right. After you got out of your squad car and approached the Ford Granada, what did you observe?

A. I observed this male white sitting in the car with gold paint around his face.

Off. Brown knew who he was. I took it that he did, because I told him -- he said, Gregory, --

MR. BRAUCHLE: Your Honor, we would object to hearsay.

THE COURT: Sustained.

BY MR. PASK;

Q. What did Off. Brown say at that time?

MR. BRAUCHLE: Your Honor, once again we would object to hearsay.

THE COURT: Sustained.

BY MR. PASK:

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Q. Do you see the person who was in that Ford Granada here in court today?

A. Yes, I do.

Q. And could you identify him?

A. He's the gentleman with the gray jacket and the blue tie, sitting.

MR. PASK: Let the record reflect that the witness has identified the defendant in open court.

THE COURT: It shall.

BY MR. PASK:

Q. And what did Off. Brown say to him?

MR. BRAUCHLE: Your Honor, once again we would object to hearsay.

THE COURT: Sustained.

BY MR. PASK:

Q. Did Off. Brown say something to the defendant?

MR. BRAUCHLE: Your Honor, once again we would object to hearsay

THE COURT: Overruled, as far as that question.

A. (Nods head.)

BY MR. PASK:

Q. And after Off. Brown said what he said to him, what happened then?

MR. BRAUCHLE: Your Honor, once again we would go into hearsay -- we would object to hearsay.

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1 THE COURT: Overruled.

29A 2 A. He cranked his car, turned around and gave Off. Brown
3 the finger.

4 BY MR. PASK:

5 Q. Now who gave Off. Brown the finger?

6 A. The defendant.

7 Q. Okay.

8 A. He picked up the bag of plastic -- the bag of paint
9 that was sprayed into a loaf bread, stuck it to his nose, and
10 then pulled the car down in drive and jumped the curb and
11 exited the Wendy's lot.

12 At that time myself, and Off. Brown, and Off. Morris
13 all got in our squad cars and pursued the subject off the lot
14 westbound on Winchester Road.

15 Q. What time of day was this?

16 A. This was -- it was rush hour. In the afternoon.
17 People were coming home from work from downtown Memphis and
18 the streets were heavily populated.

19 Q. And, so, you and your partner get back in your squad
20 car, and Off. Brown gets back in his squad car; is that right?

30A 21 A. That's correct.

22 Q. And what happened then?

23 A. The Ford Granada sped westbound on Hickory Hill to
24 Ridgeway Boulevard, in excess of 60 miles an hour, which the
25 speed limit, in that area was 45.

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There's a large mall at that location. He turned up into the mall, went around the mall parking lot. Then he exited back out onto Winchester, went south on Ridgeway Boulevard, which circles around behind the mall, came out to Hickory Hill where he disregarded the stop sign at that location, went back north on Hickory Hill to Winchester, came back west on Winchester towards the Wendy's again, at which time he turned up and cut across the lawn, went up into the mall parking lot, came back out, came into the opposing lane of traffic where he was meeting cars head on that were eastbound.

He came up to a light, at which point the traffic had him blocked, and he stopped.

Myself, and Off. Brown, and Off. Morris exited our vehicles again. We surrounded the car with our weapons drawn and ordered him to get out of the car.

Q. And where were you positioned around the car?

A. I was at my driver's door.

Off. Morris was somewhere around towards the front of the vehicle. Exact, I can't pinpoint.

Off. Brown was at the other side of the vehicle. The panic in the public -

MR. BRAUCHLE: Your Honor, we would object to anything in regard to this unless they can show that there's -- he has personal knowledge.

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THE COURT: All right. Overruled.

MR. BRAUCHLE: Note our exception.

A. The vehicles parted that had him blocked.

BY MR. PASK:

Q. Okay. You're right out there in the middle of the roadway; is that right?

A. Yes, sir.

Q. And what kind of a road are we talking about?

A. We're talking a three lane divided - it's a rather large street. It's three lanes each way, and it's divided with a median.

Q. And, so, the three of you are out there with your weapons drawn on this vehicle.

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Again, you're in full police uniform.

A. Yes, sir.

Q. What happened after you got out of your squad car and surrounded the vehicle?

What action did the defendant take at that time? Did he get out of his squad -- out of his car?

A. No, he did not. The traffic in front of him that had him blocked parted, and at that point, he took off again, nearly striking Off. Morris.

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He went down the street, turned around, came back east, ran into the back of another car, a public -- somebody in the public's car.

Q. This is a civilian car; is that right?

A. A civilian car.

Q. What happened then?

A. Off. Brown pulled up behind him, at which point he put it in reverse and rammed Off. Brown's squad car. Then he pulled up onto the sidewalk, went down the sidewalk towards Ridgeway eastbound, and shot out into the intersection with the red light against him. Traffic was moving in both directions.

He continued through the light, nearly getting struck by several vehicles, to --

MR. BRAUCHLE: Your Honor, we would object to the narrative.

THE COURT: Mr. Pask, will you

BY MR. PASK;

Q. What happened then?

A. He continued back to the Wendy's restaurant where he pulled up in the parking lot against a utility pole that was parked on the edge of the lot, just pulled up and parked like he was there to shop.

Q. Approximately how long did this chase take place?

A. 15 minutes, maybe. 10 to 15 minutes.

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1 Q. All right. And did you have your lights and siren on
2 during this entire time?

34A 3 A. Yes, I did.

4 Q. Other than when the defendant was caught in traffic,
5 did he ever pull over?

6 A. No, sir, he did not.

7 Q. And again, could you relate what kinds of traffic
8 violations he committed during this chase?

9 A. There were speeding, reckless driving, disregarding
10 red lights, disregarding stop signs, leaving the scene of
11 accidents. It was several.

12 Q. Okay.

13 A. I don't recall right offhand.

14 Q. But he led you right back to the original Wendy's; is
15 that right?

16 A. Yes, he did.

17 Q. And what happened after he got back to the Wendy's?

18 A. When he pulled up into the Wendy's parking lot, I
19 pulled my squad car up directly behind his at an angle to
20 block him in against the light pole. At that point,
21 Off. Morris's door was right next to his car. I told
22 Off. Morris to get out and break the window to get him out of
23 the car.

35A 24 At that time I came around. Off. Morris broke the
25 driver's-side window.

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Q. What happened then?

A. I opened the door, and when I opened the door, Mr. Wright laid down in the seat and kicked at me with his feet. I caught his foot and started dragging him out backwards, at which time he picked up a clawhammer, a steel clawhammer.

Q. Where did he get this clawhammer from?

A. It was in the console area where the hump is in the floorboard.

Q. And when you say a "clawhammer", is it a regular carpenter's hammer with a claw on the end of it?

A. Yes, it is.

Q. Okay. So he picked up the clawhammer. What happened then?

A. When he did, I tried to take the defensive position by coming back against the door post, still hanging onto his leg, dragging him out. He was using the hammer, I felt, as a weapon against me.

At that time the other officers -- the other officers had arrived on the scene and they started using nightsticks striking him on the leg that I had exposed, and disarming him.

Q. All right. Could you go into a little bit more detail about how he used that clawhammer?

A. He had the hammer drawn back in a manner that would -- to strike anyone that could get close to his body,

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with the hammer.

Q. And were you able to control his arm?

A. At that point; no, sir. It wasn't until the nightsticks, or batons were used, that we knocked the hammer from his hand.

We took him to the ground, at which time the subject stood back up, continuing to fight us.

Myself, I was continuing hollering, "Quit fighting. Quit fighting." And he continued. It seemed like the more that we struggled with him, the more he fought.

At that point I placed my foot behind his heel and I had him around the waist, and turned and twisted and took him to the ground.

Off. Brown had him around the neck and head area to protect his head in case any blows from the nightstick, or the baton, should - would not cause him severe injury.

Q. All right. And was he placed under arrest at that time?

A. Yes, he was.

Q. Was he handcuffed?

A. Yes, he was.

Q. And did he cooperate when you handcuffed him?

A. He didn't cooperate until we got him handcuffed. We had to forcibly bring his hands behind his back to handcuff him.

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Q. After you got him arrested, what did you do, did you take him to the hospital?

A. Yes, I did. I transported him to the city of Memphis hospital, which is known as the Elvis Presley Memorial Trauma Center, or the Med.

Q. And what was the purpose of that?

A. That was to have any injuries that he may have sustained during the struggle checked and treated.

Q. Okay. In your opinion, was the defendant willing to use that clawhammer on you?

MR. BRAUCHLE: Your Honor, we would object to this in that there's been no proper predicate laid.

THE COURT: Overruled.

BY MR. PASK;

Q. In your opinion, was that defendant, Gregory Edward Wright, going to use that clawhammer on you as an officer?

A. Yes, he was.

Q. So the defendant was arrested, taken to the hospital, and then he was booked in after that, I take it; is that right?

A. That's correct. We left him at the police holding area of Med where he was examined, and then the jail division transported him to the Shelby County Jail located at 201 Poplar.

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Q. Let me take you to a point in time approximately a week later on January the 22nd, 1998. Did you have an occasion to respond to that same Wendy's?

A. Yes, I did.

Q. And what was the nature of this call?

A. It was a complaint call by Mr. Wright's wife, estranged wife, who worked at the Wendy's restaurant, that we found out after the first incident.

Q. She was - she had called and said Gregory Wright --

MR. BRAUCHLE: Your Honor, we would object.

BY MR. PASK:

Q. You can't go into that. Strike that.

So did you respond to that location?

A. Yes, I did.

Q. And what did you observe when you responded to that location?

A. Shortly after I arrived, Mr. Wright pulled up onto the lot driving the Ford Granada that we had chased several days prior.

Q. And what did you observe at that time?

A. We talked to him, found that he had a strong odor of paint about his person. He had mineral spirits, which is paint-thinner-type stuff in his car, a loaf of bread with fresh sprayed paint in it, and then again, another gold ring around his face.

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41A 1 Q. Okay. So that was gold paint; is that right?

2 A. Gold paint, yes.

3 Q. All right. And this is just some nine days after
4 that first incident; is that correct?

5 A. That's correct.

6 Q. And this time when you placed him under arrest, did
7 he give you any problems?

8 A. No, he did not. He was very agitated that he was
9 going back to jail, and he was agitated at his wife for
10 calling us.

11 Q. Okay. All right. But he didn't lead you on a chase
12 or pull a clawhammer on you this time.

13 A. No, this time he did not.

14 Q. Okay. All right.

15 MR. PASK: I'll pass the witness.

16 THE COURT: Mr. Brauchle?

17 CROSS-EXAMINATION

18 BY MR. BRAUCHLE:

19 Q. Off. Tarwater, have you got any reports that you
20 referred to in regard to this?

21 A. I filled out an arrest -- arrest record.

22 Q. Did you bring that with you?

23 A. I don't have them personally.

24 Q. Could we be provided with that, Your Honor?

42A 25 MR. PASK: Your Honor, they've already been

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provided with them.

THE COURT: Well, if both sides would approach the bench for a moment.

(Off-the-record bench conference was had.)

BY MR. BRAUCHLE:

Q. So you didn't bring any police report in regard to any of this?

A. I did not; no, sir.

Q. Where is that?

A. The RNI section of the Shelby County Sheriff's Department keeps those records. I'm sure that --

Q. When's the last time you looked at it?

A. I looked at it today.

Q. And where is what you looked at?

A. The prosecutor has it, sir.

Q. And how many pages was the report that you looked at?

A. It was an Affidavit of Complaint and an arrest ticket, which the arrest ticket only had one side. The back side was not available to me.

Q. So we don't know where the back side is, right?

A. No, sir.

Q. The front side that you talked about just goes up to when you first approached him, right?

A. Yes, sir.

Q. So all this other stuff about the big fight with the

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clawhammer and all of that, that's not present today, is it?

A. If it's not in the affidavit.

Q. Well, you know it's not present today, don't you?

A. Yes, sir.

Q. Huh?

A. Yes, sir.

Q. Okay. And you know that -- that all these led to traffic charges, -- right? --

A. Yes, sir.

Q. -- and you released the car back to his wife right there at the Wendy's, right?

A. I don't recall whether we released the car at that time.

Q. Well, if your report says that, you wouldn't argue with it, would you?

A. That's right.

Q. Okay. And then, what, eight days later, you go right back to the same Wendy's --

A. Yes, sir.

Q. -- where his -- where his estranged wife's working, right?

A. Yes, sir.

Q. So he comes out there; she calls y'all. He comes out there; she calls y'all, right?

A. Yes, sir.

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1 Q. Y'all arrest him out there at the Wendy's twice,

2 A. Yes,

3 Q. And, basically, what you're here to tell the jury is
4 that he huffs paint and drives bad, right?

5 A. No, sir. Like I said, as far as the arrest ticket
6 and the charges that were placed on him, he was also charged
7 with assault, and that was for the use of the hammer.

47A 8 Q. Okay. And he was charged with it, but you don't know
9 what happened on that, do you?

10 A. No, sir. I don't know if he copped a plea in
11 Tennessee State Court or not.

12 Q. Well, the question was, you don't know what happened
13 on it, do you?

14 A. I don't recall; no, sir.

15 Q. In fact, you don't know what the disposition on any
16 of those matters were, do you?

17 A. I was never subpoenaed; no, sir.

18 Q. And at the most, -- well, let's back up.

19 He wasn't charged with aggravated assault on a police
20 officer, was he?

21 A. I believe under Tennessee statute, that's what he was
22 charged with at that time.

23 Q. What's that called?

24 A. The statute has changed.

25 Q. What's that called?

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1 A. Just aggravated assault.

2 Q. Well, you looked at the deal today and you know that
3 that wasn't ever filed, don't you?

48A 4 A. I'm pretty sure it was on the arrest ticket, sir.
5 I'd have to look at it and tell you whether it was or wasn't.

6 Q. I just asked you about aggravated assault on a police
7 officer, didn't I?

8 A. Uh-huh.

9 Q. And you're telling this jury over here that that was
10 filed?

11 A. It should be on the arrest ticket or affidavit, sir.

12 Q. Well, but it's not, is it?

13 A. I -- not having it here in front of me right at this
14 time, I couldn't ...

15 Q. I'll ask you, sir, if you find aggravated assault on
16 a police officer on there.

17 A. It says "additional charges of assault and battery,
18 common law."

19 Q. That's not aggravated assault of a police officer, is
20 it?

21 A. That's assault under the Tennessee system, sir.

22 Q. Sir, answer the question.

23 MR. PASK: Objection, Your Honor. He has.

24 THE COURT: Sustained.

49A 25 BY MR. BRAUCHLE;

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Q. Y'all have a charge of assault on a police officer, don't you?

A. Just - it's either aggravated assault or nonaggravated now. Back then, it was never aggravated assault on a police officer. It's -- it's just either assault, or aggravated assault.

Q. Well, in any event, you don't know if it was ever filed or not, do you?

A. I charged him with it with my affidavit.

Q. Okay. But don't know if it was filed.

A. As far as whether he copped a plea in the court, I couldn't --

Q. No, I said filed.

A. I filed the charges with the affidavit.

Q. Then they have to be processed through a filing agency, don't they?

A. Yes, I'm sure. I'm sure they are.

Q. So you come back out there, and it's the same car, same Wendy's, same wife, same person a week later, right?

A. Yes, sir.

Q. Maybe a new bag of paint, right?

A. I'm sure it was.

Q. Okay.

MR. BRAUCHLE: We'll pass the witness.

THE COURT: Anything else in this - regard to

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this witness?

MR. PASK: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. PASK;

Q. Sir, regarding the chase and the incident with the clawhammer, that's all contained within the affidavit of complaint, is it not?

A. Yes, it is.

Q. And the charges are contained in detail in that; is that right?

A. Yes, they are.

Q. And you had a chance to review that report prior to testifying; is that correct?

A. That's correct.

Q. So this isn't something that you came up with out of the blue, is it?

A. No, sir, it is not.

Q. Was this simply just a case of, quote, "bad driving"?

A. No, sir, it was not.

Q. How would you characterize it?

A. It was a dangerous situation. We had several people's lives at stake, including the public, the safety of the public.

MR. PASK: All right. I'll pass the witness.

THE COURT: Mr. Brauchle, anything else?

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MR. BRAUCHLE: May we approach the bench,

Your Honor?

THE COURT: You may.

(Off-the-record bench conference was had.)

RE CROSS-EXAMINATION

BY MR. BRAUCHLE:

Q. Okay. I think Mr. Pask asked you this, but after all this that you've testified in regard to, y'all ended right back up at the -- the Wendy's, right?

A. That's correct.

Q. Where he pulled into a parking space, right?

A. That's correct.

Q. And then y'all took him to the hospital.

A. That's correct.

Q. Is that correct?

A. That's correct.

Q. What was he admitted to the hospital for?

A. I'm not sure that he was admitted. He was turned over to police holding at the hospital.

Q. Wasn't he admitted for the injuries he received from y'all --

A. From --

Q. -- set upon him with the batons?

A. Yes, sir.

MR. BRAUCHLE: We'll pass the witness.

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MR. PASK: No further questions.

THE COURT: All right. Off. Tarwater, you may
step down.

THE WITNESS: Thank you.

THE COURT: The State may call its next witness.

MR. PASK: The State calls Bennet Morris.

THEREUPON,

SGT. BENNETT MORRIS

was called as a witness by the State, having been previously
first duly sworn by the Court, was examined and testified as
follows:

THE COURT: Sir, if you'd just have a seat up
here on the witness stand

THE WITNESS: Thank you, sir.

THE COURT: Once you're in that chair, it
doesn't move much, but if you'd pull the microphone to you,
and please speak Loudly, clearly, and slowly into the
microphone.

THE WITNESS: Okay.

THE COURT: Mr. Pask, you may proceed.

DIRECT EXAMINATION

BY MR. PASK.

Q. Would you state your name and spell your last name
for the record?

A. Bennett Morris, M-o-r-r-i-s.

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54A 1 Q. How are you employed, sir?

2 A. I'm a sergeant with the Shelby County Sheriff's
3 Office.

4 Q. And how long have you been so employed?

5 A. Since -- I was a reserve deputy from '87 till January
6 of '89, and was employed full time January of '89.

7 Q. Let me take you back to January the 13th of 1988, and
8 I'll ask you if you were riding with Dep. Tarwater on that
9 date?

10 A. Yes, sir, I was.

11 Q. And did you have an occasion to respond with him to a
12 call at the Wendy's restaurant at the 6200 block of
13 Winchester?

14 A. Yes, sir.

15 Q. After you arrived, what did you observe in that
16 parking lot?

17 A. Behind the Wendy's, there was a couple parking
18 spaces, and we observed a green Ford Granada. And another
19 officer was there with us. They said, "This is the car."

20 We walked up to the car and observed the subject,
21 which we later found to be Mr. Wright, in the car.

22 Q. All right. And do you see Mr. Wright in court today?

23 A. Yes, sir, I do.

55A 24 Q. Could you identify him?

25 A. He's sitting over there. He's got a dark blue tie

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and a light blue shirt. Kind of a grayish jacket.

MR. PASK: May the record reflect that the witness has identified the defendant in open court?

THE COURT: It shall.

BY MR. PASK:

Q. After you approached the vehicle, did one of the other officers say something to the defendant?

A. Yes, sir.

Q. And after he said that, what did you see the defendant do?

A. The defendant was -- had a plastic bag to his face inhaling what we later found to be paint, and he put the bag up, looked over, put the car in drive and jumped the curb, and took off.

Q. All right. And were you in full police uniform at that time?

A. Yes, sir.

Q. And were you in marked squad cars?

A. Yes, sir, we were.

Q. What happened then?

A. We continued out the parking lot and he led us on a pretty extensive chase.

MR. BRAUCHLE: Your Honor, we would object to this as being repetitive and redundant in this regards. It's been asked and answered.

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THE COURT: Overruled.

BY MR. PASK:

3 Q. Okay. How would you characterize the driving?

4 A. Very erratic. He led us on a small chase, or pretty
5 extensive chase around a shopping mall, several businesses,
6 and we came back up -- back towards the location we had left
7 from.

8 At one point in time we had him pinned up in traffic.
9 Myself, I jumped out of the squad car, ran around, pulled my
10 weapon, put it on him trying to get him to get out of the car.

11 Q. Where were you at that time when you pulled the
12 weapon on him?

13 A. I had run past the driver's side of the car and I was
14 in front of his vehicle at that time.

15 Q. Okay. And were you towards one side of his vehicle?

16 A. I was more towards the driver's side, but pretty --
17 pretty well centered up on the car. I was trying to get him
18 to stop and get out of the car.

19 Q. Just right in front of the vehicle.

20 A. Yes, sir. It was no -- he had no problem seeing me.
21 We were looking at each other.

22 Q. Did you say anything to him at that time?

57A 23 A. Yes, sir. I was repeatedly screaming, "Get out of
24 the car. Get out of the car." Things like that. And at that
25 point, he continued forward. I jumped out of the way.

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Myself and my partner jumped back in the car, and we continued our chase.

Q. In your opinion, if you had not jumped out of the way, would he have run you down?

A. Yes, sir, either that, or I would have been forced to use a weapon.

Q. What happened then?

A. We continued to the next intersection. At that point he crashed into a car, backed into a squad car, went forward, crashed into another car, and then pulled back into the Wendy's, the same location where the chase had originally started.

Q. All right. And what happened at the Wendy's?

A. At the Wendy's, he pulled up in front of a telephone pole. We blocked him in with our squad cars. I got out of the car, got to the front driver's side of his car; smashed the windshield. We smashed the side window out and extracted him out of the car.

Q. Okay. And as you were pulling him out of the car, what happened?

A. He was kicking and fighting.

When the other officers got his legs, got him partially out of the car, I was on one side of the door, had the door held open. They were struggling to get him out. As they were pulling him out, he reached into the passenger

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compartment of the car and came out with a steel clawhammer.

Q. All right. And what did he do with that clawhammer?

A. He was trying to use it. We were able --we had enough people, we were able to control him, and as soon as we got clear of the car, we were able to force him to the ground, and we forcibly removed the hammer from his -- from his control.

Q. And was he handcuffed at that time?

A. Yes, sir, he was.

Q. And was he taken to the hospital?

A. Yes, sir, he was.

Q. All right.

MR. PASK: I'll pass the witness.

THE COURT: Mr. Brauchle?

CROSS-EXAMINATION

BY MR. BRAUCHLE:

Q. Officer, have you got any notes that you're referring to?

A. No, sir, they -- I have seen a copy of our affidavit and the arrest ticket.

Q. When did you see that?

A. First time I saw it, it was the night I wrote it. The second time was probably a month ago. Maybe a month and-a-half.

Q. So you wrote it?

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1 A. Yes, sir, I wrote the -- that is my writing.

2 Q. The affidavit of complaint is your writing?

3 A. Yes, sir, it is.

4 Q. How come you left out the part about being out in
5 front of the car and being -- almost being forced to use a
6 weapon and all that?

7 A. That, I do not know.

8 Q. Well, that's some pretty serious stuff if it really
9 happened, isn't it?

10 A. Yes, sir, it is. The only --

11 Q. But you just left it out, didn't you?

12 A. Yes, sir. That's commonly referred to as --

13 Q. Leaving it out?

14 A. I was a rookie at the time. I left that out.

15 All it was then, --

16 Q. But you --

17 A. -- it would have been a felony charge against him.

18 Q. Pardon me a second.

19 You showed up here nine years later, and you
20 testified to something that, as a rookie, would have been
21 pretty -- a pretty exciting event, wouldn't it?

10:01A 22 A. Yes, sir, it was.

23 Q. But you just left it out.

24 A. Yes, sir.

25 Q. So here, nine years later, in the middle of a

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1 death-penalty trial, you decide to put it back in, right?

2 A. Yes, sir. I remember doing it.

3 Q. You remember leaving it out, or you remember --

4 A. I remember both.

5 Q. Oh, okay. So I guess from January 13th of '88, till
6 December 9th of '97, nobody's heard about this until today,
7 right?

8 A. Heard about what?

9 Q. What you've testified to today.

10 A. No, sir.

11 Q. Well, the DA's heard about it, right?

12 A. Correct. So someone has --

13 Q. But you haven't shared it with anybody else, have
14 you?

15 A. No, sir.

16 MR. BRAUCHLE: Pass the witness.

17 REDIRECT EXAMINATION

18 BY MR. PASK:

19 Q- Do you remember this event perfectly well, Officer?

20 A. Yes, sir, I do.

10:02A 21 MR. PASK: I'll pass the witness.

22 MR. BRAUCHLE: Pass the witness.

23 THE COURT: Off. Morris, you may step down.

24 The State may call its next witness.

25 MR. PASK: The State calls Off. Quinn.

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1 THEREUPON,

2 OFF. TED QUINN

3 was called as a witness by the State, having been previously
4 first duly sworn by the Court, was examined and testified as
5 follows:

6 THE COURT: Officer, if you'll have a seat on
7 the witness stand. You were sworn in a minute ago, correct?

8 THE WITNESS: Yes, sir.

9 THE COURT: All right. I'm going to ask you to
10 speak loudly, clearly, and slowly into the microphone for me.
10:03A 11 Mr. Pask?

12 DIRECT EXAMINATION

13 BY MR. PASK:

14 Q. Would you state your name?

15 A. Ted Quinn.

16 Q. And would you spell your last name for the record?

17 A. Q-u-i-n-n.

18 Q. How are you employed, sir?

19 A. I'm a police officer with the City of Memphis,
20 Tennessee.

21 Q. Okay. And how long have you been a police officer
22 with the city of Memphis, Tennessee?

23 A. Almost 17 years this year.

24 Q. And what division are you currently assigned to?

25 A. Right now I'm in uniform patrol.

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1 Q. All right. Let me take you back to August the 4th of
2 1988, and I'll ask you if you had an occasion to respond to a
3 call at that time?

4 A. Yes, sir, I did.

5 Q. And would that have been at 4466 Buxway?

6 A. Yes, sir.

7 Q. All right. And what was the nature of that call?

8 A. It was a disturbance. It came out as a disturbance.

9 Q. All right. And when you got to the scene of that
10 disturbance, what was the situation?

10:04A 11 A. Well, I was met by a female, and she had -- she was
12 upset, she was crying. And she had obviously been beaten, and
13 although I tried to remember what the extent and the nature of
14 her injuries were, I can't remember. I just remember that she
15 had obviously been assaulted. She said that her husband was
16 responsible for the assault.

17 MR. BRAUCHLE: Your Honor, we would object to
18 hearsay.

19 THE COURT: Overruled.

20 BY MR. PASK;

21 Q. Okay. All right. And was there another party
22 present there at that time?

23 A. Another officer?

24 Q. Another -- another individual, another white male at
25 that time?

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2 A. Yes. There were two white males in the car which she
pointed out.

3 Q. Okay.

4 A. Right.

5 Q. Okay. So she pointed out a car.

6 A. Yes, sir.

7 Q. Okay. That contained the person who assaulted her;
8 is that right?

9 A. That's what she said; yes, sir.

10 Q. All right. And did you make contact with the
11 individual that she alleged had assaulted her?

12 A. Yes, sir.

13 Q. Okay. And what did you do at that time?

14 A. Well, at that time the State of Tennessee did not
15 have a domestic violence type of law, --

10:05A 16 MR. BRAUCHLE: Your Honor, we would ask the
17 witness to be responsive.

18 THE COURT: Overruled.

19 BY MR. PASK:

20 Q. Okay. You may answer the question.

21 A. Okay. At that time, we didn't have a
22 domestic-violence law, so basically all we had was a
23 warrant-type situation. From the information I had, it was
24 just going to be a simple assault.

25 I asked the gentleman to step out of the car, which

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he did, and I asked him what happened. I don't remember what his response was. And as I was walking him to the squad car, I was going to place him in the back seat of the car until I could determine what happened. He turned and hit me in the face, -- and I was -- I was riding in a two-man car at the time.

My partner was somewhere off in the distance speaking to his wife, and a foot chase ensued through the apartment complex out into the field of a nearby school where he was tackled and arrested at that time.

Q. Okay. So you get him out of the car; is that right?

A. Yes, sir.

Q. Do you think that you'd be able to identify this person in open court?

A. No, sir, I don't think so.

Q. Okay. Is each of your reports assigned a case number?

A. A book-in number.

Q. All right.

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

THE COURT: You may.

(State's Exhibit No. 92

was marked for identification purposes.)

BY MR. PASK:

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1 Q. Let me show you a report and ask you if this is the
2 report that you generated?

10:07A 3 A. Yes, sir, it is.

4 Q. All right. And does it have a book-in number on it?

5 A. Yes, sir, it's right up here, the top-right corner.

6 Q. And what would that book-in number be?

7 A. 88217119.

8 Q. Okay. And after a prisoner is booked into jail, does
9 that book-in number remain with him?

10 A. Yes, sir.

11 Q. Okay.

12 A. That's the identifying number they use through the
13 entire process.

14 Q. All right. And let me show you what's been marked as
15 State's Exhibit Number 92, and I'll ask you if this is the
16 book-in photo regarding the individual you arrested from that
17 date?

18 A. Yes, sir, this is it.

19 Q. And does it contain that book-in number on it?

20 A. Yes, sir.

21 MR. PASK: The State offers into evidence
22 State's Exhibit Number 92.

10:08A 23 MR. BRAUCHLE: Your Honor, we would object to
24 State's Exhibit 92 in that it does not, in fact, contain the
25 book-in number.

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1 THE COURT: All right. Would y'all approach the
2 bench, please?

3 (Off-the-record bench conference was had.)

10:09A 4 THE COURT: Mr. Pask?

BY MR. PASK:

6 Q. Now having taker a look at the photograph contained
7 in State's Exhibit Number 92, does that photograph appear to
8 be this individual right here?

9 A. Yes, it does.

10 Q. Okay

11 MR. PASK: Let the record reflect that the
12 witness has identified the defendant in open court.

13 THE COURT: All right.

14 MR. PASK: The State would re-offer State's
15 Exhibit Number 92.

16 MR. BRAUCHLE: We'd renew our previous
17 objection.

18 THE COURT: All right. That will be overruled.
19 State's Exhibit 92 will be admitted.

20 BY MR. PASK:

21 Q. Now you said that you got Mr. Wright out of the
22 vehicle; is that correct?

23 A. Yes, sir I don't recall whether he got *out* on his
24 own or I ordered him out, but somehow during the course of the
25 thing, he got out of the car; yes, sir.

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Q. Okay. And was he under arrest at that point?

A. No, sir.

Q. And what were you attempting to do at that time?

A. Determine exactly what we had; whether we had a misdemeanor assault, which would require a warrant for arrest, or whether we had an aggravated assault, which we could make an arrest on that.

At that point I just merely wanted to put him in the car to secure him until I figured out what kind of situation we had.

Q. Okay. So you were going to put him in your squad car.

A. Yes, sir.

Q. And, again, what happened on the way to your squad car?

A. I was behind him and I just loosely had ahold of his belt, or shirt, or something, some type of garment he had on, and as we approached the car, he just turned quickly and -- and hit me in the mouth and took off, -- which knocked me back quite away -- and then he took off running at that point, and I chased him, along with my partner.

Q. What did he hit you with?

A. Some part of his hand. I don't recall exactly. He just turned and spun in that direction. Some part of his hand.

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Q. Okay. And what did it do to your mouth?

A. It busted my lip open and chipped my tooth, which is still chipped today, but it was basically superficial.

Q. All right. So he hit you and ran; is that right?

A. Yes, sir.

Q. And which direction did he run?

A. South, if that helps you at all.

Q. All right. And he ran you through the parking lot; is that correct?

A. I'm sorry. Yes. Through the parking lot in a southward manner, right.

Q. All right. And what was south?

A. In what regards?

Q. Was it an open field?

A. No. Initially, it was through an apartment building which was L-shaped and had hallways in the middle of it. He went through there and then went back east into the open field, which was basically a playground for the school, although the school was closed at the time.

Q. Now were you alone at that time, or did you have a partner?

A. Right. I was - I was riding in a two-man car that day.

Q. And who was your partner at that time?

A. Guy Edward Buck.

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1 Q. And did you notify Off. Buck that the individual was
2 running from you?

3 A. Right. He saw it. As soon as I got hit, I - I
4 don't remember exactly where he was positioned, but it seemed
5 to me that he had a better angle on the defendant than I did,
6 and I yelled for him, and he was actually the lead man in the
7 chase. He caught the defendant right before I did. Probably
8 about 30 seconds before I did.

10:12A 9 Q. Okay. Now how far did the chase go?

10 A. I'd say a quarter of a mile, maybe. Maybe a little
11 further than that. It was pretty lengthy.

12 Q. All right. And were you or the other officer ever
13 yelling at the defendant to stop?

14 A. I -- I don't recall.

15 Q. Okay. All right. And what was happening during the
16 chase, do you remember anything about that?

17 A. I was trying to get some more cars down there,
18 because he had a pretty good lead, initially. I didn't know
19 how far he would get away. I was radioing for some cars to
20 come into the area, and that was basically it.

21 Q. So you were letting Off. Buck handle the chase; is
22 that right?

23 A. Right. I was behind him. He was the main guy. I
24 was behind him.

25 Q. Oh, okay. And did you observe Off. Buck close in on

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him?

A. Right.

Q. And what happened after he closed in on him?

A. I don't recall exactly. I just remember I had fallen at that point, and tripped and fell, and everything had come off, and I was trying to gather up all my equipment, and by the time I looked back up, Guy Buck had caught him and they were scuffling in the field out in the little dirt area out there.

Q. And what did you do at that time?

A. I ran up to assist him, and -- but Guy couldn't get the handcuffs on him. He was wrestling around and kicking and everything else, so by the time I got up there, we both, the two of us were finally able to get the handcuffs on him.

Q. All right. And so the defendant didn't cooperate as you were trying to arrest him and handcuff him?

A. No. No, sir, not at all.

Q. Specifically, what was he doing?

A. Just resisting in general. Just resisting. We were trying to get the handcuffs -- just pulling away, and jerking away, and kicking at us, and just -- general resisting. I don't know any other way to describe it.

Q. All right. And did you finally get the handcuffs on him?

A. Yes, sir, after a struggle.

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Q. And when you were putting the handcuffs on him, was he cooperating?

A. No, sir.

Q. All right. So you forcibly put the handcuffs on him. What happened then?

A. I remember we were quite away from anything. We were out in this field. He refused to walk, I remember that. We had to drag him. I took it as an act of defiance. He could walk. He was healthy enough to walk, and that was basically -- by this time some other cars were pulling up.

Q. So he wouldn't even walk back to the squad car; is that right?

A. He did eventually, after dragging him quite away, but he eventually got to his feet and walked.

Q. All right. Was Off. Buck injured?

A. Yeah, he -- he broke his hand, and I don't remember exactly how it happened, but he actually had to have a cast. We both had to go to the hospital right after the deal. Mine was minor, but his was more extent. I remember he was -- they put a cast on it, and he had it on for several weeks.

MR. PASK: I'll pass the witness.

THE COURT: Mr. Brauchle?

CROSS-EXAMINATION

BY MR. BRAUCHLE:

Q. Off. Quinn, did you bring any notes with you?

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

2 Q. Did you review any reports?

3 A. Sir?

4 Q. Did you review any reports?

5 A. Yes, sir, I read over it yesterday, or the day
6 before.

7 Q. Were you the person who wrote that report?

8 A. No, sir.

9 Q. Who wrote it, Buck?

10:15A 10 A. No, sir. Stein, Dana Stein.

11 Q. I'm talking about the arrest report.

12 A. Yes, sir. He wrote it. We told -- he was writing --
13 that's actually his handwriting.

14 Q. Where it says "arresting officer", is you?

15 A. Right. And then you'll see in the far right block
16 there, it says the transporting officer was Stein.

17 We had both gone to the hospital, is the reason that
18 we just told him what had happened, and he wrote it down and
19 transported for us.

20 Q. Okay. So Buck didn't tell Stein about a broken hand,
21 right?

22 A. We didn't know it was broken at the time. It wasn't
23 until we got to the hospital later.

24 Q. And you didn't tell Stein about a chipped tooth,
25 right?

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1 A. No, sir.

2 Q. So basically today's the first time that that's come
3 out, right?

4 A. No, sir. It was -- it was common knowledge around
5 the department, but, no, everybody knew about it. It's just
6 that report was written prior to when we got to the hospital
7 and found out the extent of what had happened.

8 Q. Well, you knew you had a chipped tooth, I guess,
9 right when it happened, didn't you?

10:17A 10 A. No, I really didn't. It's a minor, minor chip. I
11 knew that my mouth had been busted open, but I didn't know
12 that it was chipped until I got to looking around at the
13 hospital and everything else.

14 Q. So it became major yesterday then, right?

15 A. No, it's not major. It's a very minor injury.

16 Q. Basically, this is a -- or was a domestic
17 disturbance, I believe?

18 A. Yes, sir.

19 Q. And Mr. Wright appeared to be intoxicated from paint?

20 A. He just appeared to be intoxicated to me. I don't --
21 I don't remember what -- in what regard, what the nature of
22 his intoxication was.

10:18A 23 Q. Well, you refreshed your recollection from the report
24 that said he was wild and crazed from paint, didn't you?

25 A. No, sir, I didn't write -- he was wild and crazy, but

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1 I don't remember whether he was on paint or not, what exactly
2 the extent of his intoxication was, or the reason for his
3 intoxication.

4 Q. So you'd argue with that?

5 A. I would argue with the fact that I don't know what he
6 was intoxicated on. I will state that.

7 Q. Okay. And I guess you're -- you're here to say that
8 as a general rule, people are -- are extremely cooperative
9 about being handcuffed, right?

10 A. No, that's not true.

11 MR. BRAUCHLE: We'll pass the witness.

12 THE COURT: Anything else, Mr. Pask?

13 REDIRECT EXAMINATION

14 BY MR. PASK;

15 Q. Well, as a general rule, when you stop somebody to
16 talk to them about an incident, do they hit you right in the
17 face?

18 A. No, sir, they don't.

19 Q. And do they lead you in a chase across a field for a
20 quarter of a mile?

21 A. No, sir.

22 Q. And then do they fight like a dog when you're trying
23 to arrest them?

10:19A 24 MR. BRAUCHLE: Your Honor, we would object to
25 leading.

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THE COURT: Overruled.

BY MR. PASK:

Q. You may answer.

A. No, sir, they don't.

MR. PASK: I'll pass the witness.

RE CROSS-EXAMINATION

BY MR. BRAUCHLE:

Q. Well, Off. Quinn, I think that you didn't ever testify to any of the things that Mr. Pask has just testified to, did you?

A. I'm sorry, I don't understand the question.

Q. You didn't testify about a quarter of a mile or any of this other stuff, did you?

A. Yes, sir, I did. That's an estimation, but, yeah, I - I said it was roughly a quarter of a mile. It's been ten years. I'm just trying to guess on that. It was fairly lengthy, though.

MR. BRAUCHLE: We'll pass the witness.

MR. PASK: Nothing else.

THE COURT: Off. Quinn, you may step down.

The State may call its next witness.

MR. PASK: The State calls Off. Buck.

THE COURT: Sir, if you'd have a seat on the witness stand.

You were previously sworn, correct?

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THE WITNESS: Yes, sir.

THE COURT: I'd ask that you speak loudly,
clearly, and slowly into the microphone.

You may proceed.

THEREUPON,

OFF. GUY BUCK

was called as a witness by the State, having been previously
first duly sworn by the Court, was examined and testified as
follows:

DIRECT EXAMINATION

BY MR. PASK:

Q. Would you state your name?

A. Guy Buck.

Q. And how do you spell your last name?

A. B-u-c-k.

Q. How are you employed, currently, sir?

A. I'm a case manager for a hospital in Jackson,
Tennessee.

Q. Are you a nurse?

A. I am.

Q. All right. How long have you been doing that?

A. About four years.

Q. Let me ask you, prior to that, were you employed by
the Memphis Police Department?

A. I was, from '87 until the summer of '91.

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Q. All right. And what were your duties with the Memphis Police Department?

A. I worked in the uniform patrol for about two and-a-half years, and spent two years as a detective in the Organized Crime Unit.

Q. Let me ask you, back on August the 4th of 1988, did you have a chance to respond to a domestic call on Bux Way there in Memphis?

A. It's actually Box -- I think it was Boxway, or Buxway -

Q. Okay. All right.

A. I did.

Q. And again, what was the nature of that call?

A. It was a domestic where a female had called and said that -

MR. BRAUCHLE: Your Honor, we would object to hearsay.

-THE COURT: Well, as far as the - you may cover the nature of the call.

THE WITNESS: I understand.

A. We responded to a domestic violence.

BY MR. PASK:

Q. Okay. After you arrived at the scene, what happened?

A. We were met by a female white, who I initially approached, and she initially informed us that her -

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1 MR. BRAUCHLE: Your Honor, once again we would
2 object to hearsay.

3 THE COURT: At this point, overruled.

4 BY MR. PASK;

5 Q. You may respond.

6 A. She informed us that her husband, who was also seen
7 in a vehicle, had been assaulting her earlier, or prior to our
8 arrival.

9 Q. Okay. You said "our arrival". Were you with another
10 officer?

11 A. Off. Quinn.

12 Q. All right. And where did he go at that time?

13 A. He immediately went toward where who -- it ended up
14 being the defendant, where Mr. Wright was in a vehicle, to
15 detain him while we spoke to the complainant.

10:22A 16 Q. Okay. So you were speaking to the complainant and
17 the other officer went and spoke to Mr. Wright; is that right?

18 A. That's correct.

19 Q. Did something happen during your conversations?

20 A. Actually, I don't even really know how far I got into
21 my conversation before Off. Quinn. All I heard him say was,
22 "Get him," and I looked back, and Ted had been hit in the
23 mouth, and the suspect was running through the apartment
24 complex.

25 Q. What did you do at that time?

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A. I gave foot pursuit. I started chasing him.

Q. And where did this chase lead?

A. Well, we initially ran through the apartment complex. I was identifying -- you know, telling him to stop. I got pretty close to him. I had my nightstick in my hand, and I was actually able to hit him with my nightstick, and he didn't stop, and I lost my nightstick and we continued to run through the complex.

We ran out across -- well, completely through the complex and then out into the field, which was a cutover power-line field, yeah, and that's where -- at that point we had run probably a half a mile or so, and I was right behind him and I was yelling at him, and he eventually just turned around to fight me.

Q. Okay. So you're running after him and you say -- he stopped, I take it; is that right?

A. Well, at -- after about a half a mile of me yelling at him, he finally just turned around. He didn't turn around and give. He turned around -- you know, I was -- I probably wasn't, you know, ten feet behind him at this time. He just turned around, and I just went to immediately, you know, bring him to the ground, and when that happened, of course, we both fell down and there was a significant struggle that ensued after.

Q. Okay. Describe that struggle.

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1 A. Well, like I said, initially it started with when he
2 turned around, I continued at him, and I did grab him. We
3 went to the ground, and I injured my right hand. At that
4 time, as a matter of fact, I actually broke my right hand.
5 And he continued to fight, and, of course, I was doing
6 everything I could to hold him down, and he was doing
7 everything he could to get away.

8 And at that time Off. Quinn came behind me and both
9 of us physically had to -- it was just everything we could do
10 to get him handcuffed. I mean, he never -- he never stopped
11 fighting. We had to physically, you know, fight both of his
12 arms to get him cuffed.

10:24A 13 Q. All right. And after you got him handcuffed, did he
14 cooperate with you at that time?

15 A. Mr. Wright never cooperated at any time with us.
16 When we got him handcuffed, of course, we were, as I said, at
17 least a half a mile probably from the squad car across a
18 field, you know, to the apartments. And we had to drag
19 Mr. Wright all the way back to the squad car because he
20 refused to walk. He just -- he would not -- he refused to use
21 any of his legs at all. He just was limp.

22 Q. All right. After you got him arrested, did you and
23 the other officer have to go to the hospital?

24 A. Both of us, I believe, were treated at Eastwood
25 Emergency Room.

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1 Q. And what was the nature of your injury?

2 A. I broke a bone in my right hand. It was just a
3 metacarpal bone in my right hand.

4 Q. And did you have to go on light duty as a result of
5 that injury, or were you off work for a time?

6 A. I was off work for -- of course, I can't remember the
7 exact amount of time, but I was off work for -- for quite a
8 bit of time.

9 I wore a cast for six weeks, and even stayed on light
10 duty after that. I had to work the desk until I was released
11 to full duty. It was probably eight or nine weeks.

10:26A 12 Q. All right. Does the hand still give you any pain?

13 A. "Pain" is probably not the right word for it, but
14 it's -- it's real unusual that -- that it does still hurt,
15 depending on what I'm doing, and it never fails that I can
16 remember, you know, exactly what happened, you know, because
17 it hurts frequently. Not -- not, you know, paining -- I'm not
18 on disability or anything like that, but, I mean, it is a
19 nagging injury that I've lived with ever since.

20 Q. Okay. Do you think that you'd be able to identify
21 Mr. Wright?

22 A. Yes, sir.

23 Q. Could you point him out?

24 A. The gentleman on the end of the defense table.

25 MR. PASK: May the record reflect that the

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1 witness has identified the defendant in open court?

2 THE COURT: It shall.

3 MR. PASK: I'll pass the witness.

4 THE COURT: Mr. Brauchle?

CROSS-EXAMINATION

BY MR. BRAUCHLE:

7 Q. Off. Buck, have you got any notes where you remember
8 this independently?

10:27A 9 A. No, sir.

10 Q. Now you broke your hand while you were fighting with
11 Mr. Wright; is that right?

12 A. That's correct.

13 Q. Was that from hitting him?

14 A. Thinking back about it, I'm almost positive that my
15 hand was broke whenever we went to the ground. I grabbed him,
16 you know, pretty much at a full run, and when we went to the
17 ground, I'm pretty sure my -- my hand was broken when we went
18 to the ground.

19 Q. But you're not sure, right?

20 A. No, noway to be sure.

21 Q. Okay. And I believe you characterized him as being
22 wild from the effects of inhaling paint?

23 A. I really, to be perfectly honest with you, do not
24 remember the -- the inhalant part of the -- of the incident at
25 all. I do remember Mr. Wright's attitude, you know, at the

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1 time whenever I -- I grabbed him.

2 From what I understand, the inhalant information came
3 from the complainant.

10:28A 4 Q. Well, were his actions consistent with it?

5 A. I don't know if at that time I probably -- I don't
6 know that I could have testified whether or not it was
7 consistent with inhalants or not. He was definitely acting
8 violent and wild toward me.

9 Q. And he went to the hospital as a result of this,
10 also, right?

11 A. I believe he did.

12 Q. As far as you know, you never went to court over
13 this, right?

14 A. I -- I never made court in Shelby County on it.

15 Q. And when you -- all the participants except you
16 and -- well, basically, you were called out to Mr. Wright's
17 house, weren't you?

10:29A 18 A. Looking back, I'm sure that that may have very well
19 been his residence. I didn't know it at the time. Never --
20 never entered his house. All --

21 Q. But you were called out to where he -- where he was
22 living, right?

23 A. I -- I assume that's correct.

24 Q. Well, you could tell that from reading the addresses,
25 can't you?

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A. There was noway -- if the address that he gave is his residence, and the address that we responded to were the same, then I'd say yes.

Q. And you saw that from reading the report, didn't you?

A. I ~ to be ~

Q. That it was out on Buxway?

A. I think it's Boxway, but that's correct.

MR. BRAUCHLE: We'll pass the witness.

MR. PASK: Nothing else.

THE COURT: Off. Buck, you may step down.

THE WITNESS: Thank you.

Ladies and gentlemen of the jury, we'll take a short break at this time.

(Recess taken.)

(Court reconvened; jury not present.)

THE COURT: All right. Let the record reflect we're outside the presence of the jury.

Mr. Brauchle, I believe there's something you want to put on the record?

MR. BRAUCHLE: I don't really need to. I think --

MR. DAVIS: What we're discussing is, we're discussing the first page of the penitentiary packet. There's a letter that's dated July 21st, 1997. That's addressed to Det. Bruce Pinkerton, in Metro Police, Homicide Division,

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Nashville, Tennessee. It's signed by Glenn F. Butler, Jr., and Mr. Brauchle and I are in agreement that that page can be taken out of the penitentiary packet before it's presented to the jury; is that correct?

MR. BRAUCHLE: Uh-huh. Yeah.

THE COURT: All right.

MR. DAVIS: What I'd like to do, then, is just -- yeah, I'm just going to at this time pull that page out. That's now been taken out of the penitentiary packet, Your Honor.

THE COURT: All right. That's fine.

Mr. Brauchle, are you ready?

MR. BRAUCHLE: No, Your Honor, I'm not.

THE COURT: Okay.

MR. BRAUCHLE: Could we approach the bench?

THE COURT: Certainly.

(Off-the-record bench conference was had.)

MR. BRAUCHLE: Your Honor, in regard to State's Exhibit 90, we would further -- or we would object to it. We haven't objected to it previously, but we would object to it under Article 42.09 of the Code of Criminal Procedure, as not being in compliance with the requirements as set out in 42.09.

THE COURT: All right. I'm not -- I don't think I've seen the State's Exhibit 90 yet.

MR. DAVIS: Yes, sir. Let me hand you -- let me

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hand you State's Exhibit Number 90, Your Honor, so that you could look at the front page of it.

THE COURT: It hasn't been offered yet.

MR. DAVIS: No, sir, it hasn't.

MR. BRAUCHLE: No, but it's the next exhibit.

THE COURT: Let me ask, Mr. Brauchle, do you have a more specific objection?

MR. BRAUCHLE: Well, the 42.09, the objection in regard to that would be in regard to Section 8, the requirements set out in regard to that, and then the certification also required.

The Court's aware that the laws of each state are considered to be the same as the laws of this State, and any -- any document that purports to be a pen packet, would have to be in compliance with 42.09 which, specifically, by the heading of the article, deals with the pen packets.

THE COURT: Well, it appears that Section 8 says, "The county that transfers the defendant to the Texas Department of Criminal Justice under this Article shall deliver to an officer designated by the department," and then lists the following, and I don't see the relationship, so I'm going to overrule your objection.

MR. BRAUCHLE: Well, unless the pen packet from a foreign jurisdiction is in compliance with what's required in this jurisdiction, it's not admissible.

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THE COURT: I understand your objection, but I'm
overruling it

All right. Is the State ready?

MR. DAVIS: State's ready, Your Honor.

THE COURT: Jan?

(Jury present)

THE COURT: Officer, your name again is?

THE WITNESS: James P. Howell.

THE COURT: All right. You may be seated.

Mr. Davis, you may proceed.

MR. DAVIS: Thank you, Your Honor.

THEREUPON,

JAMES P. HOWELL

was recalled as a witness by the State, having been previously
first duly sworn by the Court, was examined and testified as
follows:

REDIRECT EXAMINATION

BY MR. DAVIS:

Q. Sir, again, would you please tell us your full name?

A. James P. Howell.

THE COURT: All right. So the record is clear,
Mr. Howell, --- Sgt. Howell, you were previously sworn, and
you're still under oath, okay?

THE WITNESS: Yes.

BY MR. DAVIS:

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Q. Yes. And you are the same Sgt. Howell who testified in the first phase of this trial; is that correct, sir?

A. That's true.

Q. Sgt. Howell, did I have you come down earlier this morning and take the rolled inked fingerprint impressions from the defendant, Gregory Edward Wright?

A. Yes, I did.

MR. DAVIS: Your Honor, may I please approach?

THE COURT: You may.

BY MR. DAVIS:

Q. Sgt. Howell, if you would, take a look at what has been marked as State's Exhibit 90-A and tell me whether or not these are the fingerprints that you rolled from Gregory Edward Wright this morning?

A. They are.

MR. DAVIS: Your Honor, at this time we will offer State's Exhibit 90-A.

MR. BRAUCHLE: No objection.

THE COURT: All right. State's Exhibit 90-A will be admitted.

BY MR. DAVIS:

Q. Sgt. Howell, did I ask you then to compare fingerprints found State's Exhibit 90-A with the fingerprints contained in State's Exhibit Number 90?

A. Yes.

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1 Q. And, in fact, the second page, do we see a set of
2 second fingerprints there, also?

3 A. Yes, we do.

4 Q. And did you determine whether or not the fingerprints
5 contained in State's Exhibit Number 90 were, in fact, made by
6 the defendant in this case, Gregory Edward Wright?

7 A. They were.

8 Q. Okay. So as I understand your testimony, the
9 fingerprints contained in State's Exhibit Number 90 are, in
10 fact, the fingerprints of the defendant,
11 Gregory Edward Wright; is that correct, sir?

12 A. That is correct.

13 MR. DAVIS: Pass the witness, Your Honor.

14 THE COURT: Mr. Brauchle, any questions?

15 RECROSS-EXAMINATION

16 BY MR. BRAUCHLE:

17 Q. Off. Howell, you made that comparison today in court,
18 right?

10:57A 19 A. Yes, sir.

20 Q. Okay. And you're still the sergeant of the Physical
21 Evidence Section of the sheriff's department, right?

22 A. That's correct.

23 Q. Okay.

24 MR. BRAUCHLE: Could I approach, Your Honor?

25 THE COURT: You may.

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BY MR. BRAUCHLE:

Q. Sergeant, just to -- for clarification, let me show you what's been marked as 76-B. Are you familiar with that exhibit?

A. Yes, sir.

Q. Okay. I'll ask you what 76-B was or is?

A. It appears to be the impression that was found on a soap container, I believe, at the --

Q. Miss Vick's house?

A. That's correct.

Q. And that print was never identified to anybody, right?

A. That's correct. To my knowledge.

Q. That was what we call a comparable print, right?

A. No, I didn't think it was comparable.

Q. The one on the soap container?

A. If it's the same print -- I don't actually recall if it was comparable in my reports or not. I don't actually recall that, but to me it doesn't look like it would be.

Q. Oh, okay. So 76 wasn't a comparable print.

A. Well, that's -- it doesn't appear to be from here.

Q. Okay. And then the -- the print on the pillowcase wasn't comparable either, right?

A. That was my opinion.

Q. Okay. You're not familiar with any of the facts set

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1 out, or the -- anything in -- in -- contained in Exhibit 90
2 except for the prints; is that correct?

3 A. Well, that's pretty much true, yes.

4 Q. Well, I mean, you don't have any knowledge of -- of
5 any facts that might be purported to be in that document. All
6 you did was compare rolled prints to some other rolled prints,
7 right?

8 A. That's correct.

9 Q. All right. So you're not here vouching for what --
10 what facts or non facts may or may not be contained in
11 Exhibit 90, right?

10:59A 12 A. Not anything other than the fingerprint card.

13 MR. BRAUCHLE: We'll pass the witness.

14 MR. DAVIS: No further questions.

15 THE COURT: Sgt. Howell, you may step down.

16 The State may call its next witness.

17 MR. DAVIS: Your Honor, at this time the State
18 will offer State's Exhibit Number 90.

19 MR. BRAUCHLE: We would renew the previous
20 objection.

21 THE COURT: All right. That objection will be
22 overruled. State's Exhibit 90 will be admitted.

23 MR. DAVIS: Your Honor, may I briefly publish
24 the document to the jury?

25 THE COURT: You may.

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MR. DAVIS: Thank you.

Ladies and gentlemen, State's Exhibit Number 90 is what is commonly referred to as a penitentiary packet. You'll see that it comes from the Tennessee Department of Corrections. Inside this penitentiary packet, first you will find a photograph of the defendant, Gregory Wright.

Second, you will find the fingerprints Sgt. Howell looked at to compare to the fingerprints of the defendant in this case.

Now as you'll look through these documents, you'll find judgments and you'll find sentences from Davidson County, Nashville, Tennessee, and those judgments and sentences will reflect first that on January the 25th of 1990, in criminal courts of Davidson County, that this defendant was convicted of the offense of aggravated assault. He was sentenced to three years in the Tennessee Department of Corrections for that offense.

You'll see a second judgment and sentence, also, so there will be two convictions.

The second conviction will show that while he was still serving his sentence for the offense of aggravated assault, that on September the 19th, 1990, that he committed the offense of escape, and you'll find that actually that on March the 28th of 1991, the defendant was, in fact, convicted of the offense of escape, and he was sentenced to one

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additional year in the Tennessee Department of Corrections,
and those facts will be contained as you look at State's
Exhibit Number 90.

Your Honor, at this time the State will call
Off. Rivera.

THE COURT: All right.

THEREUPON,

OFF. MARVIN RIVERA

was called as a witness by the State, having been previously
first duly sworn by the Court, was examined and testified as
follows:

THE COURT: Sir, if you'd just have a seat on
the witness stand.

You were previously sworn in, correct?

THE WITNESS: Yes, sir.

THE COURT: All right. I'd ask that you speak
loudly, clearly, and slowly into the microphone for me.

Mr. Davis, you may proceed.

MR. DAVIS: Thank you.

DIRECT EXAMINATION

BY MR. DAVIS:

Q. Sir, would you please tell us your full name?

A. Marvin Rivera.

Q. Mr. Rivera, are you a police officer?

A. Yes, sir.

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1 Q. All right. For what department do you work?

2 A. Metro Nashville Police Department.

3 Q. So you're actually from Nashville, Tennessee; is that
4 right?

5 A. Yes, sir.

6 Q. How long have you been a member of the Nashville
7 Police Department?

8 A. 13 and-a-half years.

9 Q. What division are you presently assigned to?

10 A. I'm in the patrol division.

11 Q. I want to direct your attention back, Officer, to
12 July 22nd of 1989; ask you whether or not on that date you
13 were a Nashville police officer?

14 A. Yes, sir, I was.

15 Q. Were you on duty that day?

16 A. Yes, sir.

17 Q. And sometime during that day while you were on duty,
18 did you receive a call that led you down to near the
19 Cumberland River?

20 A. Yes, sir, I did.

11:03A 21 Q. All right. Do you recall about what time of the day
22 that you received that call?

23 A. It was right after roll call, so it must have been
24 about 6:45, 6:50 in the morning.

25 Q. Okay. Sometime shortly before 7:00 a.m. then, right?

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1 A. Yes, sir.

2 Q. What was the nature of the call?

3 A. It was a rape.

4 Q. And were you working by yourself or did you have a
5 partner that day?

6 A. I was by myself.

7 Q. All right. Did you then proceed down to the location
8 where the call had come from?

9 A. Yes, sir.

10 Q. And where, actually, did you go to?

11 A. To the intersection of First and Broadway, which is
12 just half a block away from the substation police department.

13 Q. Now does the Cumberland River actually go through
14 Nashville?

15 A. Yes, sir.

16 Q. And do you have actually what we refer to maybe as a
17 historic area, Fort Nashboro?

18 A. Yes, sir.

19 Q. What is Fort Nashboro?

20 A. Fort Nashboro was established by the first pioneers
21 that got to Nashville back in 1817, whenever that was.

11:04A 22 Q. So y'all still have a display there?

23 A. Yes, sir.

24 Q. Now, when you got there to the location, Officer, did
25 you meet with somebody, a female?

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A. I met with the victim.

2 Q. All right. And how would you describe her condition
3 at the time that you met with her?

4 A. She was upset, crying; and very upset and her clothes
5 were somewhat disarranged. She had pantyhose and shorts
6 hanging from only -- from one leg. They were just dragging
7 the sidewalk.

8 Q. All right. Did you learn her name to be a Vickie
9 Warmus?

10 A. Yes, sir.

11 Q. And while she was still in the condition that you've
12 told us about, did she relate some information to you?

13 A. Yes, she did.

14 Q. And what information did she relate to you?

15 A. She told me that she had just been raped, and that
16 the subject --

17 MR. BRAUCHLE: Your Honor, we would object to
18 hearsay.

19 THE COURT: Overruled.

20 BY MR. DAVIS:

21 Q. Okay. Go ahead and tell us what was said.

22 A. She told me that she had just been raped and that the
23 subjects went under the bridge.

x1:05A 24 Q. Did she say how many subjects?

25 A. She said it was three subjects involved.

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Q. And did she then give you descriptions of white males, black males? What did she say to you?

A. They were three male whites, homeless, and the actual --

MR. BRAUCHLE: Your Honor, once again we object to hearsay.

THE COURT: Overruled.

A. -- the actual perpetrator was male white, wearing red shorts and a red and white T-shirt.

MR. BRAUCHLE: Your Honor, may we have a running objection to the hearsay?

THE COURT: You may.

BY MR. DAVIS

Q- All right. Now after she gave you the descriptions of the individuals, did you proceed to the area that she had directed you to?

A. Yes , I did.

Q. All right. And exactly where did you go to?

A. To the corner of Forth Nashboro and what they call "the bridge".

Q. All right. And did you find anybody down there?

A. I waited for backup, seeing as there was three subjects involved.

Q. All right. When you got down there, did you actually find three subjects?

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A. Yes, sir.

Q. Okay. Did you wait, then, for the backup before you actually got them out of the area?

A. When the backup arrived, -- and backup, I mean when the backup arrived, we went down under the bridge to look for the suspects. That's where we found the three subjects.

Q. Okay. Were they all white males?

A. Yes, sir.

Q. All right. Were any one of the three of them wearing red shorts?

A. Yes, sir.

Q. What did you do with these three subjects, then, when you found them?

A. At that point we didn't tell them they were under arrest. We just told them to get out of under the bridge. It's a common area where homeless people go to sleep or live, and they get thrown out of there all the time, so it was pretty normal for us to tell them, let's go out. You need to leave. And that's when we got to a secure area upstairs on the sidewalk, that's where I told them that they were under arrest for rape.

(State's Exhibit Nos. 93-A through D
were marked for identification purposes.)

MR. DAVIS: May I approach, Your Honor?

THE COURT: You may.

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BY MR. DAVIS:

2 Q. Mr. Rivera, let me show you four photographs here.
3 They've been marked as State's Exhibit 93-A, 93-B, 93-C and
4 93-D. Do you recognize those photographs, sir?

11:07A 5 A. Yes, sir.

6 Q. Okay. Are they photographs that were taken on the
7 date of the arrest and on the date that you actually spoke
8 with a Vickie Warmus?

9 A. Yes, sir.

10 Q. All right. Do they truly and accurately depict what
11 they purport to depict, sir?

12 A. Yes.

13 MR. DAVIS: Your Honor, at this time we will
14 offer State's Exhibits Number 93-A through 93-D.

15 MR. JOHNSON: No objection.

16 THE COURT: All right. 93-A, B, C, and D will
17 be admitted.

18 BY MR. DAVIS:

19 Q. Officer, as we look here, first, at 93-A, does that
20 show Forth Nashboro, the log cabin?

21 A. Yes, sir.

22 Q. All right. 93-B, is that a closer view of the area
23 that you -- that you went to?

24 A. Uh-huh. That's correct.

25 Q. 93-C, does that show a cardboard box that was on the

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1 ground there near the fort?

2 A. Yes.

3 Q. And 93-D, does that show the individual that you
4 found to be wearing the red shorts and the white T-shirt that
5 day, sir?

6 A. Yes, sir.

7 Q. That individual, sir, do you see him in the courtroom
8 here this morning?

9 A. Yes, I do.

11:08A 10 Q. Could you please point him out for the members of the
11 jury?

12 A. He's in the gray suit.

13 Q. At the end of the counsel table?

14 A. Yes, sir.

15 MR. DAVIS: Your Honor, may the record please
16 reflect that this witness is identifying the defendant in open
17 court?

18 THE COURT: It shall,

19 BY MR. DAVIS:

20 Q. The individual shown here in State's Exhibit
21 Number 93-D then, is that, in fact, the defendant,
22 Gregory Wright?

23 A. That's correct.

24 Q. Officer, did you place all three of these people
25 under arrest?

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A. Yes, sir, I did.

Q. Including the defendant?

A. Yes, sir.

Q. Did you transport, or were all three of them then transported down to the jail there in Nashville?

A. Two of them were transported to the homicide office, and the suspect that fit the description was transported to the hospital.

Q. And, again, the offense date for that was July the 22nd of 1989; is that right?

A. That's correct.

Q. Do you know what the final disposition of that case was?

A. No, sir.

Q. Were you ever called to court to testify on that case?

A. No, sir.

Q. Now you -- you had several reports, did you not, pertaining to this offense?

A. Yes, sir.

Q. And did you give those to me this morning so that I could make copies?

A. Yes.

MR. DAVIS: Your Honor, I'll pass the witness, and if the record could reflect that I've tendered those

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1 copies to Mr. Brauchle.

2 THE COURT: Mr. Brauchle?

CROSS-EXAMINATION

BY MR. BRAUCHLE:

5 Q. Off. Rivera, looking at the pictures there,
6 Miss Warmus was sleeping on some cardboard boxes, basically,
7 down in the bushes; is that correct?

8 A. That's correct.

9 Q. Your investigation -- or during your investigation,
10 you determined that she was homeless, also, right?

11 A. Yes, sir.

12 Q. And I believe that you followed procedure in regard
13 to this arrest, did you not?

11:11A 14 A. Yes, I followed procedure; yes, sir.

15 Q. Okay. And I believe you -- you testified that you
16 took Mr. Wright to the hospital; is that correct?

17 A. No, sir, I did not take him to the hospital.

18 Q. Where was it you stated you took him?

19 A. I didn't take him anywhere, sir.

20 Q. So somebody else transported him?

21 A. Yes, sir.

22 Q. Okay. Well, let's not quibble over that. Somebody
23 took him to the hospital, right?

24 A. That's correct.

25 Q. And that's -- the purpose of that is to have a rape

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1 exam, right?

2 A. That's for a rape kit; yes, sir.

3 Q. Okay. And rape kits are anybody that's accused of
4 sexual assault, they go and -- and try and obtain evidence
5 from that person to see if they, in fact, were in any way
6 involved in a rape, right?

7 A. That's correct.

8 Q. And I guess you took the other two people to jail; is
9 that right?

11:12A 10 A. We put them in different cars, sir, and the other
11 officer that went with me down under the bridge took one, and
12 I took the other one --

13 Q. Okay.

14 A. -- to the homicide office.

15 Q. Okay. These people didn't offer any resistance.

16 A. No, sir.

17 Q. What time of day was this?

18 A. Close to 7:00 in the morning.

19 Q. Okay. It was daylight, right?

20 A. Yes.

21 Q. It was during, I believe you said, August? Is that
22 when you said it was?

23 A. Was it July?

24 Q. Well, July or August. It was in the summertime,
25 right?

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A. Yes, sir.

Q. So we're talking about broad daylight.

A. That's correct.

Q. And it had been daylight for quite some time.

A. Well, it might; yes, sir.

Q. And, of course, whether a rape, in fact, occurs or not, you have to treat it as such until proven otherwise, right?

A. Yes, sir.

Q. Did you see, or have you seen Miss Warmus down here today?

A. No, sir.

Q. Okay. Do you have any idea when the last time you saw her was?

A. Last time I saw her was that morning.

Q. Officer, you were the -- you and some other officers -- officer or officers went down back under the bridge, right?

A. Yes, sir.

Q. Okay. And the people that -- that you brought up, none of those people offered any resistance or anything, did they?

A. No, they did not.

Q. So I guess in police parlance, they -- they were arrested without incident; would that be what you'd say?

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1 That's correct.

2 MR. BRAUCHLE: We'll pass the witness.

3 MR. PASK: No further questions.

4 THE COURT: Off. Rivera, you may step down.

5 The State may call its next witness.

6 MR. DAVIS: The State will call Off. Michael
7 Gann.

8 THEREUPON,

9 OFF. MICHAEL GANN

10 was called as a witness by the State, having been previously
11 first duly sworn by the Court, was examined and testified as
12 follows:

11:15A 13 THE COURT: Officer, if you would just have a
14 seat at the witness stand, please. You were previously sworn;
15 is that correct?

16 THE WITNESS: Yes, sir.

17 THE COURT: All right. I'd ask that you try to
18 speak loudly, clearly, and slowly into that microphone.

19 THE WITNESS: Yes, sir.

20 THE COURT: Mr. Davis?

21 DIRECT EXAMINATION

22 BY MR. DAVIS:

23 Q. Sir, would you please tell us your full name?

24 A. My name is Michael Gann.

25 Q. How are you employed?

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A. I'm a patrol officer with the Metro Police Department in Nashville, Tennessee.

Q. How long have you been employed by that police department?

A. I've been there a little over nine years now.

Q. Again, what are your duties with the police department?

A. I'm a patrol officer.

Q. Let me direct your attention back to February the 10th of 1989, and ask you whether or not on that date, sir, you were a Nashville Police Officer?

A. Yes, I was.

Q. Were you on duty that day?

A. Yes, I was.

Q. Do you remember what shift that you were working back in those days?

A. The midnight shift.

Q- Which would take it from what to what?

A. Roll call started at 10:30, and we usually hit the streets around 10:45 p.m.

Q. Sometime after you came on duty that day, Officer, did you have occasion to go to Fifth and Broad there in Nashville, Tennessee?

A. Yes, sir, I did.

Q. Okay Did you receive a call to go to that location?

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1 A. No, sir.

2 Q. All right. Did you observe something that led you to
3 go to that location?

4 A. Yes, sir. I observed a fight taking place on the
5 sidewalk

6 Q. All right. And how many people were fighting?

7 A. Two.

8 Q. Both males?

9 A. Yes, sir.

10 Q. What did you do when you saw those two -- well, when
11 you say that they were fighting, --

12 MR. BRAUCHLE: Your Honor, may we approach the
13 bench?

14 THE COURT: You may.

15 (Off-the-record bench conference was had.)

11:18A 16 BY MR. DAVIS:

17 Q. Off. Gann, I believe you were telling us that you saw
18 two people fighting. Were they out on the street fighting?

19 A. No, sir, they were on the sidewalk.

20 Q. Okay And what did you actually observe them doing?

21 A. Like one was on top of the other and, you know, they
22 were trading punches.

23 Q. All right. Did you go over to where those two people
24 were?

25 A. Yes, sir.

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Q. Okay. And what did you do when you actually got up to these two people?

A. Like I said, I hollered at them, and they ignored the verbal warnings, so I physically removed one from the other. I had to physically separate them.

Q. All right. And did you, in fact, get them separated?

A. Yes, sir.

Q. All right. Now this person that was on top of the other individual when you got up there, did you actually get him out and identify him?

Did you get a name from him?

A. No, sir, I didn't have time.

Q. Okay. Well, what did you do then? Just kind of take me through this. You got the man off the other one. You separated them. What's the next thing that happened then?

A. After I got the one off the top, you know, I gave the other one instructions to lay where he was, and he started to get up, so I had to leave the first one to make sure the other one didn't get up.

I didn't know, you know, once he got up off the ground, you don't know if he's going to flee or if he's going to attack again.

So like I said, I've got two suspects there, and I'm trying to get them separated and, you know, watch myself at the same time.

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Q. So did you finally get the man to stay down on the ground?

A. Yes, sir.

Q. All right. Then what's the next thing that happened?

A. The next thing I heard was somebody hollered that he's got a knife.

Q. Do you know who yelled that?

A. No, sir, haven't got a clue.

Q. Do you know who they were talking about?

A. Not at that time. I mean, all I heard was, "He's got a knife." You know, and that was the key word there.

Q. What did you do then?

A. Okay. I immediately, you know, of course I drew my weapon, you know, not knowing what his threat was, and then I turned around and saw this first person that was involved in the fight standing there, and he was the one that had the knife.

Q. Are you talking about the first person who was on top of the other person?

A. Right.

Q. Okay. So that person, you actually determined, in fact, did have a knife; is that right?

A. Yes, he did.

Q. All right. Where was the knife?

A. In his right hand, and he had it like straight down.

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His arm was straight to his side and the knife was by his leg.

Q. Okay. What type of knife was this?

A. It was like a -- a Buck folding-like blade knife. I don't know if that explains it good enough, but it's like a hunting knife. A folding hunting knife.

Q. All right. How long was the blade, if you could indicate. Do you have any idea, any recollection of that?

A. I think the standard is like a three-and-a-half inch blade, or maybe four-inch blade.

Q. All right. When you saw the knife in this person's hand, was the knife blade actually opened where it was visible to you?

A. Yes, sir.

Q. And when you saw this person holding this knife down to his side, what did you do?

A. Okay. I immediately, you know, I hollered at him, you know, "Drop the-knife. Drop the knife." And he was like -- like he was in a trance. I mean, you know, his eyes were open and he had this blank look, and just, you know, like I don't know if he -- not like he couldn't hear me or if he was ignoring me, you know.

Q. All right. But he didn't drop the knife then.

A. No, not at first.

Q. How many times did you have to yell at him to drop the knife?

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A. Three or four times.

Q. Did you have your weapon drawn during this entire period of time?

A. Yes, I did.

Q. And when you got up there, you're on patrol. Are you then in a police uniform?

A. Yes, sir.

Q. Did this person finally drop the knife for you?

A. Yes, he did.

Q. And did you then place this person under arrest?

A. Yes, I did.

Q. And do you recall what charges that you placed on him at that time?

A. Breach of the peace by fighting, and then carrying a weapon for the purpose of going armed.

Q. Okay. So that you had the two charges; you had the weapons charge and the disturbance charge; is that right?

A. Yes, sir.

Q. Now during the course of this event, did you prepare an arrest report with regards to the person that you found to be in possession of this knife?

A. Yes, sir.

Q. Did you obtain certain information during the course of obtaining or writing down this report?

A. Yes, sir.

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Q. And do you -- do you obtain the name of the individual?

A. Yes, sir.

Q. Okay. Do you recall, in this case, whether or not you obtained the name of that person?

A. Yes, I did.

Q. All right. Let me just ask you, it's been since 1989, Officer. Do you feel like that you could identify that person visually?

A. No, sir, I'm afraid I couldn't.

Q. Okay. Do you recall what name that you were given out there by that person, though?

A. I remember his last name being Wright, but ...

MR. DAVIS: Okay. May I approach, Your Honor?

THE COURT: You may.

BY MR. DAVIS:

Q. Okay. Off. Gann, let me show you what appears to be an arrest report. Do you recognize that document, sir?

A. Yes, sir.

Q. Is this the arrest report that you prepared on this case?

A. Yes, sir.

Q. And do you feel like if you had an opportunity to look over that, that that might refresh your recollection concerning some of the information that you were given out

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there that date?

MR. BRAUCHLE: Your Honor, we would object to this in regard to our pretrial motions.

Could we approach the bench?

THE COURT: You may.

(Off-the-record bench conference was had.)

MR. BRAUCHLE: Your Honor, we would object to this in regard to objections previously made.

THE COURT: All right. I'm going to overrule your objection.

BY MR. DAVIS:

Q. Officer, now, if you could, do you believe this document would help to refresh your memory about the name of the individual that you placed under arrest that was in possession of the knife, sir?

A. Yes, sir.

Q. If you would, just look at that document; refresh your memory.

A. (Examining document)

Q. Now, Officer, what was, in fact, the name of the individual that you placed under arrest that day?

A. Greg Edward Wright.

Q. Greg Edward Wright. The individual that you arrested, was he a white male?

A. Yes.

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1 Q. Okay. Do you recall how old he was in 1989?

2 A. No.

3 Q. I believe, if you would, if you'll look at the report
4 again to refresh your memory, --

5 MR. BRAUCHLE: We would object to leading the
6 witness.

7 THE COURT: Overruled,

8 BY MR. DAVIS:

9 Q. Okay. Do you believe this document would help to
10 refresh your memory concerning his age?

11:27A 11 A. Yes, sir.

12 Q. Does it, in fact, help you?

13 A. It showed his birthday.

14 Q. Sir, how old was the individual that you arrested out
15 there?

16 A. Born in '62. I'd have to do some quick math, but .,

17 Q. Well, let me just ask you, what was his age?

18 A. He was 26.

19 Q. As a part of the process out there, do you also get
20 the name of the next of kin?

21 A. Yes, sir.

22 Q. Okay. And in this case, did you, in fact, receive
23 the name --

24 MR. BRAUCHLE: Your Honor, once again we would
25 object to the leading.

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1 THE COURT: All right. Overruled.

2 BY MR. DAVIS:

3 Q. Did you receive the name of the next of kin along
4 with the phone number?

5 A. Yes, sir.

6 Q. Okay If you would, please look at this document, if
7 it will help you to refresh your memory. Did you receive a
8 name?

9 A. Yes, sir.

10 Q. Okay Sir, what was the name of the person that was
11 given as next of kin?

12 MR. BRAUCHLE: Your Honor, we would object to
13 hearsay.

14 THE COURT: Overruled.

15 A. The name was Earl Wright.

16 BY MR. DAVIS:

17 Q. Okay And I believe that you've already testified
18 that you were given a telephone number; is that correct?

11:28A 19 A. Yes, sir.

20 Q. Do you recall what telephone number that you were
21 given?

22 MR. BRAUCHLE: Your Honor, once again we would
23 object to hearsay.

24 THE COURT: Overruled.

25 BY MR. DAVIS:

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Q. Do you recall independently what number that you were given?

A. I'd have to look at my report.

MR. BRAUCHLE: Your Honor, we'd object to relevancy, also.

THE COURT: Overruled.

BY MR. DAVIS;

Q. If you'd look at the report, please, to refresh your memory.

MR. BRAUCHLE: Your Honor, we would object to testifying from a document that's not in evidence.

THE COURT: All right.

MR. BRAUCHLE: It's gone far beyond any refreshing of recollection.

THE COURT: All right. If the witness recalls, or his memory is refreshed from a document, he may testify.

If your memory is not refreshed, you're simply repeating what you put down on the document, please inform the prosecutor and do not give any other answer.

A. That's it. I mean, I'm not going to remember a phone number that I was given in '89.

BY MR. DAVIS:

Q. Okay. Do you recall whether or not you were given an address, or a city, sir, where the -- where this next of kin could be located?

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MR. BRAUCHLE: Once again, Your Honor, we'd
renew our previous objection.

THE COURT: All right. Again, the instructions
that I gave you would apply.

THE WITNESS: Thank you.

THE COURT: I'll overrule any of the other
objections.

BY MR. DAVIS:

Q. Do you believe that this document would help to
refresh your memory, sir?

A. It does a little bit; yes, sir.

Q. Okay. If you'd look at that, sir.

MR. BRAUCHLE: Your Honor, once again we would
object to him testifying from a document not in evidence.

THE COURT: And again, Officer, the instructions
that I gave you, if it refreshes your memory and you recall,
fine. If you're simply repeating what you looked at on the
document, please inform the prosecutor and do not give any
other answer.

THE WITNESS: Yes, sir.

BY MR. DAVIS:

Q. Okay, sir. Does the document help you refresh your
memory?

A. Yes, sir.

Q. And what address were you given for this next of kin?

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A. Memphis, Tennessee.

Q. Okay. Sir, I take it, then, that you -- you placed this individual under arrest. Did you take him to jail that day?

A. Yes, sir.

MR. DAVIS: I'll pass the witness, Your Honor.

THE COURT: Mr. Brauchle?

CROSS-EXAMINATION

BY MR. BRAUCHLE:

Q- Is it Off. Gann; is that right?

A. Yes, sir.

Q. Would it be fair to say you don't really have much recollection about this?

A. No, sir, I remember the incident.

Q. Okay. Let me -- let me see if I've got this right. You break up two people who are fighting; is that right?

A. Yes, sir.

Q. And, so, when you separate them, one of them just stands there, right? One's on the ground and one stands there; is that right?

A. No, sir. I had both subjects on the ground.

Q. Oh, you had both of them on the ground?

A. Yes, sir. When I took the person that was on top off of the person that was already on the ground, I placed him on the ground.

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Q. Okay. So which one was on top?

A. Mr. Wright.

Q. And -- but neither -- neither one of them attempted to get away, right?

A. The -- the subject that was on the ground originally started to get up. You know, what his intentions were, I didn't know. I didn't know if he was going to flee or if he was going to attack.

Q. Okay. But Mr. Wright didn't; is that correct?

A. I'm sorry?

Q. Mr. Wright didn't attempt to flee or anything, right?

A. No, sir.

Q. And you didn't see that this knife had ever been used, did you?

A. What do you mean? I don't understand the question.

Q. Well, the person that you're stating on the ground wasn't cut, or stabbed, or anything like that, was he?

A. No, sir.

Q. Okay. And the fact that Mr. Wright had a knife wasn't even readily apparent to a trained police officer such as yourself, was it?

A. I don't understand the question, sir.

Q. Well, you stated you came up and broke these people up, and somebody else had to tell you there was a knife involved, right?

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A. He didn't have it in his hand when I first approached him.

Q. You're certain of that.

A. Yes, sir.

Q. Well, then you must not have been watching him very well, then, right?

A. Well, I had to let go of Mr. Wright to subdue the other subject.

Q. So you don't know where the knife came from then.

A. No, sir.

Q. So it may have already been on the ground, right?

A. I'm sorry?

Q. It may have already been on the ground, right?

A. What -- I don't understand.

Q. Well, you don't know where the knife came from.

A. No, sir.

Q. So it could have already been on the ground, right?

A. I didn't see it on the ground; no, sir.

Q. Well, I think we just established you didn't see it until somebody told you it was in someone's hand, did you?

A. That's -- that's correct.

Q. So we're back to the same question. You didn't know where it came from, did you?

A. No, sir.

Q. Now, then, both the people were arrested for

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fighting, right?

A. Yes, sir.

Q. And this was just a regular pocketknife; is that correct?

A. I don't -- I don't know if I'd classify that as a pocketknife.

Q. Well, you said it was a Buck, which is a brand name, right?

A. Best I remember; yes, sir.

Q. And it had a -- a -- between a three- and a four-inch blade, right?

A. Yes, sir.

Q. That's a fairly normal Buck pocketknife, isn't it?

A. I don't carry a pocketknife that big.

Q. Well, I didn't ask you that question.

A. Well, I don't understand the question then.

Q. Well, are you saying that you have to special order a knife such as this?

A. No, sir.

Q. So they're generally available to the public, right?

A. Yes, sir.

Q. That would make it a fairly ordinary knife, wouldn't it?

A. I would think; yes, sir.

Q. Now, then, you don't know whether the person on top

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or the person on the bottom brought that knife to the fight,
 do you?

A. No, sir.

Q. When did you review any records in regard to this?

A. The first time I reviewed the records on this case?

Q. Well, how about recently.

A. Well, within the last week or so.

Q. Okay. When would be the first time?

A. Maybe -- maybe a month ago.

MR. BRAUCHLE: We'll pass the witness.

THE COURT: Anything else?

REDIRECT EXAMINATION

BY MR. DAVIS:

Q. Off. Gann, do you recall whether or not this other
 person was armed?

A. Not that I remember; no, sir.

Q. So the only weapon that you found was that knife; is
 that right?

A. Yes, sir.

MR. DAVIS: That's all I have, Your Honor.

RE CROSS-EXAMINATION

BY MR. BRAUCHLE:

Q. Off. Gann, going back to the original question, you
 don't know who brought the knife to the scene of the fight, do
 you?

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A. NO, I don't.

MR. BRAUCHLE: We'll pass the witness.

MR. DAVIS: That's all we have, Your Honor.

THE COURT: Off. Gann, you may step down.

The State may call its next witness.

MR. PASK: The State calls Josephine Jones.

THEREUPON,

OFF. JOSEPHINE JONES

was called as a witness by the State, having been previously first duly sworn Dy the Court, was examined and testified as follows.

THE COURT: Ma'am, if you'd have a seat on the witness stand.

You were sworn in previously; is that correct?

THE WITNESS: Yes, Your Honor.

THE COURT: I'm going to ask if you would, pull the microphone towards you. Please speak loudly, clearly, and slowly into that imicrophone.

Mr. Pask?

DIRECT EXAMINATION

BY MR. PASK:

Q. Would you state your name and spell your last name for the record?

A. My name is Josephine Jones. It's J-o-n-e-s.

Q. How are you employed?

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1 A. By the Memphis Police Department.

2 Q. And what are your duties with the Memphis Police
3 Department?

4 A. I enforce the law.

5 Q. Let me take you back to January the 24th of 1995, at
6 around 4:00 a.m. and I'll ask you if you were on duty at that
7 time?

8 A. Yes, I was.

9 Q. And what was the nature of your business at that
10 time?

11 A. We were patrolling drug-infested areas.

12 Q. All right. And what was the purpose of patrolling
13 drug-infested areas?

14 A. Basically, to check people coming in and out of the
15 crack houses, to see if they have any warrants; did they have
16 proper Tennessee --

17 MR. BRAUCHLE: Your Honor, we would object to
18 this as being nonresponsive.

19 THE COURT: Overruled.

11:39A 20 MR. BRAUCHLE: We'd further object to regard to
21 our previous pretrial motions in that it goes to extraneous
22 acts or offenses.

23 MR. DAVIS: Notice has been given of this
24 particular extraneous offense, Your Honor.

25 THE COURT: All right. Your objection's

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overruled.

BY MR. PASK:

3 Q. Let me ask you if you observed an individual that you
4 later came to know as Gregory Edward Wright on that evening at
5 around 4:24 a.m.?

6 A. Yes, I did.

7 Q. Where did you see him?

8 A. Coming out of a crack house.

9 Q. All .eight. After you observed him coming out of a
10 crack house, what happened then?

11 A. We ilitially did a stop, traffic stop.

12 Q. Okay So I take it he got into a vehicle --

13 A. Yes.

14 Q. -- and you performed a traffic stop; is that right?

15 A. Yes.

16 Q. And<luring that routine traffic stop, did you arrest
17 the defendant , Gregory Edward Wright, on a probation violation
18 warrant?

19 A. Yes, I did.

20 MR. BRAUCHLE: Your Honor, we would object to
21 this as being improper. It's not set out in the State's
22 document filed in regard to June 11th of '97.

11:40A 23 THE COURT: Overruled.

24 BY MR. PASK:

25 Q. Do you think that you'd be able to identify

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Gregory Edward Wright?

A. Yes.

Q. Okay. And do you see him in court?

A. Yes, I do.

Q. And could you identify him?

A. Sitting at the table there (indicating).

MR. PASK: Okay. Let the record reflect that the witness has identified the defendant in open court.

THE COURT: It shall.

BY MR. PASK:

Q. You seemed to have a bit of a hesitation. Is each --

MR. PASK: May I approach the witness,

Your Honor?

THE COURT: You may.

BY MR. PASK:

Q. Is each record of arrest given a book-in number?

A. Yes.

Q- And do you record that book-in number on the report?

A. Yes.

Q. And would the book-in number for this incident be 95024033?

MR. BRAUCHLE: Your Honor, we would object to leading the witness.

THE COURT: Overruled.

BY MR. PASK:

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Q. You may respond.

A. Yes.

Q. Okay.

MR. BRAUCHLE: May we take this witness on voir dire outside the presence of the jury?

THE COURT: All right. Would y'all approach the bench for a minute?

(Off-the-record bench conference was had.)

MR. PASK: I'll pass the witness.

THE COURT: Mr. Brauchle?

MR. BRAUCHLE: Your Honor, we would ask that the previous testimony be stricken in that regards, since it's going to be withdrawn.

MR. PASK: No, I'm not withdrawing -- that last question, I'll withdraw.

THE COURT: Ladies and gentlemen of the jury, if you will please disregard the last question and answer.

MR. BRAUCHLE: We'd further move for a mistrial.

THE COURT: Denied.

MR. BRAUCHLE: Note our exception.

No questions.

THE COURT: Off. Jones, you may step down.

MR. DAVIS: May we approach?

THE COURT: Certainly.

Mr. Johnson, Mr. Brauchle?

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(Off-the-record bench conference was had.)

THE COURT: Ladies and gentlemen of the jury, we'll go ahead and take our lunch break at this time. It's ten minutes till 12:00. Let's take our lunch break till 1:00 o'clock. Be back in the jury room. About 1:00 will be fine to be back here.

(Jury not present.)

(Luncheon recess taken.)

(Court reconvened; jury not present.)

THE COURT: All right. Jan, if you'd go ahead and get the jury lined up.

MR. BRAUCHLE: Can we make our objections?

THE COURT: Yeah. Let the record reflect we're outside the presence of the jury.

Mr. Brauchle, you may --

MR. BRAUCHLE: I believe it was in regard to witness Gann, if I'm not mistaken. Is that not who we approached on?

THE COURT: I think so.

MR. BRAUCHLE: Well, that is, isn't it?

MR. DAVIS: Yeah, Gann?

MR. BRAUCHLE: All right. In regard to witness Gann, we objected to him in regard to not being on the witness list, which I believe was overruled, and then we also objected in regard to leading, testifying from a document not in

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evidence, and from the district attorney coaching the -- the witness in regard to his questioning suggesting the answer to the -- the witness, and for all of those reasons, we object -- we objected at the bench and in a timely fashion during Off. Gann's testimony.

THE COURT: All right. Those are the objections made by the defense. The record will indicate they approached the bench and made those objections at the bench and they were overruled.

MR. BRAUCHLE: They were timely made.

THE COURT: Yes.

All right. Other than that, --

MR. BRAUCHLE: Well, in -- in regard to Off. ~ the next witness, Jones, I guess it was, her testimony, or some of the questions propounded to her were withdrawn. We're not certain as to which ones, but I think that her testimony went to extraneous matters which we tes -- which we objected to, also, at the time of her testimony.

We'd ask that the Court issue a prophylactic instruction to the jury in that regard, that her testimony be disregarded.

THE COURT: All right. The --

MR. DAVIS: I'm sorry, Your Honor. If I could direct the Court to notice of intent to use extraneous and unadjudicated offense filed July the 11th, number 20, the

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extraneous that Miss Jones testified about are listed on or about January 24th, '95, in Shelby County, Tennessee. Offense or act, probation violation seen leaving known drug house, so I believe Mr. Brauchle had earlier stated that we have not given him notice of extraneous when, in fact, we have.

MR. BRAUCHLE: Well, what the deal is, though, is that there's no notice of the probation. How can you be in violation of something that -- that we're not put on notice of?

THE COURT: All right. The objections were made previously. The Court overruled them, except that the record will reflect that the Court did give an instruction to the jury regarding a question and answer.

Other than that, is the State ready?

MR. DAVIS: State's ready.

THE COURT: Defense ready?

MR. BRAUCHLE: Yes, Your Honor.

THE COURT: All right.

(Jury present)

THE COURT: You may be seated.

The State may continue.

MR. DAVIS: May it please the Court, Your Honor.

Ladies and gentlemen of the jury, at this time, the State of Texas rests on punishment.

THE COURT: Mr. Johnson?

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MR. JOHNSON: Your Honor, at this time the defense rests.

MR. DAVIS: The State closes, Your Honor.

MR. JOHNSON: We close, Your Honor.

THE COURT: All right. Ladies and gentlemen of the jury, you've heard all the testimony that you will hear in regards to this phase of the trial. Now it becomes the duty of the Court to prepare the Charge, and once that Charge is prepared, to read that to you and have the attorneys give their final summations.

I suspect that we're not going to be ready to do that for a little bit, and I know that I have had y'all waiting here on and off throughout the week, so I see no reason to continue with y'all here for today. We will recess for today.

I'll ask you to be in the jury room at about quarter of 9:00, and we'll try to start at 9:00 o'clock in the morning with the reading of the Charge and the summation of the attorneys for each side.

Again, please heed my instructions and warnings. Don't read the newspaper, watch TV, or listen to the radio about this case.

With that, Jesse, I guess if you would tend to the jury, we will see you in the morning.

(Jury not present.)

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MR. BRAUCHLE: Your Honor, we need to have a hearing.

THE COURT: Okay. Let the record reflect we are outside the presence of the jury.

Mr. Brauchle, or Mr. Johnson.

MR. JOHNSON: Thank you, Your Honor.

Mr. Wright, again, we've had many opportunities to talk about different aspects of this trial. One of the aspects that we had to talk about was about the punishment phase of the trial; is that correct?

THE DEFENDANT: That is correct.

MR. JOHNSON: And you understand that you have an opportunity to testify at this phase of the trial, just like you did at the guilt/innocence phase of the trial; is that correct?

THE DEFENDANT: That's correct.

MR. JOHNSON: And we talked about that at length as well, haven't we?

THE DEFENDANT: Yes, we have.

MR. JOHNSON: And, again, we're at the same situation. You know they can't stop you and they can't make you testify.

After all the conversations we've had about this, what was your choice as far as testifying at this phase of the trial?

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THE DEFENDANT: I'm choosing not to testify.

MR. JOHNSON: Okay. You also understand that we have some of your family here. Your father's here, your brother's here. We have other witnesses that we've talked about that would be available to come down here and testify in this part of the trial. We've talked about those things as well, haven't we?

THE DEFENDANT: Yes, we have.

MR. JOHNSON: And you, after talking to me, you and I agreed, and it is your agreement, your voluntary decision to not call any witnesses at this stage of the trial; is that correct?

THE DEFENDANT: That is correct.

MR. JOHNSON: And am I doing that based on your permission and your instructions after extensive talks about what we want to do at this time?

THE DEFENDANT: That's correct.

MR. JOHNSON: Okay. So you're satisfied with the way we've handled this so far.

THE DEFENDANT: Yes.

MR. JOHNSON: Okay. Thank you.

THE COURT: Mr. Johnson, do you believe your client has made a knowing and intelligent decision in regards to testifying?

MR. JOHNSON: I believe he has.

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1 THE COURT: We'll be in recess till tomorrow.

2 However, one attorney for each side will be required to remain
3 until the Charge is ready.

4 MR. PASK: May all the witnesses be excused in
5 the case? Once they're on the airplane, we can't bring them
6 back.

7 THE COURT: Any objections from the defense?

8 MR. JOHNSON: No objections.

9 THE COURT: All right. All right.

15P 10 (Recess taken.)

11 (Court reconvened; jury not present.)

12 THE COURT: Let the record reflect we're outside
13 the presence of the jury.

14 We have -- the punishment charge in this case
15 has been printed up. Each side has had an opportunity to
16 review -- so the record's clear, each side had an opportunity
17 to place into the Charge the things that they thought were
18 important or necessary, but having reviewed the Charge,
19 Mr. Jordan, does the State have any objections to the
20 punishment charge in this case?

16P 21 MR. JORDAN: No objection, Your Honor.

22 THE COURT: All right. Mr. Abbott, does the
23 defense have any objection to the punishment Charge in this
24 case?

25 MR. ROBERT ABBOTT: The defense does not have

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any objection to the punishment Charge, but I would like to add that just in case there's fundamental error, we're not waiving.

THE COURT: All right. In regards to the defense's position, there is a parole instruction in there, and the defense has requested and approved that parole instruction; is that correct?

MR. ROBERT ABBOTT: That's correct, Your Honor,

THE COURT: All right.

(Court recessed for the day.)

(Continued in Volume 51.)