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IN THE
Supreme Court of Virginia

RECORD NO. 040480



KATINA GREEN,
Administrator of the Estate of Christie D. Green,
Appellant,

v.

GEORGE INGRAM
and
DEFENSE TECHNOLOGY CORPORATION OF AMERICA
(a Delaware corporation),
Appellees.

APPENDIX
Volume II - Transcripts

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND.

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CIRCUIT COURT
FEB 24 2004
BEVILL M. DEAN, CLERK
By.....D.C.

KATINA GREEN, etc.,

Plaintiff,

v.

Case No. LL-2806-4

DEFENSE TECHNOLOGY CORPORATION OF AMERICA,

et al,

Defendants.

CLERK
SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

BEFORE: Hon. Randall G. Johnson, Judge

Transcript

Date: September 25, 2003

Time: 10:30 a.m.

Reported by:

Dennis C. Johnson

804-272-9371

ORIGINAL

Dennis C. Johnson & Associates

1
2 **APPEARANCES:**

3
4 Charles H. Cuthbert, Esq.

5 Counsel for the Plaintiff

6
7 Beverly Burton, Esq.

8 Vicki Harris, Esq.

9 Counsel for the Defendant

10
11 -----
12
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1 THE COURT: If I recall, we are here on
2 a pretrial conference. And I know I've been
3 receiving motions even on up until yesterday, and
4 I'll be guided by however you all want to -- well, I
5 say yesterday because I only came back to work this
6 week. I'll be guided by however you all want to
7 proceed.

8 Mr. Cuthbert.

9 MR. CUTHBERT: Thank you, Judge.

10 And I'm sure that Ms. Burton and
11 Ms. Harris appreciates Your Honor's flexibility as
12 much as I do. We all had some scheduling
13 difficulties to work around --

14 THE COURT: I'm sure.

15 MR. CUTHBERT: -- with the weather, and
16 so on.

17 THE COURT: And you all had another
18 incident yesterday, didn't you?

19 MR. CUTHBERT: Yes, I did, and I lost
20 power yesterday.

21 THE COURT: Because of the fire?

22 MR. CUTHBERT: I got down to the office
23 at 7 a.m., and I was going to go to work, and the
24 alarm didn't even go off.

25 THE COURT: Your wife was up here

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1 looking for the file, and she said that that was
2 inconveniencing a lot of folks.

3 MR. CUTHBERT: Yes, sir. Well, in any
4 event, I'm glad it wasn't worse, but sorry it
5 happened.

6 Your Honor, I filed a series of motions,
7 and I would like to address them in order, if I may.

8 THE COURT: All right.

9 MR. CUTHBERT: Some have gone away, some
10 have not. My Motion 1 that I filed by letter dated
11 September 5 asks the court to rule in limine that
12 certain evidence should not come before the jury.

13 THE COURT: All right. This is
14 September 5?

15 MR. CUTHBERT: Yes, sir.

16 THE COURT: This is 1, evidence as to
17 collateral source?

18 MR. CUTHBERT: That's exactly right.

19 THE COURT: All right.

20 MR. CUTHBERT: And I itemize there under
21 my Motion 1 a through h of subpart 1, and I point
22 out that the collateral source, in our view, bars
23 this evidence from coming forward.

24 THE COURT: All right.

25 MR. CUTHBERT: I think I will move onto

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1 item 2 under Motion 1, if I may.

2 THE COURT: All right.

3 MR. CUTHBERT: The following facts
4 surrounding the death of Christie Green, each of
5 which is not relevant, and regardless of --

6 MS. BURTON: I'm sorry, what did you say
7 with regard to item number 1?

8 THE COURT: Just that he is asking me to
9 exclude all of the items under 1a through h as being
10 irrelevant because they are forms of collateral
11 source.

12 And I appreciate if you all would not
13 make any extensive arguments unless I ask for it,
14 because we have quite a bit to cover and I think I
15 understand the basis for them.

16 MR. CUTHBERT: Yes, sir.

17 THE COURT: Number 2?

18 MR. CUTHBERT: Yes, sir, item 2, it's
19 not collateral source, but the facts that are not
20 relevant, and regardless, they are unduly
21 prejudicial, and I itemize the subparts there, a, b
22 and c.

23 THE COURT: Okay. I'm not sure that I
24 understand. Maybe I do need you to tell me your
25 basis for number 2. You say you don't want me to

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1 allow the jury to know the circumstances surrounding
2 the death of Ms. Green?

3 MR. CUTHBERT: It's narrower than that.

4 THE COURT: But you don't think that's
5 relevant, to show the state of mind of the
6 defendants? And this case is only against the two
7 police officers; is that correct?

8 MR. CUTHBERT: True. Your Honor, let me
9 focus with Your Honor on that.

10 THE COURT: All right.

11 MR. CUTHBERT: We are talking about
12 after the fact evidence. Guns were found, drugs
13 were found. We are not talking about what they
14 expected to find.

15 THE COURT: Okay.

16 MR. CUTHBERT: And I think that's an
17 important distinction there. Now, also I would
18 point out, Your Honor, that I have stipulated that
19 the -- let's see if I can find it.

20 THE COURT: You don't object to the
21 defendants telling the jury what they thought they
22 would find inside the apartment?

23 MR. CUTHBERT: I think they are entitled
24 to do that.

25 THE COURT: You are not going to make

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1 any suggestion to the jury that they didn't find
2 those things?

3 MR. CUTHBERT: No, sir. They did find
4 guns and they did find drugs, and I am not going to
5 suggest to the jury that they did not find them.

6 THE COURT: Wouldn't the fact that those
7 things were in the apartment lead some credence to
8 their suspicions?

9 MR. CUTHBERT: Your Honor, the issue is
10 their state of mind, what was their state of mind
11 before they pulled the trigger, or as they pulled
12 the trigger, what was their state of mind? If there
13 was nothing inside, that would not affect their
14 state of mind as they were pulling the trigger, or
15 it would not help to prove their state of mind.

16 THE COURT: Well, I don't know if this
17 is an appropriate analogy or not. Let's just use
18 the police officer's trial that just ended in
19 another hung jury. You have a police officer who
20 was accused a manslaughter or murdering a suspect,
21 and the police officer's defense is that, "I thought
22 the suspect was reaching into his pocket to pull a
23 gun."

24 You don't think the jury in that trial
25 is entitled to know whether or not the suspect did

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1 in fact have a gun? Or is that an appropriate
2 analogy, because that is the case where a person is
3 on trial for manslaughter. This is a civil action,
4 but the person is still kind of on trial for a
5 wrongful killing.

6 MR. CUTHBERT: We do not dispute that
7 they had good cause to suspect that there were guns
8 and drugs.

9 THE COURT: Regardless of the fact that
10 there were guns and that there were drugs, how does
11 that prejudice your client's case at all? If you
12 don't dispute the fact that they had, the defendants
13 had good cause to believe that the guns were there,
14 how does it prejudice your client for the jury to
15 know that the guns were in fact there?

16 MR. CUTHBERT: Because it suggests that
17 my client was hanging out with drug dealers. She
18 was there for only 10 minutes before the -- maybe
19 15, by our evidence -- before the raid began. But
20 again, going back to your example, in the Melvin
21 case, the police officer, the murder-manslaughter
22 case, it was hotly contested whether the police
23 officer had good cause to do what he did.

24 THE COURT: That's right.

25 MR. CUTHBERT: That's not an issue here.

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1 THE COURT: And the jury was told, that,
2 Mr. Johnson, I think his name was, did not have a
3 weapon on him.

4 MR. CUTHBERT: Yes, sir, and when I say
5 it's not an issue here --

6 THE COURT: And I assume that had he had
7 had a weapon on him, the jury would have been told
8 that he did have a weapon on him.

9 MR. CUTHBERT: Yes, sir. When I say
10 that it's not an issue here, it's not an issue that
11 they had good cause to call in the SWAT Team. It's
12 not an issue here that they had good cause to think
13 that there were drugs and guns in the apartment.
14 It's not an issue here that --

15 THE COURT: I think I understand your
16 argument. All right.

17 And that would be the same with regard
18 to the, or would your argument be different with
19 regard to the fact that drugs were found?

20 MR. CUTHBERT: I think it's the same.
21 Maybe it's different, Your Honor. I mean, it's a
22 different substance.

23 THE COURT: The prejudice to your client
24 would be the same?

25 MR. CUTHBERT: The prejudice to my

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1 client would certainly be the same. From my side of
2 the table it's the same, and as I say, we do not
3 dispute --

4 THE COURT: And how about C? It seems
5 to me that that might be a little different. If
6 shots were being fired from inside the apartment,
7 does it make any difference who was firing those
8 shots?

9 MR. CUTHBERT: Yes, sir, and they agree
10 that it wasn't in their request for admissions.

11 THE COURT: But doesn't that give the
12 defendants, I mean, do the defendants say, well, we
13 are not going to break down the door because we
14 don't know who's shooting at us or at them? Were
15 shots being fired at the police?

16 MR. CUTHBERT: Yes, sir, there were.

17 THE COURT: We don't know who's firing
18 those shots. If it's a drug dealer trying to kill
19 us, we should try to break down the door. If it's a
20 drug dealer's girlfriend or somebody else who is
21 shooting at us, then we should then walk away. I'm
22 not trying to make light of it. What difference
23 does it make who was firing the shots?

24 MR. CUTHBERT: Well, here's what is
25 important, and I quote it in my paragraph c. This

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1 is testimony of Sergeant Ingram himself.

2 "QUESTION: Before you heard a shot --"
3 sorry. "QUESTION: Because you heard a shot fired
4 from inside the apartment, did you change your
5 course of action in any way?

6 "ANSWER: No, sir."

7 So if it did not change his course of
8 action in any way and he admits it didn't, how does
9 it bear on his culpability?

10 THE COURT: I don't want to make
11 Ms. Burton's argument for her, but maybe they were
12 taking the most drastic action they could take
13 anyway, because they know knew that these folks
14 were -- not necessarily Ms. Green -- but knew that
15 there were people in this apartment that were
16 absolutely up to no good and were trying to kill
17 them, and whether shots were being fired at that
18 particular time or not made no difference to them as
19 to taking the most drastic action necessary. It
20 just confirmed the fact that there were people in
21 the apartment who were not nice people.

22 MR. CUTHBERT: Well, I understand that
23 confirms that some of the people in the apartment
24 were not nice people, but again, when we look at
25 what we got to prove, we got to prove gross

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1 negligence in pulling the trigger or gross
2 negligence in --

3 THE COURT: You got to prove that these
4 folks didn't have a reason for doing what they did,
5 and it seems to me -- I'm going to hear what the
6 defendants have to say, but the fact that there were
7 shots being fired, I'm not sure if that's relevant.

8 MR. CUTHBERT: Well, if Ingram had not
9 said what he said, I would sign onto that, but
10 that's why I asked, you know, in effect, where's the
11 causal link, Sergeant Ingram, between the shots that
12 you heard on the one hand, and your actions on the
13 other? And he said, there's no causal link.

14 THE COURT: All right.

15 MR. CUTHBERT: Your Honor, 3, Kevin
16 Jones was wanted or arrested for murder, and the
17 circumstances surrounding his arrest, including but
18 not limited to argument or evidence of a separate
19 SWAT Team raid earlier that same day at another
20 apartment, at another location where Ms. Green was
21 present, he was on south side, and then Ms. Green
22 was just at the wrong place at the wrong time. The
23 purpose of that earlier raid was to arrest Mr. Jones
24 for murder.

25 THE COURT: Well, where was Mr. Jones at

1 the time of Ms. Green's death?

2 MR. CUTHBERT: He was in jail, I
3 suspect. He wasn't on the premises. He wasn't
4 present.

5 THE COURT: Well, I guess I have to hear
6 from the defendants as to what the relevance of that
7 is.

8 MR. CUTHBERT: I see no relevance, Your
9 Honor. I think that is the point.

10 THE COURT: All right. Number 4.

11 MR. CUTHBERT: I guess I would say if
12 the defense can somehow point up some relevance, I
13 would argue that compared to the prejudice, the
14 balance is in favor of keeping it out.

15 THE COURT: All right.

16 MR. CUTHBERT: Now let me turn to item 4
17 and item 5. They deal with expert witness
18 designations that previously I filed before the jury
19 came back with the defense verdict in favor of the
20 manufacturer. These are expert witness disclosures
21 that I filed in connection with the claim against
22 the manufacturer. Admittedly, all are part of the
23 same lawsuit, but we are going forward. Your Honor
24 had ruled that the claims were to be severed and
25 tried separately, and I have included a copy of

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1 the --

2 THE COURT: What's happened to that
3 appeal? Is that appeal over?

4 MR. CUTHBERT: Yes, sir.

5 THE COURT: It is?

6 MR. CUTHBERT: I did not get it.

7 THE COURT: Okay.

8 MR. CUTHBERT: Your Honor, Attachment 3
9 is a copy of the expert witness disclosure in
10 question in this black book, if Your Honor has that.
11 Yes, sir.

12 THE COURT: All right.

13 MR. CUTHBERT: And I give as an
14 example --

15 THE COURT: Let me make sure I
16 understand what it is you're asking for. You made
17 expert disclosures, you think the defendants are
18 going to try use those at trial?

19 MR. CUTHBERT: Yes, sir.

20 THE COURT: And you don't want them to
21 use them?

22 MR. CUTHBERT: Correct.

23 THE COURT: Are the experts going to
24 testify?

25 MR. CUTHBERT: No, sir.

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1 THE COURT: These experts are not going
2 to testify?

3 MR. CUTHBERT: Well, it depends upon
4 which ones we are talking about. But Langford on
5 page 11 is not going to testify, and Ms. Burton has
6 filed something --

7 THE COURT: What are the precise
8 opinions that you think the defendants are going to
9 try to use? They must not be favorable to you.

10 MR. CUTHBERT: Yes, sir. It's 6 through
11 8 of Langford.

12 THE COURT: And these opinions were
13 given through discovery depositions?

14 MR. CUTHBERT: Well, they were given in
15 depositions. They were given in my expert witness
16 disclosure. I did not call Langford at trial
17 against the manufacturer.

18 THE COURT: You didn't. Well, if you
19 call these experts, you can't stop the defendants
20 from impeaching your witnesses or from pointing out
21 what they testified to in depositions.

22 MR. CUTHBERT: I think that's right.
23 I'm not calling Langford, though. This is the man
24 on page 11 of tab 3. And I've gotten something from
25 Ms. Burton that indicates that -- well, she

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1 designated in a --

2 THE COURT: But they were designated to
3 testify as your witness at trial?

4 MR. CUTHBERT: Yes, sir, against the
5 manufacturer.

6 THE COURT: And did they say something
7 you didn't like and now they want to --

8 MR. CUTHBERT: Well, no. They go
9 against the manufacturer. And now Ms. Burton is
10 pointing to that as the reason to let the police
11 officers off the hook.

12 Page 11, let's just look at that.
13 Dr. Langford --

14 THE COURT: The rules don't say anything
15 about that. I know they say if you designate an
16 expert to help you prepare for trial, but not to
17 testify at trial, then the defendants don't have any
18 right to use that, or even to discover that expert's
19 opinion, but once you designate somebody to testify
20 at trial, can you then change your mind when the
21 person gives you an opinion that you don't like?

22 Let's just take the normal case, a
23 personal injury case where you designate a physician
24 to be your expert witness on the question of
25 causation and you ask and you say that this doctor

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1 is going to say that this accident caused my
2 client's injuries, and the defendant takes the
3 doctor's deposition and asks the doctor, did the
4 accident cause the plaintiff's injuries, and the
5 doctor says, no, it didn't?

6 MR. CUTHBERT: Yes, sir.

7 THE COURT: The defendant can't tell the
8 jury that?

9 MR. CUTHBERT: Your Honor, the thing
10 that's special -- I think they could in that case,
11 but there are two things that are special.

12 THE COURT: Tell me why this is
13 different.

14 MR. CUTHBERT: One is the trial of these
15 matters has been severed. If we were going together
16 under one big umbrella against the manufacturer in
17 the same courtroom with the police officers, I would
18 not be making this particular argument. I would be
19 trying to get this opinion before the jury, but Your
20 Honor has severed the trial of the two cases.

21 THE COURT: Any case law on this?

22 MR. CUTHBERT: No, sir.

23 THE COURT: The reason I ask this is
24 because normally an expert only testifies by way of
25 contract with somebody. You cannot make somebody

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1 give an opinion.

2 MR. CUTHBERT: Yes, sir.

3 THE COURT: And I'm just wondering if
4 you have asked a person to give the opinion and now
5 you change your mind and you say you don't want that
6 person to give that opinion, I'm just wondering
7 whether the defendants have the right to call that
8 person?

9 MR. CUTHBERT: Well, Your Honor, if this
10 were not the unusual posture of a bifurcated
11 defendant trial, I could see that.

12 THE COURT: Well, it was bifurcated for
13 trial, but discovery was still the same.

14 MR. CUTHBERT: Yes, sir, but you see --

15 THE COURT: I'm just wondering whether
16 the defendants have a right to call an expert
17 against that expert's will. I just don't know the
18 answer to that.

19 MR. CUTHBERT: Well, I think Judge
20 Hughes has a decision on that says that it is an --

21 THE COURT: I mean, in general you
22 can't.

23 MR. CUTHBERT: Yes, sir. Judge Hughes
24 has a decision that says you cannot.

25 THE COURT: And what I'm just wondering,

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1 once a person has been designated as an expert, does
2 that mean that the expert has now consented to give
3 an opinion, even if the person who is designated,
4 him or her, changes his or her mind? I don't know
5 the answer to that question.

6 MR. CUTHBERT: Yes, sir. This is not
7 coming forward as a deposition. It's being
8 presented --

9 THE COURT: I mean, obviously you can't
10 change your mind after putting your expert on the
11 stand, going through direct examination, and then
12 sitting down and then when Ms. Burton stands up to
13 cross-examine and the expert starts giving testimony
14 you don't like, you can't say wait a minute. I
15 hereby call off my designation and want the witness
16 to step down.

17 MR. CUTHBERT: I understand.

18 THE COURT: You can't do it then. I'm
19 just wondering whether you can do it before trial,
20 because that's basically what you're doing. You are
21 saying I don't like what the expert is going to say,
22 and I hereby take back my designation.

23 MR. CUTHBERT: Well, I'll go back to
24 what I said before, and I don't mean to be a broken
25 record, but this is an unusual circumstance, and it

1 simply allows the defense to do what I was most
2 afraid of with the bifurcation, and that was to
3 whipsaw the plaintiff's case. But there's a more
4 fundamental reason not to let this Opinion 7 in.

5 THE COURT: Opinion 7?

6 MR. CUTHBERT: Yes, sir, on page 11.

7 THE COURT: All right.

8 MR. CUTHBERT: Let me just read that
9 into the record, if I may.

10 THE COURT: All right.

11 MR. CUTHBERT: It says page 15, copy
12 attached, it is not accurate in stating that, quote,
13 the only possible fragmentation would be from the
14 target area, rather than the slug itself, close
15 quote, and this is opinion B7 of George Langford on
16 page 11 of the document behind tab 3.

17 THE COURT: Why do you think that should
18 not come in? But for the fact that you -- I mean,
19 if he were going to testify, he would have to, this
20 would be fair game, wouldn't it?

21 MR. CUTHBERT: No, sir, I don't think
22 so. I wish it were, but I mean, if I was against
23 the manufacturer I would wish it were, but I've done
24 some research since I've wrote this designation, and
25 I would like to give you a copy and Ms. Burton a

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1 copy, if I may. And it is David A. Parker
2 Enterprises, Inc. v. Templeton at 251 Va. 235. It's
3 the motorboat propellor case.

4 THE COURT: Right.

5 MR. CUTHBERT: And the point is that
6 conclusions based on facts cannot be given to the
7 jury if the jury is just as able as the expert to
8 reach that conclusion.

9 THE COURT: All right.

10 MR. CUTHBERT: And that's why the court,
11 I believe, reversed the --

12 THE COURT: Yeah, but I mean are you
13 saying that's true in this case?

14 MR. CUTHBERT: I think if I had put this
15 forward as an opinion, it would not have gotten into
16 evidence. Page 15, copy attached, is not accurate.
17 I mean, isn't the lay jury just as capable as the
18 expert of reaching that conclusion?

19 THE COURT: Where is page 15? Is page
20 15 actually attached to here? Do I have page 15?

21 MR. CUTHBERT: I didn't give it to you,
22 Your Honor, but I can describe it. It may be that
23 defense counsel has it. It's the product literature
24 of Defense Technology.

25 THE COURT: Well, other than saying that

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1 page 15 is not accurate, can the expert simply say
2 that it is not accurate to say that the only
3 possible fragmentation, et cetera, et cetera,
4 without referring to page 15?

5 MR. CUTHBERT: I don't think so, under
6 the Templeton case. Again, that's a conclusion. I
7 mean, in that case the expert was not allowed to say
8 that, I think that the injury was caused by a moving
9 propellor. All he was allowed to say, as the court
10 explains it to us, was that the injury was caused by
11 a sharp object.

12 THE COURT: But this is a little
13 different. This is talking about a round or a slug.
14 I don't know that the average juror would have the
15 knowledge of knowing what happens when you fire --

16 MR. CUTHBERT: Well, Your Honor, the
17 basis --

18 THE COURT: -- your slug into a door.

19 MR. CUTHBERT: Right. The basis for
20 this statement is that one of our experts shot the
21 slugs and they went through the door. Now, so is
22 the jury entitled to reach its own conclusion based
23 on the fact that slugs in our testing went through
24 the door, rather than to have this man reach the
25 conclusion? I mean, isn't this reversible error to

1 allow that in, just as it was reversible error in
2 the Templeton case about the propellor, to allow the
3 expert to say that these injuries were caused by a
4 moving propellor?

5 The Supreme Court said you can put the
6 facts before the jury, but you can't take that extra
7 step, because that's why we have jurors, and a juror
8 is just as capable of taking that step, "is this
9 thing accurate or is it not," as an expert.

10 THE COURT: I understand. All right.
11 That takes care of number 4?

12 MR. CUTHBERT: Yes, sir. And may I
13 also, before I leave 4, I would like to put into the
14 record the other bases for my objection.

15 THE COURT: All right.

16 MR. CUTHBERT: And I list them on page
17 5. There are a series of them, that it's double
18 hearsay; that is, the first layer of hearsay results
19 because these disclosures are out-of-court
20 statements of experts that are being offered for the
21 truth of their content.

22 And the second layer of hearsay --

23 THE COURT: Well, is it the disclosures
24 that you're trying to get out, or is it the
25 testimony of the expert that you're trying to keep

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1 out?

2 MR. CUTHBERT: Well, at this point the
3 only issue is the disclosure.

4 THE COURT: That's what you say the
5 expert is going to say?

6 MR. CUTHBERT: Yes, sir, and that's what
7 this is behind tab 3.

8 THE COURT: All right.

9 MR. CUTHBERT: And so it is, it's double
10 hearsay.

11 The second layer of hearsay is because
12 they are out-of-court statements that I made that
13 are as to what somebody else was going to say.

14 THE COURT: Okay.

15 MR. CUTHBERT: And I also point out and
16 argue on page 5 that these disclosures are not
17 relevant in themselves.

18 THE COURT: Well, are the disclosures
19 inconsistent with your theory of the case against
20 the individual police officers? And if they are,
21 wouldn't that be relevant to show a prior
22 inconsistent statement or inconsistent theory of the
23 case?

24 MR. CUTHBERT: I don't know; the page 15
25 is such a muddle.

1 THE COURT: I'm just asking because I
2 don't know enough about the case to know the answer
3 to my question, but you and Ms. Burton should. Are
4 the disclosures inconsistent with your theory of the
5 case against the police officers? In other words,
6 if you say to an expert, if you had been asked the
7 question, who do you think is liable for Ms. Green's
8 death and your answer had been, we don't think the
9 police officer is liable, we think the only people
10 who are liable are the manufacturers, and your
11 client has signed that under oath and now you are
12 suing the police officers, don't you think the jury
13 should be told that at one point the plaintiff said,
14 I don't think the police officers are at fault?

15 MR. CUTHBERT: Yes, sir, I think so, but
16 I don't --

17 THE COURT: So that gets me to the
18 question I'm asking you. Is the disclosure
19 inconsistent with your present theory against the
20 police officers? And if it is, shouldn't the jury
21 be told that, that you are now taking a position
22 inconsistent with the previous position?

23 MR. CUTHBERT: Your Honor, I think that
24 the page 15 statement is something that the police
25 are relying on to justify what they did.

1 THE COURT: I'm not sure that answers my
2 question.

3 MR. CUTHBERT: I don't know --

4 THE COURT: I just want to know whether
5 your disclosure that you think, and I don't know
6 then yet whether the defendants are going to try to
7 do it -- I guess they are, because they haven't
8 stood up and said, don't worry about that, judge, we
9 are not going to try to do this, so I guess they are
10 trying to try to do it -- if they are going to try
11 to rely on this disclosure to show that the
12 plaintiff is now taking an inconsistent position, I
13 need to know whether your position is that it is
14 inconsistent.

15 MR. CUTHBERT: Well, the difficulty is
16 that page 15 --

17 THE COURT: Which I don't have.

18 MR. CUTHBERT: Yes, sir.

19 THE COURT: Maybe I need to see that so
20 I know what we're talking about.

21 MR. CUTHBERT: Yes, sir -- can be
22 interpreted as saying if you shoot at the hardware,
23 the only possible fragmentation would be from the
24 hardware, rather than the slug, and I don't know
25 that anybody disagrees with that.

1 THE COURT: And how does that hurt you?

2 MR. CUTHBERT: On the other hand, the
3 police say that there is an ambiguity in this page
4 15, and they are relying on the ambiguity. But to
5 get back to the Templeton decision, the jury is just
6 as capable as an expert --

7 THE COURT: Well, I don't know how the
8 jury -- juries are smarter than I am.. I don't know
9 I would be able to determine that the only
10 fragmentation would come from the slug. I don't
11 know how I would be able to determine that. Tell me
12 what information the jury is going to have to make
13 that determination.

14 MR. CUTHBERT: The factual testify from
15 the police officers.

16 THE COURT: That what?

17 MR. CUTHBERT: That when they shot this
18 thing previously and it hit hardware, it always
19 turns to dust.

20 THE COURT: So what? A doctor testifies
21 that, I have performed this operation 100 times, and
22 every time I performed it the patient does well,
23 this is the only time I've had a bad result, you
24 don't think that the plaintiff is entitled to have
25 an expert say that those hundred times that the

1 doctor performed this operation the doctor performed
2 it outside the standard of care and was just lucky?

3 MR. CUTHBERT: It depends upon what we
4 were trying to prove.

5 THE COURT: Well, if you are trying to
6 prove that the doctor failed to meet the Virginia
7 standard of care for physicians, and the doctor
8 says, you know, I have performed this operation 100
9 times. I have never washed my hands before I
10 performed this operation and no patient has ever
11 suffered an infection, this is the first time that a
12 patient suffered an infection because I didn't wash
13 my hands, and the plaintiff now wants to come in and
14 say, the standard of care in Virginia is for a
15 surgeon to wash his hands, his or her hands, before
16 an operation, is your argument that, no, you can't
17 do that because a jury can determine, based on the
18 doctor's testimony that he has had a hundred
19 operations without ever washing his hands and never
20 had a bad result, the jury can determine without
21 expert testimony what the standard of care is?

22 I don't think that's true, Mr. Cuthbert.
23 I'm sure you're not making that argument. So the
24 fact that these officers, every time they did this
25 got a certain result, are you saying that precludes

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1 the presentation of expert testimony?

2 MR. CUTHBERT: Gee, Your Honor, we are
3 so far away from what I'm trying to address here
4 that I --

5 THE COURT: Well, maybe, I picked up on
6 the last thing you said. Again, let me ask my
7 question again. What facts will the jury have to
8 make a determination that the only possible
9 fragmentation would not be from the target area,
10 rather than the slug itself?

11 MR. CUTHBERT: The testimony of Sergeant
12 Ingram, and I suspect other police officers, but
13 certainly Sergeant Ingram will say that.

14 THE COURT: I think I understand you on
15 that one. Anything else you want to tell me about
16 number 4?

17 MR. CUTHBERT: Well, Your Honor, I'm on
18 the irrelevant points. Point 4 c, I also would
19 argue that these disclosures deal with the liability
20 of the manufacturer, Defense Technology, and a
21 previous jury has concluded that Defense Technology
22 is not legally responsible for Ms. Green's death.

23 THE COURT: All right.

24 MR. CUTHBERT: So if this comes in, I
25 would argue that the door is open to my telling the

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1 jury that a previous jury had concluded that Defense
2 Technology was not legally responsible.

3 THE COURT: Okay, I think I understand
4 what you are saying. I don't agree with you, but I
5 understand what you are saying. Again, it seems to
6 me it goes to the question of whether you are taking
7 inconsistent positions, whether you at one time said
8 somebody else was liable and now you are saying that
9 the police officer was liable.

10 MR. CUTHBERT: Well, don't lose sight of
11 the Templeton case.

12 THE COURT: But that's for a different
13 proposition.

14 MR. CUTHBERT: Yes, sir, exactly.

15 THE COURT: All right.

16 MR. CUTHBERT: But I do think and I just
17 want the court to share my thinking, or at least be
18 aware of my thinking on this, that if this statement
19 does come into evidence I'm going to be asking the
20 court to allow me to tell the jury that the case
21 against the manufacturer was tried and the
22 manufacturer was --

23 THE COURT: Why is that relevant to
24 anything?

25 MR. CUTHBERT: Because it deals with

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1 whether this statement 15 is accurate or not, among
2 other things.

3 THE COURT: Okay.

4 MR. CUTHBERT: So if it's coming in, I
5 ought to be able to put it in the context of when it
6 came in and how another jury interpreted it.

7 THE COURT: All right.

8 MR. CUTHBERT: You know, interpretations
9 of fact are something that an expert may address.

10 THE COURT: All right. Let's go to
11 number 5. We have spent a lot of time on 4.

12 MS. TAYLOR: Excuse me, Judge. I
13 apologize. I have to leave. I have a hearing in
14 Chesterfield this morning.

15 THE COURT: Ms. Burton is going to let
16 you leave? Have fun.

17 MR. CUTHBERT: Your Honor, a number of
18 these also are speculative. I think we need to take
19 them on an opinion-by-opinion basis but --

20 THE COURT: Well, I think that is a
21 decision that has to be made at trial based on the
22 foundation that is laid.

23 MR. CUTHBERT: Yes, sir.

24 THE COURT: How about Number 5?

25 MR. CUTHBERT: Your Honor, I think 5 is

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1 similar to 4. It deals with -- there is a different
2 spin on it here, though. 5 is dealing with expert
3 witnesses that we have identified as people that
4 we -- let me get this straight.

5 THE COURT: All right. How about number
6 6?

7 MR. CUTHBERT: 5 is dealing with the
8 disclosures previously made as experts in --

9 THE COURT: You just don't want anything
10 to come in, any opinions to come in that deal solely
11 with the liability of Defense Technology?

12 THE WITNESS: Yes, sir.

13 THE COURT: Okay. I think I understand.

14 MR. CUTHBERT: And again, for the
15 reasons that I itemized before, I think the same
16 reasons apply here, including the Templeton case.
17 And I would also add for both of these that a number
18 of these opinions are probably not admissible on the
19 grounds that they are speculative.

20 THE COURT: Okay. How about Number 6?

21 MR. CUTHBERT: At least I had a fit
22 getting these things before the jury, Your Honor,
23 when I was with another judge.

24 THE COURT: I'm ready to move,
25 Mr. Cuthbert. Let's go to 6.

1 MR. CUTHBERT: Yes, sir. 6 is dealing
2 with whether the defense may claim that one or more
3 of the number 22 TKOs allegedly malfunctioned.

4 THE COURT: This seems inconsistent with
5 the argument you made just now that the jury should
6 be able to determine these things factually without
7 expert opinions. Are you saying now you do need
8 expert opinions?

9 MR. CUTHBERT: No, sir. I'm saying that
10 this ought not to come before the jury, period, in
11 the way of a conclusion.

12 THE COURT: That's not what you say.
13 I'm talking about number 6.

14 MR. CUTHBERT: That's what I mean to
15 say. I'm looking at --

16 THE COURT: You say, the grounds for
17 this motion are that expert witness opinion is
18 required to prove any such alleged malfunction, and
19 I'm saying that appears to be inconsistent. I'm not
20 saying it is. I'm saying at first glance it appears
21 to be inconsistent with your argument just now that
22 the jury does not need expert opinion to determine
23 what happened to these slugs. I assume that
24 Sergeant Ingram is going to testify that one or more
25 of the rounds he fired malfunctioned --

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1 MR. CUTHBERT: Your Honor.

2 THE COURT: -- and should the jury be
3 able to determine from his testimony only whether in
4 fact they did malfunction. I'm not saying they
5 should, because I disagreed with your earlier
6 argument, so I think that they do need expert
7 testimony.

8 MR. CUTHBERT: Yes, sir.

9 THE COURT: But I'm just saying it
10 appears to be inconsistent with your argument.

11 MR. CUTHBERT: It depends upon which
12 part of 6 we are focusing on, Your Honor.

13 THE COURT: There is only one part of 6.
14 I'm still looking at the same motion in limine,
15 number 6 on page 6.

16 MR. CUTHBERT: Yes, sir.

17 THE COURT: There is only one ground for
18 the motion, and that is that you need expert
19 witnesses. That's the only ground I see. I'm not
20 trying to be funny. Am I missing something? There
21 are only five lines of that motion. All it talks
22 about is expert witness opinion.

23 MR. CUTHBERT: I'm trying to answer Your
24 Honor's question.

25 THE COURT: All right.

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1 MR. CUTHBERT: Item 6 deals with alleged
2 malfunctioning, and certainly Ingram can say what he
3 observed. As to whether or not that constitutes --

4 THE COURT: He is going to say that it
5 malfunctioned.

6 MR. CUTHBERT: As to whether or not that
7 constitutes a malfunction, I don't think he can take
8 that extra step.

9 THE COURT: He is saying he pulled the
10 trigger and it didn't leave the gun.

11 MR. CUTHBERT: And I think the jury is
12 entitled to determine whether or not that
13 constitutes a malfunction or not.

14 THE COURT: You just don't want him to
15 use the word "malfunction"?

16 MR. CUTHBERT: Yes, sir.

17 THE COURT: Is that the only thing?

18 MR. CUTHBERT: In item 6, that's
19 correct.

20 THE COURT: Well, we can take care of
21 that.

22 MR. CUTHBERT: Now, item 7 --

23 THE COURT: But Ms. Burton would be
24 allowed to argue to the jury that it was a
25 malfunction. The fact that the trigger was pulled

1 and the round did not leave the gun equals
2 malfunction, she will be able to say that in her
3 closing argument.

4 MR. CUTHBERT: I think that is true, and
5 I think we are slicing it pretty thin. Maybe I am,
6 Your Honor, but let me move to 7.

7 THE COURT: Did the fact that there was
8 something that can be argued was a malfunction, did
9 that change Sergeant Ingram's actions at all? And
10 if it did, shouldn't he be allowed to tell the jury
11 that he thought there was a malfunction? I was
12 getting ready to do A, but because I thought I had a
13 malfunction I did B?

14 MR. CUTHBERT: I haven't heard any
15 evidence like that.

16 THE COURT: Okay.

17 MR. CUTHBERT: The only evidence of a
18 claim of malfunction came after the lawsuit was
19 filed. In the various statements that Ingram gave
20 before the lawsuit, he never mentioned malfunction.

21 THE COURT: That's a matter of
22 credibility. That's not a matter of admissibility.

23 MR. CUTHBERT: Well, I'm trying to
24 follow through Your Honor's hypothetical. Your
25 Honor was asking --

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1 THE COURT: Well, I don't mean to make
2 it a hypothetical. I mean to ask it is that going
3 to be the evidence?

4 MR. CUTHBERT: I have seen none that he
5 changed his course of action because he sensed that
6 the rounds were malfunctioning.

7 THE COURT: Right.

8 MR. CUTHBERT: No, sir, I haven't seen
9 that.

10 THE COURT: What's the relevance of the
11 malfunction? And I'm sure your argument is probably
12 that there is no relevance?

13 MR. CUTHBERT: I certainly can't answer
14 that question, Your Honor.

15 THE COURT: Okay. Do you believe there
16 was a malfunction?

17 MR. CUTHBERT: No, sir.

18 THE COURT: If there was a malfunction,
19 does that hurt your case, if the jury finds that
20 there was a malfunction?

21 MR. CUTHBERT: The jury concluded that
22 these rounds were just unique and bore no
23 relationship to anything that anybody had ever seen
24 before, I think it would hurt my case.

25 THE COURT: Okay. I think that answers

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1 my question.

2 MR. CUTHBERT: Yes, sir.

3 THE COURT: All right, number 7.

4 MR. CUTHBERT: That allegedly there's a
5 difference in the performance characteristics of
6 number 22 TKOs with a red hull or shell, as compared
7 to the one with the silver hull or shell, and I
8 would like Your Honor to have a chance to read what
9 I wrote down as 7.

10 THE COURT: All right. I think I
11 understand number 7.

12 MR. CUTHBERT: But there is no evidence
13 that there is any difference in their performance
14 characteristics, and when I asked in response to an
15 interrogatory whether they were claiming that there
16 was any difference in the performance
17 characteristics of the silver versus the red, they
18 objected in part because it calls for an expert
19 opinion.

20 THE COURT: All right. And no such
21 expert opinion has been rendered?

22 MR. CUTHBERT: Correct.

23 THE COURT: Disclosed. All right.

24 MR. CUTHBERT: And I attached as
25 Attachment 4 in my black book a copy of that

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1 interrogatory and a copy of the response.

2 THE COURT: All right. Let's go to
3 Motion Number 2.

4 MR. CUTHBERT: Your Honor, the good news
5 is that we have resolved all of this except for item
6 6, which is the deposition of Jimmy Trahin. When I
7 filed this motion I did not have his, I hadn't
8 received his deposition transcript. As soon as I
9 received it, I filed a supplemental motion and did
10 so by letter dated September --

11 THE COURT: September 10?

12 MR. CUTHBERT: Yes, sir.

13 THE COURT: All right.

14 MR. CUTHBERT: And I asked, in my
15 transmittal letter I said, by copy of this letter to
16 Ms. Burton I asked that she fax me an itemization of
17 any deficiencies or objections she had so that we
18 might attempt to resolve our differences before the
19 hearing, and I haven't heard and I --

20 THE COURT: All right. Tell me what it
21 is you want to do about Mr. Trahin.

22 MR. CUTHBERT: Well, Your Honor, I want
23 to put into evidence the direct examination that I
24 conducted, which is what I have attached.

25 THE COURT: Who is Mr. Trahin?

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1 MR. CUTHBERT: He is a gentleman from
2 California who investigates police shootings by the
3 Los Angeles Police Department. He is a retired
4 Los Angeles police officer.

5 THE COURT: What is going to be the
6 substance of his testimony?

7 MR. CUTHBERT: He visited the Defense
8 Technology plant in Casper, Wyoming, and shot one of
9 the rounds and recorded on film, on just a
10 35-millimeter film, not video, of what it is he
11 observed as to the performance of the rounds.

12 And they went straight through pieces of
13 wood, pieces of plywood that he shot them at a
14 distance of I think 95 feet. He had them hit two,
15 in the trade what's called witness boards, or at
16 least the second one was a witness board. The first
17 one was a target.

18 THE COURT: What's the relevance? What
19 does this have to do with this case?

20 MR. CUTHBERT: Well, Sergeant Ingram, as
21 I understand it, says that he has shot rounds
22 through wood before, and the rounds have always
23 turned to fairy dust.

24 THE COURT: Done what?

25 MR. CUTHBERT: Turned to fairy dust,

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1 always just puff, but when he shot these he was
2 surprised to see that they did not turn to fairy
3 dust.

4 THE COURT: Well, I'm not sure what you
5 mean when you say they turned to fairy dust.

6 MR. CUTHBERT: Harmless powder.

7 THE COURT: But what did they do to the
8 door?

9 MR. CUTHBERT: Well, it pokes a hole in
10 the door, but according to Sergeant Ingram, he
11 thought it could poke a hole in the door without
12 hurting anybody on the other side unless it was a
13 piece of the door itself or a piece of the lock
14 that's being shot, but the round itself --

15 THE COURT: So what does Mr. Trahin have
16 to do with anything?

17 MR. CUTHBERT: Well, Mr. Trahin shows,
18 Mr. Trahin's deposition shows, that if Sergeant
19 Ingram had shot at a wooden door, that he would have
20 seen that -- well, he would have seen that the round
21 would go completely through the door, so I'm --

22 THE COURT: Mr. Trahin conducted an
23 experiment and got a different result from what
24 Sergeant Ingram said he had observed?

25 MR. CUTHBERT: I don't want to call it

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1 an experiment, Your Honor. I think we are dealing
2 with a general principle here, that is, the general
3 principle is that when a round hits significant
4 wood, it does not turn, disintegrate --

5 THE COURT: It didn't do it when
6 Mr. Trahin did it?

7 MR. CUTHBERT: It did not do it when
8 Mr. Trahin did it.

9 THE COURT: Now, what controls did
10 Mr. Trahin have to show that his experiment was
11 conducted under the same conditions that either this
12 incident involved or any other firings that Sergeant
13 Ingram had conducted?

14 MR. CUTHBERT: Your Honor, there is
15 special, there are specially restrictive rules
16 dealing with experiments. It is not our contention
17 that this is an experiment. Instead, it is an
18 illustration.

19 THE COURT: It sounds more like an
20 accident reconstruction thing that the Supreme Court
21 says you can't have.

22 MR. CUTHBERT: No, sir. I did not bring
23 my authorities with me because I really didn't
24 expect to get into Jimmy Trahin. I was just asking
25 the court if the court could set up a schedule by

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1 which defense counsel would designate her objections
2 to what I propose.

3 THE COURT: The trial begins Tuesday?

4 MR. CUTHBERT: Tuesday.

5 THE COURT: This is it, then. You are
6 not going to get before me again.

7 MR. CUTHBERT: Well, I don't know. I am
8 not prepared to go into the details.

9 THE COURT: When did you think you could
10 see me again, Mr. Cuthbert?

11 MR. CUTHBERT: Your Honor, all I'm
12 asking is that defense counsel send me an
13 itemization so that I can consider it.

14 THE COURT: You don't want me to make a
15 ruling at this time today?

16 MR. CUTHBERT: No, sir. I want Your
17 Honor to set up a deadline so that I will have
18 something to respond to myself, and then that will
19 also give me an opportunity to bring my authorities
20 with me.

21 THE COURT: But to argue when? The
22 trial begins at 10 o'clock on Tuesday morning. When
23 do you expect to have this argument with me? I have
24 other motions on Tuesday morning before this trial
25 starts.

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1 MR. CUTHBERT: Yes, sir. I won't call
2 the man or I won't present the deposition Tuesday.

3 THE COURT: I'm not like Perry Mason. I
4 can't tell all the other lawyers in town forget your
5 case until I finish this one. We got other things
6 to do.

7 MR. CUTHBERT: Your Honor, the trial
8 starts on Tuesday. I'm not going to present this on
9 Tuesday.

10 THE COURT: I'll see what Ms. Burton has
11 to say about that, but I would like to make as many
12 rulings that I can today so that you all will know
13 exactly what the rules are when you start the trial
14 on Tuesday.

15 MR. CUTHBERT: Well, as I say, I'm not
16 --

17 THE COURT: I don't like to keep sending
18 the jury out so I got to talk with the lawyers about
19 something. I just hate doing that.

20 MR. CUTHBERT: Well, I was hoping, Your
21 Honor, that we could perhaps discuss in this in
22 detail --

23 THE COURT: Well, maybe Ms. Burton will
24 tell us that we don't have a problem, so let's wait
25 until we hear from her. What is your next one?

1 MR. CUTHBERT: Before I leave that, if I
2 may, Your Honor there is another line of authority
3 that I cannot cite because I was not expecting to
4 get to the substance of her objections today. I
5 can't give Your Honor the names of cases and
6 citations, but there are three cases out of the
7 Virginia Supreme Court in recent years that say that
8 expert testimony is relevant to show general
9 principles, even though --

10 THE COURT: General principles?

11 MR. CUTHBERT: Yes, and there is a
12 hydroplaning case, a car that hydroplaned.

13 THE COURT: But aren't those cases
14 decided on the individual facts of each case?

15 MR. CUTHBERT: Yes, sir.

16 THE COURT: I don't think you can just
17 make a general rule that in every case an expert can
18 say what generally happens when something happens.

19 MR. CUTHBERT: I agree, but on the
20 other, hand I think we can say that there is a
21 recognized legal justification for permitting a
22 party to put expert testimony before a jury, even
23 when all of the facts and circumstances are not
24 precisely the same, and that general --

25 THE COURT: I think you will have to

1 bring me that authority, because that's not my
2 understanding of the law in Virginia.

3 MR. CUTHBERT: Yes, sir.

4 THE COURT: My understanding is that the
5 reason that accident reconstruction testimony is
6 generally disfavored in Virginia is because it's so
7 hard so hard to show that you have the same
8 circumstances present during the experiment as you
9 had during the accident.

10 MR. CUTHBERT: Yes, sir.

11 THE COURT: And if Sergeant Ingram says
12 generally I have fired rounds into wooden doors
13 before and the rounds always turned into fairy dust,
14 with no indication as to how far away he was from
15 those doors, what kind of wood these doors were made
16 of, what angle he was shooting the doors at, and now
17 I have an expert who comes in and says I was
18 standing 95 feet away from some pieces of plywood
19 and this is what happened, just from what you are
20 saying -- maybe there is some more detail you are
21 leaving out -- just from what you are saying, I
22 don't see any way in the world that that comes in to
23 show what happened or what should have happened when
24 Sergeant Ingram fired his shot into some wooden
25 door. Maybe he was 195 feet away, maybe he was 5

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1 feet away. Just to say that somebody else, he fired
2 some rounds into a wooden door and somebody else
3 fired some rounds into some wood, I think you need
4 to show me the authority.

5 MR. CUTHBERT: Then maybe my argument
6 ought to be that Sergeant Ingram ought not to be
7 allowed to say that previously he had shot --

8 THE WITNESS: Because it's Sergeant
9 Ingram's we are talking about state of mind, and you
10 can argue to the jury that it was inappropriate for
11 him to rely on what he had done earlier to think the
12 same thing was going to happen this time.

13 MR. CUTHBERT: Yes, sir.

14 THE COURT: We are talking about state
15 mind.

16 MR. CUTHBERT: Yes, sir, and I think
17 also the door is opening up to Trahin coming in in
18 rebuttal.

19 THE COURT: Every time I leave work this
20 light at 8th and Clay Street is green, and I've been
21 here 15 years, and every time I leave work that
22 light is green. So yesterday when I left work, I
23 didn't look at the light. I closed my eyes and went
24 through the light because I know that light is
25 always green, do you think that's inadmissible? I

1 can't tell the jury that?

2 I think I can tell the jury that as to
3 the reason that I took the action that I did. It's
4 up to the jury to determine whether I was reasonable
5 in closing my eyes going through the intersection
6 because of my past experience.

7 And I think the situation -- I know you
8 all think that my hypotheticals are sometimes kind
9 of ridiculous, but I think that's the same situation
10 here. I think that Sergeant Ingram has the right to
11 tell the jury why he did what he did. It's up to
12 the jury to determine whether it was reasonable for
13 him to do what he did.

14 What I don't think is admissible is for
15 somebody else to say when I, you know, somebody else
16 is testifying, you know what, when I go home every
17 day, the light is not green. I don't think that is
18 admissible. That doesn't have anything to do with
19 my experience.

20 MR. CUTHBERT: Your Honor, on the 95
21 feet versus where was Ingram standing distinction, I
22 think common sense tells us that --

23 THE COURT: That what?

24 MR. CUTHBERT: Common sense tells us
25 that if Ingram was only six inches away from the

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1 door when he shot and claims that it did not go
2 through the door, that the fact that my man was 95
3 feet away is not a difference that ought to make any
4 difference, or distinction that ought to make any
5 difference in the admissibility.

6 THE COURT: I don't know if that's true
7 or not, Mr. Cuthbert.

8 MR. CUTHBERT: Well, Your Honor, there
9 is no evidence anywhere, and common sense tells us
10 that there is no subsidiary power source that
11 latches on to these rounds once they leave the
12 barrel of the gun and helps to propel it along.

13 THE COURT: I don't know the answer to
14 that question.

15 MR. CUTHBERT: Well, I think I do.

16 THE COURT: Again, I don't want to get
17 ridiculous, but have you ever see smart bombs, or
18 bombs that leave a submarine, ICBMs,
19 intercontinental ballistic missiles? They start off
20 real slow and then they get fast.

21 MR. CUTHBERT: Yes, sir.

22 THE COURT: I would think that if they
23 hit a target 10 feet from launch probably not much
24 would happen, but by the time they go a couple of
25 miles they have a catastrophic explosion.

1 MR. CUTHBERT: Your Honor, this thing
2 has just got gunpowder in it.

3 THE COURT: And I don't know. I don't
4 think that you can have seven laypeople sitting in a
5 jury box to make these kinds of determinations. I
6 think you need expert opinions. Again, I disagree
7 with your basic premise that seven people in the
8 jury can make these kinds of decisions, just based
9 on their common knowledge of guns. Maybe you are a
10 gun fancier. I'm not. I don't know. Other than my
11 experience in the Army, I don't know anything about
12 guns. I don't think those people in the jury know
13 about them either.

14 MR. CUTHBERT: Your Honor, these are
15 shotgun shell looking things. We are not dealing
16 with a missile that's got a subsidiary engine in it,
17 and I think common sense will tell us all that.

18 THE COURT: All right. What's your next
19 one?

20 MR. CUTHBERT: Your Honor, Motion 5 I
21 think is pretty simple. I'm asking for leave --

22 THE COURT: Count 5?

23 MR. CUTHBERT: Yes, sir, I'm sorry.

24 THE COURT: We just dealt with --

25 MR. CUTHBERT: -- 4, I believe, Your

1 Honor. Oh, no, we didn't. We just dealt with 3.

2 THE COURT: I thought we had finished
3 all of Motion Number 1. Motion Number 2 you say you
4 have resolved everything except number 6?

5 MR. CUTHBERT: Right.

6 THE COURT: That's the last one. We are
7 on Motion Number 3 now.

8 MR. CUTHBERT: Your Honor, I am asking
9 for leave to use Sanction software to present video
10 depositions, any video testimony, that the court has
11 previously allowed.

12 THE COURT: What is Sanction II
13 software? Is that like Power Point or Elmo or
14 something?

15 MR. CUTHBERT: Well, since I don't know,
16 I've never done Power Point, but it shows the image
17 and it shows the text. It shows the videotape, and
18 it shows beside the picture the text and then
19 there's a line that goes underneath the text as the
20 voice speaks so that the jury can not only --

21 THE COURT: Oh, you want to see the
22 testimony?

23 MR. CUTHBERT: Yes, sir, they can see
24 the testimony.

25 THE COURT: You can't do that, can you?

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1 Isn't that generally disfavored for juries to see
2 testimony? You have live witnesses, they are not
3 going to see their testimony. Isn't this putting
4 the deposition testimony on a higher level than a
5 live witness?

6 MR. CUTHBERT: I don't know. I've never
7 thought of it that way, certainly. This is what the
8 stuff is sold for and used for.

9 THE COURT: All right. It's called
10 Sanction II software?

11 MR. CUTHBERT: Yes, sir.

12 THE COURT: I've never heard of that.
13 I'm being left behind.

14 MR. CUTHBERT: Well, you know, I've
15 never used it before, I'll confess to the court, but
16 I've talked to other lawyers in town that have used
17 it in this courthouse.

18 THE COURT: Is that because you think
19 you are going to have some jurors who are hard of
20 hearing or who might not pay attention?

21 MR. CUTHBERT: No, sir.

22 THE COURT: What's the purpose of it,
23 then?

24 MR. CUTHBERT: I just think it makes it
25 easier for the jury to comprehend what is being

1 spoken from a source that is not live. If it was
2 life testimony, as Your Honor knows well, live
3 testimony generally goes over better than deposition
4 testimony.

5 THE COURT: It does.

6 MR. CUTHBERT: And I don't think that
7 this is an unfair advantage in any way, but I think
8 that deposition testimony starts at something of a
9 disadvantage anyway, compared to live testimony.

10 THE COURT: All right. That's the first
11 time I've had this that request. I'll see what
12 Ms. Burton has to say about it.

13 MR. CUTHBERT: And I would also like to
14 add that I would like permission to -- well, let's
15 just see how that goes.

16 THE COURT: All right. Number 4?

17 MR. CUTHBERT: 4 I think probably speaks
18 for itself. It deals with setting up a schedule for
19 --

20 THE COURT: Why do you need to have
21 those submitted in advance?

22 MR. CUTHBERT: Well, Your Honor, I'm
23 always -- I'll never forgot one time I was trying a
24 case. There was an objection during voir dire, and
25 I felt like it was an issue that could have been

1 resolved without sending the jury out. I think it
2 could have been resolved ahead of time.

3 And as I point out in what I filed, if
4 opposing counsel asks a question on voir dire that I
5 think is inappropriate, then I've got those two
6 unsavory choices, either to sit there and take it or
7 else bring the tactic to the court's attention, and
8 we can avoid that objection by ruling in limine. So
9 it just seems to me like it's going to streamline
10 it.

11 THE COURT: I guess my practical
12 question is when would we do it? The trial is
13 Tuesday. When would we do it?

14 MR. CUTHBERT: Just before the trial
15 starts. This is what I'm suggesting, Your Honor,
16 that I send Ms. Burton my proposed voir dire by the
17 close of business tomorrow by fax, and she does
18 likewise.

19 THE COURT: Okay.

20 MR. CUTHBERT: And then if we object,
21 depending on the volume of the objections, I mean,
22 it might be five or six questions. It might be
23 fewer than that.

24 THE COURT: But as you correctly point
25 out at page 9 of your submission, Virginia Code

1 Section 8.01-358 specifically sets out what you can
2 ask in voir dire.

3 MR. CUTHBERT: Oh, I understand, but
4 it's often difficult to make the application.

5 THE COURT: I've never required anybody
6 to submit their questions beforehand. I've never
7 had a problem, but I'm not saying that I'm not going
8 to do it in this case. We'll see what Ms. Burton
9 has to say.

10 All right, that takes care of the
11 September 5 submission.

12 MR. CUTHBERT: Yes, sir, and that gets
13 us to September 17, which is two additional motions
14 that are pretty simple.

15 THE COURT: Let's see, I have two for
16 September 17. Let's see, one I have is, these are
17 plaintiff's objections to the defendant's exhibits.
18 Do you want to deal with supplemental motions?

19 MR. CUTHBERT: Yes, sir, Motions 5 and
20 6.

21 THE COURT: All right.

22 MR. CUTHBERT: And I am asking the court
23 for leave to show the jury during opening statement
24 excerpts from the --

25 THE COURT: Tell me what you are talking

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1 about, how many.

2 MR. CUTHBERT: Well, there are two of
3 them, and I attached copies of them, Your Honor.

4 THE COURT: That's all?

5 MR. CUTHBERT: Yes, sir, those two right
6 there.

7 THE COURT: All right.

8 MR. CUTHBERT: And I may also want to
9 show an enlargement on the aiming instruction, or
10 the aiming rule, which the defense is going to put
11 into evidence anyway.

12 THE COURT: Which Instruction is that?

13 MR. CUTHBERT: I did not make a copy of
14 that.

15 THE COURT: I didn't hear what you said.
16 You want to make a copy of what?

17 MR. CUTHBERT: The rules of the FBI that
18 they gave to the SWAT Team, to the Richmond SWAT
19 Team.

20 THE COURT: All right.

21 MR. CUTHBERT: And everybody is, they
22 have been addressed in the deposition testimony of
23 Sergeant Ingram that --

24 THE COURT: All right.

25 MR. CUTHBERT: -- that Your Honor has

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1 said we may play to the jury. And I would like to
2 show an enlargement of that as well, if Your Honor
3 allows me to show enlargements.

4 THE COURT: All right.

5 MR. CUTHBERT: And I would also ask for
6 leave to show Exhibit 3, which is the actual dead
7 bolt latch bolt from the kitchen door.

8 THE COURT: All right.

9 MR. CUTHBERT: Exhibit 4, the knob
10 broke. That is the thing that goes from the knob
11 into the jamb.

12 And Exhibit 10, which is a photo of 324,
13 annotated by Larry Beadles in his deposition to put
14 a red arrow where the latch bolt is. I did not
15 attach a copy of Exhibit 10. I should have, but in
16 any event --

17 THE COURT: Who is Larry Beadles?

18 MR. CUTHBERT: He a defense expert, a
19 former police officer, Captain Larry Beadles.

20 THE COURT: What is the photograph of,
21 Photograph 324?

22 MR. CUTHBERT: It shows the hole blown
23 in the door by Sergeant Ingram below the latch bolt,
24 and Sergeant Ingram fired below the latch bolt.

25 THE COURT: All right.

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1 MR. CUTHBERT: Beadles has put a red
2 arrow where the latch bolt is so as to make it clear
3 where the latch bolt is, and he is --

4 THE COURT: Any dispute about that?

5 MR. CUTHBERT: I don't think so.

6 THE COURT: Is Mr. Beadles going to
7 testify?

8 MR. CUTHBERT: Yes, sir.

9 THE COURT: All right.

10 MR. CUTHBERT: Well, I'm not calling
11 him, but the defense has designated him.

12 THE COURT: All right. What about
13 Motion Number 6?

14 MR. CUTHBERT: And I wanted to add some
15 exhibits that I did not include in my initial
16 exhibit list. I think there are no real surprises
17 here. Everybody has had copies of these things for
18 a of couple years now.

19 THE COURT: When was your exhibit -- was
20 this exhibit list due in response to a pretrial
21 order?

22 MR. CUTHBERT: Yes, sir, it was.

23 THE COURT: When were they due?

24 MR. CUTHBERT: Let me see. It was due
25 Friday, September 12.

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1 THE COURT: All right.

2 MR. CUTHBERT: And the pretrial
3 scheduling order says any exhibit or witness not so
4 identified in pretrial will not be received in
5 evidence except in rebuttal or for impeachment --

6 THE COURT: All right.

7 MR. CUTHBERT: -- or unless the
8 admission of such exhibit or testimony of the
9 witness would cause no surprise or prejudice to the
10 opposing party.

11 THE COURT: All right. Do you have any
12 other photographs of Ms. Green's jacket?

13 MR. CUTHBERT: No, sir.

14 THE COURT: Do you not?

15 MR. CUTHBERT: Those are the only ones.

16 THE COURT: Is there any dispute that --
17 DiQasha?

18 MR. CUTHBERT: She pronounces it
19 DiQasha.

20 THE COURT: Is there any dispute that
21 her custody was given to Ms. Skipper?

22 MR. CUTHBERT: No, sir. And met me go
23 back to Your Honor's first question.

24 THE COURT: What's the relevance of the
25 job search records?

1 MR. CUTHBERT: To show that she was
2 attempting to find work. The defense is going to
3 be --

4 THE COURT: Is there going to be anybody
5 here from the Department of Social Services?

6 MR. CUTHBERT: No, sir.

7 THE COURT: Okay, I think I understand
8 that.

9 MR. CUTHBERT: Let me go back to the two
10 photographs of the jacket. I think I misspoke.
11 There are photographs of the jacket being worn by
12 Christie Green at the scene, open at the chest,
13 showing breasts and blood, so there are those
14 photographs.

15 THE COURT: What do these show that is
16 different?

17 MR. CUTHBERT: These don't show the
18 blood and gore and the invasion of the privacy.
19 They show the holes up here in the right shoulder
20 where the rounds went. That is the relevance of it,
21 Your Honor.

22 THE COURT: All right.

23 MR. CUTHBERT: And they show that she
24 was in fact wearing a jacket when she was killed.
25 This is an outdoor jacket. It's our contention that

1 she was there only for a short period of time, not
2 long enough even to take her jacket off, before she
3 got killed.

4 THE COURT: All right.

5 MR. CUTHBERT: And also on that Motion
6 6, I would like to add, if there is no objection,
7 the autopsy report of Dr. Kay. The defense has
8 identified the autopsy report as something that it
9 proposes to offer. I have not objected.

10 THE COURT: There is no question about
11 the cause of death, though?

12 MR. CUTHBERT: Correct, correct.

13 THE COURT: Does that take care of
14 Number 6?

15 MR. CUTHBERT: I'm looking to see, Your
16 Honor. I think so, but let me just look at my
17 notes.

18 THE COURT: It does. Let's go to the
19 next one. We have got to finish this hearing
20 sometime. Do you want to deal with, I have a brief
21 in opposition to a motion for summary judgment. Are
22 you going to make a motion for summary judgment,
23 Ms. Burton, on September 25 with the trial starting
24 on September 30?

25 MS. BURTON: Well, we filed it --

1 actually this is the second of these cases that --

2 THE COURT: Are you going to make a
3 motion for summary judgment today?

4 MS. BURTON: If the court will hear it
5 today.

6 MR. CUTHBERT: Your Honor, I'm --

7 THE COURT: I'll deal with your
8 opposition to that after Ms. Burton has made the
9 motion.

10 MR. CUTHBERT: Your Honor, I would
11 oppose it being heard today. It hasn't been noticed
12 for today.

13 THE COURT: It hasn't been noticed?

14 MR. CUTHBERT: No, sir. Your Honor,
15 there is another issue to be addressed, and that is
16 in opening statement --

17 THE COURT: Is this something that I
18 have?

19 MR. CUTHBERT: No, sir -- in opening
20 statement, each us make no reference to exhibits to
21 which an objection has been filed.

22 THE COURT: It depends upon what it is.
23 Do you want me to rule on the objection now?

24 MR. CUTHBERT: I don't think that Your
25 Honor can until the evidence comes in, so that's why

1 I'm saying I think it's probably better to just
2 agree or ask the Court to rule that as to any
3 exhibit to which objections have been filed, no
4 mention of those facts in that exhibit --

5 THE COURT: I'll ask Ms. Burton if she
6 agrees with me.

7 MR. CUTHBERT: All right.

8 THE COURT: All right, what else? Does
9 that take care of all of yours?

10 MR. CUTHBERT: Yes, sir.

11 THE COURT: Thank you very much.

12 MR. CUTHBERT: Yes, sir.

13 THE COURT: Mr. Cuthbert, thank you very
14 much. You are always very organized, and I
15 appreciate that.

16 MR. CUTHBERT: Yes, sir.

17 THE COURT: Ms. Burton?

18 MS. BURTON: Yes, Your Honor.

19 THE COURT: Half of them you don't have
20 any problem with, right?

21 (Laughter.)

22 MS. BURTON: I'm afraid I do.

23 THE COURT: If you don't mind, I would
24 like to take them in the same order that
25 Mr. Cuthbert raised them. That way I can keep track

1 of them on my yellow pad here.

2 MS. BURTON: Okay.

3 THE COURT: The first one I have is
4 going back to the motion, the notice that was filed
5 on September 5, number 1, evidence of collateral
6 source. Do you plan on presenting evidence that
7 Kataina has adopted Kevasha?

8 MS. BURTON: She has not adopted this
9 child.

10 THE COURT: So you don't plan on
11 presenting any evidence on that, then?

12 MS. BURTON: Well, it depends on.

13 THE COURT: Well, if she hasn't adopted
14 her, you can't put on evidence that she did.

15 MS. BURTON: Well, Ms. Green testified
16 in the corporate defendant's case that she had in
17 fact adopted this child, and so it just depends on
18 how the evidence flows as to whether or not I would
19 need to impeach or her or introduce the fact that
20 she lied under oath in another proceeding to impeach
21 her credibility.

22 THE COURT: How many beneficiaries do
23 you have?

24 MS. BURTON: Two.

25 THE COURT: And they are DiQasha and

1 Kevasha?

2 MS. BURTON: Yes, sir.

3 THE COURT: So tell me again, you say
4 you do want to put on evidence that she is adopted?

5 MS. BURTON: No, sir.

6 THE COURT: That's moot. I don't need
7 to deal with that, then.

8 MS. BURTON: Okay.

9 THE COURT: How about that Katina Green
10 is an excellent surrogate mother to Kevasha? Are
11 you going to put on evidence to that?

12 MS. BURTON: That she is an excellent
13 surrogate mother?

14 THE COURT: Yes.

15 MS. BURTON: Well, I'm not sure I know
16 what that means.

17 THE COURT: I want to get through this.
18 Mr. Cuthbert wants to prevent you from putting on
19 evidence that Katina Green is an excellent surrogate
20 mother to Kevasha. My only question is, do you plan
21 on putting on evidence?

22 MS. BURTON: Yes.

23 THE COURT: Tell me why that's relevant
24 here.

25 MS. BURTON: Well, the fact that the

1 child is in a good environment.

2 THE COURT: Why is that relevant?

3 MS. BURTON: It's relevant on the issue
4 of damages.

5 THE COURT: Do you have any case law,
6 any authority for that?

7 MS. BURTON: Not on the top of my head.

8 THE COURT: Well, you knew this was
9 coming up today, Ms. Burton. Okay, I take it you
10 don't have any.

11 MS. BURTON: No.

12 THE COURT: The amount of compensation
13 earned by Katina Green, do you plan on presenting
14 evidence of that?

15 MS. BURTON: No.

16 THE COURT: That she is covered by
17 health insurance?

18 MS. BURTON: No.

19 THE COURT: Okay. How about e, that
20 Katina Green is receiving general relief on account
21 of Kevasha?

22 MS. BURTON: No, never crossed my mind.

23 THE COURT: Dollnice Skipper, a family
24 friend, gave temporary custody?

25 MS. BURTON: Well, I believe under the

1 wrongful death statute that the child's, or the
2 beneficiaries' relationship with the deceased, is a
3 relevant inquiry, and I think it's relevant for the
4 jury's consideration on the question of damages that
5 this child was not in the mother's custody.
6 Dollnice Skipper had this child since practically
7 right after she was born.

8 THE COURT: Okay. That doesn't look
9 like that's what the motion is. The motion is that
10 --

11 MS. BURTON: As to whether she is an
12 excellent surrogate mother, no.

13 THE COURT: -- if Dollnice Skipper is an
14 excellent surrogate mother?

15 MS. BURTON: No.

16 THE COURT: The amount of compensation
17 earned by Skipper?

18 MS. BURTON: No.

19 THE COURT: Did you ever talk about this
20 before?

21 MS. BURTON: No sir.

22 THE COURT: That DiQasha is covered by
23 health insurance?

24 MS. BURTON: No, sir.

25 THE COURT: So the only dispute then, is

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1 that Katina Green is an excellent surrogate mother?
2 That's the one that you want to put on evidence?

3 MS. BURTON: Actually, no.

4 THE COURT: Well, you look at a through
5 h and tell me which, if any, of these you want to
6 put on evidence for.

7 MS. BURTON: I don't want to put on
8 evidence as to any of these things. I think in
9 fact, a lot of this is gong to come out in
10 Mr. Cuthbert's case.

11 THE COURT: All right. See how easy
12 this is. Let's go to number 2. Do you want to put
13 on evidence that guns were found inside the
14 apartment?

15 MS. BURTON: Yes, we do.

16 THE COURT: Tell me why that is
17 relevant.

18 MS. BURTON: Well, it's relevant for a
19 couple of reasons. Number one, Mr. Cuthbert claims
20 that, one of his claims is that the surveillance
21 was, Buckovich was negligent in his supervision of
22 the surveillance, and the surveillance, the
23 information of the surveillance provided, was that
24 there were guns and drugs and assault rifles and
25 that sort of thing in the apartment, and that's what

1 they relied upon when they conducted the raid.

2 Not only that, but it's also evidence of
3 Ms. Green's lifestyle, the environment into which
4 she took this child.

5 THE COURT: Ms. Green's lifestyle?

6 MS. BURTON: Yes, sir.

7 THE COURT: Did she live at the
8 apartment?

9 MS. BURTON: No, she did not live at the
10 apartment, but the evidence is going to be that one
11 of her friends -- this is one of her friend's
12 hangouts. The evidence is going to be that
13 Ms. Green was at a SWAT event earlier in the day
14 with her boyfriend, Kevin Jones, who was being
15 arrested for murder, and it turned into a hostage
16 situation, and she was there with her child Kevasha.

17 She left there, wanting to go and talk
18 to her friend who hung out over at this place where
19 the second raid occurred, and it's our contention
20 that that type of evidence, the evidence of where
21 she goes, who her friends are, where she hangs out,
22 is evidence of her lifestyle, which is relevant.

23 THE COURT: Any evidence that she knew
24 that there were guns in the apartment?

25 MS. BURTON: There is evidence of that,

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1 yes, because even though Mr. Cuthbert contends that
2 the evidence is going to show that she had just
3 gotten there, the evidence in fact will show that
4 she arrived probably sometime before 9:30 and that
5 the raid took place at 11 o'clock, around 11
6 o'clock, and that she was there and that the drugs
7 and guns were out in the open and they were out
8 there where the kids could get them. That's what
9 the evidence is going to be.

10 THE COURT: How about the fact that
11 there were drugs in the apartment?

12 MS. BURTON: Yes, sir.

13 THE COURT: Why is that relevant?

14 MS. BURTON: Well, again, it's relevant
15 because this is the environment in which Ms. Green
16 took her child. It's relevant on the issue of
17 lifestyle. The drugs were out there in the open. I
18 mean, these were big-time drug dealers, and under
19 the wrongful death statute, and also under the life
20 expectancy statute, her habits, her customs, what
21 she did, her environment, the environment that she
22 kept the child in, are relevant as far as relevance
23 to the jury on the question of damages.

24 THE COURT: How about the fact that
25 there were three pistol shots fired from inside the

1 apartment?

2 MS. BURTON: Yes, sir.

3 THE COURT: But I don't think I need to
4 hear you on that one. All right, that takes to us
5 Kevin Jones, the fact that Kevin Jones was wanted or
6 arrested for murder. Are you planning on putting on
7 evidence of that?

8 MS. BURTON: Yes, sir, because again,
9 that is evidence of Ms. Green's lifestyle and the
10 relationship between her and her child, the
11 environment that she had her child in. Ms. Green's
12 boyfriend was a murderer, a dangerous person. She
13 was -- her first contact with the SWAT Team was
14 earlier in the day.

15 THE COURT: Was this Mr. Jones'
16 apartment?

17 MS. BURTON: Yes, I believe it was, yes,
18 sir.

19 THE COURT: Well, you say you believe it
20 was. You don't think it makes it -- I mean, if this
21 was not his apartment, what difference does it make
22 that her boyfriend was arrested for murder?

23 MS. BURTON: Mr. Jones?

24 THE COURT: What difference does it make
25 whether her boyfriend was arrested? I guess you are

1 saying that this was her boyfriend?

2 MS. BURTON: This was her boyfriend,
3 yes.

4 THE COURT: What difference does it make
5 whether he was arrested or wanted for murder?

6 MS. BURTON: The point is that this was
7 evidence of her lifestyle and --

8 THE COURT: Why is that evidence of her
9 lifestyle?

10 MS. BURTON: Because her boyfriend is
11 someone that she has a relationship with. He is the
12 father of one of her children. I can't remember
13 whether it was the one -- yes, it was. He was the
14 father of Kevasha.

15 THE COURT: Now, do you have evidence
16 that Ms. Green took part in the murders?

17 MS. BURTON: No, not that she took part
18 in the murders, but that this is the environment she
19 kept the child in as far as --

20 THE COURT: You keep saying this is an
21 environment. I don't know anything about these
22 murders. I don't know if these murders were
23 committed in Ms. Green's presence or close to her or
24 whether he lives on North side and went to New
25 England or somewhere and killed somebody and then

1 came back to North side. Why would that have
2 anything to do with her lifestyle?

3 MS. BURTON: That she associated with
4 dangerous people. That is evidence of how she
5 lived.

6 THE COURT: I think you are going a
7 little bit too far there, Ms. Burton. Guilt by
8 association, we don't usually allow that.

9 MS. BURTON: Well, Your Honor, not only
10 that, but the evidence at the first SWAT event, she
11 put the child on the phone to talk to the hostage
12 negotiators to tell the hostage negotiators to let
13 her daddy go, and so again, this is evidence of the
14 mother's relationship with the child.

15 THE COURT: Well, you would say that
16 this is also fair game for the jury, even if this
17 were not a case in which Ms. Green was shot? If she
18 were waiting for a red light and somebody ran a red
19 light and killed her in a traffic accident, you
20 would say that this is admissible because this shows
21 that she has a lower life expectancy because she
22 hangs around with bad people?

23 MS. BURTON: Well, possibly, but beyond
24 that, Your Honor, I think that it's --

25 THE COURT: Or if she went in for, she

1 had a bad tooth and she went in to have a tooth
2 extracted and the dentist committed malpractice and
3 killed her, this would be admissible, also?

4 MS. BURTON: Well, I think it's actually
5 a stretch to say that her life expectancy is --

6 THE COURT: Well, tell me why either
7 example I just gave, tell me why that's different
8 than what you are trying to put it on for.

9 MS. BURTON: Well, I think we are
10 allowed to present evidence under the wrongful death
11 statute of her relationship with her child and the
12 environment that she kept the child in.

13 THE COURT: You want to show that she is
14 a bad person?

15 MS. BURTON: I beg your pardon?

16 THE COURT: Want to show that she is a
17 bad person?

18 MS. BURTON: Yes, I think that we are
19 entitled to show that she was a bad person.

20 THE COURT: Because she hangs around
21 with --

22 MS. BURTON: A bad mother because she
23 puts her child in situations that are not good for
24 the child, and obviously that has a bearing on the
25 damages in this case.

1 THE COURT: All right. And Mr. Cuthbert
2 also wants to prevent you from putting on evidence
3 that Mr. Jones was also the subject of another SWAT
4 Team action at which Ms. Green was present.

5 MS. BURTON: Well, there is only one.

6 THE COURT: This was on December 29,
7 which I assume is a -- or that's the same day?

8 MS. BURTON: Yes, sir, but --

9 THE COURT: But a different apartment?

10 MS. BURTON: Same day, different
11 apartment. The police had a warrant for Kevin Jones
12 arrest, and they went to arrest him, the SWAT Team.
13 They went to arrest him. The attempt to arrest him
14 turned into a hostage situation. When they went to
15 arrest him, Christie was there with the child, and
16 it turned into a hostage situation and it lasted for
17 four or five hours and ended without anyone getting
18 hurt.

19 THE COURT: And Mr. Jones was arrested?

20 MS. BURTON: And Mr. Jones was arrested.
21 It was during the hostage negotiations that
22 Ms. Green put the child, who was Mr. Jones' child,
23 on the --

24 THE COURT: Is that one of these
25 children, one of the beneficiaries?

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1 MS. BURTON: Yes, sir, Kevasha, put
2 Kevasha on the phone to talk to the hostage
3 negotiators to tell the hostage negotiators to leave
4 his father, to leave her daddy, alone.

5 THE COURT: How old was she at the time?

6 MS. BURTON: She was maybe three.

7 THE COURT: Three?

8 MS. BURTON: Yes, sir.

9 THE COURT: All right.

10 MS. BURTON: So far as Kevin Jones being
11 a bad person and his other criminal history, I don't
12 think that has any relevance at all, but I do think
13 that the fact that Ms. Green put her child,
14 associated with a person on a regular basis, her
15 boyfriend, who was the father of this child, put her
16 child in danger, or among dangerous people, or at
17 least among a dangerous person, is relevant on the
18 question of damages under the wrongful death
19 statute.

20 THE COURT: All right.

21 MS. BURTON: And then Ms. Green left the
22 Kevin Jones' situation to go over to the Dove Street
23 apartment to talk to her friend whose children were
24 there, or were being babysat in this drug den. And
25 she knew where to go to meet her friend, so this is

1 evidence of her lifestyle and the situations that
2 she put those children in. I mean, she put these
3 children --

4 THE COURT: Do you have any other
5 situations that she was involved in?

6 MS. BURTON: No, sir.

7 THE COURT: Similar to these?

8 MS. BURTON: But she was only 18.

9 THE COURT: All right. That takes the
10 us to number -- let's see, this take us to number 4,
11 expert witnesses. Do you plan on offering or
12 presenting to the jury the expert witness
13 disclosures?

14 MS. BURTON: Yes, sir, because they are
15 not just --

16 THE COURT: How do you do that?

17 MS. BURTON: Expert witness disclosures,
18 they are answers to interrogatories that were
19 provided under oath, and they would be offered as
20 admissions against interest. They clearly show that
21 the plaintiff took a position that is inconsistent
22 with suing the police officers.

23 THE COURT: Tell me what the
24 inconsistencies are.

25 MS. BURTON: Well, George Langford, for

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1 example, one of the issues in the case is whether
2 the police had the -- okay, one of the issues in the
3 case is what happened with the rounds. And the
4 evidence is going to be that the police tested these
5 rounds on previous occasions and that they had
6 successfully used them in other raids and that when
7 they had used them previously the rounds had
8 disintegrated into a zinc powder, as they should
9 have.

10 THE COURT: Into fairy dust, as
11 Mr. Cuthbert called it?

12 MS. BURTON: Right, into fairy dust.
13 This witness, George Langford, for example, says in
14 the case of the frangible rounds fired by Sergeant
15 Ingram during the raid at 1112 C Dove Street,
16 inadvertent powder preformed forging caused the zinc
17 powder to consolidate to become an unfrangible,
18 ductile, lethal projectile.

19 Now, the evidence is going to be that
20 Ms. Green was killed by fragments of this round. So
21 the round hit something, but it did not disintegrate
22 into the fairy dust. She was killed by fragments,
23 and here is an expert that the plaintiff says under
24 oath is going to testify that the reason this
25 happened is because the rounds didn't frange, they

1 didn't go puff and turn into fairy dust, as they
2 were supposed to have. So that's how it's relevant.

3 THE COURT: And you are saying that the
4 plaintiff is now taking an inconsistent position?

5 MS. BURTON: Yes. The plaintiff is now
6 taking an insistent position, because this
7 information is exculpatory of Sergeant Ingram and
8 Buckovich. One of the things that plaintiff claims
9 is that Buckovich was negligent in selecting the
10 rounds.

11 Well, the evidence is going to be that
12 we used these on a number of rounds. Buckovich has
13 been a breacher, Beadles, one of our expert
14 witnesses, has been a breacher, Ingram has been a
15 breacher. And the City actually tested the rounds,
16 because the manufacturer didn't, provided only very
17 limited information, and they tested the rounds
18 before they used them. And when they went in to use
19 the rounds on this occasion, they expected that it
20 would work as the manufacturer had said.

21 And this guy comes in, paid for as an
22 expert, that says, oh, well, no, it doesn't
23 disintegrate into fairy dust. There is some
24 chemical reaction occurs that causes the rounds, the
25 zinc, to form fragments instead of to disintegrate

1 into fairy dust.

2 THE COURT: What did cause Ms. Green's
3 death? Do you all agree that death was caused by
4 the round itself?

5 MS. BURTON: Yes.

6 THE COURT: All right, I think I
7 understand your responses to number 4.

8 Number 5, you do you plan on offering
9 these disclosures? Mr. Cuthbert says that these
10 deal solely with the liability of Defense
11 Technology. Are they relevant to this case?

12 MS. BURTON: No, they do not deal any
13 more solely with the liability of Def. Tech. than
14 George Langford deals solely with Def. Tech.'s
15 liability, Leonard Martin, for example.

16 THE COURT: And maybe I'm at a
17 disadvantage, because maybe I need to look to see
18 exactly what the disclosures are. First of all, do
19 you plan to offer and tell the jury about these
20 disclosures?

21 MS. BURTON: Yes, sir, at least one of
22 them.

23 THE COURT: Tell me why you think they
24 are relevant.

25 MS. BURTON: Well, I guess I'm a little

1 bit confused, because I'm thinking that this number
2 5 is really the same as --

3 THE COURT: No, number 4 deals with
4 experts who were disclosed in connection with the
5 case against the manufacturers.

6 MS. BURTON: Right.

7 THE COURT: But then apparently
8 Mr. Cuthbert gave you a supplemental designation on
9 June 30, 2003, saying that the following experts
10 will testify at the trial of the case against the
11 police officers. Number 4 deals with people who
12 were designated at the earlier trial for the earlier
13 trial, but were not designated for the trial coming
14 up next week.

15 Number 5 deals with people who were
16 designated for the trial coming up next week.

17 Is that right, Mr. Cuthbert?

18 MS. BURTON: They are same experts.
19 These experts were disclosed before even -- well, I
20 can't say that off the top of my head, but these
21 experts were disclosed in the case at the same time.

22 THE COURT: Yes, but number 4,
23 Mr. Cuthbert, I thought that number 4 were people
24 who were disclosed for the earlier case, but you
25 decided not the use them for this case.

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1 MR. CUTHBERT: Correct.

2 THE COURT: Number 5 were people who may
3 or may not have been used for the earlier case, and
4 I don't know whether they were or not, but they are
5 going to be used for this case.

6 MS. BURTON: I don't think it matters.
7 In the corporate case, the case against the
8 corporate defendants, the expert disclosure that the
9 defense used in that case was of a witness that
10 Mr. Cuthbert intended to use in the case against the
11 police officers, and that witness, the witness that
12 was not there to testify in that case, the witness
13 did not testify in that case, and so I really don't
14 think it matters for which case they were disclosed.
15 The point --

16 THE COURT: Well, but Mr. Cuthbert wants
17 to prevent you from telling the jury anything about
18 disclosures that deal solely with the liability of
19 Defense Technology.

20 MS. BURTON: Well, I don't plan to
21 introduce anything that deals solely with the
22 liability of Defense Technology.

23 THE COURT: I have a feeling that you
24 and Mr. Cuthbert are going to disagree on whether
25 the disclose does or does not deal solely with

1 Defense Technology. Maybe we can't deal with that
2 until the trial. I have a feeling that I cannot
3 deal with that until the trial.

4 All right, I understand your position on
5 that. Let's go to number 6. Mr. Cuthbert wants to
6 prevent Sergeant Ingram, and I guess other
7 witnesses, from using the word "malfunction." Do
8 you have any problem with him not using the word
9 "malfunction"? He can say what happened, he just
10 can't make the conclusion that there was a
11 malfunction.

12 MS. BURTON: Well, if he wants to tell
13 Sergeant Ingram not use the word "malfunction," I
14 don't know if there is a problem with that, except I
15 think it's a quite a common word.

16 THE COURT: Does it make any difference
17 to counsel whether it malfunctioned? Did he change
18 his actions because he thought that they
19 malfunctioned?

20 MS. BURTON: I can't say that. I
21 believe that --

22 THE COURT: It seems to me it might be
23 like you can say the defendant ran a red light, you
24 can say the defendant was speeding, you can say the
25 defendant was not paying attention; you can't say

1 the defendant was negligent.

2 So it seems to me that Sergeant Ingram
3 can say, "I pulled the trigger. Nothing came out.
4 I pulled the trigger, something came out, but it
5 didn't turn to fairy dust," but he can't tell the
6 jury, "and therefore, there was a malfunction."

7 MS. BURTON: I don't think anybody was
8 aware of a malfunction until later.

9 THE COURT: Okay. So would it prejudice
10 your case at all if I granted this motion and --

11 MS. BURTON: No, sir, I don't think so.

12 THE COURT: -- and said that Sergeant
13 Ingram and other witnesses, except expert witnesses,
14 cannot use the word "malfunction"?

15 MS. BURTON: No, sir. I just think it's
16 a commonly used word, and I don't see any difference
17 between saying malfunction or it didn't work like I
18 thought it would.

19 THE COURT: I don't think that is the
20 motion.

21 Number 7, the red versus silver, are you
22 going to have anybody to testify that the red shells
23 performed differently than the silver shells?

24 MS. BURTON: No, sir.

25 THE COURT: Okay. Now we go to Motion

1 Number 2. Everything was resolved except number 6,
2 which deals with Jimmy Trahin, I think you all
3 pronounce his name. Do you plan on presenting any
4 of the transcript of Mr. Trahin?

5 MS. BURTON: No, sir. I think
6 Mr. Trahin should not to be allowed to testify.

7 THE COURT: You don't think he should be
8 allowed to testify?

9 MS. BURTON: No, sir, because Mr. Trahin
10 --

11 THE COURT: Oh, that's right, he was the
12 one that went and fired the shots.

13 MS. BURTON: Yes, sir. First all, the
14 circumstances under which he conducted his so-called
15 experiment were nothing like the circumstance that
16 occurred in this case.

17 Second of all --

18 THE COURT: So you are not objecting to
19 certain portions of his testimony? You're objecting
20 to all his testimony?

21 MS. BURTON: I object to all his
22 testimony. Second all, Mr. Trahin didn't have very
23 much experience with the round. And he testified on
24 page 25 this way, "QUESTION: Are you of the opinion
25 that a sold hardwood door has the same

1 characteristics as plywood? "

2 And his answer was, "Well, it would be
3 similar. The idea was not to try to duplicate the
4 shooting itself."

5 And so this expert indicates that he is
6 not trying to re-create or duplicate anything that
7 happened in the case.

8 And he also further on the same page
9 said that he did not attempt to reconstruct what had
10 happened in any way.

11 And then he goes on and he admits that
12 the type of door that was involved in this case was
13 different than the material that he used to test it
14 on and that his target was 95 feet away -- and of
15 course, Ingram's target was a couple of inches
16 away -- and that he didn't fire at any type of
17 locking mechanism, which is an admission that he did
18 not use it in the manner in which it was be intended
19 by the manufacturer.

20 THE COURT: I think I understand you on
21 that one.

22 Let's go to Motion Number 3, Sanction II
23 software. Mr. Cuthbert wants to have the written
24 word, in addition to the spoken word, for the
25 deposition. Any objection to that?

1 MS. BURTON: Yes, I object because I
2 don't think that the testimony of one particular
3 witness ought to be highlighted in a manner
4 different from any other witness.

5 THE COURT: All right. Number 4,
6 Mr. Cuthbert wants and you to submit your voir dire
7 questions in advance. Do you want to do that?

8 MS. BURTON: Not particularly. I don't
9 know that I would have time to.

10 THE COURT: How about not particularly?
11 Do you have any objection to doing it?

12 MS. BURTON: Well, we do it in federal
13 court. I don't have any objection to it. I just
14 don't know when I would have time to do it, because
15 we still have to do jury instructions and --

16 THE COURT: I just want to know if you
17 object or not, because if you don't object, there is
18 no problem with doing it.

19 THE WITNESS: Yes, I object because I
20 don't think it's necessary, and I really don't have
21 time to do it.

22 THE COURT: All right, let's go to the
23 letter of December 17, the motions that were filed
24 on that day.

25 MS. BURTON: I don't even know if I can

1 find that, I have so many documents from
2 Mr. Cuthbert. What's the first one?

3 THE COURT: Mr. Cuthbert wants to be
4 able to show the jury excerpts of Sergeant Ingram's
5 deposition, lines 9 through 12 of the deposition
6 taken. I don't know what page it is. I guess page
7 81.

8 MS. BURTON: I object to that, too.

9 THE COURT: What's your objection to
10 that?

11 MS. BURTON: Well, the deposition itself
12 is not going to be offered into evidence.

13 THE COURT: Oh, it's not?

14 MS. BURTON: I mean, the written
15 deposition is not going to be offered into evidence.

16 THE COURT: Well, Mr. Cuthbert, are you
17 going to read these portions of the transcript?

18 MR. CUTHBERT: Yes, sir. These are
19 excerpts that the court --

20 THE COURT: You are going to read the
21 portions.

22 Ms. Burton, what's the problem?

23 MS. BURTON: I'm afraid I'm at a loss
24 here.

25 THE COURT: He's a party, so

1 Mr. Cuthbert has a right to read all or a portion of
2 his deposition. The only question is whether he can
3 show the testimony.

4 MS. BURTON: Whether he wants to
5 actually show the testimony to the jury, I mean
6 actually show the deposition to the jury, I don't
7 think that he should be able to show the actual
8 deposition to the jury.

9 THE COURT: All right.

10 MR. CUTHBERT: Your Honor, I'm not
11 trying to hand the jury a deposition transcript.

12 THE COURT: I understand. You're just
13 going to show it on a poster board or something.

14 MR. CUTHBERT: Yes, sir.

15 MS. BURTON: What's the difference, I
16 mean, if he actually be giving that testimony to the
17 jury?

18 THE COURT: I don't know. I've done it
19 in some cases; I have not done it in some cases. I
20 don't know that it makes a whole lot of difference.

21 He also wants to be able to show some of
22 the exhibits that I assume are going to come into
23 evidence, and there's a separate motion about
24 exhibits that have been objected to. But do you
25 have any objection to his showing Plaintiff's

1 Exhibit Number 3?

2 MS. BURTON: What is it?

3 THE COURT: The dead-bolt latch. I
4 assume that's going to come into evidence.

5 MS. BURTON: I assume so.

6 THE COURT: Any problem with showing it
7 to the jury in opening statement?

8 MS. BURTON: Well, let me see Exhibit
9 Number 3. May I see the court's copy? I don't know
10 that I have that in the actual number 3 of the
11 exhibits.

12 THE COURT: Oh, the Exhibit Number 3?

13 MS. BURTON: Uh-huh.

14 MR. CUTHBERT: Your Honor, it's a piece
15 of steel. It's three dimensional.

16 THE COURT: Exhibit Number 3 is the
17 actual dead-bolt latch bolt.

18 MS. BURTON: Oh, no, I don't need to see
19 that. Mr. Cuthbert asked us to bring that. It's in
20 police custody.

21 THE COURT: Any problem with showing
22 that to the jury?

23 MS. BURTON: No, sir.

24 THE COURT: How about the knob?

25 MS. BURTON: No.

1 THE COURT: How about the photograph?

2 MS. BURTON: Of what?

3 THE COURT: The photograph of the door
4 showing the round, the hole that the round made just
5 below the latch bolt, and Larry Beadles drew an
6 arrow to show something where the latch bolt was.

7 MS. BURTON: Well, that photograph was
8 taken during Mr. Beadles' discovery deposition.
9 Mr. Beadles is going to testify via expert witness
10 deposition, which is a different deposition.

11 THE COURT: Any problem with showing it
12 to the jury?

13 MS. BURTON: For that purpose?

14 THE COURT: To show the jury what the
15 evidence is going to be, that Mr. Beadles is going
16 to testify that this is a photograph of the door
17 after the round was fired, this is the hole, that
18 Mr. Beadles made this arrow and he is going to
19 testify that this arrow shows where the latch bolt
20 used to be.

21 MS. BURTON: Mr. Beadles is not going to
22 testify, did not testify to that.

23 THE COURT: Well, Mr. Cuthbert says he
24 is. If Mr. Cuthbert tells the jury that something
25 is going to happen and it doesn't happen, I'm sure

1 you are going to remind the jury of that in your
2 closing argument.

3 MS. BURTON: Okay.

4 THE COURT: Any problem with showing it
5 to the jury in opening statements, though?

6 MS. BURTON: Well, I mean, for what
7 purpose is it being offered?

8 THE COURT: You don't want it shown.
9 All right. The other part of the September 17
10 motion is to allow Mr. Cuthbert to add some exhibits
11 to his exhibit list, two photographs of the jacket
12 that Christie Green was wearing. Any objection to
13 that?

14 MS. BURTON: No, sir.

15 THE COURT: The order awarding custody
16 of Kevasha Green to Ms. Skipper, any objection to
17 that?

18 MS. BURTON: No.

19 THE COURT: And Plaintiff's Exhibit
20 15.6, the Department of Social Services' job search
21 records for Christie Green, any objection to that?

22 MS. BURTON: No, sir. The last two are
23 on our exhibit list as well.

24 THE COURT: I'm sorry?

25 MS. BURTON: The last two are on our

1 exhibit list as well.

2 THE COURT: How about the autopsy
3 report?

4 MS. BURTON: No objection.

5 THE COURT: There is no dispute about
6 that, is there?

7 MS. BURTON: No, sir.

8 THE COURT: And what do you want to do
9 about exhibits to which objection has been made?
10 Mr. Cuthbert suggest that neither one of you be
11 allowed to show the jury any exhibits in your
12 opening statement to which an objection has been
13 made. Any problem with that? Is there something
14 that you think you need to show the jury that he has
15 objected to?

16 MS. BURTON: No. I mean, are the
17 unobjected to exhibits admitted prior to the trial?

18 THE COURT: If you all want me to just
19 go ahead and admit them all now, I can do that, but
20 usually I admit them as they are offered at trial.
21 But what Mr. Cuthbert is concerned about is if you
22 have an exhibit that he has objected to, he doesn't
23 want you to be able to show it to the jury until I
24 have made a ruling on the objection.

25 MS. BURTON: All right, I won't show

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1 anything to the jury that was objected to.

2 THE COURT: And that goes for both
3 sides.

4 MR. CUTHBERT: Your Honor, there's a
5 little bit more than just show. It's refer to or
6 describe.

7 MS. BURTON: I think I can refer to what
8 I believe the evidence is going to show.

9 THE COURT: Mr. Cuthbert does not want
10 you to refer to any exhibit that he has objected to.
11 He doesn't want you to say we are going to show you
12 a photograph of Ms. Green standing behind the door
13 with a rifle in her hands if he has objected to
14 that.

15 MS. BURTON: Your Honor, if I say I'm
16 going to show it and then you don't let it in, then
17 I think Mr. Cuthbert can argue about that.

18 THE COURT: I just want to know whether
19 you oppose his motion or not?

20 MS. BURTON: Yes, I do oppose it.

21 THE COURT: Okay, tell me what exhibits
22 you want to be able to show to the jury that
23 Mr. Cuthbert has objected to.

24 MS. BURTON: I don't want to show any
25 exhibits to the jury that Mr. Cuthbert has objected

1 to in opening statements.

2 THE COURT: Tell me what exhibits you
3 want to refer to in opening statement that
4 Mr. Cuthbert has objected to.

5 MS. BURTON: Actually Ms. Harris is
6 making the opening statement, and I can't answer
7 that question.

8 THE COURT: All right. Anything else?
9 Get my docket book.

10 MS. BURTON: We have objections to the
11 plaintiff's exhibits and witnesses, defendant's --

12 THE COURT: I'm sorry, say that again.

13 MS. BURTON: The defendant's objections
14 to plaintiff's exhibits and witnesses that we
15 haven't addressed yet.

16 THE COURT: Okay. I'm just dealing with
17 Mr. Cuthbert's motions right now.

18 MS. BURTON: Okay.

19 THE COURT: So I think that takes care
20 of all of his motions.

21 Now, you have matters that you want me
22 to take up?

23 MS. BURTON: Yes, sir.

24 THE COURT: Let's start with summary
25 judgment. Just tell me very quickly what the basis

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1 of your motion for summary judgment is.

2 MS. BURTON: Well, the basis for the
3 motion against Buckovich, Mr. Cuthbert has basically
4 alleged improper supervision, which is not
5 recognized.

6 THE COURT: When did you file the
7 motion?

8 MS. BURTON: I filed the motion sometime
9 before the hurricane.

10 THE COURT: Before when?

11 MS. BURTON: Before the hurricane.

12 THE COURT: Before the hurricane?

13 MR. CUTHBERT: Your Honor, before we go
14 any further, I would just like to remind the court
15 that I do object to going forward on this motion.

16 THE COURT: That's exactly what I'm
17 getting to right now.

18 MR. CUTHBERT: Yes, sir.

19 MS. BURTON: It was filed August 28.

20 THE COURT: And when you did notice it
21 for hearing?

22 MS. BURTON: Actually it was not
23 noticed.

24 THE COURT: Well, do you think it's
25 appropriate to go forward with it?

1 MS. BURTON: No, sir, but you asked me.

2 THE COURT: Thank you. Tell me what
3 motions or anything else that you want me to take up
4 that you filed.

5 MS. BURTON: We have filed objections to
6 plaintiff's exhibits and witnesses.

7 THE COURT: Let me see if I can find
8 that. Do you know approximately what date you filed
9 that?

10 MS. BURTON: Yes, sir. It was received
11 and filed by the court on December 17.

12 MR. CUTHBERT: Your Honor, this is
13 something else that hasn't been noticed for today.
14 I don't have any of my papers on this issue, either
15 on Ms. Burton's list or my list, her objections or
16 my objections.

17 MS. BURTON: We can take them up at
18 trial.

19 THE COURT: I don't want to take them at
20 trial. I want to take them up now if we can.

21 I don't know, Mr. Cuthbert, maybe just
22 take a look at them and see if they are things we
23 can take up right now. If we can't, I don't want to
24 do anything that's going to prejudice you.

25 When did you say they were filed,

1 Ms. Burton?

2 MS. BURTON: September 17, objections to
3 plaintiffs's exhibits and witnesses. They were
4 filed when they were required to be filed in the
5 pretrial order.

6 THE COURT: I don't have them. I don't
7 know why I don't have them, but I don't see anything
8 that was filed on September 17.

9 MS. BURTON: Well, my copy is stamped
10 received and filed with the court September 17,
11 2003.

12 THE COURT: (Long pause) I'll blame the
13 hurricane. Maybe they were filed on September 17.
14 Was that the day before the hurricane? We were
15 closed the 18th and 19th. Maybe that's why they
16 didn't make their way into the file. I don't have
17 them. Do you have something I can look at?

18 MS. BURTON: Yes, sir.

19 THE COURT: I think the only reason that
20 I have Mr. Cuthbert's is because he provided me with
21 copies of what he filed. They're also not in the
22 Court's file here.

23 Okay, I've looked at these very quickly.
24 These all look to be things that it's more
25 appropriate to make a ruling at trial, so I think I

1 agree with you, Ms. Burton, that this will have to
2 wait until the trial date. I hate to make you walk
3 all the way up here, but Mr. Braxton just left.

4 MS. BURTON: Just for a few more weeks,
5 and then I'll have my surgery.

6 MR. CUTHBERT: Your Honor, there are
7 about a half of dozen points that I would like to
8 make.

9 THE COURT: Okay. Wait just a minute.
10 I'm not sure we are finished.

11 Ms. Burton, is there anything else that
12 you want me to take that up you have pending?

13 MS. BURTON: Not that I can recall.
14 Ms. Harris left a note here that we wish to preclude
15 Mr. Cuthbert from talking about or saying in
16 testimony that the use of this round eviscerated a
17 dog.

18 THE COURT: I hadn't ruled on that
19 earlier? I thought I had already ruled on that.

20 MS. BURTON: Today?

21 THE COURT: I thought I had already
22 ruled on that.

23 MS. BURTON: You might have. I'm sorry.

24 THE COURT: Didn't I rule on that
25 already?

1 MR. CUTHBERT: Yes, sir, Your Honor.
2 You excluded that testimony.

3 THE COURT: I thought that was a little
4 inflammatory.

5 Anything else, Ms. Burton?

6 MS. BURTON: No, sir.

7 THE COURT: Thank you very much.

8 Now, Mr. Cuthbert?

9 MR. CUTHBERT: Yes, sir.

10 THE COURT: Let me guide you through
11 here, and you have to trust me, if I tell you I
12 don't need to hear something, then I think you are
13 in pretty good shape. How about number 2 from the
14 September 5 Motion Number 1, guns and drugs? I do
15 need to hear you further on that. I don't need to
16 hear you any further on the collateral source, but
17 on the guns and drugs, tell me again why you don't
18 think that's relevant.

19 MR. CUTHBERT: Your Honor, the fact that
20 they were found inside does not prove anything about
21 the state mind of the officers when they committed
22 the alleged negligence. This was after the fact.

23 THE COURT: How about Ms. Burton is
24 saying that there had been some surveillance
25 conducted at this apartment?

1 And I assume, Ms. Burton, that you are
2 saying that the defendants relied in some way on
3 their surveillance in conducting their raid?

4 MS. BURTON: Yes, sir.

5 THE COURT: And should the jury know
6 whether the surveillance was or was not accurate?

7 MR. CUTHBERT: Your Honor, the only
8 defect in the surveillance that we allege is that
9 they allowed a gap to develop about five or ten
10 minutes before the raid began.

11 THE COURT: Let me ask this question,
12 and I'm sure you are going to answer it very
13 honestly. Suppose there had been no guns and no
14 drugs in the apartment. Should the jury be told
15 that?

16 MR. CUTHBERT: I couldn't get it into
17 evidence.

18 THE COURT: You don't think you could
19 have?

20 MR. CUTHBERT: I wish I could, but I
21 wouldn't think that I could get it in, because it
22 does not reflect anything about the state of mind as
23 of the time that the decisions were made that I'm
24 challenging. I'm stipulating that the search
25 warrant was proper. I'm stipulating that the

1 decision to call out the SWAT Team was proper.
2 There is nothing probative about what was found or
3 not found as far as the state of mind of these
4 officers is concerned.

5 I admit that the SWAT Team, there was
6 good reason to bring it in. I admit that there was
7 good cause to have the search warrant issued. What
8 was found inside doesn't make any difference, if
9 there had an atom bomb in there.

10 THE COURT: Tell me how it prejudices
11 you at all that the guns and drugs were found
12 inside. How does that hurt your client?

13 MR. CUTHBERT: Because it tends to tar
14 my client with an assumption of risk, when there is
15 no proof that she assumed the risk. And what's what
16 I said in my statement here that I filed with the
17 court citing the law dealing with assumption of
18 risk, The Greater Richmond Transit Company v.
19 Wilkerson case.

20 THE COURT: Well, I don't know anything
21 about the assumption of risk. I don't know whether
22 Ms. Burton is going to offer an assumption of risk
23 instruction. She is going to have a hard time
24 getting it. I haven't heard the evidence yet.

25 MR. CUTHBERT: Well, I'm trying to

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1 understand Your Honor's question. Your Honor's
2 question was --

3 THE COURT: No, I'm saying I agree with
4 you on the assumption of risk, yes, sir.

5 MR. CUTHBERT: Why do I care about this
6 evidence? How does it hurt me, I think was your
7 question? And the answer is because it makes it
8 look like my client assumed the risk, when there is
9 absolutely no evidence that she assumed the risk,
10 because there is no evidence that she fully
11 appreciated anything.

12 THE COURT: And you don't think it's
13 probative to the question of whether Sergeant Ingram
14 and Sergeant Buckovich --

15 MR. CUTHBERT: He was lieutenant, he is
16 now captain but --

17 THE COURT: -- whether they had good
18 cause to do what they did?

19 MR. CUTHBERT: No, sir, because I'm
20 conceding they had good cause to call out the SWAT
21 Team and to have the search warrant issued. So what
22 fact at issue does the presence of guns or drugs
23 tend to prove?

24 THE COURT: Well, I don't think you
25 meant to say what you just did. You don't mean to

1 say that they had good cause to do what they did?

2 MR. CUTHBERT: No, sir, but to call out
3 the SWAT Team and to have the search warrant issued,
4 I admit that they had good cause to do those two
5 things.

6 THE COURT: You don't think that they
7 had good cause to fire the round into the door?

8 MR. CUTHBERT: I don't think that Ingram
9 had good cause to fire rounds 2, 3, 4 and 5 into the
10 door.

11 THE COURT: Even if there were guns and
12 drugs inside of the apartment?

13 MR. CUTHBERT: Yes, sir.

14 THE COURT: And how about the fact that
15 shots were being fired from within the apartment?
16 You don't think that's relevant?

17 MR. CUTHBERT: I think technically I'm
18 probably right, but I sense that the court feels
19 otherwise, and so I'll withdraw my objection to
20 that.

21 THE COURT: All right. I appreciate
22 that. Thank you. I do not need to hear you on
23 Kevin Jones.

24 How about the expert disclosures, the
25 fact that these are sworn answers to

1 interrogatories? You still don't think they should
2 come in, even if they show that you're taking an
3 inconsistent position from what you have taken
4 previously?

5 MR. CUTHBERT: Your Honor, before we go
6 there, if I may, prior to this, the guns and the
7 drugs and whether a surveillance somehow, my
8 challenge to surveillance somehow opens the door to
9 that evidence, it does not. The only attack that we
10 make on the surveillance, the only deficiency that
11 we claim, is that the police allowed a gap in their
12 surveillance to take place about five or ten minutes
13 before.

14 THE COURT: And what's the practical
15 effect of the fact that they allowed a gap?

16 MR. CUTHBERT: That's when Christie
17 Green arrived with the child.

18 THE COURT: So what?

19 MR. CUTHBERT: Well, so --

20 THE COURT: Their surveillance convinced
21 them that this was a very dangerous situation.
22 There were guns and drugs in this apartment. Are
23 you going to try to tell the jury that there was a
24 gap, so now we don't know whether there were guns
25 and drugs in the apartment?

1 MR. CUTHBERT: Oh, no, I'm not
2 suggesting the guns -- the guns were always left
3 during the gap.

4 THE COURT: What difference does the gap
5 make?

6 MR. CUTHBERT: Well, I think that the
7 police would have taken other precautions or done
8 other things if they would have known that Christie
9 Green and a three-year-old had just come into the --

10 THE COURT: Even if they knew that the
11 apartment had guns and drugs in it?

12 And if you are withdrawing your motion
13 about the shots being fired from within the
14 apartment, now we know at least one gun was in the
15 apartment.

16 MR. CUTHBERT: Yes, sir.

17 THE COURT: Anything else on that?

18 MR. CUTHBERT: Well, the reason I'm
19 withdrawing the objection about the pistol being
20 fired is that I think only for the limited purpose
21 of showing whether Ingram's actions in continuing to
22 pull the trigger were relevant or not.

23 THE COURT: Okay.

24 MR. CUTHBERT: But it's for a limited
25 purpose. If it weren't for that, I don't think it

1 ought to come in. It's not coming in just to prove
2 there were guns inside the apartment.

3 THE COURT: Let me go back, because I'm
4 still having a problem distinguishing this case from
5 a case where a police officer shoots a suspect
6 believing that the suspect has a gun, and I'm not
7 aware that any courts have ever ruled that it's
8 irrelevant whether the suspect actually has a gun or
9 not, and I just don't know why that is different in
10 this case. Because if the person says, I have a
11 gun, I'm putting my hand in my pocket and I'm going
12 to pull out my gun and shoot you, and then it turns
13 out that the person does not have a gun, I've never
14 known a court to say that that's not relevant.

15 MR. CUTHBERT: Your Honor, in that case

16 --

17 THE COURT: Or where a person swears
18 before, I don't have a gun, and the police officer
19 shoots him and it turns out the person does have a
20 gun, then I think the jury gets to know that.

21 MR. CUTHBERT: Your Honor, and I would
22 agree, but that's not our situation.

23 THE COURT: Tell me why it's not our
24 situation.

25 MR. CUTHBERT: We do not challenge the

1 decision to use the SWAT Team in this case. We do
2 not challenge the decision to fire round 1 of the
3 Number 22 TKO. We do challenge Ingram's decision to
4 disregard his aiming instructions, for no reason
5 that had anything to do with what he thought --

6 THE COURT: Let me ask you this
7 question. If Mr. Ingram had X-ray vision and could
8 look through the apartment walls and see that there
9 were no guns and no drugs in the apartment, should
10 he have used the force that he used to break the
11 door down? If he were Superman, had X-ray vision,
12 and could see that there were no guns and no drugs
13 in the apartment, should he have taken the action
14 that he did?

15 MR. CUTHBERT: If he knew there was no
16 justification for?

17 THE COURT: Don't change my facts. If
18 he knew that there were no guns and no drugs in the
19 apartment, should he have done what he did? Should
20 he have fired rounds, 2, 3, and 4?

21 MR. CUTHBERT: And 5?

22 THE COURT: And 5.

23 MR. CUTHBERT: I don't see why he should
24 have.

25 THE COURT: Why should he have even

1 fired one?

2 MR. CUTHBERT: Yes, sir.

3 THE COURT: Now, if he had X-ray vision
4 and he saw all the guns and all the drugs in the
5 apartment, should he have done what he did, or could
6 a reasonable jury find that he should have done what
7 he did?

8 MR. CUTHBERT: I couldn't understand the
9 verbiage. Did you say should or should not?

10 THE COURT: Could the jury find that he
11 should have done what he did, if he had X-ray vision
12 and saw the guns and the drugs that were in the
13 apartment?

14 MR. CUTHBERT: No, sir.

15 THE COURT: Why?

16 MR. CUTHBERT: Because he was
17 disregarding his aiming instructions, and at no
18 point has he said that he disregarded his aiming
19 instructions because he thought saw guns or drugs
20 and/or thought there were guns or drugs.

21 There is no causal link in any of the
22 evidence that we have taken, and this case has been
23 deposed and redeposed. At no point has anyone said,
24 I deviated from the FBI's aiming instructions
25 because I thought there were drugs and guns or

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1 because I knew there were drugs and guns.

2 THE COURT: Okay.

3 MR. CUTHBERT: And we are conceding that
4 he had reason to think that there were drugs and
5 guns in there. We are conceding that the search
6 warrant for drugs and guns -- and that's what it
7 was, Your Honor. It was not a search warrant for
8 particular people. It was a search warrant for
9 drugs and guns.

10 THE COURT: I understand your argument
11 on that.

12 Now let's go to the expert disclosure.
13 Why shouldn't Ms. Burton be able to tell the jury
14 that you are taking an inconsistent position, if in
15 fact you are?

16 MR. CUTHBERT: Well, I really think -- I
17 wrote myself a note, and this is what I would ask
18 Your Honor, that let's wait and see how the evidence
19 comes in. I don't think that we can judge this in
20 the abstract.

21 THE COURT: Okay, that's good enough.

22 MR. CUTHBERT: And that is true for 4
23 and 5.

24 THE COURT: Okay. That's what I have
25 written down. That's 4 and 5.

1 MR. CUTHBERT: Yes, sir.

2 THE COURT: Ms. Burton says she is not
3 going to use the word "malfunction" or she is not
4 growing to have her witnesses use the word
5 "malfunction."

6 Silver versus red is no longer in
7 dispute.

8 MR. CUTHBERT: Yes, sir. And going back
9 to 4 and 5, since we are putting off, unless we have
10 to, addressing these, I would ask that no reference
11 be made to those expert witness disclosures in
12 opening statement.

13 THE COURT: Any problem with that,
14 Ms. Burton?

15 MS. BURTON: No, sir, because if you are
16 not making a ruling on them, I don't know whether or
17 not you are going to let them in.

18 THE COURT: Well, Mr. Cuthbert has
19 suggested, and I have preliminarily decided that I
20 can't make a ruling on that today, that I was going
21 to deny the motion without prejudice to his raising
22 it or his objecting to it at trial, but without
23 hearing how the evidence comes in and what the
24 theory of the case is at trial, I just don't know
25 whether it is or is not relevant.

1 And Mr. Cuthbert now wants me to
2 preclude you from mentioning these designations to
3 the jury in your opening statement. I just wonder
4 if you object to not mentioning them in your opening
5 statement?

6 MS. BURTON: No, sir.

7 THE COURT: Okay.

8 MR. CUTHBERT: Your Honor, I didn't know
9 whether Your Honor wanted me to comment on Kevin
10 Jones and the arrest warrant?

11 THE COURT: You don't need to comment on
12 Kevin Jones.

13 Mr. Trahin, you wanted me to give a
14 deadline by which Ms. Burton has to object to
15 portions of the deposition. She objects to the
16 entire deposition. Any further comment on that?

17 MR. CUTHBERT: Well, there is this line
18 of authority that says that general principles can
19 come in to evidence through expert witnesses.

20 THE COURT: Do you send up his
21 deposition?

22 MR. CUTHBERT: Yes, sir. I attached it
23 to --

24 THE COURT: Well, I think you attached
25 portions of it. Can you point me to the portion of

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1 this deposition that establishes the foundation for
2 whatever he did, that establishes the similarity
3 between what he did and between what Sergeant Ingram
4 says he did?

5 MR. CUTHBERT: Your Honor, this is a
6 fascinating question. There was no objection filed
7 during the direct exam, and what was filed was the
8 direct exam, and it's my view that any objection was
9 waived because it was not stated during the direct
10 exam.

11 THE COURT: All right.

12 MR. CUTHBERT: But regardless, if I lose
13 on that point, I think there is this line of
14 Virginia authority that does recognize that expert
15 testimony can come in in order to address general
16 principles.

17 THE COURT: And is all we're talking
18 about Mr. Trahin's firing these rounds into the
19 plywood from 95 feet? Is that all we're talking
20 about?

21 MR. CUTHBERT: I suppose that's right.
22 I mean, there are a number of photographs that
23 illustrate it.

24 THE COURT: Well, I just want to know if
25 there is anything else, because that's all I've

1 heard in argument about it. I don't want to rule on
2 that and then find out I've precluded you from
3 offering some portion of his testimony that might be
4 admissible on some other basis.

5 MR. CUTHBERT: I think that is the only
6 portion that is really --

7 THE COURT: Okay. How about the
8 Sanction II? Why do they call it Sanction II,
9 anyway?

10 MR. CUTHBERT: I don't know. It
11 frightens me.

12 THE COURT: I'm afraid I might be
13 sanctioned, depending on how I rule on this. Do you
14 have any further comments on that?

15 MR. CUTHBERT: Madison Avenue didn't
16 choose the name, that's for sure.

17 THE COURT: Any further comment?

18 MR. CUTHBERT: No. I think it ought to
19 be allowed. I would ask the court to allow me to
20 use it for the reasons I've stated.

21 THE COURT: How about the voir dire?
22 Ms. Burton says she doesn't have time to do it. Can
23 you tell me the purpose?

24 MR. CUTHBERT: Well, we have got to do
25 it sometime, and it would be great to have a heads

1 up on it. I would suggest at the close of business
2 tomorrow we fax each other, and if that's too soon,
3 then 12 noon on Monday, but I need a heads up.

4 And then I suspect that what will
5 happen, Your Honor, is that there will be a few that
6 I object to and a few that she objects to, and we
7 can hash it out quickly and then that will make
8 everything move more smoothly during the voir dire.

9 THE COURT: All right. I thank you for
10 that.

11 MR. CUTHBERT: Thank you, sir.

12 THE COURT: The trial begins on Tuesday,
13 not Monday?

14 MR. CUTHBERT: Yes, sir, Tuesday.

15 THE COURT: I'm going to rule on these
16 in the order that they were presented. With regard
17 to the motion dealing with collateral source, that
18 motion is granted. That takes care of all the items
19 under number 1, under Motion Number 1, a through h.
20 The defendants are precluded from mentioning any of
21 those things to the jury, either in opening
22 statement or in the presentation of evidence.

23 Regard to number 2 under Motion 1, the
24 fact that guns were found inside the apartment,
25 drugs were found inside at the apartment, that shots

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1 were fired from inside the apartment, that motion is
2 denied. And again, I'm just unable to distinguish
3 this case from the other type of case that I was
4 mentioning. Maybe that's my fault for not being
5 able to distinguish it.

6 It seems to me that what was actually
7 the situation inside the apartment is relevant. I
8 think the jury has a right to know that. I think
9 the defendants have a right to have the jury know
10 that, because I think it either lends credence or it
11 takes away credence from what was the situation. I
12 think the jury has a right to know that. I
13 understand your argument, Mr. Cuthbert, but I'm
14 going to overrule that motion, and the defendants
15 may present evidence on those factors.

16 With regard to Kevin Jones, the motion
17 is granted. The fact that Mr. Jones was wanted or
18 arrested for murder is not relevant to anything in
19 this case.

20 The fact that Ms. Green associated with
21 Mr. Jones is not relevant to anything in this case.
22 It's a stretch to say that her life expectancy was
23 somehow diminished because she hung around with
24 somebody who is wanted for or who was arrested for
25 murder. I don't even have anything to show here

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1 that he was ever convicted for that. Even if I did,
2 the ruling would be the same. That motion is
3 granted.

4 With regard to the expert disclosure,
5 I'm not going to make a ruling on that. I'm going
6 to wait until Ms. Burton attempts to mention those
7 to the jury.

8 Ms. Burton, I will direct you not to
9 make any reference to those in opening statement.
10 Before you make any reference to that in the
11 presentation of your evidence, or if you change your
12 mind between now and Tuesday and you want to make a
13 reference to it in opening statement, if you will
14 let me know so I can excuse the jury, and we could
15 revisit that.

16 I don't think I'm going to let you do it
17 in opening statement, because I won't know any more
18 Tuesday than I do now about how the case is going to
19 be presented, so I really don't think you're going
20 to be able to do it in opening statement. But even
21 before you do it during the presentation, I would
22 like for you to ask to approach the bench, and that
23 way we can excuse the jury so I take it up.

24 With regard to number 4 and number 5
25 under Motion Number 1, with regard to the use of the

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1 term "malfunction," the motion is granted. The
2 witnesses will not be allowed to say that the round
3 malfunctioned. Lay witnesses will not be able to
4 say that, including the parties. Expert witnesses
5 will be allowed to render an opinion on that.

6 With regards to the difference between
7 silver rounds and red rounds, the motion is granted.
8 There will be no evidence that there was any
9 difference between those rounds. That takes care of
10 Motion Number 1.

11 With regard to Motion Number 2,
12 everything was resolved except for number 6. With
13 regard to Mr. Trahin's deposition, with the
14 understanding that the only thing that's being
15 offered is Mr. Trahin's firing the rounds from 95
16 feet into a piece or pieces of plywood, there's not
17 enough of a foundation to show that that action was
18 similar to anything that Detective or Sergeant
19 Ingram did in this case.

20 Mr. Cuthbert, you say that there are
21 some authority. I'm not aware of any authority. My
22 understanding is that in order to show
23 reconstruction type testimony or evidence or any
24 type of experiment that was conducted, in order to
25 show that to the jury there has to be a foundation

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1 that what was done was similar to what was done in
2 the actual case.

3 There has not been a showing here, so
4 Ms. Burton's objection to Mr. Trahin's deposition is
5 granted, and that deposition will not be read to the
6 jury.

7 With regard to the use of Sanction II
8 software, I think if you show the jury the actual
9 testimony, I think that that puts that testimony on
10 a higher level than testimony where the words are
11 not shown. I don't think that's appropriate, so I'm
12 going to deny the motion to allow the use of this
13 Sanction II software.

14 I'm also going to deny the request to
15 have the parties present their voir dire questions
16 in advance. I have never required that. We are
17 very fortunate in Virginia that we have a culture
18 here where the lawyers and the judges understand
19 what voir dire is all about.

20 Whenever I go to the conferences with
21 judges from other states and they tell me about voir
22 dire that lasts hours and days and months, I'm just
23 flabbergasted. I just don't understand it. And I
24 remember telling a judge from Georgia one time that
25 our voir dire normally takes about a half-hour. I

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1 thought she was going to faint. This one will
2 probably take 35 minutes instead of 30 minutes.

3 I don't envision any problems. You all
4 know what questions you can ask, I know what
5 questions you can ask, and we will just deal with it
6 at the time. I think that takes care of all of the
7 September 5 motions.

8 With regard to the September 17 motions,
9 the motion to show the deposition excerpt, maybe it
10 sounds inconsistent with what I just said about the
11 Sanction II software, but I think I have the
12 discretion to allow this portion to be shown. This
13 is such a small portion of the deposition of
14 Sergeant Ingram, Sergeant Ingram's testimony, I am
15 going to allow Mr. Cuthbert to show that during his
16 opening statement, and also to show each of the
17 exhibits that he has referred to. Since the
18 exhibits be will be coming into evidence, he has a
19 right to show those to the jury.

20 With regard to the motion to add
21 exhibits to the exhibit list, this is Motion Number
22 6 under the September 17 motion, the motion to add
23 each one of these, the photographs of Ms. Green's
24 jacket, the order awarding custody of Kevasha Green,
25 and the job search records of the Department of

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1 Social Services are all granted.

2 Mr. Cuthbert, you can add those to the
3 exhibit list and offer those to the jury. Also the
4 autopsy report also can be added.

5 With regard to exhibits from which an
6 objection is made, based on what I consider to be
7 the agreement of the parties, no exhibit to which an
8 objection has been made can be shown to the jury or
9 referred to in front of the jury during opening
10 statements. If either one of you want to change
11 that on Tuesday, then I'll allow you to do that.

12 With regard to objections to exhibits
13 that you think have to be taken up prior to opening
14 statement, you all be here at 9:30 -- no, at 9
15 o'clock, I'm sorry, 9 o'clock on Tuesday morning --
16 and if there are any things, any loose ends that we
17 need to tidy up before we start, we will try to do
18 that between 9 o'clock and 9:30, and that will
19 include any exhibits that either one of you think
20 are just so important that even though they are
21 objected to, you have to tell the jury.

22 You know, if you tell the jury that you
23 have an exhibit and it turns out that the exhibit is
24 objected to and is not admitted, it seems to me the
25 other party is in better shape than if the exhibit

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1 was never referred to, because you can tell the
2 jury, "Mr. Cuthbert promised you he was going to
3 show you this and he never showed it to you."

4 "Ms. Burton said that Mr. Ingram was
5 going to testify to this and he never testified to
6 it."

7 I don't know why you all try to keep
8 those out. It seems to me you would want the other
9 side to make promises that he or she cannot keep,
10 but to the extent that you want me to make those
11 kind of rulings, we will do that at 9 o'clock on
12 Monday.

13 Mr. Cuthbert, have I left out anything
14 that you have?

15 MR. CUTHBERT: No, but I am going to
16 come with authorities when I see Your Honor next on
17 the Jimmy Trahin issue and ask Your Honor to
18 reconsider.

19 THE COURT: Until 21 days after final
20 judgment, you can always ask me to reconsider.

21 MR. CUTHBERT: I don't mean to be
22 recalcitrant.

23 THE COURT: No, I don't have any problem
24 with that. I would rather correct a mistake myself
25 than the people down the street correct it,

1 Mr. Cuthbert, so don't ever feel embarrassed about
2 asking me to reconsider.

3 MR. CUTHBERT: Well, thank you, sir.
4 Judge, as to time, Your Honor said something about
5 hearing motions between 9 and 9:30. Are we starting
6 at 9:30 or starting at 10?

7 THE COURT: Starting at 9 o'clock.

8 MR. CUTHBERT: I understand.

9 THE COURT: I want you all here at 9
10 o'clock, and anything that you want to bring to my
11 attention such as your motion to reconsider I want
12 to take up at 9 o'clock, and I would like to finish
13 by 9:30.

14 MR. CUTHBERT: Yes, sir. When are we
15 going to start to bring the jury in?

16 THE COURT: 10 o'clock. The jury trial
17 itself starts at 10 o'clock.

18 MR. CUTHBERT: Yes, sir. Does Your
19 Honor have any practice as to how late in the day
20 you go? I'm trying to coordinate.

21 THE COURT: Normally around 5 o'clock,
22 and it just depends. If it's 4 o'clock and your
23 next witness is going to be three hours, we are not
24 going to go. If it's 5 o'clock and you have three
25 more witnesses that are going to be 10 minutes each,

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1 we will keep going. It depends upon how the jury
2 looks.

3 MR. CUTHBERT: If Your Honor had a
4 practice, we always go to 6:30, Mr. Cuthbert, didn't
5 you know that, I just wanted to know.

6 THE COURT: I would say plan to go until
7 at least 5 o'clock.

8 MR. CUTHBERT: Yes, sir. Thank you.

9 THE COURT: How many days do you think
10 this is going to take?

11 MR. CUTHBERT: I'm guessing the jury
12 will have the case at the end of day three. It's
13 set for four days.

14 THE COURT: Do you agree with that,
15 Ms. Burton?

16 MS. BURTON: I'm guessing the court is
17 going to grant my motion to strike, and then the
18 case will be over.

19 THE COURT: Assuming that you are not
20 successful on the motion.

21 MS. BURTON: I have a medical
22 appointment on Friday evening I cannot miss for
23 presurgery.

24 THE COURT: You are going to have
25 somebody else here, though?

1 MS. BURTON: Yes.

2 THE COURT: Anything else?

3 MR. CUTHBERT: No, sir. Thank you.

4 THE COURT: Thank you very much. To the
5 extent there is anything, Mr. Cuthbert, that you
6 need an order on, I would appreciate your preparing
7 that.

8 MR. CUTHBERT: Yes, sir. Thank you.

9 THE COURT: Thank you all very much.

10

11 (Hearing concluded.)

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040480

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

KATINA GREEN, Administrator,
Plaintiff,

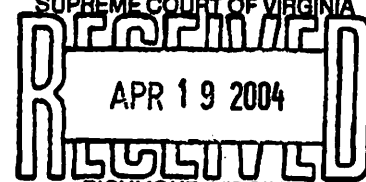
vs.

JOHN B. BUCKOVICH and
GEORGE INGRAM,

Defendants.

Case No. LL-2806

CLERK
SUPREME COURT OF VIRGINIA

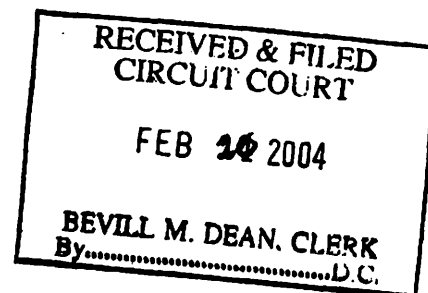


RICHMOND, VIRGINIA

September 30, 2003

Richmond, Virginia

Transcript of the above-captioned pretrial
motions, when heard before the Honorable Randall G.
Johnson, Judge.



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1 THE COURT: Good morning. I don't know
2 why we had the confusion about the time.
3 That's why I don't have a bailiff. Anyway, I
4 appreciate you all being here on time. I know
5 we have several matters to take care of. As
6 soon as we can go ahead and take care of those,
7 we'll be ready for the jury at 10:00.

8 Mr. Cuthbert.

9 MR. CUTHBERT: Your Honor, thank you. I
10 filed some written motions for today. I would
11 like just to start at the top and work through
12 them if I may.

13 THE COURT: All right. I received those
14 yesterday.

15 MR. CUTHBERT: Yes, sir. Judge, motion
16 one asks the Court in limine to rule that three
17 things as far as evidence and argument is that
18 the following are not relevant and should be
19 excluded: One, that the plaintiff sued the
20 manufacturer; two, the allegations that the
21 plaintiff made against the manufacturer in our
22 motion for judgment; and three, contributory
23 negligence or assumption of risk by Ms. Green.

24 We talked about this as we talked about
25 opinions of experts last Thursday. I don't

1 believe, however, I put the issues squarely
2 before Your Honor. I think Your Honor never
3 ruled as to whether evidence is going to be
4 allowed and whether argument is going to be
5 allowed that the plaintiff sued the
6 manufacturer.

7 THE COURT: You don't think that's
8 relevant to this case?

9 MR. CUTHBERT: Yes, sir. I think that's
10 right. I think if it comes in, I think that
11 opens the door to my being able to tell the
12 jury: We sued them, and the jury in the other
13 case returned a verdict for the defense.

14 THE COURT: Why would that be relevant?

15 MR. CUTHBERT: Well, if we sued them, why
16 is the fact that we sued them relevant?

17 THE COURT: Well, I don't -- assuming she
18 tells me why that's relevant -- well, I guess
19 I'll wait for you to respond.

20 MR. CUTHBERT: It seems to me to be the
21 other end of the strip. Otherwise, it leaves
22 the jury with the impression that we still
23 think that there's a valid claim and that
24 others think that there's a valid claim when,
25 in fact, that's not the case.

1 THE COURT: Was your claim against the
2 manufacturer inconsistent with your claim
3 against the police officers?

4 MR. CUTHBERT: No, sir, I don't think so.

5 THE COURT: All right. How about motion
6 number two?

7 MR. CUTHBERT: Now, contributory
8 negligence and assumption of risk are also in
9 this motion one as item three.

10 THE COURT: Right. Right. I understand.

11 MR. CUTHBERT: Motion two, Your Honor,
12 deals with a need to show Exhibits 19 and 20 to
13 the jury. I've given the Court a copy. They
14 are pictures of Christie Green and Kevasha
15 Green.

16 THE COURT: Why do you need both of them?

17 MR. CUTHBERT: Well, they're different
18 children.

19 THE COURT: No.

20 MR. CUTHBERT: But the point is I'm not
21 going to be -- of course, Christie Green is not
22 here, and the children are not coming as well.

23 THE COURT: All right. I mean, you're
24 going to offer these as exhibits during the
25 trial?

1 MR. CUTHBERT: Yes, sir.

2 THE COURT: Okay.

3 MR. CUTHBERT: But during voir dire I'd
4 like to know whether any of the jurors know
5 these people.

6 THE COURT: All right.

7 MR. CUTHBERT: Motion three is mostly a
8 revisit of something we've talked about before.
9 I've broken it down into a part A, part B, and
10 part C. Part A deals with drugs found in the
11 apartment after Christie Green was fatally
12 wounded. Part B deals with guns and related
13 paraphernalia found in the apartment. Part C
14 deals with homicide suspects.

15 On the drugs found inside the apartment --
16 well, on each of these, Your Honor, I'd like to
17 change a word in what I submitted to the Court.
18 In each of them, I followed a pattern that said
19 "without waiving her objections to the
20 relevance and undue prejudice, the plaintiff
21 will stipulate any facts," whichever the three
22 we're talking about, "that the Court deems
23 relevant." I should say admissible. I think
24 there's a balance that comes in even if Your
25 Honor thinks that they're relevant.

1 THE COURT: All right.

2 MR. CUTHBERT: The balancing is whether
3 the prejudice outweighs the probative value. I
4 did not want to overlook that difference. So
5 if Your Honor will, just substitute
6 "admissible" for "relevant" in that sentence.

7 THE COURT: All right.

8 MR. CUTHBERT: On the topic of drugs, Your
9 Honor, this is what I suspect the defense is
10 going to want to do. I don't know precisely
11 because I wasn't given precisely the exhibits
12 that they propose to introduce. Instead, I
13 think they said seventeen photographs of items
14 found within the apartment.

15 Now, I've seen all of those photographs.
16 I don't think there are any surprises there. I
17 don't know which seventeen they're talking
18 about. There may be 150.

19 One of those photographs, as I remember
20 it, shows a -- sorry. One of the 150 or so
21 shows some aluminum foil that was found on the
22 dining room table. The testimony or -- I
23 couldn't tell it. The testimony, I believe,
24 was during the depositions that in that
25 aluminum foil was some kind of cocaine, heroin,

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1 or some kind of a drug.

2 I don't know what other drug photographs
3 they might have in mind or whether they even
4 have that one in mind. I just wanted to bring
5 that to the Court's attention before I hear
6 about it in opening statement or see it in
7 opening statement.

8 THE COURT: All right.

9 MR. CUTHBERT: I say at the beginning of
10 this, Your Honor, that the issue is different
11 from the issue involving guns. This gets back
12 to Your Honor's hypothetical. In no way does
13 the presence of drugs justify a claim of
14 self-defense. So what is relevant to prove?
15 If they found the drugs, what is it relevant to
16 prove? I agree that they had good cause to get
17 the search warrant in the first place.

18 THE COURT: Well, I don't want to make --
19 well, I'll wait for Ms. Burton. Isn't the fact
20 that there are drugs in an apartment -- and I
21 don't know what kind of drugs they were or how
22 easily they are disposed of. But don't the
23 police have an interest in getting into an
24 apartment quickly if there are drugs there? If
25 they knock and announce their presence and

1 wait, the drugs can be disposed of.

2 MR. CUTHBERT: Yes, sir. But that concern
3 is taken care of by evidence that they had a
4 reasonable suspicion that there were drugs
5 inside.

6 THE COURT: Well, there's a difference
7 between suspicion and fact.

8 MR. CUTHBERT: Yes, sir. But all they
9 knew when they pulled the trigger was they had
10 a suspicion. That was their mind-set at that
11 time. What they found inside --

12 THE COURT: Now, that takes us back to the
13 hypothetical. The fact that there is a weapon
14 found on a person, the fact that there are
15 drugs found on a person, isn't that relevant?

16 MR. CUTHBERT: Yes, sir. I think the
17 reason that the weapon evidence is relevant in
18 the Melvin case is that theirs is a direct
19 challenge to whether there is a challenge to
20 whether the police had good reason to think
21 that this bulging fist in a pocket --

22 THE COURT: You don't think that the
23 actual presence of drugs lends credence to the
24 reasonable suspicion that there are drugs
25 there?

1 MR. CUTHBERT: If we look at the point in
2 time at which the trigger was pulled --

3 THE COURT: If the shoe were on the other
4 foot, if there were no drugs in the apartment,
5 you wouldn't be asking me to let the jury know
6 that?

7 MR. CUTHBERT: I know I wouldn't get it in
8 because of the *mens rea* or whatever the thought
9 process of Ingram.

10 THE COURT: You don't think the thought
11 process of Ingram is relevant in this case?

12 MR. CUTHBERT: I think the thought process
13 is. But what he found after he pulled the
14 trigger does not prove a thing in the world
15 about his thought process when he pulled the
16 trigger.

17 I will stipulate that he had a reasonable
18 suspicion to believe that there were drugs
19 inside the apartment. With that stipulation,
20 Your Honor, what is there left to prove? That
21 gets me to the second point, relevant to prove
22 what?

23 THE COURT: Okay.

24 MR. CUTHBERT: Then three, without waiving
25 our objections to relevance and undue

1 prejudice, the plaintiff will stipulate any
2 facts of drugs that the Court deems admissible.

3 THE COURT: All right.

4 MR. CUTHBERT: The third and the fourth
5 point, no mention of where the drugs are
6 located. If Your Honor rules that they may
7 come in, location is not relevant for any
8 legitimate purpose. For example, during the
9 depositions, I heard that the drugs were,
10 quote, in plain view on the dining room table
11 or words to that effect.

12 THE COURT: Tell me what the prejudice is.
13 How is that prejudice?

14 MR. CUTHBERT: Because it raises in the
15 minds of the jury that Christie Green was a bad
16 person.

17 THE COURT: It raises in the minds of the
18 jury that whoever had the drugs might be
19 committing a criminal act.

20 MR. CUTHBERT: I'm afraid it's a broader
21 paint brush, Your Honor. I don't think there's
22 any way you'll keep the paint off of Christie
23 Green.

24 THE COURT: Okay. How about motion number
25 four? Well, is there anything else on motion

1 number three?

2 MR. CUTHBERT: Well, a limiting
3 instruction.

4 THE COURT: I think I understand. We
5 talked about this for some time the other day.
6 I think I understand your argument on this.

7 MR. CUTHBERT: Yes, sir.

8 THE COURT: How about number four?

9 MR. CUTHBERT: I never asked specifically
10 for a limiting instruction. I would like to
11 put a focus on that.

12 THE COURT: Okay.

13 MR. CUTHBERT: On guns, Your Honor, a
14 couple of embellishments of what I said the
15 other day. Ingram's testimony I quote here.
16 This I'm going to play to the jury as part of
17 our case and chief. Your Honor sees what he
18 said on page 75, line 10 through 75, line 25
19 from the October 24 deposition. In that
20 passage, he said he wasn't trying to defend
21 himself. He wasn't trying to shoot anybody.
22 He was just trying to get the door open.

23 THE COURT: I'm not sure what -- okay.
24 This is still on your motion to exclude
25 evidence?

1 MR. CUTHBERT: Yes, sir. I'm going from
2 drugs over to guns.

3 THE COURT: Okay. I really understand
4 you, Mr. Cuthbert. I have to let Ms. Burton
5 make a response. Then we need to get ready for
6 the case.

7 MR. CUTHBERT: All right. I understand.

8 THE COURT: How about motion number four?

9 MR. CUTHBERT: Well, Your Honor, if I may,
10 there also is a photograph of a pistol
11 silencer. There's a photograph of an assault
12 rifle. There's a photograph of ammunition and
13 ammunition clips, these banana clips.

14 THE COURT: All right. How about number
15 four?

16 MR. CUTHBERT: Your Honor, I have attached
17 my objections annotated on the proposed
18 designation of Mr. --

19 THE COURT: Let me ask you a question,
20 Mr. Cuthbert. This is really one of my
21 ridiculous hypotheticals. Suppose at the time
22 that Sergeant Ingram -- it was Sergeant Ingram
23 at the time?

24 MR. CUTHBERT: Yes, sir.

25 THE COURT: -- was trying to breach the

1 door the only information he had was that there
2 were drugs on the kitchen table. That's the
3 only information he had, and he breaches the
4 door. He kills Christie Green. As soon as he
5 breaches the door, in addition to killing
6 Christie Green, he also injures a person who
7 has a bazooka pointed at him and who had just
8 made the statement to his friend: I am going
9 to kill whoever is on the other side of that
10 door.

11 Before he could pull the trigger, Sergeant
12 Ingram breached the door, injured this person
13 who was getting ready to pull the bazooka and
14 kill Sergeant Ingram. Would that be admissible
15 to the jury in this case, the fact there was a
16 person on the other side of the door with a
17 bazooka getting ready to kill Sergeant Ingram?

18 MR. CUTHBERT: Not unless Sergeant Ingram
19 knew that.

20 THE COURT: He didn't know, but it's
21 undisputed because we have a person on the
22 other side of the door who says, that person
23 told me he was getting ready to pull the
24 trigger and kill whoever was on the other side
25 of the door. The only reason he didn't do it

1 was because the door was breached, and he was
2 injured before he had a chance to pull the
3 trigger. Would that be admissible to the jury?

4 MR. CUTHBERT: No, sir. We have to think
5 in terms of the timeline.

6 THE COURT: It sure would be fortunate for
7 Sergeant Ingram that he did what he did when he
8 did it though; wouldn't it?

9 MR. CUTHBERT: There's no doubt about
10 that.

11 THE COURT: I'm sorry?

12 MR. CUTHBERT: There's no doubt about
13 that.

14 THE COURT: The jury should not know that?

15 MR. CUTHBERT: No, sir, because we have to
16 think in terms of the timeline.

17 THE COURT: Sergeant Ingram should be made
18 to pay civil damages to the estate of Christie
19 Green even though what he did is the only thing
20 that saved his life?

21 Suppose Christie Green had another child
22 who was standing beside Sergeant Ingram and
23 this other child would have been killed had
24 Sergeant Ingram not done what he had done?
25 Should that go to the jury?

1 MR. CUTHBERT: I don't know. Let me go
2 back to the first one, Your Honor. Negligence
3 is measured as of the time that Sergeant Ingram
4 pulls the trigger, or at least it's not
5 measured at any time beyond that. So the
6 question is, what was his state of mind? Was
7 he grossly negligent? Was he willful and
8 wanton up to the time --

9 THE COURT: Is state of mind in a normal
10 case -- now, I understand in this case that
11 state of mind is going to come in, but in a
12 normal case, state of mind doesn't have
13 anything to do with negligence; does it? If I
14 run the red light --

15 MR. CUTHBERT: Well, we've got gross
16 negligence and punitive damages both.

17 Now, as to the fact that there was a
18 child -- in your hypothetical, there was a
19 child standing beside Christie Green who --

20 THE COURT: No, standing beside Sergeant
21 Ingram. I don't know why the child was
22 standing there, but the child was standing
23 there.

24 MR. CUTHBERT: I don't see -- it doesn't
25 reflect anything. Well, he knows it's a child

1 standing beside him.

2 THE COURT: Let's make the hypothetical
3 more realistic. This person inside is getting
4 ready to do a suicide murder thing. He says,
5 I'm getting ready to kill Christie Green. I'm
6 getting ready to kill Christie Green's children
7 or child, and I'm getting ready to pull the
8 trigger right now. Right before he pulls the
9 trigger, Sergeant Ingram does what he does and
10 injures the person where the person cannot pull
11 the trigger.

12 MR. CUTHBERT: Unless Sergeant Ingram --

13 THE COURT: Now Sergeant Ingram is being
14 charged with wrongful death of Christie Green.

15 MR. CUTHBERT: Yes, sir.

16 THE COURT: The question is, should the
17 jury know?

18 MR. CUTHBERT: No, sir. Again, we're
19 looking at Sergeant Ingram's mind-set through
20 the moment that he pulled the trigger for the
21 last time. Anything after he pulled the
22 trigger for the last time does not reflect on
23 his mind-set at the time that he pulled the
24 trigger.

25 So my proposed stipulation that he had

1 good reason for the search warrant meets any
2 legitimate purpose that this evidence or that
3 the topic of guns and drugs fulfills.

4 THE COURT: Now, we really do need to move
5 to motion number four.

6 MR. CUTHBERT: I understand, Your Honor.

7 THE COURT: You have answered my question.

8 MR. CUTHBERT: I agree, Your Honor. We
9 haven't talked about part C of three, that is
10 that there were homicide suspects inside the
11 apartment that did not rent the apartment.

12 THE COURT: This is part C?

13 MR. CUTHBERT: Yes, sir.

14 THE COURT: Oh, I see. Okay. I
15 understand. How about number four?

16 MR. CUTHBERT: Your Honor, I'm sorry.
17 This has come at the last minute.

18 THE COURT: I know. We can't tell the
19 jury that we're not ready for them at 10:00.
20 We still have some other things we have to
21 discuss, and I have to allow Ms. Burton to
22 respond to you. It's not fair for you to make
23 your argument and I not give them a chance to
24 respond.

25 MR. CUTHBERT: I understand, sir.

1 THE COURT: The Supreme Court gives you a
2 certain amount of time to make your argument.
3 I'm sure you don't tell the seven justices: I
4 need more time. You do what they ask you to
5 do, and I'm asking you to go to motion four.

6 MR. CUTHBERT: I've turned to page three,
7 Your Honor, of the designation of Mr. Beadles.
8 If you look at the bottom right corner, you
9 will see the page number.

10 THE COURT: This is on the breach. You
11 don't think this --

12 MR. CUTHBERT: Well, it's outside the
13 scope of the disclosure. I gave Your Honor the
14 disclosure. The disclosure --

15 THE COURT: I read this yesterday. The
16 disclosure says that the proper breaching
17 method -- you don't think that's broad enough
18 to cover everything?

19 MR. CUTHBERT: It says the proper
20 breaching method involves. Then it goes on and
21 states what it involves. It doesn't say
22 anything else about the proper breaching
23 method. It says, the proper breaching method
24 involves.

25 THE COURT: You know, the normal witness

1 testifies for maybe a half an hour in this
2 court. Testimony I find is usually about a
3 page a minute. So if somebody is going to give
4 you an exact designation about what a person is
5 going to say on a witness stand, they would
6 have to give you a designation of 30 pages.

7 Nobody does that. They give you an
8 outline of what the witness is going to say.
9 If you want to know more, you take a
10 deposition.

11 I understand your argument on that. I
12 think you're going to lose that argument. I
13 think when they say the proper breaching
14 technique, anything that is involved in the
15 breaching technique I think now is fair game.
16 All right. That takes care of motion number
17 four.

18 Anything else?

19 MR. CUTHBERT: Yes, sir. It does take
20 care of motion four. If Your Honor would, turn
21 to page seven of the designation of
22 Mr. Beadles.

23 THE COURT: Page seven?

24 MR. CUTHBERT: Yes, sir.

25 THE COURT: I don't have a page seven.

1 Mine are not numbered.

2 MR. CUTHBERT: In the --

3 THE COURT: What's the first word on the
4 page?

5 MR. CUTHBERT: Let me show Your Honor the
6 first page if I may. This is what I'm
7 referring to. It's the small print, page seven
8 in the bottom right.

9 THE COURT: Oh, okay. I thought you said
10 designation. I'm sorry. Oh, this does say
11 designation. This looks like a deposition
12 though.

13 MR. CUTHBERT: Yes, sir. This is the
14 narrative for the deposition that Ms. Burton
15 wants to play to the jury.

16 THE COURT: All right.

17 MR. CUTHBERT: There are two reasons that
18 I feel that the passage that I've identified on
19 page seven is not relevant. That's page 22,
20 line 19 through 23. Outside the scope, I think
21 Your Honor has already addressed that.

22 THE COURT: Right.

23 MR. CUTHBERT: Also, it's a statement of
24 general principles. It does not deal with our
25 fact pattern. The question as Your Honor will

1 see is, are there circumstances? It doesn't
2 say "in this case."

3 THE COURT: All right.

4 MR. CUTHBERT: If we go over to page
5 eight, we've got more of the same on page 26,
6 line 20 through 27, line 5, and then at two
7 other places that I cite there on page eight.
8 Again, statement of gun principles, under what
9 circumstances would you expect is the first of
10 those three.

11 THE COURT: You're saying none of this
12 happened in this case?

13 MR. CUTHBERT: That's not the way the --
14 let's see what it is. He used the ram in this
15 case, but that's not what she asked him. She
16 just asks a general proposition: Are there
17 circumstances? The same with the second one:
18 Have you seen an occasion?

19 THE COURT: But the ram was used?

20 MR. CUTHBERT: Yes, sir, the ram was used.

21 THE COURT: All right. How about going
22 back to page seven? When you said this is just
23 talking about general circumstances, where are
24 you when you say it's just general
25 circumstances?

1 MR. CUTHBERT: Let's see. It's in the
2 very middle of the page quoting from page 22,
3 line 19.

4 THE COURT: But the question is going to
5 be whether Sergeant Ingram used the proper
6 method in breaching this door.

7 MR. CUTHBERT: Yes, sir.

8 THE COURT: Now, Mr. Beadles is talking
9 about what the proper method is. You don't
10 think that's relevant?

11 MR. CUTHBERT: It's not a question of
12 relevance. It's a question of a different
13 question being answered. The question is, are
14 there circumstances under which a breacher
15 would need to use more than a single round?

16 THE COURT: Sergeant Ingram used more than
17 one round?

18 MR. CUTHBERT: Yes, sir.

19 THE COURT: I'm not following you.

20 MR. CUTHBERT: Well, I think that's too
21 broad a topic.

22 THE COURT: Oh.

23 MR. CUTHBERT: If we look at page nine, we
24 have a leading question there at the top. I
25 objected on grounds that it was leading.

1 THE COURT: All right. Sometimes the
2 Court will allow leading questions of an expert
3 because experts are deemed to be -- I don't
4 want to say more astute, but a little different
5 than lay witnesses. The general feeling among
6 most Courts is experts cannot be led as easily
7 as other witnesses. Some Courts believe that
8 no witness can be led. I'm not one of those
9 Courts.

10 MR. CUTHBERT: Now --

11 THE COURT: This is not much of a leading
12 question. I understand you object to it. It's
13 not that leading. Does a breacher sometimes do
14 something? He could have said, yes, breachers
15 sometimes do that, or, no, breachers never do
16 that.

17 MR. CUTHBERT: Right. But I think --

18 THE COURT: This is an expert. He is
19 supposed to know what he's talking about. I'm
20 sure that you did an effective job on
21 cross-examination to take care of that leading
22 question.

23 Anything else?

24 MR. CUTHBERT: Judge, on page ten, the
25 last two, I think there are four passages cited

1 there. There's the first one; the second one,
2 the same principles we've talked about before;
3 the third one, which is 3413 through 3425. We
4 get into whether it was appropriate for Ingram
5 to use the 22 round. It gets into, I had
6 knowledge of the circumstances involved in that
7 particular raid.

8 She goes on to ask for clarification. He
9 says, because we -- at the very bottom of that
10 page ten starting on page 25, line -- sorry --
11 starting on page 35, line 6. The reason he was
12 familiar with the suspect was because --
13 answer: Was because we had a number of
14 shootings and violence in the Highland Park
15 area in which the suspect's name had been
16 involved.

17 Now, again, I stipulate the search warrant
18 was in good faith. They had good cause for it.
19 I think that when we balance everything, the
20 stipulation should get what's legitimate before
21 the jury and keep out what's not legitimate.

22 What is not legitimate is the inference
23 that Christie Green was a bad person because
24 there were --

25 THE COURT: They are not talking about

1 Christie Green being a suspect. They are
2 talking about somebody else.

3 MR. CUTHBERT: Yes, sir, that was in the
4 apartment at the time. This gets back to the
5 motion in limine about the drugs, guns, and
6 homicide suspects.

7 THE COURT: All right. Thank you.

8 Let me ask you: How many witnesses are
9 you going to have?

10 MR. CUTHBERT: I will guess twelve, and
11 I'm pulling that number out of the air. I
12 haven't counted, Your Honor.

13 THE COURT: All right. Thank you.

14 MR. CUTHBERT: Your Honor, I have given
15 Ms. Burton a copy of a list of witnesses that I
16 have subpoenaed and that she's subpoenaed for
17 her to see what she wants to add to it and give
18 it to Your Honor.

19 THE COURT: I was just trying to get some
20 idea. If you are going to have twelve
21 witnesses, I assume that -- I don't know how
22 many Ms. Burton is going to have. I just want
23 to be able to tell the jury something about how
24 long I think they're going to be here.

25 MR. CUTHBERT: Yes, sir. The reason I

1 gave her the list was so Your Honor could.

2 THE COURT: How many of your witnesses are
3 experts?

4 MR. CUTHBERT: Four.

5 THE COURT: I can't imagine that any fact
6 witness is going to take very long.

7 MR. CUTHBERT: I think that's true.

8 THE COURT: Okay. Thank you.

9 The door, why do we need that door?

10 MR. CUTHBERT: Well, I think it will help
11 the jury to see exactly what we're talking
12 about in three dimensions.

13 THE COURT: We have accidents involving
14 cars all of the time. We don't bring the cars
15 in here. We bring pictures.

16 MR. CUTHBERT: Cars are not as portable as
17 doors, Your Honor.

18 THE COURT: I think it might be a
19 distraction.

20 MR. CUTHBERT: Well, let me mention this
21 also: When I did the direct exam on Provost,
22 who was the detective who did the crime scene
23 investigation, he had a hard time identifying
24 which photograph was the front door and which
25 photograph was the back door. Now, since then

1 it's been a year and a half.

2 THE COURT: What difference does any of
3 that make? It was a door. Everybody knows it
4 was a door. What difference does it make?

5 MR. CUTHBERT: Well, I need to get the
6 photographs of the right door, Your Honor.

7 THE COURT: What difference does it make?
8 Everybody knows what door was breached. If
9 somebody were to say that it was not the door
10 that you want to say it is -- I mean, is that
11 an issue in controversy of what door was
12 breached?

13 MR. CUTHBERT: I hope not. Provost
14 stumbled over it a year and a half ago.

15 THE COURT: All right. Thank you,
16 Mr. Cuthbert.

17 MR. CUTHBERT: Thank you.

18 THE COURT: Ms. Burton, let's, again, take
19 them in the same order.

20 MS. BURTON: Yes, sir. Good morning.

21 THE COURT: The first one is motion number
22 one, the fact that the plaintiff sued the
23 manufacturer of the round. Is that relevant to
24 anything?

25 MS. BURTON: Yes, it is, Your Honor. In

1 fact, if you look at the pleadings, the counts
2 against --

3 THE COURT: I can't do that because the
4 pleadings are either at the Supreme Court or
5 downstairs. I don't even have a copy of the
6 motion for judgment. I am going to have to ask
7 you all some things, so I will know what to
8 tell to the jury. Is there anything
9 inconsistent there?

10 MS. BURTON: Yes, sir.

11 THE COURT: Tell me what it is.

12 MS. BURTON: In the counts against the
13 manufacturer for the breach of express
14 warranties, etcetera, Mr. Cuthbert makes the
15 allegations that Sergeant Ingram did what he
16 did because of the manufacturer's breach in
17 doing various things with these rounds. That
18 is a position that's --

19 THE COURT: Can you tell the jury or prove
20 to the jury that the plaintiff at one time made
21 an allegation that the manufacturer had
22 breached some warranty or had done something,
23 which was the reason that Ms. Green was killed,
24 without saying that the plaintiff actually sued
25 the manufacturer?

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1 MS. BURTON: Are you asking me can I?

2 THE COURT: Yes.

3 MS. BURTON: Yes, I can.

4 THE COURT: And get the same effect. How
5 does that hurt you if I let you do that but do
6 not let you tell the jury that the manufacturer
7 was actually sued? It seems to me that you
8 have a right to tell the jury that the
9 plaintiff has taken other positions.

10 I'm not sure that you need to tell the
11 jury that somebody else was actually sued. If
12 you do, then Mr. Cuthbert might be right. Then
13 he has a right to tell the jury what the
14 outcome of the suit was.

15 MS. BURTON: No, sir. I don't care to
16 tell the jury that the manufacturer was sued.
17 I only want to tell the jury that the plaintiff
18 has made allegations against the company that
19 produced the rounds that are inconsistent with
20 the plaintiff's position in this case.

21 THE COURT: All right. Number two is
22 Exhibits 19 and 20. Any objection to those
23 being shown to the jury in opening statement or
24 in voir dire just to make sure that nobody on
25 the jury knows --

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1 MS. BURTON: Well, Mr. Cuthbert said they
2 would be shown to the jury because the children
3 are not going to be here. No real objection.

4 THE COURT: Do you object?

5 MS. BURTON: No, sir.

6 THE COURT: Motion number three, do you
7 take any position different than the position
8 you took the other day when we argued this?

9 MS. BURTON: No, sir.

10 THE COURT: You still think all of this is
11 relevant?

12 MS. BURTON: Yes, sir.

13 THE COURT: How about number four, and
14 particularly page ten of the attachment? Is it
15 relevant whether -- Beadles, what is his rank?
16 Is he a captain or lieutenant?

17 MS. BURTON: No, sir. We have the
18 videotaped deposition of him.

19 THE COURT: He's a police officer; right?
20 He was commander of the precinct?

21 MS. BURTON: He is a retired police
22 officer. He is a career police officer.

23 THE COURT: I just wanted to know how to
24 refer to him. I will just call him Officer
25 Beadles. Is it relevant whether he thinks

1 Sergeant Ingram acted appropriately? Is that
2 relevant?

3 MS. BURTON: Where are you reading?

4 THE COURT: Can he give that opinion? I'm
5 on page ten of something called issues report.

6 I ask you all this every time, but it's
7 Buckovich; is that right?

8 MS. BURTON: Buckovich.

9 Can you point me to where he's making a
10 statement?

11 THE COURT: Yes, on line 13: Do you have
12 an opinion as to whether it was appropriate to
13 use the TKL22 breaching round? He says, yes,
14 it was appropriate.

15 MS. BURTON: Okay.

16 THE COURT: Are you all going to have
17 other experts to say that it was or was not
18 appropriate for him to use the rounds?

19 MS. BURTON: I'm confused. You are
20 reading on page ten?

21 THE COURT: On page ten about midway down.
22 It says, page 34 about the middle of the page.

23 MS. BURTON: Oh, page 34 of the
24 deposition?

25 THE COURT: No. No. No.

1 MR. CUTHBERT: Beverly, may I help?

2 THE COURT: Yes.

3 You asked Officer Beadles whether he has
4 an opinion as to whether using the rounds was
5 appropriate. He says, yes, it was appropriate.
6 Is that invading the providence of the jury?

7 MS. BURTON: I'll withdraw that question.

8 THE COURT: I'm sorry?

9 MS. BURTON: I'll withdraw that question.

10 THE COURT: You withdraw that question.
11 So that's everything between lines 13 and all
12 the way up to the bottom of the page?

13 MS. BURTON: Well, there are two questions
14 here. Line 13, the question is, do you have an
15 opinion as to whether it was appropriate to use
16 a TKL22 breaching round on this particular
17 entry that Sergeant Ingram did? The answer to
18 that was, yes, it was appropriate to use it.
19 The second question is, basically --

20 THE COURT: You are going to take out the
21 part that he says it was appropriate. Then
22 your next question is, will you tell the jury
23 why you think it was appropriate? That kind of
24 minimizes your taking out the part that he says
25 it was appropriate. Now you're asking him why

1 he thinks it's appropriate. So the jury now
2 hears that he thinks it's appropriate. I don't
3 see how that stays in.

4 MS. BURTON: I will withdraw that. The
5 only problem we have now is that the tape was
6 edited professionally.

7 THE COURT: I guess you have to have a
8 quick finger on the remote control.

9 MS. BURTON: Some kind of way.

10 THE COURT: Does the remote control have a
11 mute button?

12 THE BAILIFF: Yes, I think so.

13 THE COURT: Quick finger on the mute.

14 MS. BURTON: Okay.

15 THE COURT: How about the rest of that
16 page? I was familiar with the suspect that was
17 identified in the search warrant. Why does
18 that make a difference that he was familiar
19 with the person?

20 MS. BURTON: Well, I will agree that
21 that's not expert testimony.

22 THE COURT: So all of that comes out. All
23 right. That takes care of all of that.

24 Do you have anything you want to bring to
25 my attention, Ms. Burton?

1 MS. BURTON: Yes, sir.

2 THE COURT: All right.

3 MS. BURTON: I need clarification on a
4 ruling that the Court made. I apologize for
5 having to bring this up again. I actually was
6 confused once I got back to my office.

7 THE COURT: All right.

8 MS. BURTON: We talked about Kevin Jones,
9 who was Christie Green's boyfriend, and the
10 fact that he was involved in a high speed
11 situation where she and the child were taken
12 hostage. A squat team was called out to that
13 event earlier.

14 Now, I know and I recall that the Court
15 said that we could not mention that Kevin Jones
16 was charged with the crime that he was charged
17 with. But I did not recall whether or not the
18 Court said that we could actually mention the
19 prior incident.

20 THE COURT: You cannot mention it unless
21 you can convince me in the next three minutes
22 why you should be able to.

23 MS. BURTON: Again, it's relevant on the
24 issue of lifestyle, on the environment --

25 THE COURT: Of Ms. Green's lifestyle?

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1 MS. BURTON: Ms. Green's lifestyle, yes,
2 Your Honor. Under the wrongful death statute
3 and also under the life expectancy table,
4 evidence of the person's lifestyle, habits,
5 what they did is all relevant for purposes of
6 aiding the jury in determining the amount of
7 damages.

8 THE COURT: I think that's a little
9 farfetched. The clarification of my ruling is
10 that you cannot mention the earlier hostage
11 situation.

12 MS. BURTON: May I confer for a moment?

13 THE COURT: Yes.

14 MS. BURTON: The other issue is about
15 Kevin Jones. Sharlene Johnson is going to
16 testify. She's one of the plaintiff's experts.
17 She's going to testify that Kevasha, one of the
18 children, suffered from post-traumatic syndrome
19 that was solely the result of the incident with
20 the squat team at 1112C Dove Street.

21 So we believe it is relevant. If
22 Dr. Johnson testifies in that regard, we
23 believe it is relevant to cross-examine her
24 about the information that she received and
25 whether or not she was aware of this other

1 traumatic event.

2 THE COURT: Kevasha was present at the
3 other one?

4 MS. BURTON: Yes, she was.

5 THE COURT: All right. Anything else?

6 MS. BURTON: Yes, sir, the door. At issue
7 in this case is --

8 THE COURT: Do you object to the door?

9 MS. BURTON: The mounted door?

10 THE COURT: Yes.

11 MS. BURTON: No, sir. That's my door.

12 THE COURT: You want the jury to see the
13 door?

14 MS. BURTON: Yes, sir.

15 THE COURT: You don't need to say anything
16 else. If you want the jury to see it and
17 Mr. Cuthbert wants the jury to see it --

18 MR. CUTHBERT: Your Honor, we're talking
19 about two different doors.

20 THE COURT: We're talking about two
21 different doors. I thought we just had one
22 door.

23 MS. BURTON: There are actually three
24 doors. There is the actual door that was the
25 kitchen door that Sergeant Ingram shot in this

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1 case. That's in police custody, police
2 evidence.

3 There is an exemplar door that the police
4 have in their custody as well. Then there's
5 the exemplar door that I obtained from the
6 Housing Authority, which is exactly the same,
7 except it has a peep hole in it. That's all.

8 THE COURT: Which is the door that's
9 downstairs?

10 MS. BURTON: That's my door.

11 THE COURT: That's the exemplar door that
12 you obtained from the Housing Authority?

13 MS. BURTON: I had an expert to mount it.
14 It's mounted precisely the height, distances,
15 the inset, and everything. I can lay the
16 foundation.

17 THE COURT: You want the jury to see that?

18 MS. BURTON: Yes, sir.

19 THE COURT: Mr. Cuthbert, you want the
20 jury to see that? That's the same door that we
21 were talking about before. Mr. Cuthbert came
22 in as I was going down to speak with the
23 sheriff.

24 MR. CUTHBERT: The one that I wanted the
25 jury to see, Your Honor, is the actual door,

1 not the exemplar door.

2 THE COURT: Well, do you object to the
3 exemplar door?

4 MR. CUTHBERT: I do not object to the
5 exemplar door.

6 THE COURT: Okay. Well, if there is no
7 objection to it, you can show it to the jury.

8 How about the actual door? Is that going
9 to be here also?

10 MS. BURTON: We have requested the police
11 department to have it here. We have followed
12 up on it. We have every expectation that it
13 will be here -- that every piece of evidence in
14 police custody that Mr. Cuthbert requested will
15 be here.

16 THE COURT: Let's make sure that it's
17 here.

18 MR. CUTHBERT: Let's also make sure, Your
19 Honor, if I may -- at first I requested
20 Sergeant Ingram's shotgun. Last week I wrote
21 Ms. Burton a letter and said I do not want the
22 shotgun here. I don't know whether she's
23 planning on bringing the shotgun in or not.

24 MS. BURTON: No.

25 THE COURT: You all only need enough

1 evidence to present your case to the jury. You
2 don't need to bring up every single thing
3 that's ever mentioned in this incident.

4 MS. BURTON: I apologize, Your Honor. On
5 the question of Ingram's deposition, on page --
6 it's Mr. Cuthbert's page 21 of Ingram's
7 deposition. Beginning on page 144 --

8 THE COURT: I'm not sure that I'm on the
9 same --

10 MS. BURTON: It has here the question: Do
11 you agree or disagree with the contention that
12 Ms. Green died as a direct and proximate result
13 of one or more of five blasts from a shotgun
14 that you fired? Ingram's answer is, I've been
15 told that.

16 Well, the Court can read the rest of it.
17 Anyway, we contend that that is the same sort
18 of issue with Beadles.

19 THE COURT: What is this?

20 MS. BURTON: We are asking that the Court
21 exclude the reading of that portion of the
22 deposition.

23 THE COURT: On what basis?

24 MS. BURTON: Because it is asking Sergeant
25 Ingram for --

1 THE COURT: What's the basis for excluding
2 it?

3 MS. BURTON: It is asking Sergeant Ingram
4 for an opinion on the proximate cause.

5 THE COURT: What's wrong with that?

6 MS. BURTON: Well, that's an opinion on
7 the ultimate issue in the case.

8 THE COURT: Yes. He's a party. Isn't
9 that an admission? Mr. Defendant, do you admit
10 that your going through the red light caused
11 this accident and all of the injuries the
12 plaintiff suffered? You don't think the
13 defendant should be allowed to answer that
14 question?

15 MS. BURTON: I think a party can admit a
16 fact. The admission is, if it is an
17 admission --

18 THE COURT: That's the whole purpose of
19 asking a question. I might have to go out and
20 hire ten experts to prove Sergeant Ingram
21 breaching this door and firing the rounds
22 caused Ms. Green's death.

23 If Sergeant Ingram admits that, what's the
24 difference between that and a request for
25 admissions in which Sergeant Ingram admits.

1 Would you then be asking that the answer to the
2 request for admissions not be read to the jury
3 because Sergeant Ingram is expressing an
4 ultimate opinion on an ultimate issue of fact?

5 MS. BURTON: It's an opinion on a legal
6 issue.

7 THE COURT: Well, that's the whole purpose
8 for a request for admission.

9 MS. BURTON: May I confer with my
10 co-counsel to make sure I'm raising everything
11 she wants me to raise?

12 THE COURT: Yes.

13 MS. BURTON: The last point that I want to
14 make about that, Your Honor, is that Ingram --
15 it is not an admission because his answer is, I
16 have been told that. He is not testifying from
17 any independent knowledge.

18 THE COURT: If we were talking about a
19 request for admissions, does it make any
20 difference why the responder admits it? Admit
21 that you were negligent on such and such a
22 date. Admit it. Can you then come to trial
23 and ask the Court not to allow that admission
24 to be read to the jury? I don't know whether I
25 was negligent or not. I'm just relying on what

1 my wife told me; therefore, I want to withdraw
2 my --

3 MS. BURTON: This is a different
4 situation. In a deposition, you're asked the
5 question, and you answer it as best you can.
6 You don't have a right to not answer the
7 question. He's asked the question. He's
8 testifying to the best of his ability. The
9 best of his ability is not a yes answer. His
10 testimony to the best of his ability is that's
11 what I've been told.

12 THE COURT: Let me see the transcript
13 again. Let me ask you this question: I
14 thought we agreed on how Ms. Green died. You
15 don't think she died because one of the rounds
16 struck her?

17 MS. BURTON: No, that's not our position.

18 THE COURT: Well, how did she die?

19 MS. BURTON: I'm saying --

20 THE COURT: I'm just asking you: How did
21 she die? I'm not going to tell the jury what
22 you tell me now.

23 MS. BURTON: She died from fragments from
24 a round that Sergeant Ingram fired. It struck
25 her in certain places.

1 THE COURT: How does it hurt you if the
2 jury is told this? That's what happened. How
3 does it hurt you if the jury is told this?

4 MS. BURTON: Well, the jury is not being
5 told that's how she died. The jury is being
6 told -- it has the words proximate cause in
7 there. You're going to later instruct the
8 jury --

9 THE COURT: Are you saying that this was
10 not the proximate cause?

11 MS. BURTON: Well --

12 THE COURT: You don't think that
13 Mr. Cuthbert can prove what the proximate cause
14 was?

15 MS. BURTON: The proximate cause of
16 Ms. Green's injury, in this case the question
17 is whether it was as a result of gross
18 negligence.

19 THE COURT: No.

20 MS. BURTON: Or willful and wanton
21 negligence. I think that if you leave that in,
22 that gives the plaintiff the ability to argue
23 that he --

24 THE COURT: Let me ask you this question:
25 Did Ms. Green die as a direct and proximate

1 result of one or more of five blasts from a
2 shotgun that Sergeant Green (sic) fired?

3 MS. BURTON: Yes, sir.

4 THE COURT: I mean, apparently, this is
5 very important to you. I have to ask you why.
6 If that's how she died and Sergeant Green (sic)
7 says that's how she died -- and I assume
8 Mr. Cuthbert, who is a good lawyer, is going to
9 be able to prove that's how she died -- why
10 have we been talking about this for the past
11 few minutes?

12 MS. BURTON: Well, because I don't have an
13 objection to the fact that he says -- well,
14 first of all, he said that's what he was told.

15 THE COURT: Okay. So what?

16 MS. BURTON: The other thing is that with
17 the words "proximate cause" in there, I think
18 that --

19 THE COURT: Proximate result.

20 MS. BURTON: Proximate result, proximate
21 cause. The jury is going to be instructed that
22 if they find that Ms. Green died as a result of
23 the gross negligence of Ingram that was a
24 proximate cause, then they shall find in favor
25 of the plaintiff. Well, I think that that's

1 making the jump for the jury.

2 THE COURT: Sergeant Ingram was not asked
3 whether it was grossly negligent. He was asked
4 whether Ms. Green died as a result of one of
5 the rounds from his shotgun.

6 MS. BURTON: I think that's a
7 sophisticated analysis that lawyers and judges
8 make. I don't think the jury will do that.

9 THE COURT: You're underestimating my
10 jury. I am sure you all are going to have the
11 right instructions to tell the jury that they
12 have to find gross negligence in order to find
13 a verdict against one or both of the
14 defendants. I understand your argument on
15 that.

16 Anything else?

17 MS. BURTON: Yes, Your Honor. You made a
18 ruling previously about the use of the language
19 affiseration (phonetic). One of our exhibits
20 needs to be redacted, Exhibit 16. That
21 language is in the manufacturer's literature.
22 It's Exhibit 16 or either --

23 MR. CUTHBERT: I couldn't understand what
24 Ms. Burton said.

25 MS. BURTON: We just want to redact any

1 reference to affiseration.

2 THE COURT: Show Mr. Cuthbert what it is.

3 Any reference to what?

4 MS. BURTON: Affiseration.

5 THE COURT: Do you agree with that?

6 MR. CUTHBERT: Yes, sir.

7 THE COURT: Go ahead. That's no problem.

8 Anything else?

9 MS. BURTON: Yes, sir. Ms. Harris with
10 the Court's permission would like to raise the
11 issue of the presentation of any evidence --

12 THE COURT: I'm sorry. Speak a little
13 louder.

14 MS. BURTON: -- the presentation of any
15 evidence with reference to the living room
16 door. There are two breaches, the front entry
17 and the back entry, the living room door and
18 the kitchen door.

19 It's our position that what happened on
20 the living room door entry is not relevant to
21 the issues in this case because all that
22 happened happened at the kitchen door entry.

23 THE COURT: What happened at the living
24 room door?

25 MS. BURTON: The evidence in the case is

1 that at the living room door there was a
2 different breacher. The breacher was Sergeant
3 Wallis. They basically had the same lineup at
4 two different doors.

5 When Sergeant Wallis went to breach the
6 door using the same breaching rounds, the same
7 type of gun, the fragments from the round did
8 essentially what happened in the kitchen.
9 Fragments from the rounds went across the room
10 and hit a closet door. Some of the rounds
11 entered the closet door. Some of the particles
12 were either very large or whole. We just think
13 that --

14 THE COURT: How does that hurt your case?
15 It seems to me that you would want that. Why
16 does that hurt you?

17 MS. BURTON: Well, Your Honor, one of the
18 things that can happen in this case is that the
19 jury can believe that -- in spite of the
20 testimony to the contrary -- there will be
21 testimony to the contrary -- the jury can make
22 the determination the police department used
23 the rounds improperly on this raid.

24 In my opinion, the fact that what happened
25 at the front door, at the kitchen door, also

1 happened at the living room door will feed
2 that. So we would like to have the jury focus
3 on the entry that Sergeant Ingram did, as
4 opposed to focussing on what happened at the
5 door that's not in issue.

6 THE COURT: I almost hate to ask you the
7 question, but I have to do it: Anything else?

8 MS. BURTON: No, sir.

9 THE COURT: How many witnesses do you have
10 here?

11 MS. BURTON: Depending on how Mr. Cuthbert
12 presents his case, we have two expert witnesses
13 and at least four or five other witnesses.

14 THE COURT: Okay. Mr. Cuthbert, what is
15 your position on only the last matter that
16 Ms. Burton has brought up, that is, what
17 happened at the living room door.

18 MR. CUTHBERT: Your Honor, I'm not going
19 to dwell on it, but there are aspects of it
20 that are -- I don't propose to put any
21 photographs into evidence showing the holes in
22 the front door.

23 There were five shots at the front door
24 about the same time there were five shots at
25 the kitchen door. The people at the front door

1 or the living room door got in faster than --
2 they got in before Ingram got the kitchen door
3 open. In fact, after they came in the front
4 door, they heard Ingram still shooting at the
5 back door.

6 Now, that's inconsistent with Ingram's
7 testimony that I shot really fast. It gives us
8 a gap in circumstantial evidence that there was
9 enough time for Christie Green to have gone
10 into the kitchen and get shot in the chest,
11 which is what we believe happened.

12 The shots at the front door also, Your
13 Honor, the fact that they took place is
14 important. Not only were there shots at the
15 front door, but there was glass breaking the
16 front window. The glass breaking is a
17 diversionary tactic. What this did was to
18 drive some of the people out of the living room
19 and into the kitchen. This explains why
20 Christie Green was in the kitchen.

21 THE COURT: How about the fact that some
22 of the rounds apparently did not disintegrate?

23 MR. CUTHBERT: I'm not going to get into
24 that.

25 THE COURT: You're not going to get into

1 that?

2 MR. CUTHBERT: No, sir. I'm not going
3 into whether they disintegrated or didn't
4 disintegrate.

5 THE COURT: Thank you very much.

6 MR. CUTHBERT: They did knock a hole in
7 the door. One of the witnesses looked through
8 the door and saw some people moving inside. To
9 that extent, I want to talk about the hole. I
10 am not going to dwell on it.

11 THE COURT: All right. Let me go ahead
12 and give you my rulings then on all of the
13 matters that you all have brought up.

14 With regard to plaintiff's motion one,
15 that is, to prevent the defendants from
16 mentioning the fact that the plaintiff brought
17 a claim or filed suit against the manufacturer,
18 that motion is granted.

19 However, the defendants can state to the
20 extent that the plaintiff has made claims
21 against the manufacturer or anyone else which
22 are inconsistent with the plaintiff's claim of
23 gross negligence against one or both of these
24 defendants. The fact that those inconsistent
25 claims have been raised can be mentioned.

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1 You don't need to say that they were
2 mentioned as part of a lawsuit unless the
3 plaintiff challenges you on that, and you have
4 to say that they were mentioned in a lawsuit.
5 If you say that they were made and there's no
6 challenge to it, then you don't need to mention
7 the fact that they were made in connection with
8 a lawsuit.

9 Mr. Cuthbert.

10 MR. CUTHBERT: Your Honor, I understand
11 the Court's ruling. I would like to --

12 THE COURT: Get me to change my mind?

13 MR. CUTHBERT: No, sir.

14 THE COURT: I'm not sure then what it is
15 you'd like me to do.

16 MR. CUTHBERT: I'll sit down.

17 THE COURT: If the defendant's evidence is
18 that inconsistent claims were made against the
19 manufacturer and that's the end of it and
20 that's not challenged, then we're not going to
21 have the jury told that they were made in
22 connection with a lawsuit.

23 However, if the plaintiff challenges that
24 and says, we didn't make those inconsistent
25 claims, and that's just not true, then I think

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1 the defendants have to say, yes, you did. Here
2 it is and show the jury the motion for judgment
3 in which they were made. So it's really up to
4 the plaintiff to determine whether that comes
5 in or not.

6 With regard to number two, Exhibits 19 and
7 20 being shown to the jury in voir dire, that
8 motion is granted.

9 With regard to motion number three, which
10 is really a request for the Court to reconsider
11 it's ruling with regard to whether drugs and
12 guns were found in the apartment, the motion is
13 denied.

14 With regard to motion number four, I think
15 Ms. Burton has agreed to withdraw all of those
16 disputed questions on page ten beginning with
17 page 34 of Officer Beadles' deposition, line 12
18 through 35, line 11. So that motion is
19 granted.

20 With regard to the question about whether
21 there can be evidence that the front door, the
22 living room door, was also breached, there can
23 be such evidence. Mr. Cuthbert has said that
24 he is not going to put on any evidence about
25 whether the rounds disintegrated or not. I

1 think the fact that there was a breach of the
2 front door for the reasons that Mr. Cuthbert
3 said may be relevant to the case. That motion
4 by Ms. Burton is denied.

5 I think that takes care of everything that
6 you all have.

7 MR. CUTHBERT: Your Honor, this is guns,
8 drugs, and homicide suspects. I would ask Your
9 Honor to exclude photographs of drugs and guns.

10 THE COURT: Ms. Burton, are you planning
11 on putting in the photographs?

12 MS. BURTON: I'm sorry?

13 THE COURT: Are you planning on putting in
14 photographs of the drugs and guns?

15 MS. BURTON: Yes, sir.

16 THE COURT: Do you plan on showing them to
17 the jury in opening statement?

18 MS. BURTON: Not particularly.

19 THE COURT: Don't do it in opening
20 statement. Whenever they are offered,
21 Mr. Cuthbert, you can make your objection.
22 I'll see whether they are relevant depending on
23 what the evidence has been up until that time.

24 MR. CUTHBERT: Judge, I'll ask for the
25 limiting instruction if I can at that time.

1 THE COURT: We will take that up at that
2 time. At this point I'm not sure what it's
3 going to be limited to. It seems to me that
4 that's relevant as to the issues in this case.
5 I'm not sure a limiting instruction will be
6 appropriate. We will see how it comes in.

7 The door will be allowed into evidence. I
8 just don't want to put the door here and just
9 keep it here. At whatever time you think you
10 all will need the door, I assume you all have
11 some workers here who will bring the door in. I
12 don't want to have the door just sitting here
13 unless you all don't mind. If you all want to
14 put it back in the corner somewhere and nobody
15 objects to it --

16 MS. BURTON: It's difficult to move it. I
17 would just say put it over here.

18 THE COURT: I don't want it up here. I
19 want the jury to pay attention to the witnesses
20 and counsel. I don't want the jury to keep
21 looking at a door.

22 MR. CUTHBERT: Let's try it at the back of
23 the courtroom.

24 THE COURT: I don't see why you all want
25 to bring in the door at all. I think both of

1 you are taking away from your case. I don't
2 see why this door is anymore important than a
3 car after an accident. After a car wreck, we
4 don't bring a car into a courtroom. We bring
5 pictures.

6 I really don't understand why you think
7 the jury is going to see anything. Jurors have
8 seen doors. I really don't understand why you
9 think the jury has to see this particular door.

10 MR. CUTHBERT: I think Your Honor has
11 judged this better than I have. I oppose both
12 doors being brought before the jury.

13 THE COURT: Don't do it just because I'm
14 opposed to it, Mr. Cuthbert.

15 Ms. Burton, why do we have to have it?

16 MS. BURTON: Your Honor, the plaintiff has
17 made an issue out of how Sergeant Ingram fired
18 these rounds and why Sergeant Ingram did not
19 fire at a 45-degree angle. It is one thing for
20 a witness to come in and say I did this. It is
21 another thing for the jury to see that it's
22 actually true. I think it's critical.

23 THE COURT: All right. I will allow the
24 door to come in. I really don't want it to be
25 sitting in the courtroom during the entire

1 trial. So we will find a way to bring it in
2 when you want it in. After whoever testifies
3 about the door finishes, unless you are going
4 to have more than one witness testify about
5 it --

6 MS. BURTON: Well, if Mr. Cuthbert objects
7 to it, we don't have to bring it in until we
8 put on our case.

9 THE COURT: I don't want you to bring it
10 in until somebody has a witness do something
11 with the door. Whenever that is, we'll get it
12 in here. So you have to have somebody here to
13 bring it in. We are not going to take a recess
14 for you to call across the street and have
15 people come down here to bring the door in.
16 They have to be here and be able to bring it in
17 right when you want it.

18 Anything else?

19 Again, I don't have the motion for
20 judgment. So I just need some basic
21 information from you all. This incident
22 occurred on what date?

23 MR. CUTHBERT: December 29, 1998.

24 THE COURT: Ninety-eight?

25 MR. CUTHBERT: Yes, sir.

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1 THE COURT: What was the address where it
2 occurred?

3 MR. CUTHBERT: The address is 1112C Dove
4 Street.

5 THE COURT: So 1112C as in Charlie?

6 MR. CUTHBERT: Yes, sir.

7 THE COURT: Not Charlie Cuthbert, but
8 Charlie as in the military. All right.
9 December 29, 1998, at 1112 Dove Street. The
10 only issue is one of gross negligence; is that
11 correct?

12 MR. CUTHBERT: And punitive damages.

13 THE COURT: I understand. The cause of
14 action is gross negligence against both
15 defendants?

16 MR. CUTHBERT: Yes, sir.

17 THE COURT: Anything else?

18 MS. BURTON: Your Honor, you did not make
19 a ruling on --

20 THE COURT: We only have 15 jurors,
21 Counsel, which is not your fault. I don't
22 understand it. The jury office knew this was a
23 multi-day case. I know what's going to happen
24 as soon as I tell the jury the case is going to
25 take more than a couple of days.

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1 MR. CUTHBERT: Your Honor, did I give Your
2 Honor this list of witnesses that I think
3 everybody is being called from?

4 THE COURT: I don't think I have that.

5 MS. BURTON: I haven't seen it, yet.

6 THE COURT: I would like to have it if you
7 have an extra copy.

8 MR. CUTHBERT: I thought it might help us.
9 I gave it to Ms. Burton and asked her whether
10 she wanted to add anything to it.

11 THE COURT: It just helps me. When you
12 all call witnesses, I can see them and know
13 what their names are.

14 MR. CUTHBERT: Your Honor, I have also
15 given Your Honor a photocopy of all of the
16 exhibits and also originals of the exhibits on
17 Your Honor's desk there.

18 THE COURT: Mr. Maclin, I understand we
19 only have 15 jurors.

20 MR. MACLIN: Yes, sir. We have seven
21 absences.

22 THE COURT: Do we have any other jurors?

23 MR. MACLIN: No, sir.

24 THE COURT: All right. I guess I will be
25 the mean guy today. I guess I can't excuse

1 anybody. All right.

2 MS. BURTON: Your Honor, you never ruled
3 on the Kevin Jones matter, the hostage
4 situation with respect to --

5 THE COURT: Oh, yeah. To the extent that
6 that is relevant, if it is relevant when it is
7 offered to any post-traumatic stress disorder
8 or any other damages that are being claimed by
9 anybody in this case, that will be admissible
10 but only for that purpose. It really depends
11 on the stage of the evidence at the time that
12 it's brought in.

13 MR. CUTHBERT: When we get to that
14 point -- I think there's going to be no mention
15 in opening statement.

16 THE COURT: It should not be mentioned in
17 opening statement.

18 MR. CUTHBERT: When we get to that issue,
19 we may need to voir dire the experts.

20 THE COURT: I think when we get to that
21 issue, I'll know what evidence has come in at
22 that time. I think I'll be able to make a
23 decision.

24
25 (Voir dire is heard and transcribed separately.)

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FEB 06 2004

040480

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND.

CLERK
SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA
Plaintiff,

KATINA GREEN, ETC,

v.

Law No. LL-2806-4

DEFENSE TECHNOLOGY CORPORATION

OF AMERICA, et al.,

Defendants.

BEFORE: Hon. Randall G. Johnson, Judge

Motions

Date: January 8, 1004

Time: 9:30 a.m.

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Dennis C. Johnson

804-272-9371

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Dennis C. Johnson & Associates

1
2 APPEARANCES:
3

4 Charles H. Cuthbert, Jr., Esq.

5 Counsel for the Plaintiff
6

7 Beverly Burton, Esq.

8 Vicki Harris, Esq.

9 Counsel for the Defendants
10

11 -----
12

13 NO EXHIBITS
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1 THE COURT: All right, we're here on the
2 case of Green Administrator v. John Buckovich and
3 Ingram.

4 This case is still styled Defense
5 Technology. Shouldn't we change that now to reflect
6 the remaining defendants?

7 MR. CUTHBERT: I don't think so, Your
8 Honor, because I respectfully intend to challenge
9 the decision to sever and I think --

10 THE COURT: Well, I thought you already
11 appealed that.

12 MR. CUTHBERT: Well, I did, and I didn't
13 get a writ, but I don't know why I didn't get a
14 writ, and it may well have been that the court felt
15 that the judgment was not final as to Defense
16 Technology. I don't know. It's one of these, you
17 know, writ denied kind of short explanations.

18 THE COURT: All right, we will leave it
19 like it is.

20 Mr. Cuthbert.

21 MR. CUTHBERT: Thank you, Judge.

22 THE COURT: This is your notice.

23 MR. CUTHBERT: Yes.

24 MS. HARRIS: Judge, may I at the outset
25 be heard on a motion to oppose this hearing?

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1 THE COURT: To oppose the hearing? I
2 didn't know that there was one.

3 MS. HARRIS: Yes, sir, I have a motion
4 to oppose the hearing based on the motion for the
5 hearing. In the motion for the hearing,
6 Mr. Cuthbert notes that he has twice argued the
7 matters that he presents in this hearing before the
8 court and has twice been ruled against by the court.
9 And there have been no subsequent actions by either
10 party that would change or should change either
11 party's position on these matters, so I would object
12 to having this hearing, to the extent that we have
13 already visited these issues twice and they have
14 twice been ruled upon by the court.

15 THE COURT: I appreciate that, but I'm
16 going to allow Mr. Cuthbert to do that. I encourage
17 counsel to make hearings to reconsider if they
18 believe that those are appropriate. I've changed my
19 mind before.

20 I appreciate, Ms. Harris, your making
21 that motion, but I'm going to go ahead and hear
22 Mr. Cuthbert.

23 MR. CUTHBERT: Judge, good morning. For
24 the record, I'm Charlie Cuthbert and thank you for
25 your indulgence. To some extent one of the issues

1 that I will raise today is redundant with what Your
2 Honor has decided in the past, but there are new
3 issues as well.

4 THE COURT: All right.

5 MR. CUTHBERT: I filed a notice with a
6 motion -- three motions in fact -- and Motion One
7 has been taken care of, I'm pleased to report.
8 Ms. Harris and I conferred in the hall just now, and
9 she and I have signed off on the order dealing with
10 the hearing on September 30.

11 THE COURT: All right.

12 MR. CUTHBERT: And a day or two ago
13 Ms. Harris submitted to the court the order dealing
14 with the hearing on September 25, so I think Motion
15 One is taken care of.

16 I would like to tender, if I may, to the
17 court the order sketch that Ms. Harris and I have
18 signed.

19 THE COURT: All right.

20 MR. CUTHBERT: And while I am before
21 Your Honor, if I may give you a copy of that
22 authority, I'm going to argue from that.

23 THE COURT: I've got it. You can have
24 this back, Mr. Cuthbert. I have the entire book up
25 here.

1 MR. CUTHBERT: All right, sir.

2 THE COURT: I know you all don't think
3 that we read these things or look at them, but we
4 do.

5 MR. CUTHBERT: I know, Your Honor.

6 THE COURT: We try not to make it up as
7 we go along.

8 MR. CUTHBERT: I know you don't, Your
9 Honor.

10 THE COURT: Let me hear your argument,
11 Mr. Cuthbert.

12 MR. CUTHBERT: Thank you, Your Honor.
13 Your Honor, I would like to turn to Motion Two.
14 There are subparts A through G, and they deal with
15 the proposed exhibits of the defense to which I
16 object, and I would like to start with Photographs
17 110, 180, and 197.

18 And I have attached copies of those
19 photographs to my motion, and as Your Honor sees
20 from those three photographs, they deal with what
21 purports to be cocaine, as I understand it. I am
22 told that that's what they purport to show. This
23 thing that looks like a diamond, a three dimensional
24 diamond in Photograph 180, wrapped in what I suppose
25 is aluminum foil, is I think the police will claim

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1 cocaine. And so Photograph 110 gives a distant view
2 of it, and 180 gives a close-up view of it, and 197
3 gives kind of an intermediate view of that table.

4 There are really two parts to this
5 motion. First of all, we do ask the court to
6 revisit this issue of whether what the police found
7 in the way of guns and drugs and homicide
8 suspects --

9 THE COURT: And again, I denied
10 Ms. Harris' motion to prevent the argument, but do
11 you have any new argument other than the argument
12 that I've already heard?

13 MR. CUTHBERT: Well, two things, Your
14 Honor. The authority that I have referred to this
15 morning I have not mentioned before. It is from
16 Friend, Section 8-1, page 280, from the 6th Edition,
17 and it says, when a specific objection is made to
18 evidence or when inquiry is made by the trial judge
19 concerning the purpose of evidence, the proponent of
20 the evidence has the burden of establishing its
21 admissibility.

22 Nothing too profound, but the
23 significance is Ms. Burton and Ms. Harris have got
24 to give the court a reason why this evidence of
25 guns, drugs and homicide suspects is -- I should say

1 alleged drugs -- is relevant. And as I said in my
2 brief, I do challenge the defense to articulate one
3 reason why this is really relevant, and if they
4 cannot articulate one reason why --

5 THE COURT: If you were to try to
6 pretend just for a second -- I know it's hard for
7 you -- that you're not a lawyer.

8 MR. CUTHBERT: I understand.

9 THE COURT: And you're sitting on a
10 jury.

11 MR. CUTHBERT: Yes, sir.

12 THE COURT: And somebody is on a trial
13 in a civil case for using excessive force in
14 shooting through a door and killing somebody, and
15 their defense to that is, well, you know, there were
16 bad people behind there and there were bad things
17 behind that door, and during the course of the trial
18 there is no evidence that there were bad things
19 behind that door, what would you think as a juror?

20 MR. CUTHBERT: I think --

21 THE COURT: Let the record show it took
22 Mr. Cuthbert at least 20 or 25 seconds to get his
23 answer to that last question.

24 MR. CUTHBERT: I think the problem that
25 I'm having, Your Honor, is that the hypothetical is

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1 flawed, I would respectfully suggest. The defense
2 would not be there were bad people behind the door.
3 The defense would be they thought there were bad
4 people behind the door.

5 THE COURT: You've got to accept my
6 hypothetical as given.

7 MR. CUTHBERT: I don't think that would
8 be a proper defense. I think the proper defense
9 would be --

10 THE COURT: But assuming that it is,
11 what is your answer to my question?

12 MR. CUTHBERT: If it were a defense that
13 there were bad people behind that the door, if that
14 were the defense and the defense had to prove there
15 were bad people behind the door --

16 THE COURT: And bad things.

17 MR. CUTHBERT: And bad things, and the
18 defense had to prove there were bad people and bad
19 things, not just that we had good reason to think
20 that there were bad people and bad things, but in
21 fact, there were bad people and bad things, if they
22 had to prove that there were --

23 THE COURT: No. My question to you is
24 what would you think as a juror? That was my only
25 question, not what anybody has to prove. What would

1 you think as a juror?

2 MR. CUTHBERT: Well, your question, Your
3 Honor, truly is in the context of their defense was
4 that there were bad things and bad people behind the
5 door. Now, if Your Honor's question was their
6 defense was they thought there were bad people and
7 bad things behind the door, then it would not be
8 admissible that there were --

9 THE COURT: So as a juror, while you
10 were sitting in a jury room discussing what your
11 verdict would be, you would tell the other jurors,
12 you know, I don't think that was admissible? That's
13 what you would think as a juror, Mr. Cuthbert? My
14 question is what would you think as a juror?

15 MR. CUTHBERT: I would hope that the
16 law -- that the court -- would explain to the jury
17 that the defense is what the law is; namely, we
18 measure the fault of the defendants based on what
19 they had reason to believe, not on what in fact was
20 there.

21 And if the court properly instructed the
22 jury on that point, that would resolve the issue,
23 should resolve the issue in fairness to the parties,
24 because that is in fact the law.

25 THE COURT: All right. What's your next

1 point, Mr. Cuthbert?

2 MR. CUTHBERT: So I do think that
3 Ms. Harris and Ms. Burton have got to articulate a
4 reason why what was found is relevant to --

5 THE COURT: All right, that takes care
6 of pictures 110, 180 and 197. What's your next one?

7 MR. CUTHBERT: Well, it kind of does,
8 but it kind of doesn't, Your Honor. There are --

9 THE COURT: Mr. Cuthbert, I only want
10 new arguments, and you are playing right into
11 Ms. Harris' argument, because she told me you
12 weren't going to say anything new, and I said, well
13 maybe he will. You have got to tell me something
14 new.

15 MR. CUTHBERT: Yes, sir.

16 THE COURT: Because I really don't want
17 to hear the same argument over.

18 MR. CUTHBERT: Your Honor, there is a
19 distinction between ruling that evidence that the
20 alleged drugs, guns and homicide suspects were
21 found, there is a distinction between allowing
22 testimony to that effect, which we do object to, and
23 allowing photographs to that effect. Ms. Burton and
24 Ms. Harris are asking to put Photograph Number 180,
25 the picture of what purports to be cocaine.

1 THE COURT: How does that prejudice your
2 case?

3 MR. CUTHBERT: Because in two ways.
4 First of all, it tends to establish or make the
5 juror in the jury room, as Your Honor is saying,
6 think that Ms. Green is guilty by association and
7 deserves what she got.

8 THE COURT: How does that do it any more
9 than the testimony would do it with the jurors in
10 the room?

11 MR. CUTHBERT: It's just a more tangible
12 reminder of the evidence.

13 THE COURT: But don't you think the jury
14 needs to know how disposable these drugs were?
15 Because I assume that part of the defense is that we
16 needed to get in the room quickly, because if we
17 didn't get in there quickly the drugs would have
18 been deposed of. So doesn't the jury have to see
19 what the drugs looked like so the jury can determine
20 whether in fact the drugs were disposable?

21 MR. CUTHBERT: I think that anybody can
22 figure out that cocaine powder can flushed down the
23 toilet, and they don't have to see it.

24 THE COURT: I don't think -- you know,
25 you say that because you're a lawyer, you know what

1 cocaine powder is and you know a whole lot. I would
2 venture most people don't know.

3 MR. CUTHBERT: I'll bet you most people
4 on this jury know more about it than I do, Your
5 Honor.

6 THE COURT: I don't know. I think we
7 all assume a lot of things.

8 MR. CUTHBERT: But if Your Honor is
9 allowing evidence of cocaine, if that's what they're
10 claiming to be, put before the jury, I suspect that
11 Your Honor would also allow evidence that the
12 cocaine was in the form of powder and could be
13 easily be flushed down the toilet, and they don't
14 need to have a photograph to realize that that's the
15 case.

16 THE COURT: What's next? Let's go to
17 the next one, Mr. Cuthbert, because we need to get
18 through this.

19 MR. CUTHBERT: Your Honor, if you turn
20 to page 6 of my brief, and we are talking about
21 Photographs 229, 246, and 257.

22 THE COURT: All right.

23 MR. CUTHBERT: Now, at this point we've
24 got a photograph in 229 of a gun silencer, a pistol
25 silencer -- at least I think that is what that

1 cylinder is. It was not used in this case. It was
2 found in a drawer.

3 This is a photograph of the contents of
4 a drawer. That's beyond proof that -- not that any
5 was needed -- that shots were fired from inside.
6 There is no suggestion that the silencer or the
7 pistol in this drawer were involved in the shooting
8 from inside.

9 THE COURT: All right. What's the next
10 one?

11 MR. CUTHBERT: Similarly 257, they found
12 this rifle in a closet.

13 THE COURT: All right. I've looked at
14 all the pictures. I'm really interested in what is
15 the argument that you want to make that you have not
16 made previously?

17 MR. CUTHBERT: Well, it's not that there
18 that were guns inside, but there is an assault rifle
19 inside a closet that wasn't used to defend the
20 premises. It happened to be there. And the
21 photograph in 246 is --

22 THE COURT: Why wasn't it used to defend
23 the premises?

24 MR. CUTHBERT: I don't know. Maybe they
25 didn't have the ammunition.

1 THE COURT: Could it be that maybe they
2 didn't have an opportunity to get to it because the
3 officers acted very quickly and did not give them
4 the opportunity to get to all these weapons?

5 MR. CUTHBERT: I have no idea, I truly
6 don't. I don't know whether there was any ammo in
7 the building.

8 THE COURT: We don't know any of that,
9 but we know that there was ammo in some of these
10 pictures.

11 MR. CUTHBERT: For some weapon.

12 THE COURT: For some weapons. I mean,
13 if they had been used in the defense, you probably
14 wouldn't be suing the officers now, because they may
15 not be here.

16 What other argument do you want to make,
17 Mr. Cuthbert?

18 MR. CUTHBERT: I have nothing more to
19 offer on 229, 246, and 257, Your Honor.

20 THE COURT: And really, I mean, I say
21 that I would entertain another motion, because I do
22 take this as a motion for reconsideration, but a
23 motion to reconsider is not just telling the judge
24 the same thing you told the judge before in a louder
25 voice. It's telling the judge something the judge

1 did not hear last time, and you haven't done that
2 yet.

3 MR. CUTHBERT: Well, I think I have in
4 several respects, I would respectfully suggest.
5 Most recently, we have a picture of a silencer here.
6 How does that enter into anything? Not at all.
7 It's not relevant to anything in any way.

8 And also we have photographs. It's one
9 thing to allow testimony to which we object --

10 THE COURT: Well, again, how do you
11 think that prejudices you any? If it's not
12 relevant, how does it prejudice you?

13 MR. CUTHBERT: In two ways, Your Honor.
14 It tends to paint Ms. Green as guilty by
15 association.

16 THE COURT: Guilty of what?

17 MR. CUTHBERT: Well, that's a good
18 question.

19 THE COURT: If these were Bibles and Red
20 Cross pledge forms, you wouldn't ask to exclude
21 them.

22 MR. CUTHBERT: And you wouldn't let them
23 in.

24 THE COURT: You are asking to exclude
25 them because it tends to show that there was

1 criminal activity and people who were engaged in
2 criminal activity behind this door that the police
3 had to get to very quickly. That's why you want it
4 excluded.

5 MR. CUTHBERT: Well, I think I have
6 stated it as clearly as I can, Your Honor, as
7 clearly as I can in my paper. Photograph 275 shows
8 a hole fired through a window by someone other than
9 Christy Green from inside the apartment. This is a
10 shot at the front. Ingram was coming in through the
11 side door, not through the front door. It's hard to
12 --

13 THE COURT: He should have waited until
14 people started shooting at his door? They were
15 shooting out the other door, and he should have
16 waited until they started shooting out of his door?
17 Come on, Mr. Cuthbert.

18 You are not going to win this one with
19 that kind of argument. Any argument that I have not
20 heard?

21 MR. CUTHBERT: Your Honor, I think on
22 part F on page 7, the 589-page notebook that the
23 defense designated from --

24 THE COURT: What is in the notebook?

25 MR. CUTHBERT: Statements of witnesses,

1 among other things, all kinds of hearsay documents.
2 It's 589 pages. Your Honor can imagine that all 589
3 pages are not free of hearsay. In fact, most of
4 them are hearsay. There is different statements.

5 THE COURT: You mean these are
6 statements that were made after the raid?

7 MR. CUTHBERT: Yes, sir, interviews with
8 witnesses, all kind of things in there.

9 THE COURT: All right.

10 MR. CUTHBERT: And I think that takes
11 care of Motion Two. I'm certainly not waiving
12 anything else that I said, but I think I understand
13 where Your Honor is thinking.

14 THE COURT: All right. I appreciate
15 that very much.

16 MR. CUTHBERT: If I may turn to Motion
17 Three on page 8, this is dealing with allegations
18 that the plaintiff made against the manufacturer.
19 Previously Your Honor ruled that the defendants may
20 mention allegations that the plaintiff made against
21 the manufacturer to the extent that they are
22 inconsistent with claims that the plaintiff makes
23 against Buckovich and Ingram, and it's our view that
24 as a matter of law there is no essential
25 inconsistency between the allegations against the

1 manufacturer, on the one hand, and the allegations
2 against Buckovich and Ingram, on the other.

3 We did allege joint and several
4 liability. It is our view that these acts of
5 negligence coalesced and coincided in the death of
6 Christie Green really at a single point in time.

7 THE COURT: All right.

8 MR. CUTHBERT: And I cite on page 9 the
9 VMJI instruction 4.020 and the Coleman V.
10 Blankenship Oil case dealing with situations in
11 which two people are negligent and each is liable
12 for the entire injury. So there is no essential
13 inconsistency.

14 And I also point out on page 10 the
15 decision of the Virginia Supreme Court in Allstate
16 Insurance.

17 THE COURT: Excuse me.

18 Sir, I don't know what you are doing,
19 but please don't keep doing that.

20 SPEAKER: I'm sorry.

21 THE COURT: Put those away, please.
22 Thank you very much.

23 SPEAKER: Sorry.

24 MR. CUTHBERT: Your Honor, I would also
25 like to point out something that I did not mention

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1 in response to Your Honor's very appropriate
2 question of what's new and different. On page 4 of
3 my Notice of Motion, I cite the Griffin v. Shivley
4 case, 227 Va. 317, and I have bolded and underlined
5 the language that is particularly significant here.

6 It suggests that the appropriate time to
7 determine the fault of a tortfeasor for negligence
8 is at the moment that the tort is committed, rather
9 than later. The language I'm referring to is, with
10 the defendant aware, from his knowledge of existing
11 circumstances and conditions, his knowledge -- his
12 knowledge.

13 So we are talking about the moment that
14 the door is -- that Ingram pulls the trigger, his
15 knowledge of existing circumstances and conditions.

16 We stipulate, as I have emphasized
17 before and in this paper, that when Ingram shot
18 Christie Green, he and Officer Buckovich had a good
19 faith belief that there were illegal drugs, guns and
20 homicide suspects in the apartment where Christie
21 Green was visiting.

22 So we stipulate that he had good faith
23 belief. We stipulate what his mind-set was, what
24 their mind-set was, at the moment that the tort was
25 committed. And under this Griffin v. Shivley case,

1 the clear inference is that any knowledge that they
2 developed thereafter, either confirming or refuting
3 their expectations, is irrelevant.

4 THE COURT: All right. Anything else?

5 MR. CUTHBERT: I think that is
6 everything that I had, Your Honor, and I appreciate
7 it.

8 THE COURT: Thank you very much. I
9 appreciate your argument. I know I've cut you
10 short, but I really have heard your argument before.

11 Ms. Harris, Ms. Burton, I take it it's
12 still your position that I really have not heard
13 anything new?

14 MS. HARRIS: Yes, sir. And I would
15 direct the court to paragraph 4 on page 2 of the
16 September 30 order that is now before the court
17 wherein you state in that order that you're going to
18 sign, most likely, that you're going to reserve
19 ruling on the admissibility of those photographs
20 until the time that they are offered. I don't think
21 that there could anything more that the court could
22 do.

23 THE COURT: All right. I'll overrule
24 the motions. I really think this is a motion to
25 reconsider, and I heard not heard anything to change

1 the court's position or the court's rulings made at
2 the earlier hearings, so the motion is denied --

3 To the extent you need an order,
4 Mr. Cuthbert, would you prepare the order and submit
5 it to Ms. Harris and Ms. Burton for their
6 endorsement?

7 MR. CUTHBERT: I will, Your Honor, but
8 what about the notebook, the 589 pages?

9 THE COURT: Make your objection at
10 trial, Mr. Cuthbert, and we will see. I don't know
11 whether it's admissible or not. I have absolutely
12 no idea. We will just have to wait and see.

13 The court will not allow hearsay
14 evidence unless there is a proper exception to the
15 hearsay rule. But I don't know whether it's
16 hearsay. I don't know what it's being offered for.
17 I don't know whether it's going to be offered to
18 refresh recollection. As I say, I have absolutely
19 no idea. We need to wait until trial to see.

20 MR. CUTHBERT: I understand.

21 THE COURT: Thank you very much.

22 (Hearing concluded).
23
24
25

VIRGINIA:

040480

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

KATINA GREEN, Administrator
of the Estate of Christie
D. Green,

Plaintiff,

v.

Case No. LL-2806

JOHN B. BUCKOVICH, et. al.,

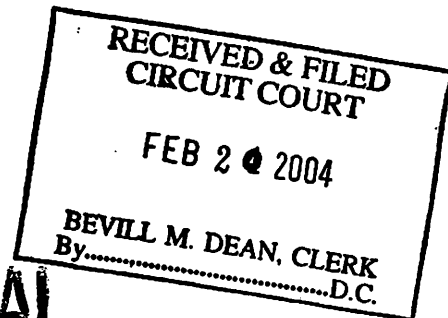
Defendants.

Volume I(a)

January 20, 2004

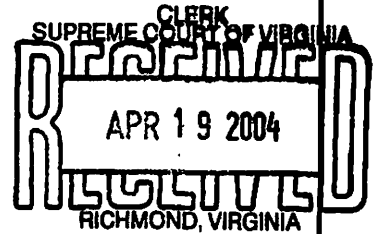
Richmond, Virginia

Excerpt from the opening statement of Charles
H. Cuthbert, Jr., when heard before the Honorable
Randall G. Johnson, Judge, and a jury.



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1 (The following is an excerpt from the
2 opening statement of Mr. Cuthbert:)

3
4 MR. CUTHBERT: Something else had to be
5 determined before we came to trial. After the
6 police started breaking the front window and
7 shooting shotguns at both doors, someone inside
8 shot a pistol three times. So to learn whether
9 Sergeant Ingram had shot any of the five shots
10 in order to defend himself, we asked him the
11 following questions:

12 Question: You weren't trying to hit
13 anybody on the other side; were you?

14 Answer: No, sir.

15 Question: You weren't trying to defend
16 yourself or others from shots you heard inside
17 when you fired at the door?

18 Answer: No, sir.

19 Question: Because you heard a shot fired
20 from inside the apartment, did you change your
21 course of action in any way?

22 Answer: No, sir.

23 The police have admitted that Christie
24 Green did not do any of the shooting, that she
25 had no drugs in her possession, that she had no

1 drugs in her system, that she had no criminal
2 record.

3 We stipulate, however, that when the
4 police -- we tell you we agree that when the
5 police raid began, Sergeant Ingram and Officer
6 Buckovich believed and had good reason to
7 believe that one or more young men, not
8 residents of the apartment, were inside and
9 that those young men had drugs and guns and
10 were homicide suspects. But they didn't live
11 there. We do not claim that Sergeant Ingram
12 meant to kill anyone.

13 Let me shift my focus and talk with you
14 about damages.
15
16
17
18
19
20
21
22
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24
25

040480
VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

KATINA GREEN, Administrator
of the Estate of Christie
D. Green,

Plaintiff,

v.

Case No. LL-2806

JOHN B. BUCKOVICH, et. al.,

Defendants.

Volume I

January 20, 2004

Richmond, Virginia

Transcript of the above-captioned trial, when
heard before the Honorable Randall G. Johnson, Judge,
and a jury.

RECEIVED & FILED
CIRCUIT COURT

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DIRECT CROSS REDIRECT RECROSS REDIRECT

CHARLES HAYES	19	22			
DEBORAH KAY	24	30	34		
EUGENE PROVOST	36	56	59	85	97
KATINA GREEN	99				

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1 (Motions are heard. A jury is duly
2 impaneled and sworn. Opening statements
3 are heard.)
4

5 THE COURT: You can bring the jury in.
6

7 (The jury enters.).
8

9 THE COURT: Mr. Cuthbert, who is your
10 first witness, sir?

11 MR. CUTHBERT: Your Honor, we're going to
12 present videotaped deposition testimony. It is
13 of George Ingram.

14 THE COURT: Members of the jury, the first
15 witness we're going to hear from we're going to
16 hear from by way of a deposition. Now, a
17 deposition is the testimony of a person taken
18 some time before trial. It's usually in a
19 lawyer's office but sometimes in other places.

20 The witness is under oath just like
21 witnesses are under oath here in the courtroom.
22 The lawyers ask the same questions that they
23 would ask in the courtroom.

24 Mr. Ingram is a defendant in the case.
25 Under the rules of court, a plaintiff can show

1 you the deposition of the defendant. You
2 should take this testimony as what Mr. Ingram
3 said in answers to the questions that he was
4 asked. He was under oath at the time of his
5 deposition.

6 You're going to see this on television.
7 There was a videotape made of the testimony. I
8 don't know how long this is.

9 Mr. Cuthbert, approximately how long?

10 MR. CUTHBERT: Fifty-three minutes, Your
11 Honor.

12 THE COURT: Fifty-three minutes?

13 MR. CUTHBERT: Yes, sir.

14 THE COURT: All right.

15 You don't need to take this. We'll have
16 the tape, so you don't need to take this.

17
18 (Please see the attached transcript of the
19 videotaped testimony of this witness
20 which, by order of the Court, copy
21 attached, is made a part of this trial
22 transcript.)

23
24 THE COURT: Ms. Burton.

25 MS. BURTON: At this point, Your Honor, I

1 don't object to him being asked about the
2 content of the statement. I just object to it
3 at this point being shown to the jury.

4 THE COURT: What?

5 MS. BURTON: The statement should not be
6 shown to the jury unless and until submitted
7 into evidence.

8 THE COURT: I'm sorry. Can you just speak
9 louder?

10 MS. BURTON: I object to the statement
11 being shown to the jury unless it's admitted
12 into evidence.

13 THE COURT: Mr. Cuthbert.

14 MR. CUTHBERT: Your Honor, I don't think
15 that the video camera shows the statement. I
16 do propose to submit the statement.

17 THE COURT: You don't think that it shows?

18 MR. CUTHBERT: The way I recollect it, it
19 does not show the statement. It did show the
20 aiming instruction. When the videotape is
21 over, I'm going to offer the statement as an
22 exhibit because I believe that it's been
23 identified.

24 THE COURT: Ms. Burton, is there going to
25 be any objection to the statement coming into

1 evidence?

2 MS. BURTON: No, sir, but as long as it
3 does come into evidence.

4 THE COURT: In that case, the objection is
5 overruled.

6
7 (Please see the attached transcript of the
8 videotaped testimony of this witness
9 which, by order of the Court, copy
10 attached, is made a part of this trial
11 transcript.)
12

13 THE COURT: Does that complete the
14 deposition?

15 MR. CUTHBERT: Yes, sir.

16 THE COURT: Who is your next witness going
17 to be?

18 MR. CUTHBERT: At this point I'd like to
19 offer into evidence a copy of page 360 that was
20 shown to the jury on the videotape. For
21 purposes of identification, I marked it as
22 Plaintiff's Exhibit 12.

23 THE COURT: Any objection, Ms. Burton?

24 MS. BURTON: No, sir.

25 THE COURT: All right. That will be

1 admitted as Plaintiff's Exhibit 1.

2
3 (Plaintiff's Exhibit 1 is received.)
4

5 MR. CUTHBERT: Your Honor, I also would
6 offer the statement.

7 THE COURT: I think you've already
8 indicated there's no objection to this,
9 Ms. Burton.

10 MS. BURTON: That's correct.

11 THE COURT: All right. This will be
12 Plaintiff's Exhibit 2.

13
14 (Plaintiff's Exhibit 2 is received.)
15

16 THE COURT: Mr. Cuthbert.

17 MR. CUTHBERT: Your Honor, if I may, I'd
18 like to read that statement aloud now that it's
19 in evidence. I have a copy of it here.

20 THE COURT: All right.

21 MR. CUTHBERT: This is the statement of
22 Sergeant Ingram that was just admitted into
23 evidence as Plaintiff's Exhibit 2: On
24 12-29-1998 I responded with the SWAT team to
25 1112C Dove Street in a high risk search

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1 warrant. I was assigned as a breacher for the
2 team assigned the limited penetration mission
3 on the kitchen door located on the number two
4 side of the structure.

5 I approached the door with Sergeant Jack
6 King and Tim DeGrauwe. On the break command, I
7 shot the dead bolt lock on the kitchen with
8 five rounds of No. 22 T.K.O. from an 870
9 Winchester. The door failed to open. I then
10 employed the one-man ram to complete the entry
11 to the kitchen.

12 I observed one male, a female, another
13 female who appeared injured, and two small
14 children. One was trapped under the injured
15 female. I kneeled down, removed my helmet and
16 Balaclava and called out to the juvenile
17 leaning by the uninjured female. I extracted
18 the first child.

19 The male and uninjured female were cuffed
20 and removed from the kitchen. The injured
21 female was moved. I then extracted the second
22 child. This child was covered in blood. I
23 handed her to the medical personnel that had
24 been called up.

25 I retrieved my equipment and then

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1 redeployed with the SWAT team to the academy,
2 signed Sergeant George Ingram.

3 THE COURT: All right.

4 MR. CUTHBERT: Your Honor, next I would
5 like to read into evidence a two-page set of
6 excerpts from a deposition that Sergeant Ingram
7 gave on June 25, 2002.

8 THE COURT: All right.

9 MR. CUTHBERT: If Ms. Broaddus may play
10 the role of George Ingram, I'll play the role
11 of the questioning attorney.

12 THE COURT: Ms. Broaddus, if you will,
13 come to the witness stand.

14 Members of the jury, this is another
15 deposition of Sergeant Ingram. Instead of
16 seeing it on television this time,
17 Ms. Broaddus, who is not Sergeant Ingram
18 obviously, is going to sit on the witness
19 stand. She's going to read the answers that
20 Sergeant Ingram gave. Again, Sergeant Ingram
21 was under oath at the time that he gave these
22 answers.

23 Ms. Broaddus, you can come to the witness
24 stand.

25 Have you all been given the designation?

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1 MS. BURTON: We are checking to see. We
2 think this was one that was dealt with at one
3 of the hearings.

4 THE COURT: Have you told her what pages
5 you want to read?

6 MR. CUTHBERT: Yes, sir, I have. The
7 Court has entered an order authorizing us to do
8 this.

9 THE COURT: All right. I just want to
10 make sure that they're aware of exactly what is
11 being read.

12 MR. CUTHBERT: This is a deposition of
13 Sergeant George Ingram on January 25, 2002:
14

15 GEORGE INGRAM, a Witness, called by the
16 Defendant, first being duly sworn, testified as
17 follows:
18

19 Q Please state your name, sir.

20 A George James Ingram.

21 Q And your current occupation?

22 A Sergeant, Richmond Police Department.

23 Q How long have you been with the police
24 department?

25 A Twenty-four plus years.

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1 Q In this particular situation, you knew
2 there was a dead bolt there, correct, because it
3 showed on both sides?

4 A We could see the dead bolt from the
5 outside.

6 Q You knew that the handle turned, right?

7 A Right.

8 Q Based on your investigation prior to
9 firing your first round, is it fair to say you
10 weren't aware of any other locking mechanism on the
11 door?

12 A Correct.

13 Q Was there any physical impediment prior to
14 your firing that first round that prevented you from
15 firing it at a 45 -- by "physical," I mean was there
16 anything in this structure that prevented you from
17 firing it at a 45-degree angle?

18 A I'm still not sure what you're -- a
19 physical impediment? A step? A door?

20 Q A step, a door, something over top of you,
21 something beside you, or whatever, that prevented you
22 from firing it at a 45-degree angle?

23 A To approximate getting the 45-degree
24 angle, no. The only thing we had was there was a
25 little bit of a lip, a four or five inch -- maybe

1 less -- little lip that the door was elevated on.
2 But there was nothing like a step or a door or
3 anything that was in the way to try to get a good
4 downward angle.

5 Q You are fully aware that this round has
6 sufficient velocity and sufficient mass to cause the
7 locking mechanism to be blasted out of the door and
8 actually become a projectile?

9 A It can, yes, sir.

10 Q That's why you have the 45-degree down
11 angle, in order to prevent somebody on the other side
12 of the door from being hit by that projectile?

13 A You try to get the downward angle, yes,
14 sir, to put the debris down on the floor or at a
15 downward angle.

16 Q I'm going to 324, which is a reference to
17 a photograph. I'm going to 324 because he wanted to
18 see the outside. Does that fairly depict the
19 outside, which would be what you saw?

20 A Yes, sir.

21 Q So, as you shot each round you would
22 pause, do your toe kick, and visualize the hole in
23 the door and then you'd shoot the next round, right?

24 A Correct.

25 Q So the hole got bigger and bigger as you

1 continued to shoot your rounds. So you would pause
2 and the hole would get bigger the next time, right?

3 A Some of this -- and there is going to be
4 some debris missing out of this. When we used the
5 ram, it threw everything out. So it would have been
6 a little bit more debris within that hole.

7 Q Was it your goal when you shot the second
8 round to, again, walk it down and a hole would have
9 been created at the top here, that you would aim
10 right at that top level of the hole --

11 A You are walking it down.

12 Q Walking it down.

13 A Correct.

14 Q So your target, again, would be the top
15 level of the hole as you walked it down?

16 A Correct.

17 MR. CUTHBERT: Thank you.

18 THE COURT: Thank you very much,
19 Ms. Broaddus.

20 MS. BROADDUS: Thank you, Judge.

21
22 (Ms. Broaddus returns to counsel table.)

23
24 THE COURT: All right.

25 MR. CUTHBERT: Your Honor, I would like to

1 read into evidence, if I may, some responses to
2 requests for admissions.

3 THE COURT: Have you told Ms. Burton and
4 Ms. Harris?

5 MS. BURTON: No.

6 MR. CUTHBERT: Yes, sir, I have. I've got
7 the letter in front of me, but they're welcome
8 to look at it.

9 THE COURT: Let's let them take a look at
10 that.

11 Members of the jury, during the pretrial
12 process -- that's when the parties are getting
13 ready for trial -- the rules of court allow
14 each party to serve on the other party certain
15 statements and to ask that the other party
16 admit that the statements are true.

17 For example, admit that January 20 is a
18 Tuesday. If the other party admits that, then,
19 of course, the party who is asking or serving
20 those requests for admissions does not have to
21 bring a witness into court to prove that point
22 because the other party admits that that's
23 true.

24 What Mr. Cuthbert is going to do now is to
25 read certain statements that were served on the

1 defendants. The defendants or at least one of
2 the defendants has admitted that these
3 statements are true.

4 All right.

5 MR. CUTHBERT: Requests for admission one:
6 Ms. Christie D. Green, Ms. Green had no
7 criminal record. Response: Admit.

8 Ms. Green did not fire a weapon on
9 December 29, 1998, at 1112C Dove Street.
10 Response: Admit.

11 When the raid took place that resulted in
12 the death of Ms. Green on December 29, 1998,
13 Ms. Green had no illegal drugs in her system.
14 Response: Admit.

15 When the raid took place that resulted in
16 the death of Ms. Green on December 29, 1998,
17 Ms. Green had no alcohol in her system.
18 Response: Admit.

19 Ms. Green died as a proximate result of
20 one or more frangible rounds fired by George
21 Ingram on December 29, 1998. Response: Admit.

22 The frangible rounds fired by George
23 Ingram at 1112C Dove Street on December 29,
24 1998, were bought by the City of Richmond from
25 Defense Technology Corporation of America.

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1 Response: Admit.

2 With respect to the shotgun fired by
3 Sergeant Ingram when he killed Christie Green,
4 it had a barrel length of 14-inches long and an
5 overall length of 33-inches. Response: It was
6 admitted during the hearing we had on July 24,
7 2003.

8 When George Ingram killed Christie Green,
9 there were no exit wounds. Response: Admit.

10 When George Ingram killed Christie Green,
11 there were 13 people in the apartment known as
12 1112C Dove Street, including six children.

13 Response: Admit.

14 Then interrogatory 26, please describe --
15 this is directed to Sergeant Ingram. Please
16 describe the discipline, if any, you received
17 on the count of the events at 1112C Dove Street
18 on December 29, 1998, resulting in the death of
19 Christie D. Green. Answer under oath: I was
20 not disciplined for my actions at 1112C Dove
21 Street on December 29, 1998.

22 Thank you, sir.

23 THE COURT: All right. What's next?

24 MR. CUTHBERT: Your Honor, I would like to
25 call Officer Hayes.

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1 THE COURT: Before we do that, why don't
2 we take a very short recess? We're going to
3 stand in recess until 20 minutes after 3:00.

4 Once again, members of the jury, please do
5 not discuss the case among yourselves.

6
7 (The jury exits.)

8
9 THE COURT: All right. We'll stand in
10 recess until 20 minutes after 3:00.

11
12 (Recess taken.)

13
14 THE COURT: We're missing someone. Where
15 is Ms. Broaddus?

16 MR. CUTHBERT: She's making a photocopy,
17 Your Honor, with your permission.

18 THE COURT: Once you're on this side of
19 the rail, you have to be here all of the time,
20 Mr. Cuthbert. Is she in the library?

21 MR. CUTHBERT: Yes, sir.

22 THE COURT: You can bring the jury in.
23 You can tell Ms. Broaddus we're back in
24 session.

1 (The jury enters.)

2
3 THE COURT: All right. Mr. Cuthbert, who
4 is your next witness?

5 MR. CUTHBERT: Officer Hayes, Your Honor.

6 THE COURT: All right.

7
8 CHARLES HAYES, a Witness, called by the
9 Plaintiff, first being duly sworn, testified as
10 follows:

11
12 DIRECT EXAMINATION

13 BY MR. CUTHBERT:

14
15 Q Officer Hayes, good afternoon, sir.

16 A Good afternoon.

17 Q Would you please tell the members of the
18 jury your name, sir.

19 A Charles Hayes.

20 Q Are you employed by the City of Richmond?

21 A Yes, sir. I'm a sergeant with the
22 Richmond Police Department.

23 Q How long have you been with the Richmond
24 Police Department?

25 A Thirteen and a half years.

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1 Q Did you participate with the Richmond
2 Police Department in the events that took place
3 around 11:00 p.m. on December 29, 1998?

4 A Yes, I did.

5 Q What was your assignment?

6 A My primary assignment was to rake and
7 break the front window of the structure. Upon raking
8 and breaking, when the window was broken, announce
9 "Richmond Police, search warrant" and continuing
10 doing that until I was called to render assistance on
11 the other side of the structure.

12 Q You used the term "rake and break," which
13 I'm sure to you is a common term. Until I got
14 involved in this case, I had never heard of it. What
15 does that term mean, please?

16 A When the command is given, it's breaching
17 a structure, breaking the front window. It's a
18 diversion. Once the window is broken, the
19 announcement is made "Richmond Police, search
20 warrant" identifying who we are and what we're there
21 to do.

22 My orders were to break the window. Once
23 the window was broken, continue announcing "Richmond
24 Police, search warrant."

25 Q What is the tool that you use to rake and

1 break that window?

2 A It's a halogen tool.

3 Q What does that mean, halogen tool?

4 A It's about 4-feet long. The fire
5 department uses it. It's about 4-feet. It has two
6 prongs on each end -- on one end. Then the other end
7 is just straight. You can use either end of it to
8 either pry open a door or break a window, whichever
9 you desire to do.

10 Q So you slugged the window with the halogen
11 tool; is that right?

12 A Yes, sir.

13 Q Did you have to hit it more than one time?

14 A No, sir. I hit it one time.

15 Q Now, I believe you heard Officer Buckovich
16 give the signal to begin; is that correct?

17 A Lieutenant Buckovich gave the command
18 "breach, breach, breach." Upon those commands, that
19 was my queue to go ahead and break the window and
20 make the announcement once he gave those commands.

21 Q Was there any separate command to fire the
22 frangible rounds?

23 A No, sir, not from me.

24 Q Did you hear Officer Buckovich give a
25 separate command to fire?

1 A I heard Lieutenant Buckovich give no
2 separate command for the breachers on those doors,
3 no, sir.

4 Q Where was Officer Buckovich approximately
5 when he ordered the breaching to begin?

6 A Lieutenant Buckovich was on the front of
7 the structure but away where he could observe
8 everyone, therefore, giving the command to go ahead
9 and initiate the breaching.

10 MR. CUTHBERT: I don't have any other
11 questions. Thank you.

12 THE COURT: Is there any
13 cross-examination?

14
15 CROSS-EXAMINATION

16 BY MS. HARRIS:

17
18 Q Officer Hayes, how many times do you
19 believe that you might have yelled "Richmond Police,
20 search warrant?"

21 A It was several times.

22 Q So at least three?

23 A Yes, ma'am.

24 Q Did you yell it to the top of your lungs?

25 A Yes, ma'am.

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1 MS. HARRIS: That's all of the questions I
2 have.

3 THE COURT: Any redirect?

4 MR. CUTHBERT: No, Your Honor.

5 THE COURT: Thank you very much, Officer
6 Hayes.

7 Can Officer Hayes be excused?

8 MR. CUTHBERT: Yes, sir.

9 THE COURT: Officer, you're free to leave
10 if you would like to leave. If you would like
11 to stay in the courtroom, you're welcome to
12 stay in the courtroom.

13 THE WITNESS: Yes, sir.

14 THE COURT: Thank you very much.

15
16 -----
17 WITNESS STOOD ASIDE

18
19 THE COURT: Mr. Cuthbert.

20 MR. CUTHBERT: Dr. Deborah Kay.
21
22
23
24
25

1 DEBORAH KAY, a Witness, called by the
2 Plaintiff, first being duly sworn, testified as
3 follows:
4

5 DIRECT EXAMINATION

6 BY MR. CUTHBERT:

7
8 Q Dr. Kay, good afternoon.

9 A How are you?

10 Q Fine. Thank you, ma'am. How are you?

11 A Fine. Thanks.

12 Q Good. Would you please tell the members
13 of the jury your name.

14 A I'm Deborah Kay.

15 Q Your occupation?

16 A I'm an assistant chief medical examiner
17 for the Commonwealth of Virginia.

18 Q Your employer?

19 A Commonwealth of Virginia.

20 Q For how long have you held this position?

21 A Over eleven years.

22 Q As assistant chief medical examiner, what
23 are your job duties?

24 A My job is essentially to determine cause
25 and manner of death in cases which are in the public

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1 interest.

2 Q Would you summarize, please, for the jury
3 your education, training, and experience in medicine
4 starting with college.

5 A Well, I have a bachelor's degree from
6 Brandeis University and a medical degree from what
7 was then the Medical College of Virginia. I have
8 training in anatomic and clinical pathology and also
9 in the subspecialty of forensic pathology. I'm board
10 certified in anatomic and clinical pathology, as well
11 as forensic pathology.

12 Q Are you licensed to practice medicine here
13 in Virginia?

14 A Yes.

15 MR. CUTHBERT: I move Dr. Kay as an expert
16 in the field of forensic pathology.

17 THE COURT: Any questions on Dr. Kay's
18 qualifications?

19 MS. BURTON: No, sir.

20 THE COURT: Okay.

21 Q Dr. Kay, as assistant chief medical
22 examiner, did you perform an autopsy on the body of
23 Christie Green?

24 A Yes, I did.

25 Q Did you also order photographs dealing

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1 with the autopsy that you did?

2 A There were photographs taken.

3 Q When Christie Green arrived at your
4 office, what clothing was she wearing?

5 A I will have to read it: Brown boots,
6 white socks, blue denim pants, boxer shorts, purple
7 jacket, green shirt, white T-shirt.

8 Q I'm going to hand you a photograph that
9 for purposes of identification I've marked as
10 Plaintiff's Exhibit 13.2.

11 MS. BURTON: Your Honor, we're going to
12 object to this photograph.

13 THE COURT: What is the basis?

14 MS. BURTON: It's hellacious, and it does
15 not have any probative value to the case.

16 THE COURT: Mr. Cuthbert.

17 MR. CUTHBERT: May I show Your Honor the
18 photograph?

19 THE COURT: All right.

20
21 (The photograph is shown to the Court.)
22

23 THE COURT: All right. The objection is
24 overruled.

25 Q Dr. Kay, I hand you a document that for

1 purposes of identification I've marked as Plaintiff's
2 Exhibit 13.2. Is that a copy of a photograph that
3 was taken by your office in connection with the
4 autopsy of Christie Green?

5 A Yes, it is.

6 Q Does it fairly and accurately depict the
7 chest wounds that you observed on Ms. Green's body
8 when you did your autopsy?

9 A Yes, they do.

10 MR. CUTHBERT: I move the introduction
11 into evidence of Plaintiff's Exhibit 13.2.

12 THE COURT: That will be Plaintiff's
13 Exhibit 3.

14 MS. BURTON: I renew my objection, Your
15 Honor. They serve no purpose, and they should
16 not be admitted.

17 THE COURT: All right.

18
19 (Plaintiff's Exhibit 3 is received.)
20

21 MR. CUTHBERT: Your Honor, once it's been
22 marked, I would like to ask Dr. Kay to show it
23 to the jury, just to hold it up if I may.

24 THE COURT: All right.
25

1 (The photograph is published to the jury.)

2

3 BY MR. CUTHBERT:

4 Q Dr. Kay, do you have an opinion as to the
5 cause of Christie Green's death?

6 A Yes, I do.

7 Q What is your opinion in that regard?

8 A Shotgun wound to the chest.

9 Q What caused the shotgun wound to the
10 chest? Was it a frangible round? Portions or
11 fragments?

12 A Well, there were fragments of a frangible
13 round recovered on the body at the scene and also in
14 the body at the time of the autopsy.

15 Q Does the photograph that we just put into
16 evidence show the entrance point of the fatal wound?

17 A Well, there are four entrances. That
18 photograph does show that.

19 Q Yes, ma'am. So the photograph does show
20 the entrance point of the fatal wounds?

21 A Points, yes.

22 Q According to your autopsy report, how tall
23 was Christie Green?

24 A I believe it says 64 1/2 inches.

25 Q Did you make a note as to how far each of

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1 the four entrance wounds were from midline, that is,
2 the center of her chest measured from the top of her
3 head?

4 A Yes.

5 Q Basically, were those entrance points 11
6 and 12-inches below the top of her head?

7 A Well, from 11 to 12-inches, yes.

8 Q In general, what course did those wounds
9 follow once the fragments entered Ms. Green's body?

10 A In general, that would be front to back,
11 right to left, and downward.

12 Q When you say --

13 A This is with respect to this person only.

14 Q So right to left from her right?

15 A That is correct, from her right to her
16 left.

17 Q I hand you an autopsy report that for
18 purposes of identification I've marked as Plaintiff's
19 Exhibit 15.7. I'd like you to take a look at it and
20 tell the jury whether that is, in fact, a copy of
21 your autopsy report. For purposes of identification,
22 I've numbered the pages starting as 86 in the
23 upper-right corner and continuing through page 95 I
24 believe.

25 A This is a copy of the report and also some

1 diagrams that were marked as worksheets.

2 MR. CUTHBERT: Your Honor, I move that
3 document into evidence.

4 THE COURT: Any objection?

5 MS. BURTON: Can I just see it?

6 No objection.

7 THE COURT: That will be Plaintiff's
8 Exhibit 4.

9
10 (Plaintiff's Exhibit 4 is received.)
11

12 MR. CUTHBERT: I have no other questions
13 of this witness. Thank you, sir.

14 THE COURT: Is there any
15 cross-examination?
16

17 CROSS-EXAMINATION

18 BY MS. BURTON:
19

20 Q Good afternoon, Dr. Kay.

21 A How are you?

22 Q Fine. Thank you. How are you?

23 A Good.

24 Q I just have a couple of questions. Your
25 examination of Christie Green's body also revealed

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1 the existence of gray powdery substances on her body;
2 is that true?

3 A Yes.

4 Q Is it fair to attribute those gray powdery
5 particles or substances, whatever you want to call
6 it, to the frangible rounds in this case?

7 A It seemed like they were.

8 Q Did I understand you to say that the
9 fragments entered Ms. Green's body on a downward
10 path?

11 A Front to back, right to left, and downward
12 generally.

13 Q You did not find any whole rounds in
14 Ms. Green's body; did you?

15 A No.

16 Q You did not find any in tact rounds in
17 Ms. Green's body; did you?

18 A No, I didn't.

19 Q But you did find several very large pieces
20 of rounds in Ms. Green's body; correct?

21 A One sizable portion and multiple
22 particles.

23 Q May I ask you to take a look at those
24 three?

25 THE COURT: Let's let Mr. Cuthbert see

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1 them.

2 MS. BURTON: He's seen them.

3 THE COURT: I'm sure he's seen a lot of
4 things. I want to make sure he knows what it
5 is.

6 MS. BURTON: Let me show him.

7 MR. CUTHBERT: I understand.

8 Thank you, sir. That's fine.

9 BY MS. BURTON:

10 Q Do you recognize those cards there?

11 A Oh, yes. These are the cards that I fill
12 out when I'm packaging evidence. These are the three
13 cards that I filled out during this autopsy with
14 pictures with the fragments of the rounds that we're
15 discussing on the card as well. So you can see them.

16 Q Are those fragments essentially life size?
17 Are the pictures life size?

18 A Oh, I don't know about that. I'd have to
19 compare one of my bullet cards. There is no scale on
20 them.

21 Q Do you recall the actual size of the
22 fragments?

23 A I don't measure them.

24 Q Do the pictures on those cards fairly and
25 accurately depict the fragments that were removed

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1 from Ms. Green's body as pictures?

2 A Yes.

3 MS. BURTON: At this point I have no
4 further questions. I'd like to have those
5 admitted into evidence.

6 THE COURT: Any objection, Mr. Cuthbert?

7 MR. CUTHBERT: Your Honor, she said she
8 didn't know about the scale. I think that
9 might be important.

10 THE COURT: Ms. Burton.

11 MS. BURTON: I'm not offering them for the
12 size. I'm just offering them as a
13 representation by the photograph.

14 THE COURT: Unless we know that that is
15 the correct size, it may be a little
16 misleading.

17 MS. BURTON: I think the jury can be
18 instructed that they're not being offered for
19 the size.

20 THE COURT: What are they being offered
21 for?

22 MS. BURTON: They're being offered to show
23 the fragments, the number of the whole
24 fragments.

25 THE COURT: Fragments?

1 MS. BURTON: Yes, sir, that they were
2 fragments.

3 THE COURT: I'm going to sustain that
4 objection. The objection is sustained.

5 Do you want me to mark that?

6 MS. BURTON: Yes, sir.

7 THE COURT: It will be marked Defendant's
8 Exhibit A refused unless you're going to have
9 somebody else to authenticate it.

10 Any redirect?

11 MR. CUTHBERT: Yes, sir.

12
13 REDIRECT EXAMINATION

14 BY MR. CUTHBERT:

15
16 Q Dr. Kay, was one of those fragments that
17 we've just talked about -- was one of them found in
18 Christie Green's abdominal aorta?

19 A Yes.

20 MR. CUTHBERT: Thank you.

21 THE COURT: Dr. Kay, thank you very much.
22 Can Dr. Kay be excused?

23 MR. CUTHBERT: Yes, sir.

24 THE COURT: Do you have anymore questions?

25 MS. BURTON: Yes, sir.

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1 THE COURT: Go ahead.

2 MS. BURTON: I thought you were asking if
3 she could be excused.

4 THE COURT: No. I was asking if you had
5 any other questions of Dr. Kay.

6 MS. BURTON: Oh, no, sir.

7 THE COURT: Dr. Kay, you may step down.
8 You are free to leave if you would like to
9 leave.

10 THE WITNESS: Thank you, Your Honor.

11

12

WITNESS STOOD ASIDE

13

14
15 MR. CUTHBERT: Your Honor, I call Officer
16 Provost as our next witness.

17 THE COURT: Eugene Provost?

18 MR. CUTHBERT: Yes, sir.

19

20

21

22

23

24

25

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1 EUGENE J. PROVOST, a Witness, called by the
2 Plaintiff, first being duly sworn, testified as
3 follows:
4

5 DIRECT EXAMINATION

6 BY MR. CUTHBERT:
7

8 Q Officer Provost, good afternoon, sir.

9 A Good afternoon, sir.

10 Q Would you please tell the members of the
11 jury your name.

12 A Eugene J. Provost.

13 Q Your occupation?

14 A Police officer, Richmond Police.

15 Q Did you bring some physical evidence with
16 you today?

17 A Yes, I did.

18 Q Among the physical evidence, is there a
19 kitchen door?

20 A That's correct.

21 MR. CUTHBERT: Your Honor, I have movers
22 here to bring that into the courtroom if I may.

23 THE COURT: Any objection?

24 MS. BURTON: No, sir.

25 THE COURT: All right.

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1 Q Would you tell the movers where the
2 kitchen door is, so they can bring it in.

3 A Yes, sir.

4 If you go out the door, the sheriff's
5 department has it.

6 THE COURT: Mr. Braxton, will you assist
7 the movers or take the movers to where the door
8 is?

9 MR. CUTHBERT: Your Honor, if I may, I'll
10 just continue until he gets here.

11 THE COURT: That's fine.

12 BY MR. CUTHBERT:

13 Q Did you also bring with you the dead bolt
14 latch bolt -- the actual dead bolt latch bolt from
15 the kitchen door?

16 A I brought a number of things, yes, sir.

17 Q Would you identify, please, in your items
18 the dead bolt latch bolt and also the knob throw both
19 from the back door. If it is of any help to you, I
20 believe that the dead bolt latch bolt is number 27
21 and that the knob throw is number 13.

22 A That's correct for number 27, and that's
23 correct for number 13 also. Yes, sir.

24 THE COURT: Do you want that up here?

25 MR. CUTHBERT: Yes, sir, with your

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1 permission.

2 THE COURT: You can bring the door up.
3 Mr. Braxton will open the gate for you.

4 Do you need Officer Provost to step down?

5 MR. CUTHBERT: Yes, sir. That would be
6 helpful.

7 THE COURT: Officer Provost, you can step
8 down.

9 MR. CUTHBERT: Now, if we could, orient
10 the door so that the outside is towards the
11 jury.

12 THE COURT: Please be careful with the
13 carpet.

14 BY MR. CUTHBERT:

15 Q That's the bottom of the door that we have
16 at the top; correct?

17 A That's correct.

18 Q Now we have it oriented. This is the door
19 from the outside; correct?

20 A That's correct.

21 Q Is it possible to remove that tape, so
22 that the jury can see the hole in the door?

23 MS. BURTON: I'm going to object, Your
24 Honor. That particular portion of the door has
25 been -- first, it was in cardboard as I recall.

1 Now it's been taken apart two or three times.
2 Every time you take it apart, it changes. So
3 the hole in the door is probably much larger
4 than it started out with, than it was when --

5 THE COURT: Mr. Cuthbert.

6 MR. CUTHBERT: Your Honor, there's a court
7 order to preserve it.

8 THE COURT: Do you know whether what
9 Ms. Burton just said is accurate?

10 MR. CUTHBERT: I do not know, sir.

11 THE COURT: Do you know if Officer Provost
12 can confirm whether it is or is not accurate?

13 MR. CUTHBERT: I don't know, but I will
14 ask him.

15 THE COURT: All right.

16 MR. CUTHBERT: May the tape be removed and
17 I would ask?

18 THE COURT: No. Just ask him before you
19 remove the tape.

20 BY MR. CUTHBERT:

21 Q Officer Provost, have you looked under
22 that tape recently?

23 A No, sir.

24 Q When was the last time you looked under
25 the tape?

1 A We had a viewing in the property room over
2 a year ago.

3 MR. CUTHBERT: Well, Your Honor, if I may
4 ask the movers just to bring the door -- leave
5 the tape in place, bring the door forward, and
6 let the jury see it, let the jury see the side
7 of it, let the jury see the back of it, then I
8 will ask the movers to remove the door. We
9 have photographs.

10 THE COURT: That's fine. If any members
11 of the jury need to stand in order to see the
12 entire door, that's fine.

13 You just want the jury to observe all of
14 the door; is that correct?

15 MR. CUTHBERT: Yes, Your Honor, that's
16 correct.

17 MS. BURTON: Your Honor, I'd like the
18 record to reflect that it took two individuals
19 to move that door.

20 THE COURT: I'm sorry?

21 MS. BURTON: I'd like the record to
22 reflect that it took two individuals to move
23 the door.

24 THE COURT: Well, the record will reflect
25 that two individuals moved the door. I don't

1 know if you want to test them to see if one can
2 do it or not. They look like they don't want
3 to be tested. They're looking at me. They
4 don't want to be tested.

5 A MOVER: No, sir.

6 BY MR. CUTHBERT:

7 Q Officer Provost, would you come over here
8 where I am. Just so there's no misunderstanding,
9 would you point please to the dead bolt lock.

10 A This is the dead bolt lock. This is the
11 knob here.

12 Q Underneath this tape and so on are the
13 openings through which the dead bolt latch bolt came
14 originally; is that correct?

15 A Right. There's cardboard around here.
16 This is all taped.

17 Q Then, of course, there's another opening
18 at -- I'll call it 3:00 as one looks at the doorknob.
19 That opening represents the doorknob throw or would
20 be the passageway to the doorknob throw; is that
21 correct?

22 A That's correct.

23 MR. CUTHBERT: Your Honor, I think that
24 does what I needed.

25 THE COURT: Ms. Burton, do you need the

1 door for any purpose in your cross-examination?

2 MS. BURTON: No, sir.

3 THE COURT: So you don't object to the
4 door being removed then?

5 MS. BURTON: No, sir.

6 THE COURT: Thank you very much.

7 Gentlemen, thank you very much. We
8 appreciate your help.

9 MR. CUTHBERT: You gentlemen can put the
10 door back where you got it from. Thank you
11 very much.

12 THE COURT: All right. Officer, you can
13 come back to the witness stand.

14 BY MR. CUTHBERT:

15 Q Officer, I'm going to hand you Plaintiff's
16 Exhibit 5 and ask you whether this is a copy of the
17 product literature or the first page of the product
18 literature of the manufacturer of the door that we've
19 just looked at.

20 THE COURT: Ms. Burton, do you know what
21 it is?

22 MS. BURTON: (Nods in the affirmative.)

23 THE COURT: All right. You can approach.

24 A Yes, this is the SLC-5 Stave Lumber, just
25 a solid core door.

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1 Q Would you please read to the jury the very
2 top paragraph on that sheet that you have in front of
3 you.

4 A Where it says solid lumber, or are you
5 talking about --

6 Q Where it says Algoma's architectural Stave
7 Lumber Core door...

8 A Okay. Algoma's architectural Stave Lumber
9 Core door features a kiln dried low density wood
10 block core, which is sanded together under side
11 pressure using the high frequency cured method. Then
12 it says, Solid lumber stills and rails are securely
13 bonded to this core under side pressure with the same
14 high frequency method of cure. To ensure strength,
15 ridgity, and freedom from telegraphing of core parts,
16 this utilized core is then sanded before hot pressing
17 a crossband and face on each side of the core
18 assembly. This side here is all -- I mean, the words
19 are missing.

20 Q Do you have your copy?

21 A Yes. I have my copy also, but mine is in
22 the same condition on that side.

23 MR. CUTHBERT: That's fine.

24 Your Honor, I move into evidence this
25 document if I may.

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1 THE COURT: Any objection, Ms. Burton?

2 MS. BURTON: No, sir, but I think my copy
3 is a little bit more legible.

4 THE COURT: Let's see. Do you want to
5 compare? Any objection?

6 MS. BURTON: No, sir.

7 THE COURT: That will be Plaintiff's
8 Exhibit 5.

9
10 (Plaintiff's Exhibit 5 is received.)
11

12 BY MR. CUTHBERT:

13 Q Officer Provost, would you please look for
14 that dead bolt latch bolt and knob throw that you
15 have with you?

16 A That's actually in the sergeant's office
17 also if you'd like me to get that, sir.

18 Q Well, maybe we can go through the rest of
19 your testimony.

20 I'm not sure how Your Honor would care to
21 handle this. Maybe Mr. Braxton can bring it if
22 that's all right. I'm sorry.

23 THE COURT: This can be moved by one
24 person?

25 MR. CUTHBERT: Yes, sir, absolutely.

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1 Q I'm going to hand you a number of
2 photographs. For purposes of identification, I have
3 marked them as Plaintiff's Exhibits 6.1 through 6.10,
4 also 7.1 through 7.3, and also 6.13. I'll ask you if
5 you recognize them.

6 THE COURT: Let Ms. Burton see them.

7 Q Would you be looking for the dead bolt
8 latch bolt, please, and the doorknob throw. Do you
9 have both of those items there?

10 A Yes, sir, I do.

11 Q Are they in the same condition -- excuse
12 me. Where did you find them? How is it they came
13 into your possession?

14 A They were at 1112 Dove Street,
15 Apartment C. I recovered them when I processed the
16 crime scene.

17 Q Are they in the same condition now as when
18 you retrieved them from the scene?

19 A Yes, they are.

20 MR. CUTHBERT: Your Honor, I move these
21 two items into evidence as our next exhibit.
22 I'd like, if I may, to have them passed to the
23 jury for the jury to look at.

24 THE COURT: How many things do you have?

25 THE WITNESS: I don't remember -- 13 which

1 is the --

2 THE COURT: All right. They'll be
3 admitted as Plaintiff's Exhibits 6 and 7.

4 I'm sorry. Any objection?

5 MS. BURTON: What are the specific items?

6 THE WITNESS: Number 13 and number 27.
7 Number 27 is the dead bolt throw, and number 13
8 is the locking device for the front door -- for
9 the knob lock.

10 MS. BURTON: For the front door or the
11 kitchen door?

12 THE WITNESS: I mean kitchen doorknob
13 lock.

14 MS. BURTON: No objection.

15 THE COURT: All right. Plaintiff's 6 and
16 7 are admitted, counsel, maybe with the
17 understanding that at the end of the trial the
18 officer can have them back. They will not stay
19 with the Court.

20 MR. CUTHBERT: Yes, sir.

21
22 (Plaintiff's Exhibits 6 and 7 are received
23 and published to the jury.)
24
25

1 BY MR. CUTHBERT:

2 Q Mr. Provost, just so the record is clear,
3 I want to ask you about the bag that's marked
4 Plaintiff's Exhibit 6 and ask you whether it contains
5 the latch bolt from the dead bolt. This is item
6 number 27.

7 A That's correct, it contains the throw.

8 Q With this jagged metal end at one end?

9 A Yes, sir.

10 Q The other end is undamaged; correct?

11 A That's correct.

12 Q The undamaged end was the end that went
13 into the doorjamb; is that your understanding?

14 A That's correct.

15 Q The end that is jagged was attached to the
16 dead bolt lock before it was damaged; is that your
17 understanding?

18 A That's correct.

19 Q Where did you find this item, this dead
20 bolt latch bolt? It was in the apartment; wasn't it?

21 A That's correct. It was found in the
22 kitchen area.

23 Q On the floor in the kitchen area?

24 A That's correct.

25 Q Now, the other item which is in the bag

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1 marked Plaintiff's Exhibit 7, is that the throw from
2 the knob?

3 A That's correct. That's number 13.

4 Q Right. It has a little bit of a spring to
5 it; is that correct?

6 A That's correct.

7 Q Does it show any evidence of having been
8 hit by a frangible round?

9 A I don't know.

10 Q Do you see any? Do you see any metal
11 damage?

12 MS. BURTON: I would like to object to the
13 question. First of all, proper foundation has
14 not been laid. This witness has not been
15 offered as an expert.

16 MR. CUTHBERT: I will withdraw the
17 question.

18 THE COURT: Objection sustained.

19 Q Did you also retrieve any No. 22 T.K.O.'s
20 from the police force as part of your gathering of
21 evidence, that is, unfired No. 22 T.K.O.'s?

22 A Yes, I did recover -- actually, it was
23 turned over from Sergeant Buckovich to myself -- or
24 now Lieutenant Buckovich -- T.K.O. rounds.

25 Q These are unfired rounds; correct?

1 A That's correct, sir.

2 Q How many of those did you get possession
3 of, unfired No. 22 T.K.O.'s? Perhaps you could give
4 me an approximate number.

5 A On voucher number 9871111, I have five
6 shotgun 22 -- No. 22 T.K.O. frangible slugs.

7 Q Thank you very much. Let me ask you to
8 turn to -- are you comfortable with that answer?

9 A Well, actually, I have more than that.
10 Then I have an item three, which is -- it says,
11 T.K.O. rounds, which I believe was also recovered. I
12 think it should be a box.

13 Q That's fine. Let me ask you to turn to
14 your credentials for a moment in crime scene
15 investigation. Would you please tell the jury about
16 your experience and training in that area.

17 A In the Richmond Police Department, my job
18 or responsibilities are to go to a crime scene and to
19 photograph and document the crime scene as I find it
20 when I arrive.

21 Q How long have you been doing this job?

22 A I've been doing this job for approximately
23 four to five years.

24 Q As of December 29, 1998, approximately how
25 long had you been doing this job?

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1 A About four years.

2 Q What kind of training had you had to do
3 the job of investigating crime scenes?

4 A I've gone to the forensic academy, which
5 is a ten-week course that's put on through the State
6 Crime Lab.

7 Q Are you familiar with the term "trajectory
8 analysis"?

9 A Yes, I am, sir.

10 Q Would you tell the jury what the term
11 "trajectory analysis" means, please.

12 A The "trajectory analysis" is the study of
13 the point of -- from the point where a bullet has
14 passed through a projectile -- the projectile goes
15 through a barrel. Then it travels. That traveling
16 distance from the time that it is discharged until
17 the time that it's stopped is the trajectory of a
18 path of a bullet.

19 Q Have you had any specialized training in
20 reconstructing the trajectory of gunshots?

21 A Just the training that I've had, sir, at
22 the Forensic Academy.

23 Q What did that training involve?

24 A It just gives us a tool to use to recover
25 evidence. What we do is we look at the trajectory of

1 a bullet or the trajectory of an item. So this way
2 we can determine where the most likely point for this
3 point is that we can find, whether it be a bullet or
4 a wadding or any part of the expelled item that came
5 through the barrel.

6 Q In investigating the crime scene in
7 connection with the death of Christie Green, did you
8 perform a trajectory analysis?

9 A Yes, I did.

10 MR. CUTHBERT: Your Honor, I will offer
11 Detective Provost as an expert in crime scene
12 reconstruction, including trajectory analysis.

13 MS. BURTON: I wasn't aware that this
14 detective had agreed to serve as Mr. Cuthbert's
15 expert witness.

16 THE COURT: Well, is that your objection?

17 MS. BURTON: He's not listed for a
18 trajectory analysis. Mr. Cuthbert did not
19 provide disclosures for trajectory analysis.

20 THE COURT: May I have the designation for
21 Officer Provost?

22 MS. BURTON: Just crime scene
23 reconstruction.

24 MR. CUTHBERT: I think item five under B
25 covers it, Your Honor.

1 THE COURT: Ms. Burton, Mr. Cuthbert is
2 pointing to item five of paragraph B.

3 MS. BURTON: I think we should hear this
4 out of the hearing of the jury.

5 THE COURT: I'm sorry? We need to do this
6 outside the presence of the jury?

7 MS. BURTON: Yes, sir.

8 THE COURT: Members of the jury, I'm going
9 to ask that you go into the jury room for just
10 a few minutes while I take this matter up with
11 counsel. It should not take us very long.
12 Please do not discuss the case.

13
14 (The jury exits.)

15
16 THE COURT: Officer Provost, I'm also
17 going to be very impolite and ask that you go
18 out into the hall while we talk about you.
19 We'll try not to keep you out there too long.
20 Please do not discuss the case.

21
22 (Officer Provost exits.)

23
24 THE COURT: Ms. Burton.

25 MS. BURTON: Your Honor, first of all, I

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1 think you have to ask the witness, Officer
2 Provost, if he wants to be an expert. If he's
3 not agreed to be an expert, then he can't
4 testify as an expert.

5 THE COURT: Isn't that up to Officer
6 Provost?

7 MS. BURTON: Yes, sir, it's up to Officer
8 Provost. Perhaps he doesn't know that. I
9 don't think that the --

10 THE COURT: Mr. Cuthbert showed me a
11 designation. He was designated.

12 MS. BURTON: He can designate him. The
13 person can't testify as an expert if the person
14 hasn't agreed to be an expert.

15 THE COURT: If that's the objection, that
16 should have been brought up before now. What
17 else do you have?

18 MS. BURTON: Well, Mr. Cuthbert has
19 related to me -- he said B5, facts and opinions
20 stated by this witness during the trial... Was
21 Mr. Provost allowed to testify as an expert
22 during that trial? We didn't participate in
23 that trial. Of course, any disclosures that
24 were pertinent to --

25 THE COURT: You say you did not

1 participate?

2 MS. BURTON: No, we did not participate
3 because the case was bifurcated. So I don't
4 know why we would have any reason to know what
5 opinions he discussed or was asked.

6 THE COURT: Well, do you want to voir dire
7 Officer Provost as to whether he's agreed to
8 testify in this case as an expert?

9 MS. BURTON: Yes, sir.

10 THE COURT: All right.

11 MR. CUTHBERT: Your Honor, he's already
12 testified to what I'm going to ask him about.
13 He's testified about it in the deposition I
14 took.

15 THE COURT: I understand. You don't think
16 that Ms. Burton is correct that no one can
17 testify as an expert witness without that
18 person's agreement?

19 MR. CUTHBERT: I think as far as that
20 goes, yes, sir, but he's already testified to
21 this.

22 THE COURT: I understand. The fact that I
23 testified as an expert in a case involving John
24 Jones yesterday doesn't mean that you can make
25 me testify in a case involving Jane Jones

1 today; does it? Isn't that truly a contractual
2 matter between the expert and the party?

3 MR. CUTHBERT: Well, would Your Honor do
4 the voir diring of Officer Provost?

5 THE COURT: I know what you're afraid of.
6 I try to stay out of these things as much as I
7 can.

8 MR. CUTHBERT: It all depends on how the
9 question is asked.

10 THE COURT: Well, Ms. Burton knows what
11 she can and cannot get away with. She's an
12 officer of the court. She's not going to ask
13 any improper questions or ask any questions in
14 an inappropriate way.

15 MS. BURTON: What question are you all
16 afraid that I might ask?

17 THE COURT: It's a very straightforward
18 question. Let's see what happens.

19 You can bring Officer Provost in.

20 Why don't you let Ms. Burton have the
21 podium if she needs the podium?

22 MR. CUTHBERT: Yes, sir.

23
24 (Officer Provost enters.)
25

1 THE COURT: Officer, we need to ask you a
2 few questions outside the presence of the jury.

3 THE WITNESS: Yes, sir.

4
5 CROSS-EXAMINATION

6 BY MS. BURTON:

7
8 Q Officer Provost, have you ever had any
9 discussions with Mr. Cuthbert about testifying as an
10 expert witness for the plaintiff in this case?

11 A No, I have not.

12 Q Have you agreed to testify as an expert
13 witness for Mr. Cuthbert in this case?

14 A No, I have not.

15 THE COURT: Would you like to agree to do
16 that now?

17 THE WITNESS: No, sir.

18 THE COURT: Any other questions?

19 MS. BURTON: I would like to know --
20 nothing.

21 THE COURT: Mr. Cuthbert, any other
22 questions on qualifications?

23 MR. CUTHBERT: No, sir. I think we may
24 get to the same point just by asking about the
25 facts. I'm not sure that it's necessary.

1 THE COURT: All right. Why don't we stand
2 in recess for an additional eight minutes.
3 We'll stand in recess until 20 minutes after
4 4:00.

5 Officer, you may step down. Please don't
6 talk to any of the lawyers or witnesses or
7 parties in the case for the next eight minutes.

8
9 (Recess taken.)

10
11 THE COURT: All right. Where is Officer
12 Provost?

13
14 (Officer Provost enters.)

15
16 MR. CUTHBERT: Your Honor, any idea how
17 long we're going to go today?

18 THE COURT: I don't know how long you're
19 going to be with Officer Provost.

20 MR. CUTHBERT: I guess ten minutes.

21 THE COURT: Do you have any other fairly
22 short witnesses we can do today?

23 MR. CUTHBERT: Yes, sir. I'd like to call
24 Ms. Katina Green today.

25 THE COURT: I'd like to see if we can go

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1 until at least 5:00, maybe not much longer than
2 that. Based on what we've done so far today,
3 do you think that we're on schedule?

4 MR. CUTHBERT: Yes, sir.

5 THE COURT: Do you have any other argument
6 that you'd like to make with regard to Officer
7 Provost?

8 MR. CUTHBERT: No, Your Honor.

9 THE COURT: Thank you.

10 You can bring the jury in, please.

11
12 (The jury enters.)

13
14 THE COURT: Members of the jury, you'll
15 learn over the course of the next few days:
16 Sometimes when I say something is not going to
17 take very long, sometimes it takes a little bit
18 longer than I think. I apologize to you for
19 that. Please do not hold it against the
20 parties or the lawyers. It is always my fault.

21 Go ahead, Mr. Cuthbert.

22 MR. CUTHBERT: Thank you.

1 REDIRECT EXAMINATION

2 BY MR. CUTHBERT:

3
4 Q Officer Provost, let me return to the
5 photographs if I may. I believe you have in front of
6 you photographs that are marked for purposes of
7 identification in the bottom right-hand corner 6.1
8 through 6.10 and then 6.13 and then 7.1 through 7.3.
9 Is that correct?

10 A That's correct, sir.

11 Q Did you take photographs 6.1 through 6.10
12 and 6.13?

13 A Yes, sir.

14 Q Do all of those photographs fairly and
15 accurately depict aspects of the apartment where
16 Christie Green died as of December 29, 1998?

17 A Yes, they do.

18 MR. CUTHBERT: Your Honor, I move the
19 introduction of these photographs into
20 evidence.

21 THE COURT: Separately or collectively?

22 MR. CUTHBERT: I defer to Your Honor's
23 judgment. I believe individually might be
24 easier.

25 THE COURT: Any objection, Ms. Burton?

1 MS. BURTON: Yes, sir. I believe there's
2 one photograph that needs to come out based on
3 an earlier ruling that you made. This is the
4 photograph 6.10. Plaintiff's Exhibit 6.10 we
5 do have an objection to.

6 THE COURT: What's your objection?
7

8 (The following proceedings were had at the
9 bench between Court and counsel:)

10
11 MS. BURTON: The objection is that that's
12 the living room. You ruled this could not be
13 discussed.

14 THE COURT: What?

15 MR. CUTHBERT: This damage here could not
16 be discussed. It was not a part of this case.

17 THE COURT: Mr. Cuthbert, did you hear?

18 MR. CUTHBERT: Yes, Your Honor.

19 THE COURT: She's saying this damage is
20 not a part of this case.

21 MR. CUTHBERT: I think that it is. I
22 think it's part of what was going on.

23 THE COURT: Where is the kitchen in
24 relation to this?

25 MR. CUTHBERT: The kitchen is around the

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1 corner here.

2 THE COURT: What's the relevance of this?
3 Are you going to have some testimony that this
4 is part of this case?

5 MR. CUTHBERT: In the sense that what is
6 shown there took place.

7 THE COURT: Why do we need to see that in
8 light of the other pictures and testimony we've
9 had? What's the importance of that?

10 MR. CUTHBERT: Your Honor, it helps to
11 document what was going on at the front door at
12 the same time.

13 THE COURT: You just want to make sure the
14 jury doesn't believe that this was part of the
15 rounds that Sergeant Ingram shot?

16 MS. BURTON: You have already ruled that
17 damage in that area is not relevant to any
18 issue in this case.

19 THE COURT: I understand. If that's the
20 only thing that you're concerned about, I'm
21 just trying to balance -- not the equities, but
22 just balance the rights of the parties. If
23 this is the only picture that shows the entire
24 inside -- well, this portion of the inside of
25 the apartment -- if this is the only objection

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1 you have, we can make sure the jury knows that
2 this was not caused by those shots and let them
3 see this. If there's some other objection, let
4 me know what it is.

5 MS. BURTON: We can solve the whole thing
6 by just redacting that portion of the picture.

7 THE COURT: Is that the only problem you
8 have, that portion of the picture?

9 MS. BURTON: Yes, sir, based on the ruling
10 that you made.

11 THE COURT: Okay. Well, I'm just not sure
12 I understand why --

13 MS. BURTON: May we come around?

14 THE COURT: I beg your pardon?

15 MS. BURTON: May we come around?

16 THE COURT: No. That won't do me any
17 good.

18 All right. I'm going to allow this. Do
19 you want the jury to see it now?

20 MR. CUTHBERT: Yes, sir.

21 THE COURT: Well, they can look at all of
22 them, except this one. Then at the next recess
23 we'll talk about that. I don't want to send
24 the jury back out right now. At the next
25 recess we'll talk about this one. If we need

1 to mark it separately, then they can look at
2 this one later.

3 MS. BURTON: Just give it to the jury as
4 shown without any reference.

5 THE COURT: I want to know if you object.

6 MS. BURTON: Oh, no, I don't object.

7
8 (Thereupon, the following proceedings
9 continued within the hearing of the jury:)

10
11 THE COURT: All right. They'll be
12 admitted. You can go ahead and show them to
13 the jury now.

14 Does it make any difference what order
15 these are in, Mr. Cuthbert?

16 MR. CUTHBERT: I don't think so, Your
17 Honor.

18 THE COURT: All right.

19
20 (The photographs are published to the
21 jury.)

22
23 THE COURT: All right, Mr. Cuthbert.

24 MR. CUTHBERT: Thank you, sir. If Officer
25 Provost could have those photographs back so he

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1 could describe each one.

2 THE COURT: Let me go ahead and put
3 numbers on them. Then as he does, he can refer
4 to them with the exhibit numbers.

5 MR. CUTHBERT: Would Your Honor put the
6 Court's number beside the plaintiff's exhibit
7 number?

8 THE COURT: I'm afraid I'm covering up the
9 plaintiff's exhibit number. Now they are court
10 numbers.

11
12 (Plaintiff's Exhibits 8 through 17 are
13 received.)

14
15 BY MR. CUTHBERT:

16 Q Officer Provost, let me ask you if you
17 would locate the photograph that looks like this,
18 please. What is the exhibit number of that, please?

19 A It says Plaintiff's Exhibit 17.

20 Q All right. Would you hold Plaintiff's
21 Exhibit 17 up to the jury and tell the jury what that
22 represents.

23 A This is the side door or the same side as
24 the kitchen. The door opens on the right-hand side
25 and swings to the left, so it's a left-handed door.

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1 Q That's the outside of the kitchen door; is
2 that correct?

3 A That's correct.

4 Q Now, would you find this one, please, and
5 tell the jury what that is.

6 MS. BURTON: Do you have a number,
7 Mr. Cuthbert?

8 MR. CUTHBERT: I have 6.2.

9 THE COURT: She just wants to see what it
10 is.

11 BY MR. CUTHBERT:

12 Q Do you have that one, Officer Provost?

13 A Yes, sir, I do, sir.

14 Q What is the number on that, please?

15 A This is Number 16.

16 Q Is that a close-up view of what we just
17 saw?

18 A That's correct.

19 Q Would you hold that up for the jury. So
20 that's the way the outside of the kitchen door
21 appeared when you were at the scene that night; is
22 that the case?

23 A Yes, sir, it was.

24 Q Now, go to, please, this photograph. Do
25 you have that, sir?

1 A Yes, sir. It's Exhibit 15.

2 Q Would you hold Exhibit 15 up for the jury
3 and tell the jury what Exhibit 15 shows.

4 A This is the interior side of the same
5 door, of the kitchen door.

6 Q All right. Thank you. Would you please
7 find the photograph that looks like this. It's got
8 the number 55 on it. What's the number on that?

9 A Exhibit 14.

10 Q It sounds like we're counting down from my
11 numbers. So maybe that will help you find them from
12 this point on. In any event, what is Exhibit 14?

13 A Exhibit 14 is a picture of the, I guess,
14 damage to the door with a scale.

15 Q Is that the inside of the kitchen door?

16 A That's correct.

17 Q Thank you. Would you, please, look for
18 this photograph next. Perhaps it's number 13.

19 A Yes, sir.

20 Q What's that exhibit number?

21 A Exhibit 13.

22 Q Would you hold that up for the jury and
23 tell the jury what that shows.

24 A This is the dead bolt throw.

25 Q So that's the latch bolt that was

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1 connected to the dead bolt; is that correct?

2 A That's correct.

3 Q On the kitchen door?

4 A That's correct.

5 Q Would you go, please, to the photograph
6 that looks like this.

7 A Yes, sir.

8 Q What's the number on that?

9 A Number 12, sir.

10 Q Would you, please, tell the jury what
11 Exhibit 12 shows.

12 A Yes. This is the latch for the knob lock,
13 and this was found in the apartment in the kitchen
14 area.

15 Q So those last two photographs that we've
16 talked about, are they photographs of the dead bolt
17 latch bolt and the knob throw that are in those bags
18 that we passed around to the jury?

19 A That's correct.

20 Q Would you please look at the photograph
21 that looks like this and tell the jury what it shows.

22 A Exhibit 10?

23 Q Yes, sir. What does that show, please?

24 A This shows the right corner of the
25 kitchen, the kitchen cabinets, the shelving area or

1 countertop of the kitchen, and the right wall in the
2 kitchen if you're looking inward.

3 Q If you were standing at the kitchen door
4 and looking into the kitchen; correct?

5 A That's correct.

6 Q Look, please, with me at this photograph.

7 A Exhibit 11.

8 Q All right. Would you hold that up for the
9 jury and tell the jury what that represents.

10 A This is the interior of the kitchen door.
11 There's a light switch on the wall. The door opens,
12 again, inward to the left.

13 Q Would you take a look, please, for this
14 photograph.

15 A It's Exhibit 8.

16 Q Hold that up for the jury, please, and
17 tell the jury what Exhibit 8 represents.

18 A Exhibit 8, again, represents the right
19 corner looking in from the doorway, again, the
20 kitchen cabinets, the countertop, bread box at the
21 right wall.

22 Q Now, would you hold up side by side or
23 together, please, Exhibits 11 and 8 and tell the jury
24 what those show, how they relate to each other.

25 A This is the front door -- I mean, excuse

1 me. This is the kitchen door, the side door of the
2 apartment. Again, this is the counter or that right
3 corner that you can see from the kitchen door
4 inwards. The lines that you see running through here
5 are the trajectory or the path of the wadding and
6 debris that came through the door.

7 Q As part of your investigation, you put
8 those strings on the kitchen door and on the cabinet
9 fronts?

10 A That's correct.

11 Q What was your purpose in doing that?

12 A Again, part of my job in forensic or crime
13 scene reconstruction is to collect evidence. The
14 reason that it was strung is as an enhancing tool to
15 collect as much evidence as I can.

16 Q How did you decide where to place the
17 strings that we see in Plaintiff's Exhibit 8. The
18 ends of those strings, how did you select those
19 particular points to attach the string ends?

20 A What I looked at is I looked at the
21 indentations of the cabinets and where the debris or
22 the items were struck or actually hit the cabinet.
23 What I did was I followed that back to the door to
24 give me an angle of the trajectory that the debris
25 came through the door.

1 Q Then did you measure those angles?

2 A Yes, I did.

3 Q What did you determine those angles to be
4 along these strings? Would it help you if I were to
5 give you a paper I've marked for purposes of
6 identification Plaintiff's Exhibit 6.12?

7 THE COURT: Any objection to the witness
8 being shown that paper?

9 MS. BURTON: No, sir.

10 THE COURT: Why don't you go ahead and
11 show it to him?

12 Okay. He has it now.

13 Q You have that, sir?

14 A Yes, sir.

15 Q What did you determine those angles to be,
16 please, along the strings?

17 A 30-degrees, 28, 25, and 10.

18 Q Those are down angles; is that right?

19 A That's correct.

20 Q So the least shallow of angles that you
21 measured is 10-degrees down; is that the case?

22 A That's correct.

23 Q The most steep is 30-degrees down; is that
24 the case?

25 A That's correct.

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1 Q You measured a total of four angles; is
2 that the case?

3 A That's correct.

4 MR. CUTHBERT: Your Honor, while I am at
5 it, I would like to put into evidence the sheet
6 that the officer has just testified to.

7 THE COURT: Any objection?

8 MS. BURTON: No, sir.

9 THE COURT: All right. That will be
10 admitted as Plaintiff's Exhibit 19.

11

12 (Plaintiff's Exhibit 19 is received.)

13

14 Q While we're on Plaintiff's Exhibit 19, how
15 is it that you went about placing the marks that we
16 see on Plaintiff's Exhibit 19? Is that document
17 intended to be to scale?

18 A Yes, sir.

19 Q In general, is each square equal to
20 6-inches?

21 A Yes, sir.

22 Q So count up with me to the highest of the
23 points of impact that you've identified in your
24 investigation, that is, the end of the string that
25 says 10-degrees. Approximately how high from the

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1 floor is the end of that string?

2 A Like 3-feet.

3 Q A little bit less than 36-inches?

4 A That's correct.

5 Q Now, let's go back to the other
6 photographs, the one that looks like this that has
7 the number 46 on it. Do you have that in front of
8 you?

9 A Yes, sir, I do.

10 Q Now, what does that photograph 46
11 represent?

12 A This is the interior of the -- this is an
13 interior shot of the door.

14 Q Of the front door?

15 A Correct.

16 Q What is the exhibit number on that again?

17 A Exhibit 9.

18 Q Would you hold Exhibit 9 up for the jury,
19 so they can see what the interior of the front door
20 looked like when you were there.

21 MS. BURTON: I'm sorry, Your Honor.

22 Objection. What's the relevance of the front
23 door?

24 THE COURT: I don't know. It's already an
25 exhibit; isn't it?

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1 MR. CUTHBERT: Yes, sir.

2 Q Would you please look at the three
3 photographs of the exterior of the building. Let's
4 start with the one I've marked as 7.1. It's a shot
5 across the front of the building I believe.

6 A Yes, sir.

7 Q What is the exhibit number on that?

8 A Excuse me.

9 Q What is the exhibit number on that,
10 please?

11 A It's Plaintiff's Exhibit 7.1.

12 Q I believe the Court gave it a number.

13 A No.

14 Q Oh, I'm sorry. We haven't put those into
15 evidence. I'm sorry.

16 THE COURT: Oh, it's not come into
17 evidence? These are different than the ones we
18 just talked about?

19 MR. CUTHBERT: These are different, yes,
20 sir. There are three of them, Your Honor.

21 THE COURT: All right. Show them to
22 Ms. Burton.

23 Any objection, Ms. Burton?

24 MS. BURTON: No, sir.

25 THE COURT: All right. They will be

1 admitted then as Plaintiff's Exhibits 20, 21,
2 and 22.

3 For your information, Mr. Cuthbert, 7.1 is
4 20; 7.2 is 21; and 7.3 is 22.

5 MR. CUTHBERT: Thank you, Judge.

6 BY MR. CUTHBERT:

7 Q Would you hold up Plaintiff's Exhibit 20,
8 please, show that to the jury, and tell the jury what
9 that represents.

10 A This shows the front of the building.
11 This is 1112 Dove Street, Apartment C right here, and
12 that's the front door.

13 Q When you say right here, it's the door on
14 the left?

15 A It's the door on the left.

16 Q Let's go to Exhibit 21. Tell the jury,
17 please, what that represents.

18 A Exhibit 21 would be the north side of the
19 building or where the kitchen door is. It's the side
20 of the building.

21 Q Now, which of the white rectangles is the
22 kitchen door there?

23 A It's the one where my finger is.

24 Q All right, sir. With the light
25 immediately to its right, is that correct?

1 A That's correct.

2 Q Look at Exhibit 22. Hold that up for the
3 jury and tell the jury what that represents.

4 A Exhibit 22 is going to show you part of
5 the north side of the building and also the west side
6 of the building of 1112 Dove Street, Apartment C.

7 MR. CUTHBERT: We still have Plaintiff's
8 Exhibit 6.10 to talk about.

9 THE COURT: Any other questions for the
10 officer?

11 MR. CUTHBERT: No, sir, I do not have any
12 other questions.

13 THE COURT: Members of the jury, I hate to
14 do this to you again. I have to ask that you
15 go back into the jury room for just a minute.
16 I promise you: This won't take very long.

17

18 (The jury exits.)

19

20 THE COURT: Ms. Burton, I know you wanted
21 to have a bench conference. As strange as it
22 might sound, my hearing is such that I can hear
23 you from where you are. I have a hard time
24 hearing whispers. My hearing is not what I
25 would like for it to be.

1 Now, you've objected to what Mr. Cuthbert
2 has marked Plaintiff's Exhibit 6.10. I know
3 you mentioned that these markings on the right
4 door, the door all the way to right side you
5 say have nothing to do with this case. I think
6 Mr. Cuthbert agrees with that.

7 MR. CUTHBERT: No, sir.

8 THE COURT: You do not agree with that?

9 MR. CUTHBERT: I disagree with that, Your
10 Honor. I think they help to document the chaos
11 that was happening at the front.

12 THE COURT: What are the marks on this
13 door?

14 MR. CUTHBERT: Sir?

15 THE COURT: What are the marks on this
16 door? Are they bullet holes?

17 MR. CUTHBERT: Well, they're holes that
18 were formed from shooting through the front
19 door, yes, sir.

20 THE COURT: Shooting what?

21 MR. CUTHBERT: Frangible rounds, but not
22 by Ingram.

23 THE COURT: What's the relevance to it?

24 MR. CUTHBERT: To document, as I say, the
25 chaos that was occurring at the front.

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1 THE COURT: Ms. Burton, what's your
2 objection?

3 MS. BURTON: Well, we objected to this at
4 a hearing on September 30.

5 THE COURT: You mentioned a ruling I had
6 made. I'm not sure what ruling I made. I made
7 one or two rulings in this case. It's hard to
8 keep track.

9 MS. BURTON: At the time Mr. Cuthbert said
10 that he is not going to put on any evidence
11 about whether the rounds at the front door
12 disintegrated or not. That's exactly what that
13 is. It's a picture of the damage from the
14 rounds that fragmented at the living room door.

15 THE COURT: If we make sure the jury
16 understands that this damage was not caused by
17 the rounds that Sergeant Ingram fired, what
18 objection do you have?

19 MS. BURTON: Well, I suppose I would have
20 no objection as long as Mr. Cuthbert didn't
21 argue what the damage was from or present any
22 evidence as to what the damage was from.

23 THE COURT: Are you going to try and argue
24 or make any contention, Mr. Cuthbert, that this
25 damage came from Mr. Ingram's rounds?

1 MR. CUTHBERT: No, sir.

2 MS. BURTON: Or Mr. Wallis' rounds?

3 THE COURT: What?

4 MS. BURTON: Sergeant Wallis was a
5 breacher at the living room door.

6 THE COURT: You're saying this did not
7 come from him?

8 MS. BURTON: That damage came from
9 Sergeant Wallis' rounds.

10 THE COURT: And what?

11 MS. BURTON: Your ruling is simply that
12 Mr. Cuthbert cannot argue that they came from
13 Sergeant Ingram's gun.

14 THE COURT: All right. Mr. Cuthbert has
15 indicated that he's not going to try to --

16 You agree these came from Sergeant Wallis'
17 rounds?

18 MR. CUTHBERT: Absolutely.

19 MS. BURTON: Yes, sir. The point of not
20 going into the rounds malfunctioning at the
21 living room door is that whether the manner
22 that the rounds performed have no bearing on
23 what happened to Christie Green. The manner in
24 which those rounds performed at the living room
25 door have no bearing on what happened to

1 Christie Green. There's not going to be any
2 expert to testify to tie it together.

3 THE COURT: What do you think the jury is
4 going to discern from this picture that you do
5 not want them to discern?

6 MS. BURTON: I think if the jury is given
7 the picture and not told anything about what
8 those holes are, they are not going to discern
9 anything. It will just be a door with some
10 holes in it. They won't know where the damage
11 came from.

12 THE COURT: How will that hurt your case?

13 MS. BURTON: It does not hurt my case. My
14 objection is that if Mr. Cuthbert intends to
15 admit additional evidence explaining where
16 those holes came from, then I object to the
17 picture.

18 THE COURT: You don't want the jury to
19 know these came from Sergeant Wallis' rounds?

20 MS. BURTON: That's correct.

21 THE COURT: Tell me why.

22 MS. BURTON: Well, we think it's more
23 prejudicial to our opposition of the case if
24 the jury thinks that the rounds are doing the
25 same at the front door as at the back door. I

1 think that that gives the jury some basis for
2 determining, which is absolutely incorrect.

3 THE COURT: Mr. Cuthbert, if the Court
4 tells the jury that this damage -- and does not
5 even tell the jury what this damage is -- if
6 the Court simply tells the jury that this
7 damage to the door on the right has absolutely
8 nothing to do with this case, what's your
9 objection to the Court telling the jury that?

10 MR. CUTHBERT: I think it does have
11 something to do with the case, Your Honor. It
12 helps to document, as I say, the chaos that was
13 happening in the living room, which is why the
14 people went back into the kitchen, for
15 sanctuary.

16 Your Honor will hear that the front door
17 breacher finished his job and got the front
18 door open before Sergeant Ingram ever got the
19 back door open.

20 THE COURT: I still don't understand what
21 the damage to the door has to do with anything.

22 MR. CUTHBERT: It just documents, as I
23 say, the chaos in the living room, which would
24 explain why people went back into the kitchen,
25 to try to get out of the way of everything that

1 was happening.

2 THE COURT: You're going to have evidence
3 that they were breaching the living room door?

4 MR. CUTHBERT: Yes, sir.

5 THE COURT: I assume they don't have a
6 silencer on the shotgun. When it breaches
7 doors, it makes noise. So anybody in the
8 apartment knew that they were breaching that
9 living room door?

10 MR. CUTHBERT: Yes, sir.

11 THE COURT: You don't want the Court to
12 tell the jury what I just say the Court will
13 tell the jury?

14 MR. CUTHBERT: That damage does have
15 something to do with the Christie Green case.
16 I think the photograph also is helpful to show
17 the inside dimensions.

18 THE COURT: I think it is too. Unless you
19 are willing to cut this part of the photograph
20 off or unless you're willing to have the Court
21 tell the jury that this damage is not relevant
22 to this case, then I'm going to sustain the
23 objection.

24 MR. CUTHBERT: Let's cut it off then,
25 please.

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1 THE COURT: Do what?

2 MR. CUTHBERT: Cut it off.

3 THE COURT: All right. We'll do that.
4 Would you like for me to cut it off now?

5 Give me the scissors, please.

6 But you want it like it is?

7 MR. CUTHBERT: I want it like it is.

8 THE COURT: Do you have a copy of it like
9 it is that I can put in the record?

10 MR. CUTHBERT: Yes, sir.

11 THE COURT: Then at an appropriate time
12 you can make a copy of that and give it to me.
13 I will make that a part of the record.

14 This is Plaintiff's Exhibit 18. It will
15 be the picture without that damage on the door.

16 MR. CUTHBERT: Yes, sir.

17
18 (Plaintiff's Exhibit 18 is received.)
19

20 THE COURT: But you want the jury to know
21 there is a door there, or that doesn't make any
22 difference?

23 MR. CUTHBERT: It doesn't make any
24 difference. It's a closet door.

25 THE COURT: I just want to make sure I

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1 take all of the damage off. That is what I
2 just cut off. That, again, is Plaintiff's
3 Exhibit 18.

4 MR. CUTHBERT: Your Honor, I have no other
5 questions for this witness.

6 THE COURT: You don't want to ask him
7 anything about this?

8 MR. CUTHBERT: Oh, excuse me. Yes, sir, I
9 do.

10 THE COURT: You can bring the jury back.
11 I take it now you don't have any objection
12 to Plaintiff's Exhibit 18; is that right?

13 MS. BURTON: That's right.

14 THE COURT: Thank you, Ms. Burton.

15
16 (The jury enters.)
17

18 THE COURT: Mr. Cuthbert, do you want to
19 give this to Officer Provost?

20 MR. CUTHBERT: Yes, sir. Thank you.

21 BY MR. CUTHBERT:

22 Q Officer Provost, I've handed you a
23 photograph that is in evidence as Plaintiff's
24 Exhibit 18. Would you please hold it up to the jury
25 and tell the jury what that shows.

1 A This is the interior of 1112 Dove Street,
2 Apartment C, depicting the living room area.

3 Q Tell the jury, please, where the kitchen
4 is with respect to what they see there in Exhibit 18.

5 A This here is the wall. Right here is the
6 kitchen door. It's on the other side of this wall.
7 Right here would be the kitchen.

8 Q Where is the kitchen door, that is, the
9 door that Sergeant Ingram shot?

10 A It's going to be right there.

11 MR. CUTHBERT: Your Honor, I don't have
12 any other questions for this witness.

13 Thank you very much.

14 THE COURT: Cross-examination, Ms. Burton?

15 MS. BURTON: Yes, sir. Let me just go
16 ahead and put a few pictures into evidence.
17 I'm going to put the larger ones into evidence.
18 I just have the smaller ones because they are
19 the actual ones we got from the police
20 department.

21 THE COURT: All right.

22
23 RE CROSS-EXAMINATION

24 BY MS. BURTON:

1 Q Good afternoon.

2 A Good afternoon.

3 Q Let me direct your attention to the
4 smaller photographs in the back. Take a quick look
5 at those if you would.

6 A Yes, ma'am.

7 Q Are those photographs that you took as
8 part of your crime scene investigation?

9 A Yes, ma'am, I did.

10 Q You were investigating this scene as a
11 crime because Christie Green had died at the scene;
12 correct?

13 A That's correct.

14 Q In investigating this as a crime, it was
15 initially your belief that Christie Green had died as
16 a result of the gunfire perhaps from inside the
17 apartment; is that a fair statement?

18 A That's correct.

19 Q Now, you also investigated this apartment
20 as a crime scene in connection with the warrant that
21 was served, that is, in relation to drugs and weapons
22 that were found there; isn't that true?

23 MR. CUTHBERT: Your Honor, may I just for
24 the record have a standing objection?

25 THE COURT: Well, do you object to that

1 particular question?

2 MR. CUTHBERT: Yes, sir.

3 THE COURT: What's your relevance,
4 Ms. Burton? What's the relevance of why he was
5 conducting his investigation?

6 MS. BURTON: I will withdraw the question.

7 BY MS. BURTON:

8 Q The photographs I've asked you to look at
9 there, are those photographs that were taken of some
10 of the items found there at that crime scene?

11 A Yes, they were.

12 Q Are those photographs that you took?

13 A Yes, they are.

14 Q Do the enlargements match the small
15 photographs there that you looked at?

16 A Yes, they do.

17 MS. BURTON: At this time I would like to
18 introduce each of those photographs.

19 THE COURT: These are the ones we talked
20 about earlier that you object to, Mr. Cuthbert?

21 MR. CUTHBERT: Yes, sir.

22 THE COURT: All right. I note your
23 objection. If they are the same photographs
24 that I have seen earlier, then they will all be
25 admitted as defendant's exhibits. They will be

1 admitted as Defendant's Exhibits 1 through 6.

2
3 (Defendant's Exhibits 1 through 6 are
4 received.)

5
6 MR. CUTHBERT: Your Honor, I would just
7 like the record to reflect that I am
8 incorporating my reference of my earlier
9 discussion with Your Honor on the topic of
10 this.

11 THE COURT: Yes. I think I understand the
12 basis of your objection. If you would like to
13 say anything else on the record after the jury
14 leaves, remind me to let you do that.

15 We are going to make the larger ones
16 exhibits. Ms. Burton, I'm going to give you
17 the smaller ones back. Did you want the jury
18 to see this now?

19 MS. BURTON: Yes, sir. I'm going to ask a
20 few questions about them.

21 THE COURT: Did you want to show them to
22 the jury?

23 MS. BURTON: Yes, sir.

24 THE COURT: You can give the small ones
25 back to Ms. Burton and show the other ones to

1 the jury.

2
3 (Defendant's Exhibits 1 through 6 are
4 published to the jury.)
5

6 BY MS. BURTON:

7 Q Officer Provost, let me ask you to refer
8 to what's been marked as Defendant's Exhibit 1. Now,
9 in the middle of that picture on the floor right
10 there, that's a handgun; is it not?

11 A Yes, it is.

12 Q That was one of the handguns that you
13 found in the apartment after you went in to
14 investigate; isn't that true?

15 A That's correct. That's my item number 20.

16 Q There are several items on the table in
17 this picture; isn't that true?

18 A That's correct.

19 MR. CUTHBERT: Your Honor, I just want the
20 record to reflect that I have a continuing
21 objection, so I don't have to keep popping up.

22 THE COURT: Yes, sir. I appreciate that.

23 Q Referring now to Exhibit 2, that's a
24 close-up of what's on the table; isn't that true?

25 A That's correct.

1 Q There is an even larger close-up of one of
2 the items on the table; isn't that true?

3 A That's correct.

4 Q In Defendant's Exhibit 3, what is the item
5 right here that appears to be in plastic?

6 A It's a plastic bag with numerous folded
7 pieces of tinfoil folded with a white powder
8 substance inside that was sent to the state lab.

9 Q As a part of your investigation, did you
10 make a determination as to what that substance was?

11 A Yes, ma'am. It was heroin.

12 Q Were there any other illegal substances
13 shown on this photograph?

14 A No, ma'am.

15 Q Now, in what's been marked as Defendant's
16 Exhibit 4, describe for the jury, please, what that
17 item is. Hold it up so the jury can see.

18 A Exhibit 4 is my item number 40, which is a
19 rifle. It's an SKS 7.62 caliber.

20 Q Where is the area where this rifle is
21 sitting? Do you know?

22 A Yes, ma'am. This is sitting in the
23 closet, which is in the living room.

24 Q Referring to what's been admitted as
25 Defendant's Exhibit 5, can you tell the jury, first

1 of all, where these items were found?

2 A Yes, ma'am. That is, again, in the living
3 room. My item number 32 is over near the table, but
4 it's in that -- if you come in the kitchen door, it's
5 directly to the left passed the table -- the dining
6 room table.

7 Q Can you point on what's Plaintiff's
8 Exhibit 18 to the area that you're speaking of where
9 the items in Defendant's Exhibit 5 were found?

10 A Here's a table here. Over a little
11 further in this corner, here is a dresser. When you
12 pull the dresser drawer out, there was item number
13 32, which is a Haskell .45 caliber pistol.

14 Q Still referring to Defendant's Exhibit 5,
15 what is the long round item right here?

16 A That is a silencer for a firearm.

17 Q What's the purpose of a silencer for a
18 firearm?

19 A That's to muffle the gases that expel.

20 Q Is it legal to have those things?

21 A It's illegal to have that.

22 Q Next to this silencer is what appears to
23 be a handgun?

24 A That's correct.

25 Q What kind of gun is that?

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1 A That's the Haskell .45 caliber.

2 Q What are these two items on the right-hand
3 side of this photograph that appear to be curved?

4 A Those are magazines for the SKS.

5 Q What kind of guns do these magazines
6 belong to?

7 A Assault rifles.

8 Q Did you find assault rifles in this
9 apartment?

10 A Yes, ma'am. The assault rifle was found
11 in the closet.

12 Q Well, first of all, is this the assault
13 rifle?

14 A That's correct, ma'am.

15 Q You're referring to Defendant's Exhibit 4?

16 A That's correct, ma'am.

17 Q Now, look with me, if you will, at
18 Defendant's Exhibit 5. There will be a pair of
19 brass-colored items that look to me like bullets.
20 What are those items?

21 A Those are cartridges.

22 Q Let me go back and ask you a question
23 about the magazines. Excuse my ignorance about guns.
24 If I say something silly, please correct me. This
25 picture here shows a number of what appear to be

1 cartridges. Is that what they are?

2 A That's correct.

3 Q These cartridges, did you make any
4 determination as to whether they were live or spent?

5 A Based on my knowledge and experience, a
6 cartridge case is the expelled cartridge or the
7 bullet -- I mean, not the bullet. This is a
8 cartridge case. Once the bullet has left the
9 cartridge and has been fired through a firearm, it's
10 the separation of the two. That's called a cartridge
11 case. The cartridge is the bullet, the primer, the
12 powder that's inside, and the bullet that's in tact
13 in the case.

14 Q So these are in tact or live rounds?

15 A They are live ammunition, correct.

16 Q Now, let me direct your attention to
17 Defendant's Exhibit 6 here. This dark item in the
18 middle appearing under the sofa is a handgun as well;
19 isn't that true?

20 A That's correct.

21 Q Did you make any determination as to
22 whether that handgun was loaded or not?

23 A Can we back up to that picture there?

24 Q This one here?

25 A Yes, ma'am.

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1 Q The witness is now referring to
2 Defendant's Exhibit 5.

3 A That item is item 32, and that is a Glock
4 .40 caliber pistol. The firearm was found in the
5 dresser. The item 38, which is --

6 Q Defendant's Exhibit 6?

7 A Again, that was found in the living room
8 just under the couch. Again, that is item number 38.
9 That's the Haskell .45 caliber pistol.

10 Q What's the difference between an automatic
11 weapon and one that's not automatic?

12 A An automatic weapon, as soon as you pull
13 the trigger, it recycles and will continue to fire.

14 Q Fire very quickly?

15 A That's correct.

16 Q Were any of these weapons automatic
17 weapons? Any of the guns? The Haskell? The Glock?
18 Well, we know the assault rifle is.

19 A They recycle themselves, so they are
20 considered a pistol. They are not fully automatic.
21 Fully automatic would continue. As long as you had
22 the trigger squeezed, it would continue. However,
23 these are what's considered semiautomatic, which
24 means that every time you fire a round, you have to
25 pull the trigger in order for the next round to

1 engage.

2 Q Did you make any determination as to
3 whether any of the guns here have been recently
4 fired? Was that part of your investigation?

5 A Yes, ma'am. The item number 20, which is
6 the Browning 9-millimeter that was found just to the
7 left of the door -- the kitchen door.

8 Q Is this it?

9 A Yes, ma'am, that's correct.

10 Q You're referring to the gun that's in
11 Defendant's Exhibit 1; is that true?

12 A That's correct.

13 Q Now, I just have a few other questions for
14 you. Let me show you this document which is marked
15 for identification as Exhibit 24.

16 THE COURT: Have you shown it to
17 Mr. Cuthbert?

18 MS. BURTON: Yes, sir.

19 A Yes, ma'am.

20 Q Now, I note for you one little error up
21 here. It says 1211C. It should be 1112C. Can I ask
22 you to go ahead and correct that with this red ink?
23 Put the correct house number in there.

24 A (Complies.)

25 Q All right. Thank you. Now, this document

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1 here, is it a document that you prepared?

2 A That's correct.

3 Q Did you prepare this at my request, or did
4 you prepare this as part of your investigation?

5 A It's prepared as part of my investigation.

6 Q It's fair to say that Exhibit 24 shows the
7 layout of the apartment; does it not?

8 A Yes, it does.

9 Q It also shows the placement of furniture
10 in the apartment; does it not?

11 A Yes, it does.

12 Q It shows the correct placement of
13 appliances in the kitchen; correct?

14 A That's correct.

15 Q It also shows the placement of most of the
16 items of evidence that you collected at the scene,
17 including the ones shown in the plaintiff's exhibits
18 and in the defendant's exhibits entered into evidence
19 today; isn't that correct?

20 A That's correct.

21 Q Now, this diagram also contains a key that
22 tells you what each item is and where you found it in
23 the apartment when you did your investigation; is
24 that correct?

25 A That's correct.

1 Q Now, is this diagram a fair and accurate
2 representation of the location of the items of
3 evidence that are noted on here and that you found as
4 part of your investigation?

5 A That's correct.

6 Q Is this layout done to scale?

7 A Yes, it is.

8 Q Did you do it yourself? Did you prepare
9 the scaled layout yourself?

10 A Yes, I did.

11 Q Is this diagram a fair and accurate
12 representation of the placement of the pieces of
13 furniture that are indicated on it?

14 A Yes, they are.

15 MS. BURTON: Your Honor, I would offer
16 this.

17 THE COURT: Any objection, Mr. Cuthbert?

18 MR. CUTHBERT: None other than I already
19 stated, Your Honor.

20 THE COURT: All right. This will be
21 admitted then as Defendant's Exhibit 7.

22
23 (Defendant's Exhibit 7 is received.)

24
25 MS. BURTON: If the Court will just allow

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1 me a minute to check my notes here.

2 THE COURT: All right.

3 MS. BURTON: Thank you. Those are all of
4 the questions I have.

5 THE COURT: Is there any redirect?

6 MR. CUTHBERT: Yes, sir.

7 THE COURT: All right.

8

9 REDIRECT EXAMINATION

10 BY MR. CUTHBERT:

11

12 Q Officer Provost, are you aware of any
13 evidence that Christie Green ever touched any of the
14 guns or drugs or ammunitions or silencer that you've
15 just told the jury about?

16 A I have no evidence either way, sir.

17 MR. CUTHBERT: Thank you.

18 THE COURT: Any other questions?

19

20 (No response.)

21

22 THE COURT: Officer Provost, thank you
23 very much, sir. You may step down.

24 I assume that Officer Provost may be
25 excused.

1 MR. CUTHBERT: Yes, Your Honor.

2
3 -----
4 WITNESS STOOD ASIDE
5

6 THE COURT: Mr. Cuthbert, although we
7 talked about doing another witness, I think we
8 need to stop for the evening.

9 MR. CUTHBERT: May I make a suggestion,
10 Your Honor? I don't want to do witnesses
11 piecemeal. I have two little girls out in the
12 hall just to say that's Kevasha and DiQuasha.

13 THE COURT: Any objection to that,
14 Ms. Burton?

15 MS. BURTON: No, sir.

16 MR. CUTHBERT: Then I will recall Katina
17 tomorrow.

18 THE COURT: Will this take longer than a
19 couple of minutes?

20 MR. CUTHBERT: No, sir.

21 THE COURT: Why don't you do exactly what
22 you just said?

23 Ms. Green, would you come to the witness
24 stand, please.
25

1 KATINA GREEN, the Plaintiff, called on her own
2 behalf, first being duly sworn, testified as follows:

3
4 DIRECT EXAMINATION

5 BY MR. CUTHBERT:

6
7 Q Ms. Green, good afternoon.

8 A Good afternoon.

9 Q Would you please tell the members of the
10 jury your name, ma'am.

11 A My name is Katina Green.

12 Q Are you the sister of the deceased?

13 A Yes, I am the sister of Christie D. Green.

14 Q Was she older or younger than you?

15 A She was younger than me.

16 Q Would you, please, tell the jury something
17 about your background. Where are you employed now?

18 A I'm with the Richmond Public School, food
19 nutrition. That's a cafeteria worker.

20 MR. CUTHBERT: Your Honor, I would ask
21 Officer Braxton to ask the two little girls to
22 come in, so Ms. Green may identify them.

23 THE COURT: All right.

24
25 (Two girls enter.)

1 Q Ms. Green, did your sister have two
2 daughters?

3 A Yes, she did.

4 Q What are their names, please?

5 A Kevasha is the oldest, and DiQuasha is the
6 youngest.

7 Q Are those two young ladies here in the
8 courtroom now?

9 A Yes, sir, they are.

10 Q What grade in school are they in?

11 A Kevasha is in the third grade. DiQuasha
12 is in the first grade.

13 Q Who is taking care of the older child,
14 Kevasha?

15 A I'm taking care of Kevasha Green, and
16 Dollnice Skipper is taking care of DiQuasha.

17 MR. CUTHBERT: Your Honor, I don't have
18 any other questions for today if I may have the
19 right to recall Ms. Green tomorrow.

20 THE COURT: All right. Cross-examination?

21 MS. HARRIS: No, sir.

22 THE COURT: Ms. Green, thank you very
23 much. You may step down and return to your
24 seat at counsel table.

25 THE WITNESS: Thank you.

WITNESS STOOD ASIDE

1
2
3
4 THE COURT: All right. Do Kevasha and
5 DiQuasha need to remain in the courtroom now,
6 Mr. Cuthbert?

7 MR. CUTHBERT: No, Your Honor. They may
8 leave.

9 THE COURT: All right. Thank you very
10 much.

11
12 (Two girls exit.)

13
14 THE COURT: All right. Members of the
15 jury, we are going to break for the evening.
16 As I indicated earlier, we're going to start
17 tomorrow at 9:00. So all of you be here very
18 promptly at 9:00.

19 Of course, do not discuss the case among
20 yourselves or with anyone else. That includes
21 your family members and friends when you go
22 home this evening. That might sound like it
23 doesn't make sense. Everybody is very
24 interested in what goes on in court these days.

25 If you start talking about the case, they

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1 are going to ask you questions about the case.
2 They are going to say, well, did you hear
3 anybody say such and such? When you go
4 tomorrow, see if anybody says this or says
5 that. If they start doing that, then they
6 become members of the jury. They cannot be
7 members of the jury.

8 They cannot influence you in any way. You
9 can't talk about the case tonight. Once the
10 case is over, you will be glad to answer any
11 questions that they have. You don't talk about
12 the case tonight.

13 The other thing I'm going to ask you to do
14 is please don't get on the internet or look in
15 any encyclopedia or anything to see if you can
16 figure out something about proper police
17 techniques or the kind of round that you've
18 heard talked about today. You cannot do any
19 independent investigation, so please don't try.

20 You can only use what you came in with
21 this morning, your common sense, your life
22 experiences, and what you see and hear in this
23 courtroom. You can't do any independent
24 research.

25 Other than that, just have a pleasant

1 evening, get a good night's sleep. I'll see
2 you tomorrow morning at 9:00.

3
4 (The jury exits.)

5
6 THE COURT: All right. Counsel, anything
7 we need to do tonight?

8 MR. CUTHBERT: Your Honor, while I am
9 thinking of it, I would just like to put on the
10 record a little bit of expansion of my
11 continuing objection to guns and drugs and
12 homicide suspects. My most comprehensive
13 statement of my objection is in the footnote to
14 the order memorializing Your Honor's rulings on
15 September 30, 2003. I would incorporate all of
16 those by reference. I would assume that Your
17 Honor has ruled as Your Honor has knowing of
18 those objections.

19 I looked with somewhat dismay at my
20 explanation of the objections at the hearing on
21 January 8, 2004. It was nothing like as
22 complete to my objections set forth in Your
23 Honor's order memorializing the rulings on
24 September 30, 2003. So I would like to
25 incorporate by reference those objections that

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1 I set forth in that footnote. I just don't
2 want the record to indicate in any way that
3 I've waived any of those points. I know Your
4 Honor realizes that.

5 THE COURT: I don't think there's anything
6 in the record or anyone in the courtroom who
7 believes you have waived your objection,
8 Mr. Cuthbert.

9 MR. CUTHBERT: That's fine. I appreciate
10 Your Honor's comments. I don't have anything
11 else to say. Thank you very much.

12 THE COURT: Ms. Burton, anything else?

13 MS. BURTON: I just want to mention that
14 Mr. Cuthbert mentioned guns and drugs in his
15 opening statement.

16 THE COURT: Because he knew how I ruled.
17 Once you know how the Court rules, you have to
18 make your argument fit the Court's rulings.
19 That doesn't sway his objection at all.

20 MS. BURTON: No. I'm saying that --

21 THE COURT: I'm saying, it doesn't waive
22 his objection.

23 MR. CUTHBERT: I would also point out for
24 anyone who was listening that in my opening
25 statement -- what I said in my opening

1 statement was that we do not dispute that
2 Officer Ingram and Officer Buckovich believed
3 this, and they had a good faith basis for
4 believing that these things were inside. I did
5 not say they were inside.

6 THE COURT: Ms. Burton, if you make a
7 hearsay objection and I overrule it and I allow
8 Mr. Cuthbert to ask the witness what somebody
9 said, I don't think you waive your hearsay
10 objection on cross-examination asking the
11 witness, what else do you say? So I don't
12 think Mr. Cuthbert has waived his objection by
13 mentioning something that I have already ruled
14 on.

15 Anything else we need to talk about?

16 MS. BURTON: No.

17 THE COURT: I do have an 8:30 hearing in
18 the morning. So I'm going to have to ask that
19 you all clear the tables. You can leave things
20 back by the railing. I don't think the lawyers
21 are going to need anymore space than the table.

22 We'll stand in recess until 9:00 in the
23 morning.

24
25 (TIME: 5:35 p.m.)

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VIRGINIA:

040480

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

KATINA GREEN, Administrator
of the Estate of Christie
D. Green,

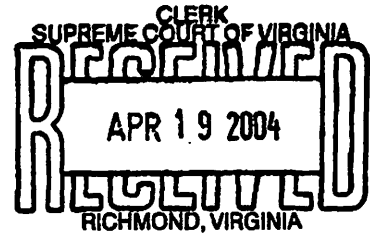
Plaintiff,

v.

Case No. LL-2806

JOHN B. BUCKOVICH, et. al.,

Defendants.



Volume II

January 21, 2004

Richmond, Virginia

Transcript of the above-captioned trial, when
heard before the Honorable Randall G. Johnson, Judge,
and a jury.

RECEIVED & FILED
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1 THE COURT: Good morning. Mr. Cuthbert,
2 do you still have the Court's file?

3 MR. CUTHBERT: Yes, sir. We've been going
4 through it.

5 THE COURT: I don't know that I can help
6 you, but is there anything particular you want
7 me to look for or that you're looking for?

8 MR. CUTHBERT: Yes, sir.

9 THE COURT: Are you still looking for the
10 amended motion for judgment?

11 MR. CUTHBERT: Yes, sir.

12 THE COURT: Does the amendment just change
13 the name of the administrator? I notice when
14 it was first filed, it was filed in the name of
15 Leslie Green. I don't know who Leslie Green
16 is. Is that what it might have been?

17 MR. CUTHBERT: Maybe we've been looking
18 for the wrong document. I had it in my head
19 that we had --

20 THE COURT: I don't know how I know this,
21 but I remember seeing something yesterday. For
22 example, here's a letter from Mr. Hoppe in re
23 in the case of Leslie L. Green.

24 MR. CUTHBERT: What I was looking for is
25 the initial document in which the allegation

1 against Defense Technology was made. Was that
2 in the motion for judgment, or was there an
3 amended motion for judgment that added them?

4 THE COURT: I don't know. As of April 23,
5 Defense Technology was in the case. I don't
6 know how to help you.

7 MR. CUTHBERT: Well, Your Honor has given
8 me a good idea. Maybe I ought to look for the
9 motion for judgment instead of an amended
10 motion for judgment.

11 THE COURT: Do you want your assistant to
12 look for it?

13 MR. CUTHBERT: If she may, yes, sir.

14 THE COURT: I need to keep a couple of
15 these up here if you don't mind. I will give
16 you the other one. I am going to keep the
17 first and last one.

18 MR. CUTHBERT: The first one may have the
19 amended motion for judgment in it. Is that the
20 case?

21 THE COURT: I looked at that yesterday. I
22 recall myself looking at that as you all were
23 making your opening statements. This is a very
24 abbreviated file because I think this is the
25 one that went over to the Supreme Court.

1 There's nothing in here -- I think I got the
2 amended motion for judgment out of this file.

3
4 (Discussion off the record.)

5
6 THE COURT: I'll give you, Mr. Cuthbert,
7 file number one too. I don't need think I need
8 that today. I really don't see anything in
9 there, but you all are welcome to look.

10 You may want to check in the clerk's
11 office. I don't know that we have everything.
12 Usually when a case comes back from the Supreme
13 Court, there's a green hard folder that the
14 papers that were sent to the Supreme Court come
15 back in.

16 It may be that they were not sent up here
17 to me yesterday. There's always something
18 that's in the file that comes back from the
19 Supreme Court. So you may want to go down to
20 the clerk's office. Just tell them that I told
21 you there should be something like that, to see
22 if they can find out. If you find it, if you
23 don't mind, bring it up here after you finish
24 taking a look at it.

25 MR. CUTHBERT: It's a green colored file?

1 THE COURT: Yes. It doesn't look like
2 this. It's the kind that opens this way.

3 MR. CUTHBERT: Yes, sir.

4 THE COURT: When the clerk's office sends
5 the papers to the Supreme Court, either our
6 clerk's office or the Supreme Court clerk's
7 office puts it in that kind of file folder.
8 They do what they do. Then when it's remanded
9 back to us, they send that back to us. That
10 might be why, because I didn't see the grounds
11 of defense or anything else.

12 MR. CUTHBERT: Yes, sir.

13 THE COURT: I think basically all we have
14 are papers that really were not needed on the
15 appeal, things like subpoena requests and those
16 kinds of things and things that were filed
17 after the appeal was taken. Now that I think
18 about it, I'm 99 percent sure that's what the
19 answer to the question is.

20 MR. CUTHBERT: All right. Thank you.

21 THE COURT: So the clerk's office should
22 be open now. So you might want to go down and
23 ask them that.

24 All right. Are we ready to go,
25 Mr. Cuthbert?

1 MR. CUTHBERT: Yes, sir. Thank you.

2 THE COURT: All right. Anything we need
3 to do before we bring the jury in?

4
5 (No response.)

6
7 THE COURT: You can bring the jury in,
8 Mr. Braxton.

9
10 (The jury enters.)

11
12 THE COURT: Mr. Bolden, how are you
13 feeling today, sir?

14 MR. BOLDEN: Pretty good.

15 THE COURT: That's good, sir. I
16 appreciate that.

17 Members of the jury, good morning. I
18 appreciate your promptness. Hopefully, we'll
19 all be rewarded for that by moving fairly
20 quickly today.

21 Mr. Cuthbert, who is your first witness,
22 sir?

23 MR. CUTHBERT: Nurse Dunn, D-U-N-N.

24 THE COURT: Thank you.

1 WENDY DUNN, a Witness, called by the Plaintiff,
2 first being duly sworn, testified as follows:

3
4 DIRECT EXAMINATION

5 BY MR. CUTHBERT:

6
7 Q Ms. Dunn, good morning.

8 A Good morning.

9 Q Would you please tell the members of the
10 jury your name, ma'am.

11 A My name is Wendy Diner (phonetic) Dunn.

12 Q What city or county do you live?

13 A I live in Hanover County, Virginia.

14 Q Have you been trained professionally as a
15 registered nurse?

16 A Yes, I have.

17 Q Were you working at MCV as a registered
18 nurse on the evening of December 29, 1998?

19 A Yes.

20 Q In what department?

21 A In the pediatric emergency department.

22 Q On that occasion, did you help to take
23 care of Kevasha Green?

24 A Yes.

25 Q Would you please tell the members of the

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1 jury, as you helped take care of Kevasha Green, what
2 you remember observing about her?

3 A She was brought to the emergency
4 department covered in blood. I placed her in an exam
5 room and removed her clothing and placed that in a
6 bag and washed her from her head to -- her hair to
7 her toes and removed the blood and found that she had
8 no injuries to her body. Beyond that, she was in
9 stable condition.

10 MR. CUTHBERT: Thank you very much.

11 THE COURT: Is there any
12 cross-examination?

13 MS. BURTON: No, sir.

14 THE COURT: Ms. Dunn, thank you very much.
15 You may step down.

16 Can Ms. Dunn be excused?

17 MR. CUTHBERT: Yes, Your Honor.

18 THE COURT: My bailiff is doing something
19 else. Just push that away from you. Thank
20 you. You're free to leave if you'd like to
21 leave, Ms. Dunn. If you'd like to stay in the
22 courtroom, you're welcome to stay.

23
24 -----
25 WITNESS STOOD ASIDE

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1 THE COURT: Mr. Cuthbert, your next
2 witness.

3 MR. CUTHBERT: Your Honor, I would like to
4 call Charnte Anderson.

5 THE COURT: Charnte Anderson?

6 MR. CUTHBERT: Yes, sir.

7 THE COURT: Charnte Anderson, come to
8 courtroom 304, please.

9
10 (No response.)
11

12 THE COURT: Do you know if Ms. Anderson is
13 here? Have you seen her?

14 MR. CUTHBERT: I have not seen her, Your
15 Honor.

16 THE COURT: I don't get a response.

17 Mr. Braxton, I know you're doing that, but
18 would you check to see if Charnte Anderson is
19 in the hall.

20 No response?

21 THE BAILIFF: No response.

22 THE COURT: There's no response,
23 Mr. Cuthbert.

24 MR. CUTHBERT: I have her under subpoena.
25 I don't quite know what to do, except to go

1 forward, Your Honor.

2 THE COURT: I assume Ms. Anderson was
3 subpoenaed.

4 MR. CUTHBERT: Yes, sir.

5 THE COURT: All right. We'll see what we
6 can do at the next recess.

7 MR. CUTHBERT: Yes, sir. Thank you.

8 Your Honor, I call Michael Talbert.

9 THE COURT: Michael Talbert, Mr. Braxton.

10
11 MICHAEL R. TALBERT, a Witness, called by the
12 Plaintiff, first being duly sworn, testified as
13 follows:
14

15 DIRECT EXAMINATION

16 BY MR. CUTHBERT:

17
18 Q Officer Talbert, good morning.

19 A Good morning, sir.

20 Q Would you please tell the members of the
21 jury your name, sir.

22 A Yes. My name is Mike Talbert.

23 Q Your employment?

24 A I'm employed by the Richmond Police
25 Department. I am a detective with the narcotics

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1 unit.

2 Q How long have you been with them?

3 A Eighteen years.

4 Q Are you a member of the Richmond SWAT
5 team?

6 A Yes, sir, I am.

7 Q Did you participate in the attempt to
8 serve a subpoena at 1112C Dove Street on December 29,
9 1998?

10 A A search warrant, yes, sir.

11 Q I'm sorry. It was a search warrant. I
12 had subpoena on my mind, but you're correct.

13 What was your role in that event, please?

14 A I was carrying a level-three ballistic
15 shield. I was assigned to be the first one through
16 the front door, the living room door of the
17 apartment.

18 Q As of that time, how long had you been on
19 the SWAT team?

20 A Four years.

21 Q All right, sir. I'm going to hand you a
22 paper and ask you if you have seen this paper before.
23 For purposes of identification, I've marked it as
24 Plaintiff's Exhibit 15.8. Does that paper appear in
25 the lesson plan for breaching rounds?

1 A I believe so. I don't recall.

2 Q That's fine. Let me take it back from you
3 if I may. Let's proceed with the events that you saw
4 that night at Dove Street. All together how many
5 shots were fired at the front door?

6 MS. HARRIS: Your Honor, I would object to
7 the relevance of the front door. We're here
8 about the kitchen door, the events that
9 transpired at the kitchen door.

10 THE COURT: I'm going to overrule that
11 objection.

12 Q All together how many shots were fired at
13 the front door, please?

14 A As far as shots fired at us or shots
15 fired --

16 Q No, sir. How many shots were fired at the
17 front door?

18 A The breach --

19 Q How many breaching rounds were fired at
20 the front door?

21 A I believe five. I'm not positive.

22 Q It was a 12-gauge shotgun that was shot at
23 the front door; is that correct?

24 A It was a 12-gauge shotgun with breaching
25 rounds, yes, sir.

1 Q And it held a total of five rounds;
2 correct?

3 A I believe so. I don't know if that
4 particular shotgun was capable of holding more than
5 that or not.

6 Q At least five?

7 A Yes, sir.

8 Q Now, at any time before the door came
9 open, did you notice that there were one or more
10 holes in the front door?

11 A Yes, sir.

12 MS. HARRIS: Your Honor, again, objection
13 to the relevance of the front door.

14 THE COURT: When you say the front door,
15 you're talking about the living room door?

16 MR. CUTHBERT: Yes, sir.

17 THE COURT: What's the relevance of that?

18 MR. CUTHBERT: Because he looked
19 through -- as I'm about to get to, he looked
20 through --

21 MS. HARRIS: Your Honor, I object.

22 THE COURT: What's the relevance of what
23 this officer did?

24 MR. CUTHBERT: He saw people moving.

25 THE COURT: What's the relevance of that?

1 I understand that. What's the relevance of
2 that?

3 MR. CUTHBERT: Because it helps to
4 establish what was going on inside the living
5 room. Also, he got inside the living room
6 before Sergeant Ingram ever got the back door
7 open. So it helps to show the sequence of
8 events.

9 THE COURT: Objection sustained. I don't
10 see it's relevant what this officer knew unless
11 it was communicated to one of the defendants.
12 If you want to show that whatever this officer
13 knew was communicated to one of the defendants
14 to show that one of these defendants did
15 something wrong, then you can do that. If it
16 was not communicated to one of these
17 defendants, then what this officer knew, I
18 don't see that as relevant.

19 MR. CUTHBERT: Yes, sir. May we discuss
20 this further outside the presence of the jury?

21 THE COURT: Members of the jury, I'm going
22 to ask you to go inside the jury room. I hate
23 to do this so early in the morning, but
24 sometimes it happens. Would the last one of
25 you just close that door very tightly, please.

1 (The jury exits.)

2
3 THE COURT: All right. Mr. Cuthbert.

4 MR. CUTHBERT: Your Honor, this is what I
5 expect to establish through this line of
6 questioning.

7 THE COURT: Yes, sir.

8 MR. CUTHBERT: Once there were two holes
9 in the door, in the front door, the living room
10 door, this witness looked through those holes.
11 This is his deposition testimony:

12 Question: When you first noticed holes in
13 the door, how many holes were there?

14 Answer: When I first saw the holes, there
15 were -- it was when my attention went from just
16 focussing on the door to the holes, there were
17 two because --

18 THE COURT: We need to go faster than
19 this. What's the relevance of what this
20 officer did? You don't need to tell me what he
21 did. Just tell me what the relevance is to
22 what he did.

23 MR. CUTHBERT: Yes, sir. Then he looked
24 through the holes, and he saw what looked to
25 him like an adult moving toward the kitchen

1 area.

2 Now, this helps to establish that what was
3 going on was that people were moving from the
4 living room into the kitchen for sanctuary in
5 effect. So it's relevant to show when -- it's
6 circumstantial evidence.

7 THE COURT: What's the relevance of that
8 though?

9 MR. CUTHBERT: Well, it's circumstantial
10 evidence to show that Christie Green was not
11 killed by round number one because she wasn't
12 in the kitchen when round number one took place
13 because people were moving into the kitchen for
14 sanctuary.

15 Also, he will testify that after he
16 crossed the threshold, he went back and could
17 look at the kitchen door. He actually saw the
18 kitchen door come open. He saw it come open.
19 While he was inside, he saw the results of
20 Sergeant Ingram ramming it; that is, he saw the
21 door pop open.

22 THE COURT: Why is that relevant?

23 MR. CUTHBERT: That's relevant, Your
24 Honor, again, to show the sequence of events
25 inside, that the front door team was acting

1 much more quickly than the kitchen door team.
2 Consequently, the people rationally thought
3 that sanctuary was in the kitchen.

4 THE COURT: So what?

5 MR. CUTHBERT: Again, that shows that it's
6 less likely that it was the first round that
7 killed Christie Green because she wasn't even
8 in the kitchen at the time.

9 THE COURT: Ms. Harris.

10 MS. HARRIS: Your Honor, just a few
11 things: One, there were three adults found in
12 that kitchen. Officer Talbert cannot identify
13 which adult was moving towards the kitchen,
14 whether it was Christie Green, the male, or the
15 female. Also, there was a male firing a
16 shotgun in the living room area towards the
17 outside.

18 THE COURT: You don't want the jury to
19 know that?

20 MS. HARRIS: Yes, I do. However, we've
21 already got that evidence in, that there were
22 shots being fired from inside the dwelling to
23 the outside. Whether that person was firing in
24 the living room or not, it doesn't prove or
25 disprove anything. We just need the fact that

1 the shots were fired from inside. That's
2 already come into evidence.

3 THE COURT: How about Mr. Cuthbert's
4 argument that it shows the sequence of events
5 and it shows the first shot fired at the
6 kitchen door did not kill Christie Green?

7 MS. HARRIS: Because it doesn't show that.
8 He doesn't have the rest that he needs to make
9 that picture. The jury would have to speculate
10 upon that because there were three adults found
11 in that kitchen. So the jury would have to
12 speculate as to whether or not Christie Green
13 was the adult moving into the kitchen and
14 wasn't already there or whether or not the
15 other male or the other female was there and
16 moving into the kitchen. There is just no
17 evidence as to who the person was that was
18 moving into the kitchen. It tells us
19 absolutely nothing about that point.

20 THE COURT: Any other argument?

21 MS. HARRIS: Just that it would be
22 misleading and prejudicial unnecessarily.

23 THE COURT: All right. The objection is
24 overruled.

25 You can bring the jury back in.

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1 (The jury enters.)

2
3 BY MR. CUTHBERT:

4 Q Officer Talbert, at any time before the
5 front door came open, did you notice whether there
6 were one or more holes in the front door?

7 A Yes, sir.

8 Q When you first noticed holes in the front
9 door, how many holes did you see?

10 A I believe there were two.

11 Q What, if anything, do you remember seeing
12 in the way of people after those two holes were in
13 the door and you looked through those two holes as
14 you observed what was going on in the living room?

15 A I could see legs that had gone back and
16 forth from the holes. There were people that were
17 moving towards the steps that led upstairs, as well
18 as at least one person that was moving in the other
19 direction towards the kitchen.

20 Q So you actually saw a portion of a body of
21 a person moving from the living room toward the
22 kitchen; is that the case?

23 A Towards the kitchen and, as I said, other
24 people moving towards the steps that led upstairs.

25 Q Could you tell whether that person moving

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1 toward the kitchen was a man or a woman?

2 A No, sir. It was just legs.

3 Q But you could tell it was an adult;
4 correct?

5 A Yes, sir. It wasn't a small person.

6 Q After the front door was breached and you
7 entered, did you move toward the kitchen?

8 A Initially, when I went through the door,
9 my area of responsibility was the entire living room,
10 but then I was to go toward the steps. I went in,
11 turned, could not see anyone in the living room area.

12 I heard the shots being fired from the
13 kitchen. I turned my attention toward the kitchen,
14 but I did not make it to the kitchen. The back door
15 came open, and there was an area that is considered
16 in our briefing called a no pass, no fire, which I
17 was not -- I was not supposed to go into the kitchen
18 because that was being covered by the people coming
19 through the side door.

20 Q When you were in the living room, did you
21 actually see the kitchen door come open?

22 A Yes, sir.

23 Q Before you actually saw the kitchen door
24 come open, while you were in the living room, did you
25 hear a shotgun being fired at the kitchen door?

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1 A I believe it was the last round from the
2 breaching round that opened the door.

3 Q But you were inside the apartment in the
4 living room when the last round was fired by Sergeant
5 Ingram at the kitchen door; is that correct?

6 A I believe so.

7 Q What exactly did you see when you saw that
8 kitchen door come open?

9 A I heard the shot. I saw some splinters
10 from the door, and the door came open. I mean, we're
11 talking from the time I entered the structure to the
12 time the door came open was maybe a couple of
13 seconds. It was going that fast.

14 Q But in that time, you heard a shotgun
15 fired at the back door; correct?

16 A Yes, sir.

17 Q You also saw the back door come open;
18 correct?

19 MS. HARRIS: Your Honor, I will object to
20 asked and answered at this point.

21 THE COURT: I'm sorry?

22 MS. HARRIS: I will object to asked and
23 answered.

24 THE COURT: Mr. Cuthbert.

25 MR. CUTHBERT: I have no other questions.

1 Thank you very much.

2 THE COURT: Is there any
3 cross-examination?

4 MS. HARRIS: Yes, sir.

5
6 CROSS-EXAMINATION

7 BY MS. HARRIS:

8
9 Q Officer Talbert, at the time of this
10 incident, how long had you been a member of the SWAT
11 team?

12 A I believe this was '98.

13 Q Yes, sir.

14 A I believe it was four years. I joined in
15 '94.

16 Q In your four years with the SWAT team, had
17 you been on missions where this T.K.O. breaching
18 round had been used previously?

19 A Yes, ma'am.

20 Q In the times that you had observed the
21 T.K.O. rounds being used, had you observed whether or
22 not there was any gray powder in the room after the
23 round was used?

24 MR. CUTHBERT: Your Honor, I believe this
25 is outside the scope of my direct. If she

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1 wants to call this witness as her own as part
2 of her case and chief, fine. It's outside of
3 the scope of my direct.

4 THE COURT: Ms. Harris.

5 MS. HARRIS: He's asked him whether or not
6 he is familiar with the round, showed him
7 product literature from the round, and asked
8 him what he discovered after the round was
9 used.

10 THE COURT: I think it's a little bit
11 outside the scope of direct. The objection is
12 sustained.

13 MS. HARRIS: Yes, sir.

14 BY MS. HARRIS:

15 Q You said that you were a ballistic shield
16 on the living room door, sir; is that correct?

17 A Yes, ma'am.

18 Q When you were looking inside and you saw
19 legs moving, could you determine whether those were
20 male or female legs?

21 A No, ma'am.

22 Q So you do not know those legs to be
23 Christie Green's legs, as opposed to the other
24 individuals that were found in the kitchen; do you?

25 A No, ma'am.

1 Q When you indicated that you were in the
2 structure for a couple of seconds before the kitchen
3 door was breached, are you talking maybe two seconds?

4 A Maybe two seconds. I had only stepped in
5 maybe a couple of seconds.

6 Q When you all first arrived at the
7 structure, did you hear Officer Hayes yell "police,
8 search warrant" after the rake and break?

9 A Absolutely. I was standing at the front
10 door covering my part of the team when that was
11 initiated.

12 Q It was after Officer Hayes made that call,
13 "police, search warrant," several times that the gun
14 fire from within the structure came without; is that
15 correct?

16 A Yes, ma'am.

17 MS. HARRIS: That's all of the questions I
18 have. Thank you, Officer.

19 THE COURT: Mr. Cuthbert, any redirect?

20 MR. CUTHBERT: No, Your Honor.

21 THE COURT: Thank you very much.

22 Mr. Talbert, you may step down.

23 Can Mr. Talbert be excused, Ms. Harris?

24 MS. HARRIS: Yes, sir, for today.

25 THE COURT: Mr. Talbert, you're free to

1 leave if you would like to leave. If you would
2 like to remain, you're welcome to stay.

3 THE WITNESS: Yes, sir.

4
5 -----
6 WITNESS STOOD ASIDE
7

8 THE COURT: Mr. Cuthbert.

9 MR. CUTHBERT: Your Honor, I would like to
10 read into the record two excerpts from the
11 deposition of John Buckovich. They are short.

12 THE COURT: Members of the jury, you are
13 going to hear Mr. Cuthbert read a portion of
14 the deposition of the other defendant, John
15 Buckovich. You saw the deposition of
16 Mr. Ingram yesterday. Now you're going to hear
17 part of the deposition of Mr. Buckovich.

18 MR. CUTHBERT: Members of the jury, this
19 is from the deposition of Mr. John Buckovich,
20 taken on June 27, 2000:

21 Question: Before the raid on 1112C Dove
22 Street, did you ever consult with another
23 jurisdiction to see how its lesson plan
24 compared to Richmond's lesson plan?

25 Answer: Other than the fact that a lot of

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1 this lesson plan came from other jurisdictions
2 or other agencies, but no, I didn't see -- I
3 didn't check with other departments and say,
4 let me see your lesson plan on this. But a lot
5 of this information on this came from other
6 agencies.

7 Question: How do you know that?

8 Answer: Well, because the lesson plan
9 that you were just referring to, page 360, came
10 from the FBI hostage rescue team.

11 Question: So these aiming instructions on
12 page 360 came from the FBI hostage rescue team?

13 Answer: Yes, sir, and it was taught at
14 the Richmond Police Training Academy.

15 Page 84, question: And what did the
16 training involve as best you recollect?

17 Answer: It involved classroom instruction
18 in the morning and then some practical. I
19 didn't go to the practical instruction in the
20 afternoon, but it involved practical exercises
21 in the plans.

22 Then page 102, question: When the FBI
23 people came to Richmond to train area law
24 enforcement agencies in the use of frangible
25 rounds, did Sergeant Ingram receive any of that

1 training?

2 Answer: Yes, he did.

3 Then from Mr. Buckovich's deposition on
4 January 22, 2002, page 99, question: But the
5 observers quit observing about five minutes
6 before the raid started; didn't they?

7 Answer: I don't know how long they
8 actually lost site. They left one location and
9 got closer and then picked up their
10 surveillance or picked up their observation
11 again. So there was a couple of minutes in
12 there where we didn't have it under
13 surveillance.

14 Page 99, question: Can you rule out that
15 Christie Green arrived during that interval
16 when the building was not under surveillance?

17 Answer: She could have.

18 Question: If she had arrived during this
19 gap in surveillance, it would have been very
20 soon before the raid began; wouldn't it?

21 Answer: It would have been within a few
22 minutes.

23 Thank you.

24 THE COURT: Ms. Harris.

25 MS. HARRIS: Yes, sir. Just to that last

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1 portion on page 99 that Mr. Cuthbert just read
2 as to whether or not Ms. Green could have
3 arrived within a couple of seconds, I would
4 object to that and ask it be stricken from the
5 record. Lieutenant Buckovich was not present
6 at that time. He was back at the academy.

7 THE COURT: You can make that argument to
8 the jury. Objection overruled. He answered
9 the question in a deposition. I think he
10 gave -- I won't say anything else.

11 Mr. Cuthbert, your next witness.

12 MR. CUTHBERT: Your Honor, I'd like to
13 play a videotape now, if I may, for the jury of
14 Mr. Buckovich.

15 THE COURT: How long does that take?

16 MR. CUTHBERT: It's thirteen minutes.

17 THE COURT: All right. Very good.

18 Members of the jury, we are now going to
19 see -- I assume it's a portion of
20 Mr. Buckovich's deposition. Again,
21 Mr. Buckovich was under oath at the time he
22 gave his testimony.

23 You don't need to take this.

1 (Please see the attached transcript of the
2 videotaped testimony of this witness
3 which, by order of the Court, copy
4 attached, is made a part of this trial
5 transcript.)

6
7 THE COURT: Is that the end of your
8 deposition?

9 MR. CUTHBERT: Yes, sir.

10
11 (Carolyn J. Boone testifies, but it is not
12 transcribed.)

13
14 THE COURT: Mr. Cuthbert, who is your next
15 witness?

16 MR. CUTHBERT: Mr. Bob Lee.

17
18 ROBERT E. LEE, JR., a Witness, called by the
19 Plaintiff, first being duly sworn, testified as
20 follows:

21
22 DIRECT EXAMINATION

23 BY MR. CUTHBERT:

24
25
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1 Q Mr. Lee, good morning.

2 A Good morning, sir.

3 Q Would you, please, tell the members of the
4 jury your name.

5 A Robert E. Lee, Jr.

6 Q Are you employed, sir?

7 A Yes, I am.

8 Q Tell the jury, please, the nature of your
9 employment.

10 A I'm a private investigator with Lee
11 Security Consultants.

12 Q In Prince George County, Virginia?

13 A Yes, sir.

14 Q How long have you been involved in that
15 line of work?

16 A Eight years.

17 Q Before that what did you do?

18 A I was a police officer with Prince George
19 County.

20 Q For how long?

21 A Twenty years.

22 Q At my request, have you gone inside the
23 apartment known as 1112C Dove Street?

24 A Yes, sir.

25 Q How is it that you arranged to do this?

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1 A I contacted a Ms. Norfleet (phonetic) who
2 was the resident at the time. She set up a date that
3 I could go there.

4 Q When was the first time you went inside
5 1112C Dove Street?

6 A September 23, 1999.

7 Q So we're talking nine or ten months after
8 Christie Green was killed?

9 A Yes, sir.

10 Q On that date, what did you do at my
11 request?

12 A I measured the complete interior of the
13 apartment. I will correct that, sir. I did not
14 measure the upstairs, only the downstairs.

15 Q At my request, did you prepare a diagram
16 of the measurements that you took?

17 A Yes, sir, I did.

18 Q I'm going to hand you a paper that for
19 purposes of identification I've marked as Plaintiff's
20 Exhibit 9.1. I'll ask you whether that accurately
21 shows the diagram that you prepared.

22 A Yes, sir, it is.

23 Q Is that diagram to scale?

24 A Yes, it is.

25 Q I want to show you, please, a second

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1 version of that. I believe that it's like the one
2 you've got, but it does not have as much descriptive
3 writing on it. Is that the case?

4 A Yes, sir.

5 Q Again, that's to scale?

6 A Yes, sir.

7 Q It's identical to the first diagram I've
8 given you, but it has less on it?

9 A Yes, sir.

10 MR. CUTHBERT: I would like to put into
11 evidence those two.

12 THE COURT: Any objection?

13 MS. BURTON: The one without the writing
14 on it?

15 MR. CUTHBERT: Correct.

16 MS. BURTON: No, sir.

17 THE COURT: That will be Plaintiff's
18 Exhibit 23.

19
20 (Plaintiff's Exhibit 23 is received.)
21

22 BY MR. CUTHBERT:

23 Q With the permission of the Court, I'd like
24 to hand you an enlargement of Exhibit 23 and ask you
25 if you'd hold it up and if you would --

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1 THE COURT: Do you want Mr. Lee to come
2 down?

3 MR. CUTHBERT: Yes, sir, if he may. Thank
4 you very much.

5 THE COURT: Mr. Lee, you may step down.

6 Q I'm going to give you, if I may, a red
7 magic marker and ask if on the enlargement you would
8 indicate the kitchen door, please, and show that to
9 the jury as you're doing so. Step right over here if
10 you would. I'll hold it with you if I may. Where is
11 the kitchen door?

12 A This is the kitchen door.

13 THE COURT: Mr. Lee, you need to keep your
14 voice up, so we can hear you over on this side
15 of the room.

16 THE WITNESS: Yes, sir.

17 Q Can you write "kitchen door" there at that
18 space?

19 A (Complies.)

20 Q Now, where is the front door, please?

21 A This is the front door.

22 Q Did you also observe the location of some
23 cabinets that had indications of having been damaged?

24 A Yes, sir.

25 Q Where were those cabinets?

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1 A The location of the cabinets was right
2 here.

3 Q Yes, sir.

4 A They extend across the length of the room.
5 That's a small cabinet here, and the damage was in
6 this area.

7 Q That's very helpful. Did you determine
8 the total square footage of the downstairs of this
9 apartment?

10 A Approximately 400 square feet.

11 Q That small?

12 A Yes, sir.

13 Q If you would, take your chair, please.
14 Hold onto that if you would.

15 MR. CUTHBERT: Your Honor, with the
16 Court's permission, may Mr. Lee write the same
17 information on the smaller version of the
18 exhibit?

19 THE COURT: All right.

20 MR. CUTHBERT: Mr. Lee, thank you. I
21 don't have any other questions. If you would,
22 answer any questions the city attorney has,
23 please.

24 THE COURT: Ms. Burton.

25 MS. BURTON: I have no questions, Your

1 Honor.

2 THE COURT: Mr. Lee, you may step down.

3 Unless counsel tells me differently, I'm
4 going to assume that all witnesses are free to
5 leave.

6 Mr. Lee, you are free to leave if you
7 would like to leave. If you would like to
8 stay, you're welcome to stay.

9 THE WITNESS: Thank you, sir.

10
11 -----
12 WITNESS STOOD ASIDE

13
14 THE COURT: Mr. Cuthbert, your next
15 witness.

16 MR. CUTHBERT: Your Honor, I call Officer
17 DeGrauwe.

18
19 TIMOTHY DEGRAUWE, a Witness, called by the
20 Plaintiff, first being duly sworn, testified as
21 follows:

22
23 DIRECT EXAMINATION

24 BY MR. CUTHBERT:

25
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1 Q Officer DeGrauwe, good morning.

2 A Good morning.

3 Q Would you please tell the members of the
4 jury your name, sir.

5 A My name is Timothy A. DeGrauwe. I'm an
6 officer with the City of Richmond Police Department.

7 Q How long have you been with the Richmond
8 Police Department?

9 A Approximately nine years.

10 Q Before Christie Green's death, for
11 approximately how long had you been on the Richmond
12 SWAT team?

13 A Approximately six months.

14 Q Did you participate in the effort of the
15 Richmond Police to serve a search warrant at 1112C
16 Dove Street on December 29, 1998?

17 A Yes, I did.

18 Q Please tell the jury what your role was in
19 that incident.

20 A I was the shield person, which would have
21 been the number one person through the door at the
22 back door doing what's called a limited penetration.
23 Once the door would open, I would only go so far into
24 the structure.

25 Q Were you standing next to Sergeant Ingram

1 as he breached the door?

2 A I was standing right at the door.
3 Sergeant Ingram, if I'm not mistaken, was to my left.

4 Q Was there anyone in between you and
5 Sergeant Ingram?

6 A I'm sorry?

7 Q Was there anyone in between you and
8 Sergeant Ingram?

9 A No, sir.

10 Q Who was the first policeman to enter the
11 kitchen after Sergeant Ingram got the door open?

12 A I was.

13 Q When you entered the kitchen that night,
14 were the lights on in the kitchen?

15 A Yes, sir.

16 Q When you entered the kitchen that night,
17 what did you see?

18 A Once the door was open, I entered into the
19 kitchen area. I had a shield in my hand and a
20 handgun. The lights were on. The view port that we
21 look through in the ballistic shield was
22 approximately this big.

23 Generally, we scan the area as soon as we
24 go through the door. I scanned from right to left.
25 When I scanned from right to left, I saw Ms. Green on

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1 the floor. I believe there was another person next
2 to her, a female, and then another male who was by
3 the nickname of Muscle that was in there also. So
4 from right to left.

5 Q So as you were looking into the kitchen,
6 you saw three adults; correct?

7 A Yes, immediately.

8 Q The one on the right you learned was
9 Christie Green?

10 A Yes, sir.

11 Q The one in the middle was another adult
12 female?

13 A Yes. I don't recall her name.

14 Q That adult female that was in the middle,
15 was she lying down?

16 A I don't recall. I believe so, but I can't
17 be for certain.

18 Q Then continuing from right to left, the
19 male was over in the left corner of the kitchen. Is
20 that the case?

21 A That's correct. They were trying to get
22 into -- basically into the cupboard.

23 Q I want to hand you a copy of the exhibit.

24 MR. CUTHBERT: What was that number, Your
25 Honor?

1 THE COURT: Number 23.

2 Q I'm going to number this for purposes of
3 identification as Plaintiff's Exhibit 24 if I may.
4 It's a copy of 23. I would ask you if you would take
5 a look at that. Take a look at that, if you would,
6 and tell the jury whether that diagram includes the
7 location where you saw Christie Green when you
8 entered the kitchen that night or when you looked in
9 the kitchen that night for the first time.

10 A It does.

11 Q It does?

12 A Yes, sir.

13 Q I'm going to hand you, if I may, a red
14 magic marker and ask you, if you would, to indicate
15 on that Exhibit 24 the approximate location of where
16 it was that you saw Christie Green when you entered
17 the kitchen that night.

18 A (Complies.)

19 Q Would you please put the initials CG
20 underneath of that X for Christie Green.

21 A (Complies.)

22 Q Now, as you were looking into the kitchen
23 or as you were in the kitchen that night, did you see
24 any children?

25 A Not immediately.

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1 Q Before you left the kitchen that night,
2 did you see any children?

3 A Yes.

4 Q How many?

5 A There were two.

6 Q Where were they when you first saw them,
7 and what were they doing?

8 A They were underneath Ms. Green.

9 Q Were both of them underneath Ms. Green, or
10 was just one of them underneath Ms. Green?

11 A I cannot be for certain exactly if I saw
12 them. I would have to refer back to my notes to be
13 certain.

14 Q You're certain that one of the children
15 was underneath Ms. Green; is that the case?

16 A Yes, sir.

17 Q What part of the body of the one that you
18 remember seeing was apparent to you as you were in
19 the kitchen before the child was extracted? Was it
20 the head? The arm? The leg?

21 A I really don't recall, sir.

22 Q Now, going back to Ms. Green, how was her
23 body positioned? Was she lying down? In what
24 position was her body when you first saw it?

25 A To the best of my recollection, she was

1 almost slumped over with her head facing the -- what
2 would that be -- the north wall to the left of the
3 door, my right of the door as I was coming in, just
4 almost as if she was crouched down.

5 Q So she was facing the wall in which the
6 kitchen door was placed; is that the case?

7 A Yes.

8 Q What about her legs? Was she centered on
9 her feet? Was she kneeling down? What, if anything,
10 do you remember about the placement of her legs?

11 A I don't have any recollection of that,
12 sir.

13 Q When you said she was almost crouching
14 down, can you describe in more detail what you mean
15 by that?

16 A I know her head was facing me, and the top
17 of her back was up. As far as where any of the
18 positions or anything else like that, I don't know.

19 Q Was her head on the floor?

20 A I couldn't even be for certain on that.
21 It could have been. It could not have been.

22 Q What, if anything, did you do in response
23 to the injuries that you observed Ms. Christie Green
24 had?

25 A I did nothing but covered the individuals

1 until Sergeant Ingram began extracting the children,
2 removed the individuals that were also in there.
3 Then if I'm not mistaken, medical attention came in
4 immediately once everybody was, I guess, secured and
5 moved in position.

6 Q Did you observe Sergeant Ingram remove the
7 child from under Ms. Christie Green?

8 A Yes, sir.

9 Q What did you see Sergeant Ingram do to the
10 child once he had removed her from under Christie
11 Green?

12 A The first child Sergeant Ingram removed
13 and passed it off to a team member behind me. I
14 don't recall who that was. Then the second child he
15 took in his arms and carried it outside.

16 MR. CUTHBERT: I don't have any other
17 questions. Thank you very much. Answer any
18 questions, please, the city attorney has.

19 THE COURT: Ms. Harris.

20
21 CROSS-EXAMINATION

22 BY MS. HARRIS:

23
24 Q Good morning Officer DeGrauwe.

25 A Good morning.

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1 Q I have just a couple of questions for you.
2 That initial position that you took next to Ingram,
3 when you all set up positions to prepare for the
4 breach, did you remain in that same position the
5 entire time until the door was breached?

6 A No, ma'am.

7 Q Why did you move?

8 A Initially, when Sergeant Ingram began to
9 engage the door to breach it, we -- I specifically
10 heard gunfire coming from just behind the door, which
11 would have been the area where I would have moved
12 into. I immediately acknowledged that back to the
13 team leader.

14 At the time Sergeant King began announcing
15 it, that there was gunfire from beyond the door. So
16 at that point, my number one mission as the shield
17 person is to protect the breacher. So I slightly
18 adjusted my position that should gunfire start coming
19 out of the door, I could keep Sergeant Ingram from
20 taking any rounds or being harmed.

21 Q Now, you're the shield person, but you're
22 also the first person that's going to go through the
23 door; is that correct?

24 A That's correct.

25 Q Where is your focus of attention while you

1 are providing coverage to Sergeant Ingram as he's
2 breaching the door?

3 A My main focus is just looking for any
4 indication that the door is open and then to take the
5 team into the structure under the cover of the
6 shield.

7 Q Is that indication that you're looking
8 for -- you're looking for a crack of light in the
9 door frame?

10 A Anything that tells me that the door is
11 ready for me to go through.

12 Q As you were standing out there providing
13 coverage to Sergeant Ingram as he's breaching the
14 door and you're looking for that indication, did you
15 receive any indication at any time between the time
16 that Sergeant Ingram fired the first frangible round
17 and the time that he fired that last frangible round?

18 A No. When he used that style, the door did
19 not come open.

20 Q Did you ever see any indication that the
21 door was breached prior to Sergeant Ingram using the
22 round?

23 A No, ma'am.

24 Q Now, you indicated that once you went into
25 the kitchen, you did not aid the individuals that

1 were in there. Why did you not aid them?

2 A My sole function is the protection of the
3 team, the whole team with the shield. So therefore,
4 I take up a position to -- whoever would be the
5 threat.

6 At the point when I went in, there was a
7 weapon that was loaded -- I believed was loaded that
8 was laying in the center of the floor in between the
9 false wall and the wall I had just come in into the
10 doorway. So there was a loaded weapon, I believed,
11 that was laying right there on the ground.

12 So what I wanted to do was to make sure
13 that nobody was going to go from where I was at to
14 that weapon to harm myself, my team members, or the
15 other team members coming through the door on the
16 other side.

17 Q Were there any individuals inside the
18 structure that were near that loaded weapon?

19 A Well, the other two individuals that
20 were -- well, actually, all three that I knew of were
21 there, Ms. Green and the other two individuals that
22 were in the kitchen.

23 Q You referred to one of the individuals as
24 Muscle?

25 A That was his street nickname, yes, ma'am.

1 Q You were familiar with Muscle?

2 A I wasn't specifically. I had just heard
3 about him from the other street enforcement officers
4 from the third precinct.

5 Q Did you know his true name to be Alvin
6 Anderson?

7 A I don't know his name specifically, no,
8 ma'am.

9 Q From the time that you first entered the
10 structure until the time that the medic entered the
11 structure, how many seconds was that?

12 A I really couldn't gauge. I could say that
13 it could feel like three seconds. It could feel like
14 a lifetime. It was really quick. How quick it was,
15 I really couldn't tell you.

16 Q But you know that it was quick?

17 A Yes, ma'am.

18 MS. HARRIS: That's all of the questions I
19 have. Thank you, sir.

20 THE COURT: Is there any redirect?

21 MR. CUTHBERT: No, Your Honor.

22 I believe I did not ask that Exhibit 24 be
23 put into evidence. I move that it be put into
24 evidence, Your Honor.

25 THE COURT: Any objection, Ms. Harris, to

1 the copy of the exhibit?

2 MS. HARRIS: I didn't have an opportunity
3 to see it after the witness marked it.

4 THE COURT: All right.

5 MS. HARRIS: No objection, sir. Thank
6 you.

7 THE COURT: That will be admitted as
8 Plaintiff's Exhibit 24.

9
10 (Plaintiff's Exhibit 24 is received.)
11

12 MR. CUTHBERT: Your Honor, I have no other
13 questions for this witness. As far as I am
14 concerned, he is free to go.

15 THE COURT: Thank you very much, Officer
16 DeGrauwe. You may step down. You are free to
17 leave if you need to leave.

18 THE WITNESS: Yes, sir.
19

20 -----
21 WITNESS STOOD ASIDE
22

23 THE COURT: Your next witness,
24 Mr. Cuthbert.

25 MR. CUTHBERT: Your Honor, I call Officer

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1 Buckovich as our next witness.

2 THE COURT: Officer Buckovich, would you
3 come forward, sir.

4
5 JOHN B. BUCKOVICH, a Defendant, called by the
6 Plaintiff, first being duly sworn, testified as
7 follows:

8
9 DIRECT EXAMINATION

10 BY MR. CUTHBERT:

11

12 Q Officer Buckovich, good morning.

13 A Good morning, sir.

14 Q Would you tell the members of the jury
15 your name, sir.

16 A John Buckovich.

17 Q You're employed by the Richmond Police
18 Department, City of Richmond; is that the case?

19 A Yes, I am.

20 Q I'm going to ask the bailiff to hand you a
21 document that for purposes of identification I've
22 marked as Plaintiff's Exhibit 15.8.

23 THE COURT: All right. Let's go. If you
24 all have had a chance to see what it is, that
25 will be handed to the witness. I assume you

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1 all have seen that before.

2 MS. HARRIS: I apologize, sir, but it does
3 look different than the one that we have seen
4 before. We were trying to compare whether or
5 not it has been altered.

6 THE COURT: Is it different, Mr. Cuthbert?

7 MR. CUTHBERT: No, sir. It is a cleaner
8 copy. She has a fuzzier copy. The contents
9 are the same.

10 THE COURT: All right.

11 BY MR. CUTHBERT:

12 Q Officer Buckovich, you've been handed a
13 paper that for purposes of identification has been
14 marked Plaintiff's Exhibit 15.8. Have you seen that
15 document or one that has the identical content
16 before?

17 A Yes, sir.

18 Q Would you please tell the jury where
19 you've seen that. Isn't that in the lesson plan of
20 the Richmond Police Department dealing with breaching
21 techniques?

22 A Yes, sir. This is the sheet we receive
23 from the manufacturer.

24 MR. CUTHBERT: All right. I move the
25 introduction of that into evidence.

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1 THE COURT: Any objection?

2 MS. HARRIS: We're not certain that it's
3 the same document.

4 THE COURT: If it's the same document, you
5 do not object?

6 MS. HARRIS: If it's the same document, we
7 do not object. We can take this up on a break.

8 THE COURT: I accept your representation
9 as an officer of the court. I accept
10 Mr. Cuthbert's representation. He says this is
11 the same document.

12 MR. CUTHBERT: Yes, sir.

13 THE COURT: It will be admitted as
14 Plaintiff's Exhibit 25.

15
16 (Plaintiff's Exhibit 25 is received.)

17
18 BY MR. CUTHBERT:

19 Q Would you please read to the jury the
20 first paragraph.

21 A Which paragraph? There's one under
22 application, and then there's one under frangible
23 slug at the top left.

24 Q Good question. The paragraph that starts
25 off, "The No. 22 T.K.O. is a high velocity...

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1 A The No. 22 T.K.O. is a high velocity,
2 12-gauge, frangible slug made of compressed powdered
3 zinc, which disintegrates into a fine powder upon
4 impact with the target. The only possible
5 fragmentation would be from the target area, rather
6 than the slug itself.

7 Q Then go over, please, to the side that
8 says application. Do you see that paragraph?

9 A Yes, sir.

10 Q Would you please read that aloud.

11 A Application: When properly applied, this
12 round is capable of defeating door lock mechanisms,
13 doorknobs, hinges, dead bolts, safety chains, and
14 padlocks on both hollow and solid wooden doors, as
15 well as standard hollow industrial doors. It is also
16 effective on automobile door and trunk lock
17 mechanisms.

18 Q Thank you very much.

19 When the police attempted to serve the
20 search warrant at 1112C Dove Street on December 29,
21 1998, who was the front door breacher? What was his
22 name?

23 A When you refer to the front door, the
24 living room door?

25 Q Yes, sir.

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1 A Sergeant David Wallis.

2 Q Now, how many shots did Sergeant Wallis
3 fire at the front door?

4 A To the best of my recollection, it would
5 be five rounds.

6 Q Isn't it true that the shotgun that he was
7 using held a total of five rounds?

8 A I don't know if it held more than that,
9 but I believe he had loaded five breaching rounds in
10 it.

11 Q So you believe he fired every No. 22
12 T.K.O. that he had at that door that night; is that
13 the case?

14 A Yes.

15 MR. CUTHBERT: Your Honor, I don't have
16 any other questions for this witness.

17 THE COURT: Cross-examination?

18 MS. HARRIS: No, sir. Thank you.

19 THE COURT: Mr. Buckovich, thank you very
20 much, sir. You may step down and return to
21 your seat at counsel table.

22

23

24

25

WITNESS STOOD ASIDE

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1 THE COURT: All right. It's about quarter
2 to 11:00. Why don't we go ahead and take the
3 morning recess. I'm going to recess until
4 11:00.

5 Members of the jury, you can go into the
6 jury room. If anybody wants to go down to the
7 lower level to get some nabs or sodas, feel
8 free to do that. Be aware though that there
9 may be witnesses or lawyers in the hall. So if
10 they're talking about the case, make sure they
11 know that you are on the jury, so they will not
12 continue to talk about the case.

13 We'll stand in recess until 11:00.

14
15 (The jury exits.)

16
17 THE COURT: Mr. Braxton, what's the status
18 of Ms. Anderson?

19 THE BAILIFF: Captain Quigg has gone out
20 to the house now.

21 THE COURT: We're still trying to get
22 Ms. Anderson. In the event that we can't get
23 her -- and I will say that it looks like
24 service was served by posting -- is there
25 anything that you all can stipulate as to what

1 she might say if we cannot get her here?

2 MR. CUTHBERT: I would propose that we
3 stipulate that she'd testify just as she
4 testified in the first trial.

5 THE COURT: You all will not stipulate to
6 that?

7 MS. HARRIS: No, sir.

8 THE COURT: You all talk about it for five
9 minutes during the recess and see if there's
10 anything that you can stipulate. I'm hoping
11 that we get her here, but I think we better
12 prepare for the worst.

13 So Mr. Cuthbert, you have to decide what
14 you want to do. She was subpoenaed, but the
15 service was made by posting.

16 Anything else we can do before we take a
17 recess?

18

19 (No response.)

20

21 THE COURT: Mr. Cuthbert, did you want to
22 put anything on the record about the questions
23 that I overruled you on? You wanted to object
24 to Dr. Boone saying that the other information
25 that eventually came in would have been helpful

1 to her. Do you still want to object to that?

2 MR. CUTHBERT: Yes, sir. But I would like
3 to look back at Your Honor's --

4 THE COURT: That really doesn't do any
5 good. Like many times when lawyers make
6 arguments on motions in limine, the Court does
7 the best that it can. It makes its ruling
8 based on the representations of counsel as to
9 what the evidence will be. Many times when we
10 have the actual trial, the evidence is not
11 different than what the lawyers say it was, but
12 it comes in in a different context. Sometimes
13 it is different.

14 Based on Dr. Boone's testimony, she
15 testified that it was the trauma of Kevasha's
16 mother's death that led to whatever problems
17 she was testifying about. I think it's very
18 relevant that there were other traumas in her
19 life on that particular day which, as Dr. Boone
20 then testified to, would have been helpful to
21 her and important to her in making the
22 diagnosis.

23 I will let you look back at my ruling, and
24 you can say whatever you want to say when we
25 come back. I don't know how it can be anymore

1 relevant than that. I will let you take a look
2 at the record. You can respond to what I just
3 said when we come back.

4 MR. CUTHBERT: Yes, sir.

5 THE COURT: Okay.

6 MS. HARRIS: Your Honor, before we
7 adjourn -- I'm sorry -- might we address one
8 issue about -- I believe that Mr. Cuthbert is
9 planning on calling Dr. Johnson.

10 MR. CUTHBERT: Yes.

11 MS. HARRIS: With regard to Dr. Johnson --

12 THE COURT: Let's let the jury go.

13 MS. HARRIS: Okay.

14
15 (The jury exits the jury room and exits
16 the courtroom.)

17
18 MS. HARRIS: I have located that case. I
19 apologize.

20 THE COURT: All right. What's the name of
21 it?

22 MS. HARRIS: It is El-Meswari v.
23 Washington Gas Light Company, 785 F.2d 483 (4th
24 Cir. 1986).

25 THE COURT: That is one of the

1 annotations?

2 MS. HARRIS: Yes, sir.

3 THE COURT: All right.

4 MS. HARRIS: It would be on page 96.

5 THE COURT: What does it say that you want
6 me to know about?

7 MS. HARRIS: It says, in a wrongful death
8 action, the District Court's decision to
9 excluding doctor's expert testimony concluding
10 that the jury could assess the mother's inner
11 grief without expert guidance represented a
12 reasonable exercise of the judge's broad
13 discretion --

14 THE COURT: I didn't hear the last thing
15 you said. Reasonable exercise of what?

16 MS. HARRIS: Yes, of the judge's broad
17 discretion.

18 THE COURT: The judge's broad discretion.
19 It doesn't say you have to do it or you don't
20 have to do it. It says, broad discretion.

21 MS. HARRIS: I'm getting to that point,
22 yes, sir.

23 THE COURT: I just want to make sure I
24 heard you right.

25 MS. HARRIS: You heard me right. I'm

1 going to get to that point. Under the Federal
2 Rule of Evidence 702, to determine that a
3 proposed expert will not significantly assist
4 the arbiter of fact. In this case --

5 THE COURT: Well, did you read the
6 annotation that's directly under that?
7 Although indirect physical injuries allegedly
8 suffered by the mother as the result of her
9 child's death are not compensable in
10 themselves. The Court might nevertheless admit
11 the mother's proffered information to
12 illustrate her claim of direct mental anguish.
13 That's from the same case.

14 MS. HARRIS: Same case, yes, sir.

15 THE COURT: So it sounds like what you
16 just said is absolutely correct. The Court has
17 broad discretion.

18 MS. HARRIS: What I will say is we have
19 now heard from Dr. Boone who states that the
20 child has suffered mental anguish from her
21 mother's passing, which certainly the jury
22 could discern without ever hearing from
23 Dr. Boone. I think it would be repetitive,
24 cumulative, and more prejudicial to now have --

25 THE COURT: You don't think it's a little

1 different though where you have a child? We
2 adults can take care of ourselves, and
3 Mr. Cuthbert can ask an adult: Tell me about
4 the mental anguish that you've suffered. An
5 adult can do that. Kevasha is now eight years
6 old or whatever. Do you expect her to be able
7 to tell a jury about her mental anguish that
8 she suffered when she was three years old?

9 MS. HARRIS: Well, I think that's the very
10 point. Because Kevasha was three years old,
11 then the doctor's testimony as to her mental
12 anguish that she suffered, her ability to
13 connect that mental anguish, one, to her
14 mother's passing, as opposed to anything else.

15 Now we know there was also this hostage
16 situation that was never shared with the
17 doctor. This is really purely speculative. It
18 doesn't assist the trier of fact in determining
19 what mental anguish Kevasha suffered and why.

20 Also, you expect that a three year old
21 will not behave at all times. Your Honor has
22 children. I have children. Anybody who has
23 children knows a three year old doesn't always
24 behave.

25 THE COURT: My three year old always

1 behaved.

2 MS. HARRIS: Well, I have an exception to
3 the rule -- I will admit -- both of mine.

4 At any rate, a three year old in my
5 experience does not always behave. So to have
6 the doctors testify as to the suffering of the
7 child and mental anguish of the child is just
8 inappropriate in this case.

9 When there is an adult, an adult is able
10 to identify a triggering event that is more
11 probative -- I would argue -- than in the case
12 of a child who is not able to communicate that,
13 and the adults are merely speculating as to
14 that.

15 THE COURT: I disagree with you. I think
16 it's helpful to the jury, particularly when you
17 have a child involved, to have that expert
18 testimony.

19 The case that you've mentioned, I think,
20 gives the Court the discretion to either
21 exclude it or not exclude it. I'm not sure you
22 can exclude it where you have a child. I don't
23 know how else the jury will be able to
24 determine what mental anguish the child
25 suffered other than assuming that children

1 suffer mental anguish. I'm not sure that's
2 appropriate. I appreciate your objection, but
3 it's overruled.

4 Anything else?

5
6 (No response.)

7
8 THE COURT: We'll stand in recess until
9 11:00.

10
11 (Recess taken.)

12
13 THE COURT: Mr. Cuthbert, are you ready to
14 proceed?

15 MR. CUTHBERT: Yes, sir.

16 THE COURT: Did you want to make any other
17 argument on the matter we talked about?

18 MR. CUTHBERT: I think I have said all
19 that the record needs, Your Honor. Thank you.

20 THE COURT: All right. You can bring the
21 jury in, please, Mr. Braxton.

22
23 (The jury enters.)

24
25 THE COURT: Mr. Cuthbert, who is your next

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1 witness?

2 MR. CUTHBERT: Your Honor, I call Sergeant
3 Ingram as an adverse witness.

4 THE COURT: Sergeant Ingram.
5

6 GEORGE J. INGRAM, a Defendant, called by the
7 Plaintiff, first being duly sworn, testified as
8 follows:
9

10 DIRECT EXAMINATION

11 BY MR. CUTHBERT:
12

13 Q Sergeant Ingram, good morning.

14 A Good morning, sir.

15 Q Would you please state for the record your
16 name.

17 A Sergeant George James Ingram.

18 Q You're employed by the City of Richmond,
19 Richmond Police Department; correct?

20 A Yes, I am.

21 Q When you killed Christie Green, the
22 shotgun that you were using was capable of holding
23 only five rounds; isn't that true?

24 A Yes, sir.

25 Q I hand you a photograph that for purposes

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1 of identification I've marked as Plaintiff's Exhibits
2 1 through 10. I ask you if that is a photograph of
3 the weapon that you used to kill Christie Green.

4 A Yes, sir, it is.

5 MR. CUTHBERT: I move that into evidence.

6 THE COURT: Any objection?

7 MS. BURTON: No, sir.

8 THE COURT: That will be admitted as
9 Plaintiff's Exhibit 26.

10
11 (Plaintiff's Exhibit 26 is received.)
12

13 MR. CUTHBERT: Yes, sir.

14 BY MR. CUTHBERT:

15 Q Isn't it true that you called for the ram
16 only after you had no more 22 T.K.O.'s left in your
17 shotgun?

18 A Yes, sir, and that the door wasn't open.

19 Q Yes, sir. But in terms of the number of
20 rounds that were left in your shotgun, were there
21 anymore No. 22 T.K.O.'s left in your shotgun?

22 A No, sir.

23 Q Isn't it true that when you fired the
24 first of your five No. 22 T.K.O.'s at the kitchen
25 door, you knew that the No. 22 T.K.O. had sufficient

1 power to go through the wood and destroy the steel
2 latch bolt and then knock that latch bolt out the
3 back of the door? Didn't you know that the shotgun
4 shell of a 22 T.K.O. had enough power to do that?

5 A By the design of kinetic energy that it
6 imparts on the wood, it would push on the latch and
7 push the latch through the door. Yes, sir, I'm aware
8 of that.

9 Q Tell the jury, please, what protective
10 clothing you had on when you shot at the kitchen
11 door.

12 A The night of the mission I would have been
13 wearing a ballistic helmet, goggles, an Balaclava, my
14 SWAT armor, gloves, and a uniform.

15 Q Yes, sir. What is a Balaclava?

16 A It's a special protective hood that we
17 use. It's a fireproof hood.

18 Q What is the SWAT body armor?

19 A It's a heavier body armor than a normal
20 police officer would have. It has plates. It's just
21 a little bit heavier body armor.

22 Q What part of the body does it protect?

23 A The front and back of the upper torso.

24 Q Let me shift to another topic. Isn't it
25 true that before you killed Christie Green, you had

1 fired a No. 22 T.K.O. in a real mission only once?

2 A As I recall, yes, sir.

3 Q That once was seven or eight years before
4 you killed Christie Green?

5 A I don't believe it would have been that
6 long before that. It was a time before that. It was
7 on a mission. I don't recall the specifics.

8 Q Well, let me see if I can find your
9 deposition transcript from October 14, 1999. I ask
10 you to look with me, please, at page 126. I'd like
11 you to look, please, with me to page 126.

12 THE COURT: You can just read the question
13 and the answer. You don't need to show it to
14 the witness.

15 MR. CUTHBERT: Yes, sir.

16 Question: Approximately how many years
17 ago was this? This is referring to his earlier
18 mission when he first shot a No. 22 T.K.O.

19 Answer: At least eight years ago, seven
20 or eight years ago.

21 BY MR. CUTHBERT:

22 Q Was that your testimony?

23 A It would have been, sir. Was that from
24 the time you were interviewing me?

25 Q Yes, sir. It was seven or eight years ago

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1 before the date you gave your deposition, which was
2 October 14, 1999?

3 A It may have been that long, sir. I don't
4 recall the specifics or the exact time.

5 Q That was the only time though as far as
6 you can recollect that on a real mission you fired a
7 No. 22 T.K.O. before you killed Christie Green;
8 correct?

9 A On a mission, yes, sir.

10 Q I want to hand you, please, a duplicate of
11 the exhibit that is in evidence, I believe, as
12 Exhibit 24. It's the diagram of the floor. I would
13 ask you to take a look at that. If I may, I'll also
14 give you a red magic marker.

15 MS. BURTON: This is one with the writing
16 on it. Did you intend for the writing to be on
17 it?

18 MR. CUTHBERT: I'm sorry. No.

19 What is the number on that exhibit,
20 please?

21 THE COURT: It should be 23. There was a
22 duplicate that was 24.

23 MR. CUTHBERT: Yes, sir. I would like
24 this one, Your Honor, for purposes of
25 identification to be the next in sequence.

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1 THE COURT: This will be 27.

2 BY MR. CUTHBERT:

3 Q Take a look at the document that's going
4 to be Plaintiff's Exhibit 27. Do you see on there
5 the location where Christie Green's body was when you
6 first saw it?

7 A Yes, sir.

8 Q Would you please take that red magic
9 marker and indicate that location on that document,
10 please. Would you put the initials CG with that X
11 that you just drew.

12 THE COURT: He needs to put something else
13 on there to distinguish it from the one the
14 prior witness testified about. Somebody else
15 also did the same thing -- Officer DeGrauwe.

16 MR. CUTHBERT: However Your Honor wants
17 to.

18 THE COURT: I'm just saying: We have an
19 exhibit with an X and a CG.

20 Maybe put your initials on there,
21 Mr. Ingram, at the top, not in the same place,
22 but somewhere so we'll know that that's the one
23 that you did.

24 BY MR. CUTHBERT:

25 Q At what point in time was it that you

1 first saw the body of Christie Green?

2 A After we had obtained entry to the kitchen
3 area.

4 Q Tell the jury, please, everything that you
5 observed about the body of Christie Green after you
6 obtained entry into the kitchen?

7 A As we entered the kitchen, I observed
8 three adults and two juveniles in the kitchen.
9 Originally, three adults and one juvenile. I didn't
10 see the second juvenile immediately. There was a
11 male to my far left, and there was a female in the
12 center. Actually, the male was behind the female
13 attempting to drag her attempting to use her as some
14 kind of cover or whatever. He was physically trying
15 to get away from us and using her.

16 Then there was a juvenile in approximately
17 the center of the kitchen standing up. Then I
18 noticed another adult, which was Christie Green,
19 leaning up against the cabinet, as I recall, head
20 slumped toward the wall by the cabinet, which would
21 have been the north wall.

22 Q And seated on the floor?

23 A Yes, she was on the floor.

24 Q Now, when did it first come to your
25 attention that there was a second child in that

1 kitchen?

2 A I don't recall the exact moment, but I do
3 recall seeing the second child. She was with
4 Christie Green at that time.

5 Q Do you remember what part of the anatomy
6 of the child you saw first?

7 A I saw her feet first. I saw her feet and
8 then the lower part of her body.

9 Q How were her feet aligned with respect to
10 the body of Ms. Green?

11 A They were close by. I don't recall the
12 exact alignment, but they were close together.

13 Q Were the legs underneath the mother?

14 A I noticed the legs. The legs were
15 sticking out.

16 Q Sticking out from where?

17 A Her body was slumped over. As I recall, I
18 saw the legs and like part of the lower torso. I
19 didn't see the whole body, but I don't recall exactly
20 how the feet -- which angle the feet were.

21 Q Would you indicate also on that exhibit,
22 please, the location of the child. Let's use the
23 letter C with a circle around it for child if that's
24 all right.

25 A (Complies.)

1 MR. CUTHBERT: Your Honor, I would ask
2 also if Sergeant Ingram would annotate this
3 enlargement of that exhibit to indicate the
4 same information if I may.

5 THE COURT: All right.

6 Q So here's the kitchen and here are the
7 cabinets.

8 A (Complies.)

9 MR. CUTHBERT: All right. Fine. Thank
10 you very much.

11 Your Honor, I move the introduction into
12 evidence of that.

13 THE COURT: Any objection to the exhibit
14 with Officer Ingram's markings on it?

15 MS. BURTON: No, sir, but we would like to
16 see it.

17 THE COURT: Show that to Ms. Burton also.

18 MS. BURTON: Thank you.

19 THE COURT: All right. Plaintiff's
20 Exhibit 27 is admitted.

21

22 (Plaintiff's Exhibit 27 is received.)

23

24 MR. CUTHBERT: Thank you. Your Honor, I
25 don't have any other questions for this

1 witness.

2 THE COURT: Any questions for Officer
3 Ingram at this point?

4 MS. BURTON: No, sir.

5 THE COURT: Officer Ingram, thank you,
6 sir. You may return to your seat at counsel
7 table.

8
9 -----
10 WITNESS STOOD ASIDE

11
12 THE COURT: Mr. Cuthbert, your next
13 witness.

14 MR. CUTHBERT: Your Honor, I call
15 Ms. Dollnice Skipper.

16 THE COURT: There's no response,
17 Mr. Cuthbert.

18 MR. CUTHBERT: I would recall Ms. Katina
19 Green if I may, Your Honor.

20 THE COURT: Ms. Katina Green?

21 MR. CUTHBERT: Yes, sir.

22 THE COURT: Ms. Green, would you come to
23 the witness stand, please. You can have a
24 seat. You are still under oath. You were
25 sworn yesterday. You're still under oath.

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1 KATINA GREEN, the Plaintiff, called on her own
2 behalf, having been duly sworn, testified as follows:

3
4 CONTINUED DIRECT EXAMINATION

5 BY MR. CUTHBERT:

6
7 Q Ms. Green, good morning.

8 A Good morning. Good morning.

9 Q You told the jury a little bit about
10 yourself yesterday. I'm just going to pick up. I am
11 not going to repeat that.

12 Let me ask you to turn your attention,
13 please, to the evening that your sister, Christie
14 Green, died. On that night, how did she get to 1112C
15 Dove Street?

16 A I drove her.

17 Q Did anyone else ride with you and Christie
18 Green to Dove Street?

19 A I was the driver. Christie was the
20 passenger, and Kevasha was in the baby car seat.

21 Q Where was the baby car seat?

22 A In the back.

23 Q In general terms, what, if anything, did
24 Christie tell you as to why she wanted to go to the
25 Dove Street apartment?

1 A She had problems, and she needed to talk
2 to her best friend. It was something that she
3 couldn't talk to me about. We all know that when you
4 have a best friend, you need that best friend at that
5 time.

6 Q Who was that best friend?

7 A Charnte Anderson.

8 Q Did Ms. Charnte Anderson live at that
9 apartment?

10 A No, she didn't.

11 Q What, if anything, did Christie Green tell
12 you as to why she expected Ms. Charnte Anderson to be
13 at the apartment?

14 A She spoke to Charnte. Charnte told her,
15 well, if you need to talk to me, just meet me at
16 1112C Dove Street. My kids are being baby-sat there,
17 and I will be there in a minute.

18 Q Now, was Christie Green wearing a jacket
19 or a coat of some kind?

20 A Yes, sir. She was wearing a purple coat,
21 a purple leather coat.

22 Q I want to hand you an exhibit that I've
23 marked for purposes of identification Plaintiff's
24 Exhibit 15.4.

25 MS. HARRIS: I object to that.

1 THE COURT: Don't we already have that,
2 Mr. Cuthbert? Why do we need that?

3 MR. CUTHBERT: Your Honor, we don't have a
4 picture of that jacket.

5 THE COURT: Why do we need it?

6 MR. CUTHBERT: Well, we need it to show
7 that Ms. Green still had her outside jacket on
8 when she was killed. It indicates that she had
9 only been there a short while.

10 THE COURT: The objection is overruled.

11 MR. CUTHBERT: Did you say overruled, Your
12 Honor? I'm sorry.

13 THE COURT: The objection is overruled.

14 MR. CUTHBERT: Yes, sir. Thank you.

15 BY MR. CUTHBERT:

16 Q Ms. Green, do you recognize the jacket
17 that is pictured in that photograph?

18 A Yes, sir.

19 Q What do you recognize that jacket to be?

20 A This is Christie Green's jacket, her
21 purple leather coat she got for Christmas.

22 Q Her purple leather coat that she got for
23 just that Christmas?

24 A Yes.

25 Q Was she wearing it that night?

1 A Yes.

2 MR. CUTHBERT: Your Honor, I move the
3 introduction into evidence of that.

4 THE COURT: That will be Plaintiff's
5 Exhibit 28. It's admitted.

6
7 (Plaintiff's Exhibit 28 is received.)
8

9 Q Now, about what time was it when you let
10 Christie Green off at 1112C Dove Street?

11 A She was let off at quarter to 11:00, no
12 later than 11:50.

13 Q When Ms. Green got out of the car, did she
14 take Kevasha with her, or did she leave Kevasha with
15 you?

16 A She was toting her like you hold a child
17 on your hip. She held her like that.

18 Q When Ms. Christie Green and Kevasha got
19 out of your car, what did you see happen next if
20 anything?

21 A She walked up the hill towards 1112C Dove
22 Street. See, there's a hill that you go to to get to
23 the back door. The back door is lit up. There are
24 lights from the project area. The porch light is
25 also on. She opened the screen door. She knocked on

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1 the door. Then it was a light from the inside of the
2 apartment. I seen the door open. She leaned back,
3 and she waved. And then she went in.

4 Q At any time when you were at Dove Street
5 that night, did you see any indication of any police?

6 A No, sir, I didn't.

7 Q Now, when you dropped Kevasha and Christie
8 Green off this night, what was your understanding as
9 to how they were going to get home?

10 A She said Charnte had her car. She was
11 going to take her home.

12 Q Charnte had Charnte's car?

13 A Yes.

14 Q And that Ms. Green would go home with
15 Charnte?

16 A Yes.

17 Q Now, what did you do next after you let
18 your sister out and Kevasha out?

19 A I backed up, and I proceeded to go home.

20 Q Did you go straight home?

21 A I went straight home.

22 Q How long did it take you to drive home?

23 A Fifteen or twenty minutes.

24 Q Where were you when you learned that
25 Christie Green had been killed?

1 A As soon as I arrived at my apartment, I
2 was handed the phone. I said, who is it? They said,
3 it's for you. It's for you. I said, hello. They
4 said, your sister is dead. I said, no, she's not.
5 She's not dead. I just dropped her off. And she was
6 dead within 15 minutes.

7 Q After Christie Green was killed, when and
8 where did you first see Kevasha?

9 A At MCV Hospital.

10 Q When you first saw Kevasha at MCV that
11 night, what, if anything, do you remember about how
12 Kevasha looked?

13 A She said -- the first thing that came out
14 her mouth was she said, Aunt Tina, the police killed
15 my mama. The police shot my mama.

16 Q Now, did Kevasha spend the night at MCV
17 that night?

18 A No, she didn't.

19 Q With whom did she go home that night?

20 A She went home with me.

21 Q What, if anything, do you remember about
22 Kevasha's first night at home without her mom?

23 A She had a nightmare about the police
24 killing her mother. She said, mom, why the police
25 kill my mama? She just kept waking up. She had an

1 outburst of crying.

2 Q Did you attend Christie Green's funeral?

3 A Yes, sir, I did.

4 Q Did Kevasha and DiQuasha also attend?

5 A Yes, sir, they did.

6 Q I want to hand you a bill that for
7 purposes of identification I've marked as Plaintiff's
8 Exhibit 16. I ask you if this is a bill for Christie
9 Green's funeral.

10 A Yes, sir, this is the bill.

11 Q What is the total amount of that bill,
12 please?

13 A \$35,000.

14 MS. BURTON: Objection. That's not the
15 correct amount.

16 Q May I help you with that?

17 A I mean \$3,500. I'm sorry.

18 MR. CUTHBERT: Your Honor, I move the
19 introduction into evidence of that bill.

20 THE COURT: Any objection?

21 MS. HARRIS: No, sir.

22 THE COURT: That will be admitted as
23 Plaintiff's Exhibit 29.

24

25 (Plaintiff's Exhibit 29 is received.)

1 Q Let me turn your attention to another
2 topic, that is, to your sister's decision to give
3 custody of DiQuasha to Ms. Skipper. Do you remember
4 that happening?

5 A Yes, sir.

6 Q How is it that you remember that
7 happening?

8 A Me, which is Katina Green; Dollnice
9 Skipper; and Christie Green, we was in the hospital.
10 She decided it then. As she was carrying DiQuasha in
11 her stomach, she was just too young to have another
12 child. So the best thing to do was -- she didn't
13 believe in abortions and stuff like that. So to make
14 sure her child was well taken care of, she decided to
15 give DiQuasha to a family member within our family, a
16 family friend, Dollnice Skipper.

17 Q What, if anything, did you hear your
18 sister say as to how long she expected Ms. Skipper to
19 have custody of DiQuasha?

20 A It wasn't full term. It was supposed to
21 have been when she gets her own apartment and get her
22 a job, which she was looking for a job. She was in a
23 work program for young adults. She was only
24 eighteen. She was going to take her daughter when
25 she get her own place and get a job and get well

1 established, get comfortable.

2 Q Let me pursue that topic a little bit
3 further, that is, the topic of getting a job. What,
4 if anything, did you hear your sister say at any time
5 about getting a job?

6 MS. HARRIS: Your Honor, I would object to
7 the hearsay.

8 MR. CUTHBERT: I think it's state of mind,
9 Your Honor, of her efforts to get a job.

10 THE COURT: State of mind?

11 MS. HARRIS: State of mind doesn't go to
12 future events.

13 THE COURT: State of mind is overruled.
14 Objection is sustained.

15 BY MR. CUTHBERT:

16 Q I hand you some papers that for purposes
17 of identification I've marked as Plaintiff's
18 Exhibit 15.6. I ask you if you've seen some of those
19 before. Do you recognize those papers that you have
20 in front of you?

21 A Yes, sir, I do.

22 Q Would you please tell the jury what you
23 recognize them to be?

24 A This is the work program application forms
25 to go out and seek jobs. Once you go out to the job

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1 place, you would get the address location. You also
2 make an application and bring it back to the work
3 program to show them that you are out looking for
4 jobs and seeking employment.

5 Q How is it that you first came to see some
6 of these papers?

7 A She lived with me, and I used to take her
8 to the work program. Also, I took her on some of
9 these jobs to go fill out the application and try to
10 get a job.

11 MR. CUTHBERT: Your Honor, I move the
12 introduction into evidence of those items.

13 THE COURT: Any objection?

14 MS. HARRIS: No, sir.

15 THE COURT: That will be admitted as
16 Plaintiff's Exhibit 30.

17
18 (Plaintiff's Exhibit 30 is received.)
19

20 Q Once your sister gave custody of DiQuasha
21 to Ms. Skipper, on a typical weekday during the last
22 six months or so of your late sister's life, did you
23 ever see your sister with DiQuasha?

24 A Yes. DiQuasha will come over when
25 Dollnice Skipper go to work Monday through Friday and

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1 in the evening times. Dollnice worked evening
2 shifts. When she get off, she will come and pick up
3 DiQuasha.

4 Q Who would take care of DiQuasha in the
5 meantime?

6 A Dollnice Skipper.

7 Q When?

8 A When Dollnice Skipper go to work, Christie
9 will get her. She'll come over to the house.

10 Q What kind of things did you see your late
11 sister do to help take care of DiQuasha?

12 A She changed her pamper, did motherly
13 things she's supposed to do with your child. She
14 read to her, played with her, talked to her. She was
15 only like infant going to one.

16 Q Other than what you've already told us,
17 what did you observe about the relationship between
18 DiQuasha and her mother?

19 A It was a good bond. It was a real good
20 bond.

21 Q Why do you say that?

22 A Because she's young. Children -- they
23 usually just drop the children off and go on about
24 her business. She was responsible to get her child
25 when her -- she let Peaches get her -- Peaches

1 meaning Dollnice Skipper -- for temporary custody.
2 And she volunteered to take care of her when Peaches
3 go to work. We also seen her. We was involved in
4 her life. So it was a good bond there.

5 Q Let me ask you to turn with me, please, to
6 your late sister's relationship with the older child,
7 Kevasha. From the time Kevasha was born until the
8 October before your sister died, who lived with
9 Kevasha?

10 A Christie Green.

11 Q Where did the two of them live?

12 A They used to live with me up until she
13 got -- well, they always lived with me, and it was
14 always Christie Green. Before she passed away, she
15 had got her a project.

16 Q Was that in October '98 that your sister
17 and Kevasha moved from your apartment to an apartment
18 that Ms. Christie Green had gotten in her own name?

19 A Yes.

20 Q Until that time, had Christie Green and
21 Kevasha lived with you for the entire span of
22 Kevasha's life?

23 A Yes.

24 Q How was it that your sister became able to
25 get an apartment in October of the year that she

1 died?

2 A Because the work program helped hurt
3 people. If you try to get a job or out getting a
4 job, they would help you get an apartment.

5 Q Now, in a typical day based on what you
6 observed, about how many days did your late sister
7 spend taking care of Kevasha on average?

8 A Every day all day.

9 Q Other than what you've already told us,
10 what, if anything, did you observe about the
11 relationship between Kevasha on one hand with her
12 mom?

13 A Kevasha and Christie, they were real
14 tight. Kevasha will come -- just living with me,
15 period. I'm a mother figure to her as a sister. I'm
16 a sister but a mother figure to Christie. So it was
17 like, I had the rules. Christie was like the mother
18 to Kevasha. It was like, Aunt Tina, can I have
19 something or whatever? Aunt Tina, can I do something
20 or whatever? Me, I'll say, no. Christie, they were
21 so tight and unseparable. She'll say, my mama said I
22 could have it.

23 They always was together. One time
24 Christie had put Kevasha in the bath or something and
25 put her clothes on and everything. She was

1 downstairs. I had took pictures of her. She was
2 down there playing dress up with the little play
3 girl, the little shoes that you buy from the Family
4 Dollar, the little shoes that the little girls wear.

5 Christie went in the tub and getting ready
6 to get her bath. Kevasha went in there. She said, I
7 get in with you, mama? She let her get in. It's
8 like, if you got your child and they're already
9 dressed, you can't, you know. They played in the tub
10 together. They caught the bus together. They slept
11 together. They was just -- they had a real good
12 bond. They was really tight mother and daughter
13 figure.

14 Q As far as you are aware, has Kevasha ever
15 visited her mother's grave?

16 A Yes, she visits her mother's grave.

17 Q When approximately was the first time?

18 A The first time -- Christie was buried
19 January 6. Our first visit to the grave was
20 Valentine's Day. Right after that was her birthday,
21 Christie Green's birthday, which is February 17.

22 Q All together approximately how many times
23 has Kevasha visited her mom's grave?

24 A She visit right frequently. She'll say --
25 it's not her mother's grave to Kevasha. It's her

1 mother's house. She'll say, Aunt Tina, can we go to
2 my mama's house? We'll go if she's having a bad day
3 or she just feel like she wants to talk to her
4 mother. She goes over there and says a prayer. She
5 says the prayer. We'll bow our heads. She'll end it
6 off with, Christie, watch over us.

7 Q Whose idea is it to go to the grave? Is
8 it yours or Kevasha's?

9 A It would be Kevasha's idea to go because
10 Kevasha really misses her mother.

11 Q Other than on that first night from MCV,
12 has Kevasha ever had nightmares about the death of
13 her mother?

14 A Kevasha had nightmares that night after
15 MCV. She woke up screaming. Like gunshots, fire
16 crackers, any loud noises -- Kevasha have a nervous
17 problem now. She will scream out. It really
18 affected her the night of Christie's death.

19 Q When was the last time to your knowledge
20 that Kevasha had a nightmare about her mother's
21 death?

22 A She had one last night. She woke up. She
23 said, can we talk? Then I said, yeah. She said, why
24 we go over to my -- Charnte is her godmother. She
25 said, why do we go over there to my godmother? I

1 said, your mama wanted to go. She said, I wish my
2 mama was here. I'll say, just go to sleep.

3 Q As far as you are aware, did Kevasha ever
4 have nightmares before?

5 A No.

6 Q Based on what you've observed,
7 approximately how frequently does Kevasha have
8 nightmares dealing with her mother's death?

9 A She have them very frequently. She'll
10 have them two to three times. It will just be
11 outbursts. Like, she'll wake up, and she'll just be
12 like, Aunt Tina -- she call me mom sometimes. She'll
13 just have little outbursts. Then she'll go back to
14 sleep.

15 Q This is two to three times every what?

16 A Every week.

17 Q How do you know that these outbursts are
18 prompted or related to her mother's death?

19 A Because she'll say, I wish my mama was
20 here.

21 Q Other than in connection with the visits
22 to the grave and the nightmares, have you ever heard
23 Kevasha say anything about her mother?

24 A No. She'll be talking. When we ride
25 passed somewhere her mother had took her or on a city

1 bus -- one time my car wasn't working -- she'll say,
2 I remember my mama used to bring me on these things.
3 I have a car. So really, we don't catch the city
4 bus. She'll be like, my mama used to bring me on
5 this thing right here.

6 So anything that she remember that
7 Christie did with her or was with her at the time,
8 she'll just speak on it like that. Also, she'll just
9 always be like, I wish my mother was here.

10 Q Other than nightmares, what changes, if
11 any, have you noticed in Kevasha's behavior now
12 compared to before her mom died?

13 A Kevasha have a nervous problem. She have
14 a -- she gets angry, but she's -- she's disturbed
15 with the death of her mother.

16 Q I'm going to hand you four exhibits and
17 ask you if you would tell the jury what they are,
18 please.

19 A Yes.

20 Q Are those the birth certificates of
21 Kevasha and DiQuasha?

22 A Yes.

23 Q And also photographs of your late sister
24 with each of the girls?

25 A Yes.

1 MR. CUTHBERT: Your Honor, I would move
2 them into evidence.

3 THE COURT: Is there any objection?

4 MS. HARRIS: No, sir.

5 THE COURT: All right then. They will be
6 admitted as Plaintiff's Exhibits 31 through 34.

7
8 (Plaintiff's Exhibits 31 through 34 are
9 received.)

10
11 BY MR. CUTHBERT:

12 Q What was the date of birth and age of your
13 sister when she died?

14 A She was eighteen years old. Her date of
15 birth was February 17, 1980.

16 Q How about the date of birth and age of
17 Kevasha now?

18 A Kevasha is eight years old. Her date of
19 birth is 9-26-1995.

20 Q How about DiQuasha? How old is she now?

21 A DiQuasha is six years old. Her date of
22 birth is April 9, 1997.

23 MR. CUTHBERT: Your Honor, I would like to
24 read into the record the life expectancies per
25 Virginia Code Section 8.01-419 if I may.

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1 THE COURT: Any objection?

2 MS. HARRIS: No, sir.

3 THE COURT: All right. You can go ahead.

4 MR. CUTHBERT: According to the statutes
5 of Virginia, for an eighteen-year-old female,
6 the future life expectancy is 61.8 years. For
7 an eight-year-old female, it's 71.6 years. For
8 a six-year-old female, it's 73.6 years.

9 BY MR. CUTHBERT:

10 Q Ms. Green, one other topic, based on what
11 you've observed, did it seem to you that your late
12 sister loved Kevasha more or DiQuasha more?

13 A Christie Green loved both of her children
14 the same. She loved neither one more or neither one
15 less. For an eighteen-year-old child -- adult child
16 to have two kids right behind each other, she made
17 sure that she had the best home, the best person, and
18 the best mother figure to make sure her second child
19 was fine.

20 Kevasha, which is her first child -- of
21 course, your first child you're so excited. You are
22 going to make sure that child is fine. But to have
23 one right behind it and you can't take care of it,
24 you are going to make sure that you make sure both of
25 them are well taken care of. If you can do it or

1 can't do it, you're going to make sure somebody can
2 do it. So I say she loves both of her children
3 equally the same.

4 MR. CUTHBERT: Thank you very much. Would
5 you answer any questions the city attorney has.
6

7 CROSS-EXAMINATION

8 BY MS. HARRIS:
9

10 Q Good morning, Ms. Green.

11 A Good morning.

12 Q Ms. Green, if I could, can I take you back
13 to the date of this incident?

14 A Yes.

15 Q During that time period, December 1998,
16 your sister, Christie Green, was living with you; is
17 that correct?

18 A Yes, ma'am, she was.

19 Q How long had she been living with you at
20 that point?

21 A I took her in when I turned eighteen and
22 moved out in my first apartment. So she's been with
23 me all of my life.

24 Q What is the age difference between you and
25 your sister, Christie Green?

1 A Eight.

2 Q Eight years?

3 A Yes.

4 Q So from the time that you were eighteen,
5 Ms. Green was living with you?

6 A Yes.

7 Q Was she living with you when Kevasha was
8 born?

9 A Yes.

10 Q Was she working at the time Kevasha was
11 born?

12 A No.

13 Q Has she ever worked? Did she ever work in
14 her lifetime?

15 A No.

16 Q While we're there, the job program, the
17 information that was provided through your testimony
18 moments ago, was that through the Department of
19 Social Services?

20 A Yes.

21 Q It was 80 different applications over a
22 very short period of time; is that correct?

23 A Yes.

24 Q Ms. Green, your sister, didn't get any one
25 of those positions; is that correct?

1 A No.

2 Q It is correct, or it is not correct?

3 A She didn't get no positions, no.

4 Q So she was living with you when Kevasha
5 was born?

6 A Yes.

7 Q Was she likewise living with you when
8 DiQuasha was born?

9 A Yes.

10 Q Now, during the daytime when DiQuasha was
11 brought over to the house, was that your house that
12 she was brought over to?

13 A My house, yes.

14 Q This is while Ms. Skipper was at work; is
15 that correct?

16 A Yes.

17 Q During that time period, Ms. Green would
18 have Kevasha and DiQuasha?

19 A Yes.

20 Q Is that also during the time period that
21 she was filling out these applications that are noted
22 in those documents?

23 A Yes. Dollnice Skipper --

24 Q How was that working?

25 A Dollnice Skipper worked from 2:00 to

1 10:00. The job fair was from 8:00 in the morning.
2 You go out and look for jobs. You take it back in at
3 12:00. It was a work program morning. So she had
4 came home, and she do DiQuasha in the evening.

5 Q How was your work schedule?

6 A At that time I was pregnant with Kanese
7 (phonetic). I was working in the evening time
8 like -- I wasn't working all of the time, but I was
9 working some of the times. It was like from 5:00 to
10 9:00.

11 Q Now, on the particular day of this
12 incident -- let me focus your attention there if I
13 could -- you said that you drove your sister and
14 Kevasha over to the Dove Street address?

15 A Yes.

16 Q Had you ever taken them over to that
17 address before?

18 A No. I took them -- Charnte's mother lived
19 in the back of the Dove Street address. But I don't
20 know the apartment number, but Charnte's mother used
21 to live over there in the Dove Court Apartments.

22 Q You used to take your sister over there?

23 A To Charnte Anderson's mother's house.

24 Q Now, where did you get your sister and
25 Kevasha from that day in order to take them over to

1 Dove Street?

2 A I got them from down in Afton. I picked
3 them up from there.

4 Q Why did you pick them up from Afton?

5 A Because she called me and asked me to come
6 pick her up.

7 Q What time was it that she called you to
8 pick her up?

9 A It was after 6:00.

10 Q How long after 6:00? A few minutes?
11 Before 6:30?

12 A It was like 6:15 or something like that.

13 Q Did you go over to Afton and pick her up
14 when she called?

15 A Yes.

16 Q Did you all go directly over to the Dove
17 Street address?

18 A No.

19 Q Where did you go?

20 A First, we went to -- do you want every
21 location? Every minute? Every second?

22 Q Well, tell us what you can recall.

23 A We went to her apartment.

24 Q Whose apartment?

25 A Christie Green, we went over to Christie

1 Green's apartment. We put the -- it's like a Barbie
2 set play thing she got for Christmas, Kevasha Green.
3 So we put that together.

4 Q Let me stop you right there. Did
5 Ms. Green have a different apartment than yours?

6 A When she passed away, she had just got her
7 own apartment since October.

8 Q Where was her apartment?

9 A In Jackson Ward.

10 Q Okay.

11 A So we left there. We went to her
12 apartment, which is Jackson Ward, Christie Green's
13 apartment. We put the play thing together that
14 Kevasha got for Christmas. We did that. We played
15 with her toys. Christie talked on the phone.

16 Q Did you all just remain at Ms. Green's
17 apartment until you all went to Dove Street?

18 A Yes. Then we left her apartment. We rode
19 passed MCV because she said Charnte will probably be
20 at MCV. So we went passed MCV. We parked the car.
21 Christie went in the emergency part. She didn't see
22 Charnte, so we went back to her house.

23 Q Went back to whose house?

24 A Christie. I'm sorry. You're asking me to
25 take you back. I'm just going on my memory.

1 Q I just want to make sure we get there.

2 A We went back to Christie's house.
3 Christie talked to Charnte on the phone. Then she
4 was like -- she was going to be over at 1112C Dove
5 Street in a few minutes.

6 Q So what time was it that you all went back
7 to Ms. Green's house in Jackson Ward?

8 A Christie Green's house?

9 Q Yes.

10 A We went back to her house after the
11 emergency, which was like 10:00, 9:30, 10:00. So
12 then she got ahold to Charnte on the phone from
13 Jackson Ward. So her and Charnte talked on the
14 phone. Kevasha was playing with the Barbie set.
15 Somehow Kevasha had -- it's like a plastic Barbie
16 set. Kevasha --

17 Q I'm sorry. I don't mean to interrupt you,
18 Ms. Green. What I'm trying to figure out is, how
19 long were you over at the Jackson Ward address?

20 A You're asking me, and I'm taking you --

21 THE COURT: She just asked you what time
22 it was. That's what she asked you.

23 A Okay. We got there -- we stayed over
24 there until 10:40, something like that.

25 Q Then from 10:40?

1 A You drive down the hill. You go up the
2 hill, and Dove street is to your right. So it's a
3 good five to ten-minute drive.

4 Q So just to be clear, when you answered
5 Mr. Cuthbert that your sister Christie Green was
6 living with you at the time of this incident, you
7 were mistaken or either incorrect? She wasn't;
8 right?

9 A She wasn't living with me at the time that
10 she passed away, but she lived with me all of her
11 life.

12 Q So when you took her over to Dove Street,
13 it was about 11:00 at night; is that correct?

14 A Yeah. It was 10:45, 10:50.

15 Q Let me ask you: Why is it that you know
16 these times, ma'am?

17 A Because I'm a person that do time. I make
18 sure we wake up on time. We eat on this time. We do
19 homework on this time. Everything is like -- I'm
20 like a time person.

21 Q What were you supposed to be doing at the
22 time that you took her over to Dove Street?

23 A Go home to my child.

24 Q Why is it that Kevasha didn't go home with
25 you that evening being that the hour was so late?

1 A Because she wanted to go with her mother.
2 Her mother wanted her to be with her, and I have my
3 own child.

4 Q Now, when you took her over to that Dove
5 Street address, you dropped Ms. Green and Kevasha
6 off; is that correct?

7 A Yes.

8 Q You said you went straight home, and it
9 took you about 15 minutes?

10 A Yes, 15 or 20 minutes.

11 Q Where were you living at that time, ma'am?

12 A On Ruffin Road.

13 Q Ruffin Road?

14 A Yes.

15 Q That's on the other side of the city?

16 A Yes.

17 Q Did you know the people your sister was
18 going to see?

19 A I don't go over to Dove Court. I don't
20 know nobody. Charnte's mother lived over in Dove
21 Court. I don't know nothing about no houses of who
22 lives in Dove Court.

23 Q Why is it that you don't go over there?

24 A I just don't. I'm a south side person.
25 Christie, her best friend lived in Dove Court, so she

1 went over to Dove Court to meet her best friend. She
2 had her life. I got my life.

3 Q I'm not sure if that really answered my
4 question. Did you know the people she was going over
5 there to see?

6 A I knew she was going to see Charnte
7 Anderson, yes.

8 Q Did you know the people who lived in the
9 apartment where she was going?

10 A I knew she was going to see Charnte
11 Anderson.

12 Q Well, what I'm asking you in addition to
13 that is, did you know the people who actually lived
14 there?

15 A No, I didn't.

16 Q You didn't?

17 A No.

18 Q Do you know Alvin Anderson, ma'am?

19 A That's Charnte Anderson's brother.

20 Q Do you know him well?

21 A No, I don't.

22 Q Do you know him well -- well, you don't
23 know him well.

24 A I don't know him.

25 Q Do you know whether or not your sister

1 knew Mr. Anderson well?

2 A No, I don't.

3 Q You indicated in your answers to
4 interrogatories -- let me see if you can recall that.

5 If I could just have a moment to show
6 these to Mr. Cuthbert.

7 Are you aware of this question and answer
8 that you provided in response to your interrogatories
9 in this matter: State the names and the addresses of
10 all persons familiar with the relationship between
11 Christie Green and her statutory beneficiaries. In
12 your answer, number one, Alvin K. Anderson; number
13 two, Charnte Anderson; and number three, Kevin Jones.

14 Do you recall that?

15 A Yes.

16 Q So at the time you gave this answer, you
17 were of the opinion that Alvin Anderson was someone
18 who was very familiar with the relationship between
19 Christie and her daughters?

20 A I know Charnte Anderson and Alvin Anderson
21 are sister and brother. So that's all I knew. I
22 know that Kevin Jones is Kevasha's daddy. That's all
23 I knew.

24 Q Did you know that Alvin Anderson had a
25 street name of Muscle? Did you know that as well?

1 A Yeah, I heard of Muscle.

2 Q Did you know that Muscle was Alvin
3 Anderson?

4 A Yes, I knew that. They didn't call him
5 Alvin Anderson, but I know him as Alvin Anderson
6 because of Charnte Anderson's brother.

7 Q I know you didn't know that there was a
8 search warrant that was going to be served on the
9 Dove Street address that evening. Would it surprise
10 you to know that one of the subjects of that search
11 warrant, one of the people who they believed to have
12 guns and drugs who they were investigating for a
13 homicide was Mr. Anderson? Did you know that?

14 A No, I did not.

15 Q You said Kevin Jones is the father of the
16 children?

17 A Yes. Of Christie's children, yes.

18 Q Kevasha and DiQuasha, is that correct?

19 A Kevasha and DiQuasha.

20 Q Where is Mr. Jones today?

21 MR. CUTHBERT: Your Honor.

22 THE COURT: I'm sorry?

23 MR. CUTHBERT: Mr. Jones is in prison as I
24 understand it.

25 THE COURT: Are you objecting, or are you

1 answering the question? The witness is on the
2 stand, Mr. Cuthbert. Why are you answering the
3 question for the witness? If you're objecting,
4 object. It's not appropriate for you to answer
5 Ms. Harris' question.

6 MR. CUTHBERT: I'm sorry, Your Honor.
7 We've just so far --

8 THE COURT: Are you objecting?

9 MR. CUTHBERT: I object.

10 THE COURT: What's your objection?

11 MR. CUTHBERT: I think it's irrelevant.

12 THE COURT: Ms. Harris, what is the
13 relevance?

14 MS. HARRIS: The relevance goes to her
15 lifestyle and the lifestyle of her children.

16 THE COURT: The objection is overruled.

17 BY MS. HARRIS:

18 Q I'm sorry. Do you know the whereabouts of
19 Mr. Jones today?

20 A He's incarcerated.

21 MS. HARRIS: That's all of the questions I
22 have. Thank you, Ms. Green.

23 THE COURT: Is there any redirect?

24 MR. CUTHBERT: No, Your Honor.

25 THE COURT: I'm curious why you answered

1 the question. You gave exactly the same answer
2 that Ms. Green gave. You objected to her
3 answering the question, but you had already
4 answered it.

5 Thank you very much, Ms. Green. You may
6 step down and return to your seat at counsel
7 table.

8
9 -----
10 WITNESS STOOD ASIDE

11
12 (Dollnice Skipper, Fayne Edwards, and
13 Sharlene Johnson testify, but it is not
14 transcribed.)

15
16 THE COURT: Mr. Cuthbert, your next
17 witness.

18 MR. CUTHBERT: Your Honor, I have no other
19 witnesses. I do have a proffer of --

20 THE COURT: Does this involve --

21 MR. CUTHBERT: I have a proffer of a
22 document that I'd like to present, but I have
23 no other witnesses.

24 THE COURT: Let me see what it is.

25 MR. CUTHBERT: Yes, sir.

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1 THE COURT: Is that something that the
2 defendants object to?

3 MR. CUTHBERT: Yes, sir.

4 THE COURT: Let me see what that is.

5 MS. BURTON: What's the case number on
6 that document?

7 THE COURT: All right. Any other evidence
8 for the plaintiff other than this?

9 MR. CUTHBERT: We have Charnte Anderson.
10 I take it that's still in flux, Your Honor.

11 THE COURT: We cannot locate her. We'll
12 talk about that when the jury is gone and see
13 if we can resolve that issue.

14 Any other evidence other than Ms. Anderson
15 and the document you've just given to me?

16 MR. CUTHBERT: No, Your Honor.

17 THE COURT: The plaintiff rests.

18 Members of the jury, we're going to go
19 ahead and break for lunch. It's almost quarter
20 to 1:00. I'm going to ask that you all have a
21 pleasant lunch and be back here at 2:00. Once
22 again, it's very important that you not discuss
23 the case amongst yourselves. Please do not
24 allow anyone to discuss the case in your
25 presence. I will see you back here at 2:00.

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1 (The jury exits.)

2

3 THE COURT: The last document that
4 Mr. Cuthbert has given me is the trial order,
5 signed by Judge Markow, in the case of Green v.
6 Armor Holding. I notice this one also says
7 Leslie Green. Who is Leslie Green?

8 MR. CUTHBERT: He was the administrator,
9 Your Honor. Then he resigned in favor of
10 Ms. Katina Green, his sister.

11 THE COURT: That happened after the first
12 trial? I hope that whatever happened, there
13 was an order that reflected the change. The
14 amended motion for judgment still has Leslie
15 Green's name on it also. Let's just hope that
16 there's something in the record. Nobody has
17 objected to the change of name. I hope that
18 there's something that reflects it.

19 MR. CUTHBERT: I know I had a hearing
20 before Judge Markow. I know it happened. I
21 think it happened on the first day of the
22 trial, but I'm not sure.

23 THE COURT: This still says Leslie Green.

24 MR. CUTHBERT: Oh, I agree. It does.

25 THE COURT: Any other arguments? This is

1 the trial order. You want the jury to see this
2 to show that the previous jury found against
3 the plaintiff?

4 MR. CUTHBERT: Well, that the previous
5 jury found that any claims against the
6 manufacturer had no merit.

7 THE COURT: That's the purpose for which
8 you want the jury to see it?

9 MR. CUTHBERT: Yes, sir.

10 THE COURT: Any argument that you have not
11 already made?

12 MR. CUTHBERT: No, sir.

13 THE COURT: All right. I am not going to
14 allow this. This will be Plaintiff's A refused
15 for the reasons that are already on the record.

16 Now, what do you want to do about
17 Ms. Anderson not being here?

18 Mr. Braxton, you say the apartment was
19 vacant?

20 THE BAILIFF: The apartment was vacant.
21 They checked next door. They said it's been
22 vacant for a while.

23 THE COURT: It doesn't look like there's
24 any prospect of getting her here unless you all
25 can get her here. Again, the service was

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1 posted.

2 MR. CUTHBERT: I understand the situation.
3 Certainly, I'm not going to ask for a mistrial.

4 THE COURT: Somehow I had the feeling that
5 you would not do that.

6 MR. CUTHBERT: We'll just rock along
7 without Ms. Anderson I'm afraid.

8 THE COURT: Ms. Harris is going to move
9 for a mistrial if one of the jurors has to go
10 to the restroom.

11 Anything else we need to do before lunch?

12 MS. BURTON: Your Honor, we have a motion
13 to strike.

14 THE COURT: All right.

15 MS. BURTON: Your Honor, both defendants
16 in the case move to strike all of the
17 plaintiff's evidence. The plaintiff has
18 pleaded this case on two grounds. One is
19 willful and wanton. She's accused each of the
20 plaintiffs of willful and wanton conduct.
21 She's accused each of the defendants of gross
22 negligence.

23 I might also point out, initially, that
24 the depositions of both Captain Buckovich and
25 Sergeant Ingram were played. They were each

1 called to testify as adverse witnesses in this
2 case. So the plaintiff is bound by whatever
3 evidence is clear and logical and
4 uncontradicted that comes from those witnesses.

5 First, gross negligence is the standard
6 that the plaintiff must meet, and the evidence
7 falls far short of showing that either of the
8 defendants engaged in gross negligence.

9 Let's look at Captain Buckovich first at
10 the allegations in the motion for judgment.
11 Now, the allegations in the motion for judgment
12 are very specific. Captain Buckovich has been
13 accused and what the plaintiff had to prove was
14 that he was grossly negligent in the training
15 and equipping of Sergeant Ingram in the
16 planning and supervision of the forced entry,
17 in deciding to use the frangible slugs, and
18 failing to see that Sergeant Ingram did not
19 commit the acts of negligence outlined below
20 with respect to Sergeant Ingram, and failing to
21 see that Sergeant Ingram was properly trained.

22 One of the first and most obvious
23 shortcomings of the plaintiff's evidence is
24 that this case involves the activities of two
25 gentlemen who were both members of the SWAT

1 team. It's a highly specialized team. They
2 have special training, and they go in on
3 special missions.

4 That being the case, it was incumbent upon
5 the plaintiff to provide some basis on which
6 one could determine that what they did was not
7 correct, first of all, and then some basis on
8 what they did was grossly negligent; that is,
9 that they failed to show even slight care in
10 doing what they did.

11 Well, you have no standard by which to
12 measure their conduct. With regard to Captain
13 Buckovich, we heard some evidence of what went
14 into the planning of the raid. That's all we
15 know. We just know what he did and why he did
16 it to the extent that he said that he did it.

17 We do not know whether what he did -- that
18 is, selecting the frangible round for use in
19 this raid -- violated police procedures in any
20 way, whether it violated his duty as SWAT team
21 officer. All we know is what he did.

22 We do know that there was some care taken
23 in the selection of the breaching round for the
24 raid because we heard about testing. We heard
25 about using it, and we heard about it

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1 performing as the manufacturer's instructions
2 and literature had indicated it would on
3 previous occasions.

4 The sum total of the plaintiff's evidence
5 on this point is that there was never any
6 problem with the round. So if all the evidence
7 we know indicates there was no problem with the
8 round and this was Captain Buckovich's
9 knowledge when he went to plan the raid and
10 authorized the use of the round, then it
11 logically follows that there's no basis for
12 concluding that he or Sergeant Ingram for that
13 matter knew that this round would not perform
14 as it always had.

15 So there's no basis for a finding that he
16 was grossly negligent in deciding to use this
17 particular breaching tool. We don't have a
18 police procedures expert, so we don't have any
19 other basis for looking at whether or not some
20 other breaching tool would have been more
21 appropriate under the circumstances. So that
22 claim of the plaintiff fails totally.

23 Captain Buckovich has also been accused in
24 this lawsuit of failing to see that Sergeant
25 Ingram did not commit the acts. There is a

1 very long list of acts that Sergeant Ingram is
2 alleged to have done wrong beginning -- they're
3 listed in paragraph 19 of the motion for
4 judgment. Well, Captain Buckovich is accused
5 of --

6 THE COURT: In paragraph 19? Maybe I'm
7 looking at something different. I have the
8 amended motion for judgment. Are you looking
9 at the amended motion for judgment?

10 MS. BURTON: The allegations are the same
11 in the amended motion for judgment.

12 THE COURT: I don't know.

13 Mr. Cuthbert, did you ever find an order
14 amending the motion for judgment?

15 MR. CUTHBERT: No, sir, we were not able
16 to. I did not go through the green Supreme
17 Court file looking for that though. I just
18 stopped when I found the original motion for
19 judgment in the green file.

20 THE COURT: I have the original motion for
21 judgment. I'm listening.

22 MS. BURTON: Well, Captain Buckovich was
23 supposed to have been grossly negligent because
24 he didn't prevent Sergeant Ingram from doing
25 the things listed in paragraph 19. There are

1 subparagraphs A through E. They should be the
2 same if I remember correctly. Do you have
3 them?

4 THE COURT: I'm still looking for an
5 amended motion for judgment. Since we can't
6 find one, you're on paragraph 19?

7 MS. BURTON: Yes, sir. One of the things
8 that Sergeant Ingram was accused of doing was
9 aiming four of his five blasts in the gap
10 between the dead bolt latch and the knob latch.
11 There was absolutely no evidence presented from
12 which the jury could determine that this fact
13 occurred. Plaintiff has failed totally to
14 prove that Sergeant Ingram aimed four of his
15 five blasts in the gap between the dead bolt
16 and the latch.

17 In looking at paragraph B of what Ingram
18 was supposed to have done, failing to check the
19 target door after each of the blasts -- well,
20 all we know from the evidence that the
21 plaintiff presented is that we know from
22 Buckovich's -- if I'm remembering correctly,
23 from Buckovich's videotaped testimony, yeah, he
24 should've checked the target. We know from
25 Ingram's videotaped testimony that he checked

1 the door after each of the blasts. Remember --

2 THE COURT: He said he kicked it with his
3 foot.

4 MS. BURTON: You shoot, and you tap it
5 with your toe. There is no evidence from which
6 the Court can conclude that that was improper
7 or that there was anything grossly negligent
8 about that.

9 Not only that, the fact that he did the
10 toe check as he was breaching shows care. So
11 that is clearly contrary to the plaintiff's
12 contention that that's an act that shows a
13 total disregard for the life, health, and
14 safety of the people inside.

15 Going to item C --

16 THE COURT: Are you saying he only has to
17 show slight care, some care?

18 MS. BURTON: Yes, sir, he only has to show
19 slight care, some care. There are a number of
20 manners in which the evidence the plaintiff
21 presented that actually show some care. I'd
22 like to go through and finish.

23 THE COURT: Go ahead. I'd like to give
24 Mr. Cuthbert a chance to respond. Then if
25 you're not successful in your motion, I'd like

1 to give all of us the chance to get something
2 to eat. I think I understand your motion with
3 regard to Sergeant Ingram. Let me hear your
4 motion with regard to Captain Buckovich.

5 MS. BURTON: Well, Captain Buckovich, Your
6 Honor, without expert testimony to establish
7 what he should or should not have done with
8 respect to training or equipping or planning
9 and supervising the forced entry into the
10 apartment, there's absolutely no basis for
11 finding, first of all, that he did anything
12 improper.

13 The other point that I want to make about
14 Captain Buckovich is about the things that he
15 did, according to the testimony, that show some
16 care. They defeat a standard of gross
17 negligence. The fact that he did provide
18 training as commander of the SWAT team --

19 THE COURT: I'm going to cut you off. Let
20 me hear from Mr. Cuthbert unless there's
21 something else you feel you have to say within
22 the next one minute.

23 MS. BURTON: Well, Your Honor, I do want
24 to make all of my points to preserve my record,
25 which I don't feel like I'm being able to do

1 here.

2 THE COURT: You are. It seems to me
3 you're in an even better position. You can go
4 to the Supreme Court and say, that trial judge
5 wouldn't even let me give the grounds for my
6 motion to strike. It seems to me that puts you
7 in a better position than if you give them all
8 and get it overruled. Thank you very much.

9 Mr. Cuthbert.

10 MR. CUTHBERT: Yes, sir. Thank you.

11 THE COURT: Let me hear your response
12 regarding Captain Buckovich first.

13 MR. CUTHBERT: Yes, sir.

14 THE COURT: What did he do wrong?

15 MR. CUTHBERT: Well, may I visit the law
16 first?

17 THE COURT: Either one. Do it the way you
18 want to do it.

19 MR. CUTHBERT: The law is that if the
20 Court has any doubt at all as to whether a
21 submissible case has been presented, then the
22 Court should, of course, allow --

23 THE COURT: Well, are you giving me the
24 law on when I should grant a motion to strike?
25 I thought you were going to give me the law on

1 gross negligence. Let me know what facts are
2 in the record that Captain Buckovich is guilty.

3 MR. CUTHBERT: Yes, sir. I will give you
4 this brief.

5 THE COURT: I'm not going to accept a
6 brief on it. Is this a brief that's already
7 been filed?

8 MR. CUTHBERT: No, sir.

9 THE COURT: This is a new brief?

10 MR. CUTHBERT: Well, this is a brief of
11 the plaintiff in opposition to the motion for
12 the defense to strike the plaintiff's evidence.

13 THE COURT: I'm not going to accept that,
14 Mr. Cuthbert. I can't read that in the time
15 that I'm going to allow you to make your
16 argument. I appreciate you wanting to do that.
17 You can give that to the Supreme Court. I am
18 not going to stop this trial and read a brief
19 and do legal research that might be
20 necessitated by my reading. I assume you've
21 cited cases that you want me to read. You want
22 me to do all of that before I rule on the
23 motion to strike?

24 MR. CUTHBERT: I think the Court needs to
25 do that, sir.

1 THE COURT: Let me see something.
2 Besides, it's 22 pages long. Take it back,
3 Mr. Cuthbert. Take it back. Even if this were
4 14 or 17 days before trial, it's too long.
5 Supreme Court Rule 4:15 does not allow you to
6 file a 22-page brief.

7 Let me hear the facts you think are in the
8 record that indicate or prove that Sergeant
9 Buckovich is guilty of gross negligence.

10 MR. CUTHBERT: You're speaking of Officer
11 Buckovich?

12 THE COURT: Yes, sir.

13 MR. CUTHBERT: Your Honor, he designed the
14 raid; yet, he allowed this gap in surveillance
15 to develop. He agrees that the gap was there,
16 and it could very well have been during that
17 gap that Christie Green arrived.

18 THE COURT: Is there any evidence that had
19 all of the SWAT team known that Christie Green
20 had arrived that they would not have taken the
21 actions that they took?

22 MR. CUTHBERT: I think that's for the jury
23 to resolve.

24 THE COURT: So if I have illegal guns and
25 drugs in my apartment and I'm shooting at

1 somebody, all I have to do is get an innocent
2 person to come in there, and I'm protected? I
3 don't have to worry about the police ever
4 breaching my house or my apartment as long as I
5 have an innocent person there?

6 MR. CUTHBERT: Well, I think care has to
7 be taken. It was not taken under these
8 circumstances. We're dealing with a highly,
9 highly dangerous implement here.

10 THE COURT: On both sides.

11 MR. CUTHBERT: Yes, sir. But you can't
12 get anymore dangerous than this No. 22 T.K.O.
13 It really is hard to see how it could be.

14 THE COURT: I don't want to get into that
15 on a motion to strike. I will say: It depends
16 on who is pointing what at whom. Go back to
17 telling me what Captain Buckovich did wrong.
18 You say the break in surveillance. What else?

19 MR. CUTHBERT: Yes, sir. He allowed
20 Sergeant Ingram to perform this very important
21 and very delicate function without first
22 training Sergeant Ingram adequately.

23 THE COURT: Is that Captain Buckovich's
24 fault? I mean, Captain Buckovich is not
25 Sergeant Ingram's employer. Can one employee

1 be held liable for negligence for improper
2 training? I'm not even sure an employer can be
3 held liable for that, but can an employee be
4 held liable for failing to train a fellow
5 employee?

6 MR. CUTHBERT: Under these circumstances,
7 yes. I would like to cite a case that does not
8 deal with frangible rounds, but it deals with
9 highly dangerous. It's American Oil Company v.
10 Nicholas, 156 Va. 1, stating the common law
11 requires a higher degree of care and vigilance
12 in dealing with a dangerous agency than is
13 required in the ordinary affairs of life.

14 THE COURT: Is this the dynamite case?

15 MR. CUTHBERT: I think that's right, Your
16 Honor.

17 THE COURT: I am not aware of any other
18 instrumentality that has been declared by the
19 Supreme Court to be a dangerous instrumentality
20 other than dynamite.

21 MR. CUTHBERT: No, sir. I do remember
22 this case now. I think it arose out of
23 Petersburg. Someone sold kerosene, and they
24 put it in a gasoline can. In any event --

25 THE COURT: Was a fellow employee held

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1 liable?

2 MR. CUTHBERT: I don't think that's --

3 THE COURT: I'm talking about a fellow
4 employee held liable. In other words, if I'm
5 training you to be a truck driver and I don't
6 train you correctly and you go out and hurt
7 somebody or kill somebody, I'm liable for not
8 training you correctly?

9 MR. CUTHBERT: I think under the
10 circumstances of this case, yes, Your Honor.
11 We're dealing with dangerous instrumentalities.
12 Clearly, the responsibility is on Officer
13 Buckovich's shoulders. He said that he was in
14 charge of training and had been for a number of
15 years. That was his job. The buck has got to
16 stop with the person who has the job title.

17 THE COURT: Assume just for a minute that
18 you're right. What training did he fail to
19 give? What training did he give improperly?

20 MR. CUTHBERT: All we have to do, Your
21 Honor, is to look at the exhibits, the
22 photographs that show and the testimony that
23 corroborates that only one of those No. 22
24 T.K.O.'s was fired at the latch bolt.

1 THE COURT: What evidence do we have that
2 Captain Buckovich trained Sergeant Ingram --
3 let's assume Sergeant Ingram did something
4 wrong. Let's say you're supposed to fire it at
5 the metal part. You're never supposed to fire
6 it at just wood, and Sergeant Ingram did that.
7 What evidence do we have that Captain Buckovich
8 did not train Sergeant Ingram to only fire at
9 metal?

10 MR. CUTHBERT: Well, we have what I just
11 said, namely, what happened in this case.

12 THE COURT: I understand what happened.
13 Again, I'm going back to my driving. Let's say
14 I tell you: Look, don't ever go over 60-miles
15 an hour on Interstate 95; don't ever do it; no
16 matter what happens, don't do it; even if a
17 police officer or judge tells you to do it,
18 don't go over 60-miles an hour. You go out and
19 go 70-miles an hour. The fact that you go
20 70-miles an hour is proof that I didn't train
21 you correctly?

22 MR. CUTHBERT: Well, it's part of the
23 entire picture. There is more. Your Honor is
24 asking for that. Among other things, the same
25 problem arose at the front door. When you look

1 at the front door in the photographs that are
2 in evidence, there's a shot at the latch bolt
3 and then a whole series of shots underneath
4 where the latch bolt was.

5 Not only that, but Sergeant Ingram had
6 only one actual field experience in shooting a
7 No. 22 T.K.O. at a door. That was eight years
8 before this incident. To put a man in that
9 position, highly delicate, really explosive in
10 terms of its ramifications of being done wrong.
11 The man hadn't shot one in a real mission in
12 eight years.

13 Now, Sergeant Ingram was filling that role
14 only because Officer Buckovich approved the
15 plan, including who was going to do what.

16 THE COURT: Let me ask you this question:
17 People always do that. It tickles me. How do
18 you jump from never having done this in an
19 actual situation to having done it more than
20 one time?

21 In other words, it would be great if we
22 could have -- look, you don't have any
23 experience in firing this thing in an actual
24 situation. We don't want you to do it the
25 first time because if something goes wrong,

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1 you're going to be in court with somebody
2 saying you've never done it before.

3 How do you jump to say, okay, I've done it
4 20 times, without doing it the first time or
5 the second time or the third time?

6 MR. CUTHBERT: Well, I think the question
7 ought to be, how do you prevent the gap of
8 eight years taking place? The answer is, you
9 assign two people to do this. Every time this
10 ticklish job is required to be discharged, you
11 call on those people, rather than just Russian
12 Roulette.

13 THE COURT: I'm not sure I understand you,
14 but go ahead.

15 MR. CUTHBERT: There were other occasions
16 in which the No. 22 T.K.O. had been shot during
17 the last eight years.

18 THE COURT: I understand what you're
19 saying.

20 MR. CUTHBERT: I think it's important to
21 keep in mind that we're dealing with an
22 extremely small apartment here. That's also
23 part of the total environment in which this
24 tragedy took place.

25 THE COURT: I'm just talking about Captain

1 Buckovich. Is there anything else that you
2 think he failed to do or that he did
3 improperly?

4 MR. CUTHBERT: No.

5 THE COURT: I don't need to hear you on
6 Sergeant Ingram. Thank you very much,
7 Mr. Cuthbert.

8 The motion to strike the evidence with
9 regard to Captain Buckovich is sustained. It's
10 not even a close question in the Court's mind.

11 You can have a seat, Mr. Cuthbert.

12 MR. CUTHBERT: Yes, sir.

13 THE COURT: The Court is not sure that the
14 plaintiff's evidence shows that Captain
15 Buckovich was guilty even of simple negligence.
16 There certainly is no evidence that he's liable
17 for gross negligence. The evidence falls far
18 short of that. So the motion to strike Captain
19 Buckovich is sustained.

20 Captain Buckovich, I appreciate you being
21 here the last couple of days. I don't know
22 what your lawyers want you to do, but you're no
23 longer in the case.

24 It's a little closer question with regard
25 to Sergeant Ingram. The Court is going to

1 overrule the motion at this point based on the
2 obligation of the Court to give all reasonable
3 inferences to the plaintiff at this stage of
4 the proceedings. The Court does believe at
5 this stage of the proceedings that it must
6 overrule the motion.

7 The motion with regard to Sergeant Ingram
8 is overruled noting your objection, Ms. Burton,
9 and noting your objection, Mr. Cuthbert, of
10 sustaining the motion with regard to Captain
11 Buckovich.

12 Is there anything else we need to do
13 before lunch?

14 MS. BURTON: Does that include willful and
15 wanton? What about the issue of willful and
16 wanton?

17 THE COURT: Are you talking about Captain
18 Buckovich? Do you want to bring him back in on
19 something else?

20 MS. BURTON: No. I just want to make sure
21 what the Court's ruling is. I thought you said
22 the gross negligence was a different question
23 for Sergeant Ingram, but we also moved to
24 strike the evidence against both of them.

25 THE COURT: The motion to strike any of

1 the evidence with regard to Sergeant Ingram at
2 this point is overruled, willful and wanton and
3 gross negligence.

4 The motion to strike all of the evidence
5 with regard to Captain Buckovich is sustained.

6 MS. BURTON: I would like an opportunity
7 to state specifically on the record all of my
8 reasons, which I didn't get to do that with
9 regard to Sergeant Ingram.

10 THE COURT: I appreciate that, Ms. Burton.
11 Again, if I don't let you make the argument,
12 you can go to the Supreme Court and add things.
13 Let's say I say, okay, make your argument, and
14 you name seven things. I say, anything else?
15 Then you say, yeah, one more, eight things. I
16 say, anything else? You say, no. I say, are
17 you sure? You say, no. I say, fine. You go
18 to the Supreme Court. The only thing you can
19 argue are those eight things.

20 You're telling me now you want to argue
21 something else. I'm sorry, Ms. Burton. I'm
22 hungry, and you all are hungry. Let's go to
23 lunch. You can go to the Supreme Court, and
24 you can name 100 things. You can say, the
25 judge didn't let me put on the record what I

1 wanted to put on the record.

2 I've heard your argument, Ms. Burton.
3 I've been paying attention. I know you all
4 don't think I pay attention. I've been paying
5 attention the last day and a half. I
6 understand the basis for your motion. Your
7 motion is overruled.

8 Anything else?

9
10 (No response.)

11
12 THE COURT: Thank you. We'll stand in
13 recess until 2:00.

14
15 (Lunch break.)

16
17 THE COURT: Are we ready?

18 MS. BURTON: Just a minute, Your Honor.

19 THE COURT: Now, I see Captain Buckovich
20 is still at the table.

21 MS. BURTON: Yes, sir. We have a concern
22 that the jury might read the fact that Captain
23 Buckovich is not here as an automatic right to
24 find against Sergeant Ingram. We'd like to ask
25 the Court to provide a special instruction to

1 the jury.

2 THE COURT: Well, I'm going to tell them
3 what I normally tell them.

4 MS. BURTON: Yes, sir.

5 THE COURT: Captain Buckovich, thank you
6 very much, sir. You are excused.

7 Are you ready now?

8 MS. BURTON: Yes. I can tell the Court
9 that we have actually decided to stand on our
10 motion to strike with the exception of one
11 little piece of evidence. We want to put some
12 evidence on the record on the issue of
13 interest.

14 We'd like to ask the Court to take
15 judicial notice of the fact that the case was
16 originally filed in another lawsuit earlier as
17 LF-330; and that LF-330 was voluntarily
18 nonsuited by the plaintiff; and that the case
19 was subsequently refiled adding additional
20 parties; and that the Court bifurcated the case
21 and tried the other case first; and the
22 plaintiff chose to try the other case first.

23 THE COURT: Well, do you want to tell the
24 jury all of that?

25 MS. BURTON: Well, I want the jury to know

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1 that the delay --

2 THE COURT: Can you do that through a
3 witness though? Unless you all stipulate, I
4 don't know that I want to take judicial notice
5 of these things.

6 MS. BURTON: Well, this information is
7 basically --

8 THE COURT: I guess I can say, judicial
9 notice of court records.

10 MS. BURTON: Yes, sir. It's basically the
11 court records. I couldn't put my finger on the
12 nonsuit order.

13 THE COURT: Just tell me exactly what it
14 is you want. I'll hear what Mr. Cuthbert has
15 to say, but you want me to tell the jury when
16 the case was filed?

17 MS. BURTON: The case was filed in 1999.

18 THE COURT: December 1999. What else do
19 you want me to tell them?

20 MS. BURTON: It was nonsuited -- I will
21 get the date the first case was nonsuited.
22 I've sent someone downstairs to get that.

23 THE COURT: I thought that the case we're
24 trying now was filed in '99. Are you saying it
25 was filed before then?

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1 MS. BURTON: Yes, sir.

2 THE COURT: It was filed before 1999?

3 MS. BURTON: Yes, sir.

4 THE COURT: So what was the date?

5 MS. BURTON: Well --

6 THE COURT: Oh, okay. The one I have --
7 this is December 2000. Do you know what month
8 in '99 it was originally filed? You say with
9 this you're going to rest your case?

10 MS. BURTON: Yes, sir. That's the only
11 concern we have.

12 THE COURT: Okay. We need to take a
13 recess, so I can tell the clerk's office that.
14 They're getting ready to bump a case for
15 tomorrow, and I don't want to bump a case.

16 MR. CUTHBERT: Your Honor, I've got all of
17 my closing arguments in Petersburg.

18 THE COURT: I'm sorry. We're going to
19 finish this case today. I wouldn't know how to
20 act if I excused a jury at 2:30 and told them
21 to come back the next day.

22 MR. CUTHBERT: May I make a phone call to
23 Petersburg to ask for my notes? I've got the
24 closing arguments and rebuttal written out.
25 I've got to have it.

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1 THE COURT: Rebuttal? There's nothing to
2 rebut.

3 MR. CUTHBERT: Argument, Your Honor.

4 THE COURT: Let's see where we go with
5 this. Ms. Broaddus, if you want to, see if you
6 can get on the phone, but we are not going to
7 wait.

8 MR. CUTHBERT: May I confer with
9 Ms. Broaddus?

10 THE COURT: Yes. I am going to continue
11 to hear from Ms. Burton.

12 MS. BURTON: The only thing I want the
13 Court to take judicial notice of is the fact
14 these same allegations were filed in a lawsuit
15 styled LF-330, and that lawsuit was voluntarily
16 nonsuited by the plaintiff.

17 THE COURT: I'm just trying to get the
18 dates.

19 MS. BURTON: I sent someone downstairs to
20 get the dates.

21 THE COURT: I guess we have time for
22 Mr. Cuthbert to go to Petersburg and get his
23 things.

24 MS. BURTON: I do have a motion to strike
25 in the meantime.

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1 THE COURT: Well, if you tell me a date,
2 I'll see if Mr. Cuthbert objects to me telling
3 the jury that. It was nonsuited sometime in
4 1999 or 2000? Do you know when?

5 Bring the jury out.

6 Everybody, have a seat, please.

7 You're not going to call any other
8 witnesses?

9 MS. BURTON: No, sir. I just want this
10 one piece of information in the record.

11 THE COURT: Don't bring the jury out yet
12 then.

13 Tell me what else you want me to tell the
14 jury.

15 MS. BURTON: That after voluntarily
16 nonsuiting, the plaintiff refiled it, and that
17 was the delay in --

18 THE COURT: It was refiled December 27,
19 2000. All right. I have that date here, so I
20 know that's correct.

21 MS. BURTON: And because of certain
22 rulings the Court made, the delay in these
23 defendants coming to trial is not properly
24 attributable to the --

25 THE COURT: You want the Court to take

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1 judicial notice of the last thing, Ms. Burton?
2 Even you're laughing. It doesn't pass the
3 laugh test. Now, you can put a witness on to
4 say that if you want to try to put a witness on
5 to say that. I don't think it's fair. I don't
6 think the Court can take judicial notice of
7 that.

8 MS. BURTON: In that case, the case was
9 scheduled for trial in September 2003. Because
10 of a mistrial, the Court rescheduled the case
11 for trial today.

12 THE COURT: I'd rather for you to do that
13 unless I have a stipulation. I don't think I
14 want to take judicial notice of that.

15 MS. BURTON: Of the fact the case was
16 scheduled for trial in September?

17 THE COURT: You don't want to put
18 Mr. Ingram on to say that?

19 MS. BURTON: No.

20 THE COURT: I'm just asking. If I tell
21 the jury that, it sounds like I'm advocating.
22 I don't want to advocate.

23 MS. BURTON: Well, Your Honor, you can
24 tell the jury that the defense has asked you to
25 tell them.

1 THE COURT: I hear you.

2 Now, Mr. Cuthbert, what's your feeling
3 about whether the Court should tell the jury
4 any of what Ms. Burton wants me to tell them?

5 MR. CUTHBERT: I feel the Court should
6 not. Of course, this is an important issue,
7 but it's coming out of the woodwork bang. I
8 think there's Virginia law that at least
9 supports the proposition, if it does not say,
10 that what we're doing with an award of interest
11 is to take into account the time value of
12 money. I think that's what the Virginia
13 Supreme Court decisions say. That being the
14 case, the cause of the delay doesn't matter.
15 The fact is --

16 THE COURT: The case is set for trial
17 tomorrow. The plaintiff comes in: I don't
18 want to try this case because I want to get
19 some interest on my money. The banks are only
20 paying 1 percent interest a year. The Virginia
21 statute provides 9 percent interest a year. I
22 want to delay this case as long as I can.

23 You don't tell the Court that. You tell
24 the Court there's another reason. It comes out
25 in trial that the real reason is because the

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1 plaintiff wanted the delay to get interest.

2 The jury doesn't hear that?

3 MR. CUTHBERT: I don't think the jury
4 hears that at all. The law is that the reason
5 for the award of interest is to account for the
6 time value of money.

7 THE COURT: I understand.

8 MR. CUTHBERT: This is a really important
9 issue in terms of money.

10 THE COURT: I agree. I have often
11 wondered why parties don't put evidence in as
12 to the cause of the delay, why the plaintiffs
13 don't show the jury that it was the defendant's
14 fault to ask for interest, and why the
15 defendants don't show it was the plaintiff's
16 fault to show that interest is not awarded.

17 I don't feel comfortable sometimes;
18 though, I do it because that is the law of
19 Virginia. What I always tell them is, you can
20 award interest if you want to. It's entirely
21 up to you. I don't tell them what to consider
22 in deciding to award interest.

23 Every other thing that a jury decides, we
24 tell them what they should consider in making
25 that decision. We say, look, you can award

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1 interest if you want to. You don't have to
2 award it if you don't want to. We don't give
3 them any guidance at all as to whether to do it
4 and why to do it.

5 MR. CUTHBERT: All I know, Your Honor, is
6 that the concept is that interest is awarded
7 because of the time value of money. If we
8 accept that assumption, then the reason for the
9 delay doesn't matter. The reason it doesn't is
10 that the defendants have had the use of the
11 money.

12 As I say, this issue is important. It
13 should have been brought on in a motion in
14 limine. We're all here naked as a jaybird in
15 terms of knowing what the law is.

16 THE COURT: All issues are important,
17 Mr. Cuthbert.

18 MR. CUTHBERT: Well, this one is very
19 foreseeable. It could have been briefed and
20 decided in --

21 THE COURT: Is there something that they
22 did not respond to appropriately in discovery
23 that you're trying to keep out?

24 MR. CUTHBERT: No, sir. But this is an
25 issue --

1 THE COURT: I'm going to allow them to do
2 it because I think it's appropriate. Maybe I'm
3 wrong. I wish more parties would do it. So
4 I'm going to do it.

5 Can we agree on what I'm going to tell the
6 jury? I'm going to tell the jury this case was
7 filed in December 1999.

8 Do you know when it was filed? Do you
9 have that date now? I see Mr. Hairston is
10 back. I'm glad that you gave him something to
11 do. I was teasing him downstairs about him
12 just observing. I'm glad that you gave him
13 some work. Now he can get paid for the day.

14 I'm sorry, Mr. Hairston. You know I'm
15 just messing with you.

16 MS. BURTON: The filing, I'm sure it's on
17 the Court's record.

18 THE COURT: I don't have the record. See,
19 nonsuited cases are a completely different
20 case. Once, they're dismissed, that's a
21 completely different case. When it's refiled,
22 it gets a new case number. We don't have any
23 record of the nonsuit unless the parties refer
24 to it in some way. I don't feel like going
25 through these six file folders right now to see

1 if that's true.

2 Do you want to say that it was nonsuited
3 sometime prior to 2000?

4 MS. BURTON: Yes, sir. That would be
5 suitable.

6 THE COURT: That it was filed sometime
7 prior to 2000, and it was nonsuited and refiled
8 December 27, 2000?

9 MS. BURTON: That's fine.

10 THE COURT: Would that satisfy you: This
11 case was originally filed at some point prior
12 to the year 2000?

13 MS. BURTON: Yes, sir.

14 THE COURT: It was subsequently nonsuited,
15 which means that the plaintiff decided not to
16 proceed with the case. It's a legal word. We
17 call that taking a nonsuit. It was refiled
18 December 27, 2000.

19 MS. BURTON: Yes, sir.

20 THE COURT: I'm not going to do that. I'm
21 not going to do it. Every time I think about
22 doing it, it sounds to me like I'm being an
23 advocate for something. I would rather not do
24 it. If Mr. Cuthbert objects to it, I'm not
25 going to do it.

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1 If you would like to call a witness to
2 establish these facts, you may over
3 Mr. Cuthbert's objection. Do you want to call
4 a witness to establish these facts?

5 MS. BURTON: No. I want to ask the Court
6 to take judicial notice of the nonsuit though.

7 THE COURT: I'll do that. I'm not going
8 to show the jury the pleading. What's your
9 problem with putting a witness on?

10 MS. BURTON: I don't have a witness. The
11 witness couldn't tell anything, except what we
12 told him to say.

13 THE COURT: The reason I'm doing that --
14 I'm not saying that it's not an accurate
15 statement of facts. Every time I think of how
16 I'm going to tell the jury, it just sounds like
17 I'm advocating. The jurors will say, why would
18 the plaintiff want the judge to tell us that?
19 The judge must be doing this because the
20 defendant wants him to do it. I don't think I
21 should take sides.

22 MS. BURTON: This is the only evidence
23 we're going to present. I think it's proper.

24 THE COURT: Let's go though. It's quarter
25 after 2:00. I'm not going to do it over your

1 objection. I'm going to allow you to do it if
2 you want to do it over Mr. Cuthbert's
3 objection. Do you want to do it? You can't do
4 it yourself. You have to call a witness.

5 MS. BURTON: We don't have a witness, Your
6 Honor.

7 THE COURT: Sergeant Ingram doesn't know
8 when the case was filed. I don't know when the
9 case was filed. To be very technical, I don't
10 know when the case was filed. Nobody has given
11 me anything to show me when this case was
12 filed. I'm not going to take a recess to go to
13 the clerk's office to find out.

14 MS. BURTON: We can call a court clerk.

15 MR. CUTHBERT: Your Honor, may I jump in?

16 THE COURT: It may go away.

17 MR. CUTHBERT: I think I can help it go
18 away.

19 THE COURT: Go.

20 MR. CUTHBERT: A substantial part of the
21 delay was caused by --

22 THE COURT: Wait a minute. It may go
23 away. If Ms. Burton doesn't have anything to
24 show me when the case was filed and she's not
25 going to put on any evidence, that's the end of

1 it. You don't need to make an argument.

2 MR. CUTHBERT: Yes, sir. I think I can
3 help make sure that happens by pointing out
4 that a lot of the delay happened because of the
5 bifurcation decision.

6 THE COURT: I'll let you put on rebuttal
7 evidence.

8 MR. CUTHBERT: I'm going to put on that
9 the Court decided to bifurcate the case against
10 the manufacturer, and that the jury decided the
11 case against the manufacturer?

12 THE COURT: No. You don't have to tell
13 what happened as a result of the bifurcation.

14 MR. CUTHBERT: Well, if I'm going to tell
15 them that I filed against the manufacturer, I
16 think I daggone need to --

17 THE COURT: Have a seat, Mr. Cuthbert.

18 MR. CUTHBERT: Yes, sir.

19 THE COURT: Now, Ms. Burton, you need to
20 let me know right now because I'm getting ready
21 to bring the jury out: Do you have any
22 evidence that you wish to present based on my
23 ruling? Do you wish to present any evidence,
24 Ms. Burton?

25 MS. BURTON: No, sir. Let it stand

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1 objected to.

2 THE COURT: The defendant rests.

3 I assume, Ms. Burton, you are renewing
4 your motion to strike with regard to Sergeant
5 Ingram?

6 MS. BURTON: Yes, sir.

7 THE COURT: Any argument you want to make
8 that I have not heard?

9 MS. BURTON: Yes, sir.

10 THE COURT: Bring the jury out, please.
11 The jury thinks that I forget them. They don't
12 need to have a seat. They can just stand
13 there.

14
15 (The jury enters.)
16

17 THE COURT: I don't want you all to think
18 I'm forgetting about you because I always take
19 longer to bring you out here than I tell you I
20 am. We're not quite ready to go, yet. I will
21 tell you this: The parties have completed the
22 presentation of evidence. We are going to
23 finish this case today even though I told you
24 that we might have to come back tomorrow and
25 Friday.

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1 I need to talk with the lawyers about the
2 legal instructions which I will be reading to
3 you. Then the lawyers are going to make their
4 closing arguments, and then the case will be
5 yours. You will have to make a decision in the
6 case. I just wanted you to know that, so you
7 wouldn't think that we'd forgotten about you
8 out here.

9 This will probably take us as much as
10 maybe a half an hour or so to finish doing what
11 we're going to do. So I'm going to ask you to
12 go back into the jury room. If you'd rather go
13 downstairs and get a nab or a soda, you can do
14 that.

15 Once again though, if you do that, I want
16 to remind you that lawyers and witnesses may be
17 in the halls. You have to make sure nobody
18 talks about the case in your presence. Okay.

19
20 (The jury exits.)
21

22 THE COURT: All right. Ms. Burton.

23 MS. BURTON: May I stand here?

24 THE COURT: Yes.

25 MS. BURTON: Well, you know what? If I

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1 stand here, I can't see. So I need to get
2 here.

3 THE COURT: See, you all are just
4 contrary. If I said you couldn't stand there,
5 you would have argued: Why can't you stand
6 there?

7 MS. BURTON: I apologize, Your Honor. It
8 seemed like a good idea at the time. I renew
9 my motion to strike the evidence against
10 Sergeant Ingram and remind the Court that there
11 are two bases for liability asserted against
12 him. One is gross negligence, and the other is
13 willful and wanton negligence.

14 I think there's absolutely no evidence
15 with regard to the issue of willful and wanton
16 evidence, that Sergeant Ingram knew that
17 someone was in a position to be hurt and that
18 he deliberately even knowing that did what he
19 did.

20 The evidence is that he went to the door
21 to wait for the command. He listened at the
22 door. He was not aware -- the evidence is that
23 he was not aware of anyone being at the door.

24 So when he received the command to breach,
25 he did what he was instructed to do. That is

1 the only evidence on that point, and it falls
2 far short of the measure that's required to
3 establish willful and wanton conduct on the
4 part of Sergeant Ingram.

5 I'd like to take a moment to address the
6 specific allegations in the motion for judgment
7 against Sergeant Ingram.

8 THE COURT: Ms. Burton, I want to be
9 polite, and I want you to feel that you've had
10 your full opportunity. But I really don't want
11 to do that. I'm not going to sustain your
12 motion. I really don't want to take a whole
13 lot of time because we do need to get this case
14 to the jury since we have no other evidence to
15 present.

16 MS. BURTON: Well, Your Honor, I would
17 like the opportunity after the case goes to the
18 jury to state specifically the reasons.

19 THE COURT: I promise you: At some point
20 you will get that opportunity.

21 If there's something that you think is
22 going to change my mind -- and you know me. So
23 if it's something you think is going to change
24 my mind, tell me really quickly.

25 MS. BURTON: Your Honor, all of the

1 evidence in the case that the plaintiff has
2 presented shows care. It shows that Sergeant
3 Ingram was trained. It shows that he acted in
4 accordance with his training.

5 It doesn't show the angle at which he
6 fired. The testimony was that optimally they
7 fire at a 45-degree angle. He fired at the
8 best angle he could under the circumstances.
9 The testimony was that the angle became steeper
10 an inch at a time.

11 Furthermore, the evidence is that
12 Ms. Green was killed by fragments of a round,
13 which indicate the rounds hit something. The
14 inference is that the rounds hit something in
15 the door.

16 THE COURT: Something other than wood?

17 MS. BURTON: Something other than wood,
18 something that broke them apart. All of the
19 evidence indicates he applied the rounds to the
20 target area. In fact, the testimony was that
21 his first round was fired directly in the area
22 of the dead bolt. The evidence is that the
23 dead bolt is on the floor and that part of the
24 doorknob is on the floor.

25 The only permissible inference from that

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1 is that he fired the rounds in accordance with
2 his training. It struck a metal object in the
3 door and struck something hard enough to breach
4 it. Obviously, the rounds hit something and
5 broke into parts. The evidence is that
6 Ms. Green was killed by fragments. There is no
7 evidence that --

8 THE COURT: All right. Thank you very
9 much, Ms. Burton. I'm going to take your
10 motion under advisement. I really need to end
11 your argument at this point. The Court takes
12 the motion to strike under advisement. Let's
13 see what the jury does with it.

14 All right. Counsel, do you want to bring
15 your instructions up, please? You can bring
16 them all the way up here if you would.

17 MR. CUTHBERT: Yes, sir.

18 THE COURT: We're going to go off the
19 record until we find out if there are
20 instructions that are objected to. I will be
21 very surprised if there are not.

22 MS. BURTON: Let me just say for the
23 record that Sergeant Ingram objects to the
24 giving of any instructions. We believe that
25 the evidence fails to show that he engaged in

1 any grossly negligent conduct or any willful or
2 wanton conduct; therefore, it should not go to
3 the jury.

4 Without waiving that objection, however,
5 we reserve the right to weigh in on whatever
6 instructions the Court might offer.

7 THE COURT: I hope you do. Can we go off
8 the record now?

9 MS. BURTON: Yes, sir.

10
11 (Discussion off the record.)
12

13 THE COURT: Let's go on the record if we
14 could. These are the instructions that are
15 objected to: The first one I have is, you are
16 not required to accept any of the testimony of
17 any witness who has knowingly testified
18 untruthfully.

19 Mr. Cuthbert, this is your instruction.

20 Ms. Burton, what is your objection?

21 MS. BURTON: I don't think there's any
22 evidence that any witness knowingly testified
23 untruthfully or any from which you could glean
24 at that.

25 MR. CUTHBERT: I'll withdraw it, Your

1 Honor.

2 THE COURT: When a party has the burden of
3 proof -- and let's look at that with the
4 same -- there's also one that talks about
5 greater weight of the evidence.

6 Ms. Burton, what is your objection to the
7 one that uses the term "burden of proof"?

8 MS. BURTON: Can I see that?

9 THE COURT: Hint, hint, that's the one I
10 like, but I'll listen to your argument against
11 it.

12 MS. BURTON: No, I don't have an issue
13 with that.

14 THE COURT: Okay. Do you withdraw yours
15 then? I like giving that one because the
16 issues instruction talks about the plaintiff
17 having the burden of proof. I like to follow
18 that up by telling the jury what the burden of
19 proof is.

20 Punitive damages. Ms. Burton, any
21 objection that I have not already heard?

22 MS. BURTON: Let me think.

23 THE COURT: Go ahead and state it because
24 you haven't made it with regard to the
25 instruction.

1 I am going to change this, Mr. Cuthbert,
2 to take out Lieutenant Buckovich.

3 MR. CUTHBERT: Yes, sir.

4 MS. BURTON: May I see that instruction?

5 THE COURT: This is one that you're
6 objecting to. What is your objection?

7 MS. BURTON: My objection is based on the
8 fact that I don't believe there's any evidence
9 that shows willful or wanton conduct. The
10 instruction then isn't appropriate.

11 THE COURT: Mr. Cuthbert, can I change
12 your punitive damages award instruction? You
13 say, and you may distribute that amount between
14 Kevasha and DiQuasha. Can I say you must?

15 MR. CUTHBERT: That's fine, Your Honor.

16 THE COURT: Can I say you must? I had one
17 wrongful death case where the jury did not do
18 it. I had to do it. I don't want to do it.
19 But I won't do it if you don't want me to.

20 MR. CUTHBERT: No, sir. That's fine.
21 Let's make it must.

22 THE COURT: I think the statute says may.

23 MR. CUTHBERT: No, sir. That's fine.
24 Let's get it done.

25 THE COURT: Can I say must?

1 MS. BURTON: That's fine. I don't object
2 to that. That means that the verdict form has
3 to be changed.

4 THE COURT: I think so. You all don't
5 have to agree with me. I don't think the
6 statute says must. I think the statute says
7 may.

8 MR. CUTHBERT: It does, but I have no
9 objection.

10 THE COURT: The verdict form says, to be
11 distributed as follows. So it tells them they
12 have to do it.

13 MR. CUTHBERT: I think it's the damages
14 instruction, Your Honor, that says -- something
15 else says may distribute.

16 THE COURT: It says, you may distribute
17 these damages. Can I just cross it out and put
18 must without getting the whole thing retyped?

19 MR. CUTHBERT: Yes, sir.

20 THE COURT: Ms. Burton?

21 MS. BURTON: Yes, sir.

22 THE COURT: All right. The law requires a
23 higher degree of care and vigilance in dealing
24 with a dangerous agency.

25 Ms. Burton, you object?

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1 MS. BURTON: Yes, sir.

2 THE COURT: Give me your best argument,
3 Mr. Cuthbert.

4 MR. CUTHBERT: It's Virginia law, and the
5 facts fit that description. I'm not quite sure
6 how to say it. Those are our facts, and that's
7 Virginia law.

8 THE COURT: I'm going to let you argue
9 that, but I'm not going to give it as an
10 instruction. This will be called Plaintiff's
11 Exhibit A refused.

12 Sergeant Ingram had a duty not to be
13 grossly negligent.

14 MS. BURTON: Well, the Court has to give
15 an instruction on gross negligence, but I don't
16 think you have to keep giving it.

17 THE COURT: Cumulative?

18 MS. BURTON: Yes, sir.

19 THE COURT: Mr. Cuthbert, isn't it
20 cumulative?

21 MR. CUTHBERT: Have we said that?

22 THE COURT: We have an issues instruction.

23 MR. CUTHBERT: I'll withdraw it, yes, sir.
24 Thank you.

25 THE COURT: A police officer who

1 undertakes to act is required to act without
2 committing gross negligence.

3 MS. BURTON: I think that's cumulative as
4 well.

5 MR. CUTHBERT: Let me go back to this one
6 if I may. I think in an automobile case -- and
7 that's where I come from. All right -- you
8 have not only the issues instruction, but you
9 have a duty instruction. It was by analogy to
10 the motor vehicle accident cases.

11 THE COURT: You withdrew it.

12 MR. CUTHBERT: Yes, sir, but I think I
13 need to reassert it. Don't you think it's --

14 THE COURT: Don't argue with me though.
15 You withdrew it.

16 MR. CUTHBERT: Well, I will reassert it.
17 I hope I haven't waived anything, Your Honor.

18 THE COURT: Now you can argue it.

19 MR. CUTHBERT: Thank you, sir.

20 THE COURT: Do you want it? Make your
21 best argument. You already made your argument.
22 I'm going to give this one.

23 If I give this one, do I have to give this
24 one? Now I think that what Ms. Burton says
25 comes into play. You don't have to keep on

1 giving it; do you?

2 MR. CUTHBERT: Well, this is the negligent
3 undertaking concept.

4 THE COURT: Do you want both of them?

5 MR. CUTHBERT: I think you're probably --
6 let me change my mind again about the one in
7 the left hand, and let me ask you to give the
8 one in your right hand.

9 THE COURT: Well, I like the one in my
10 left hand. Let me read it again. Okay. I
11 will give either one you want. Pick one.

12 MR. CUTHBERT: I'd like Your Honor to give
13 the one in Your Honor's right hand.

14 THE COURT: You want me to give both? I
15 will mark this refused.

16 MR. CUTHBERT: No, sir. I'll withdraw it.

17 THE COURT: Ms. Burton, you object to that
18 one, the one that says, a police officer who
19 undertakes to act is required to act without
20 committing gross negligence?

21 MS. BURTON: As long as there are not two.

22 THE COURT: No. The other one I had taken
23 out.

24 MS. BURTON: That's fine.

25 THE COURT: Well, you objected. Do you

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1 still object?

2 MS. BURTON: Well, I objected because I
3 think it's cumulative, but I'll withdraw it.

4 MR. CUTHBERT: Your Honor, I'm going to
5 take that one back, the gross undertaking.

6 THE COURT: Do you want the other one?

7 MR. CUTHBERT: No, sir.

8 THE COURT: You don't want either one?

9 MR. CUTHBERT: I've talked myself into
10 neither.

11 THE COURT: An official appointed by this
12 Court will receive, take care of, and hold --
13 you think if the jury doesn't know that that
14 they might not want to give these little girls
15 a lot of money?

16 MR. CUTHBERT: Exactly, Your Honor. I'm
17 concerned. They come from a pretty difficult
18 background. I can imagine how I would think if
19 I were a juror. I don't think the man on the
20 street knows what that instruction says is
21 true.

22 MS. BURTON: I don't think it's relevant
23 to any of the issues in the case. It's not the
24 jury's province to decide who keeps the money.
25 They decide whether they get any and how much

1 each gets.

2 MR. CUTHBERT: I have tracked the language
3 of the statute. I think it's an accurate
4 statement of Virginia law, and I think it's a
5 legitimate concern.

6 THE COURT: It's a true statement of what
7 will happen I think. I don't know. We've had
8 discussions about that. A lot of times when we
9 have cases involving children, we don't know
10 what happens to the money. So I don't know
11 that this is true.

12 MS. BURTON: Plus, it's almost telling the
13 jury --

14 THE COURT: I don't know that this is
15 true.

16 MR. CUTHBERT: Well, it's what the
17 Virginia statute says that I cited there, Your
18 Honor.

19 THE COURT: I don't think there's a
20 statute that says that.

21 MR. CUTHBERT: Well, may we look and see,
22 Your Honor? It's 8.01-582.

23 THE COURT: Does the statute say that the
24 Court may do that? If the City of Richmond
25 wants to give a million dollars to Kevasha, is

1 there any way the Court can stop the City of
2 Richmond from doing that?

3 MR. CUTHBERT: If they want to satisfy a
4 judgment, they've got to follow that statute.

5 THE COURT: That's not my question. My
6 question is, if the City of Richmond says,
7 okay. Kevasha, you won a million dollars.
8 Here it is. Or if they say, Ms. Green, you've
9 just won a million dollars. Here it is. Is
10 there anything the Court can do to stop that
11 from happening?

12 MR. CUTHBERT: Yes, sir, not discharge the
13 obligation.

14 THE COURT: You keep going to the next
15 step. My question is, is there anything to
16 stop the City of Richmond from doing that?

17 MR. CUTHBERT: No, sir. It could be done.
18 Please look at the statute, Your Honor. Your
19 question is, could the City of Richmond
20 give Kevasha a million dollars? The answer is,
21 yes, they could do it without my filing suit.

22 THE COURT: This doesn't say anything
23 about satisfying a judgment or anything else.

24 MR. CUTHBERT: Would Your Honor please
25 look at the statute. It's 8.01-582.

1 THE COURT: I've looked at it. I do it
2 every day. We generally only do it in
3 settlements.

4 Judge Markow and Judge Hughes and I have
5 had this conversation very recently, within the
6 last two or three weeks. I think Judge Hughes
7 had a case where he was asked to put money into
8 the court after a jury verdict. It's the first
9 time that any of us could remember being asked
10 that.

11 We wondered at lunch: What happens when
12 the jury returns a verdict for an infant
13 plaintiff? In settlements, they have to come
14 here and have the settlements approved. We
15 automatically put the money in court.

16 I have never had a party ask me to put
17 money in court after a jury returns a verdict
18 in favor of an infant plaintiff who is suing.
19 I don't know what happens. I don't know if the
20 insurance companies are just writing checks to
21 these kids or what.

22 They probably would be in a lot of trouble
23 if they write a check to the kid or if they
24 write a check to the parent and the parent
25 spends the kid's money. I think the insurance

1 companies would be in a lot of trouble. I
2 don't know what happens.

3 MR. CUTHBERT: I understand.

4 THE COURT: That's my hesitancy in giving
5 this instruction.

6 MR. CUTHBERT: I understand, sir.

7 THE COURT: I think it's a true statement.
8 If Ms. Burton agrees to it, I would give it. I
9 can't give it over her objection. I'm going to
10 call this Plaintiff's B refused.

11 If you believe a party without explanation
12 failed to call an available witness --
13 Mr. Cuthbert, you object to it?

14 MR. CUTHBERT: I do.

15 THE COURT: Give me your best argument,
16 Ms. Burton.

17 MS. BURTON: I withdraw it.

18 THE COURT: The fact there was an accident
19 and the plaintiff was injured does not of
20 itself entitle the plaintiff to recover.

21 MS. BURTON: I will withdraw that.

22 THE COURT: Life expectancy table
23 introduced as evidence is to be considered to
24 you as an aid. You should consider it along
25 with all of the other evidence related to the

1 health, et cetera, et cetera, et cetera.

2 MS. BURTON: Is that Mr. Cuthbert?

3 THE COURT: This is yours. I forgot to
4 read a part. But it is not in any way
5 conclusive or binding. I don't remember seeing
6 that part in the statute.

7 You don't want that; do you?

8 MS. BURTON: Yes.

9 THE COURT: You want that?

10 MS. BURTON: Yes, sir.

11 THE COURT: You think this is better than
12 the one that Mr. Cuthbert has given?
13 Mr. Cuthbert's says, in determining the life
14 expectancy of Christie Green, you should
15 consider the life expectancy figure along with
16 any evidence relating to her health,
17 constitution, and habits. I think that is the
18 statutory one.

19 If you want yours, tell me you want it and
20 give me your argument.

21 MS. BURTON: That's fine.

22 THE COURT: Okay. This is the one. You
23 all check that to make sure it doesn't have any
24 typos or anything in it.

25 MS. BURTON: Is there an instruction that

1 defines what --

2 MR. CUTHBERT: Your Honor, the only thing
3 that I'm concerned about at all in the issues
4 instruction is that item three concludes, what
5 is the amount of "her" damages?

6 THE COURT: You want me to say "the"?

7 MR. CUTHBERT: Yes, sir.

8 THE COURT: Ms. Burton, any problem with
9 saying "the"?

10 MS. BURTON: No, sir.

11 THE COURT: Okay. That was also retyped.

12 MR. CUTHBERT: That's okay.

13 THE COURT: All right. That was retyped
14 as well.

15 MR. CUTHBERT: Your Honor, could I see the
16 definition of willful and wanton? Don't we
17 have an instruction?

18 MS. BURTON: Your instruction.

19 THE COURT: Here it is.

20 MR. CUTHBERT: Thank you, sir.

21 THE COURT: Is that okay?

22 MR. CUTHBERT: Yes, sir.

23 THE COURT: All right. The instructions
24 that I'm going to give are the issues
25 instruction, which is being retyped; burden of

1 proof; proximate cause; general credibility;
2 sympathy, bias, guesswork; one of the parties
3 testifies unequivocally; expert witness;
4 adverse witness; circumstantial evidence; gross
5 negligence; finding instruction; damages
6 instruction; life expectancy for Christie
7 Green; life expectancy for Kevasha Green; life
8 expectancy for DiQuasha Green; punitive damages
9 instruction; definition of willful and wanton;
10 interest; and statement of counsel.

11 MR. CUTHBERT: What was the statement of
12 counsel? Oh, the amount asked for.

13 THE COURT: Yes. The statement of
14 counsel, the amount asked for, any statement of
15 counsel referring to the amount sued for. That
16 was the last instruction.

17 MR. CUTHBERT: Yes, sir.

18 MS. BURTON: Are we done?

19 THE COURT: I have two instructions that I
20 have refused. Plaintiff's Exhibit A is the
21 instruction that begins, the law requires a
22 higher degree of care and vigilance.
23 Plaintiff's Exhibit B is, an official appointed
24 by the Court will receive and take care of the
25 monies.

1 Are there any other instructions that
2 either of you want to offer that I have not
3 either said I am giving or that I'm rejecting?

4 MR. CUTHBERT: I do not have any.

5 THE COURT: Ms. Burton?

6 MS. BURTON: We have none.

7 THE COURT: Mr. Cuthbert, any other
8 argument you want to make about any of the
9 instructions which I am either giving or
10 rejecting?

11 MR. CUTHBERT: No, sir, I don't. I take
12 it you've got the verdict form on there.

13 THE COURT: Yes, sir.

14 MR. CUTHBERT: Your Honor, on the verdict
15 form, I would like to ask the Court to show the
16 jury this. I've had to mark it up.

17 THE COURT: It's the same as what I have?

18 MR. CUTHBERT: Yes, sir, the content is.
19 It made reference to Buckovich in here.

20 THE COURT: Any problem with that,
21 Ms. Burton?

22 MS. BURTON: No, sir.

23 THE COURT: Ms. Burton, any other
24 arguments you want to make on any of the
25 instructions that I am either giving or not

1 giving?

2 MS. BURTON: No, sir.

3 THE COURT: Okay. We'll stand in recess
4 for ten minutes.

5 MR. CUTHBERT: Your Honor, may I look
6 through the exhibits?

7 THE COURT: Yes.

8 MR. CUTHBERT: I just want to prepare for
9 closing argument.

10 THE COURT: Don't take them away from the
11 bench.

12 MR. CUTHBERT: Yes, sir.

13 THE COURT: Okay. We'll stand in recess
14 for ten minutes.

15
16 (Recess taken.)

17
18 THE COURT: Do you want to get your
19 clients and your co-counsel, Ms. Burton?

20 MS. BURTON: Yes, sir.

21 THE COURT: If there are witnesses in the
22 hall, I didn't tell them. They know they don't
23 have to stay? They can come in, or they can
24 leave.

25 MS. BURTON: Yes, sir, they know.

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1 THE COURT: I see there are people in the
2 hall that look like they are witnesses in this
3 case.

4 MR. CUTHBERT: Your Honor.

5 THE COURT: Yes.

6 MR. CUTHBERT: I move to strike the
7 evidence that was presented on
8 cross-examination.

9 THE COURT: Let's wait until Ms. Harris
10 comes in if you don't mind.

11 MR. CUTHBERT: Sure.

12 THE COURT: I assume she's somewhere
13 around, Ms. Burton.

14 MS. BURTON: We think she went to the
15 ladies room.

16 THE BAILIFF: She's coming.

17 THE COURT: All right. Mr. Cuthbert.

18 MR. CUTHBERT: Your Honor, I move to
19 strike the questions and answers of Dr. Boone
20 and Dr. Johnson on the topic of the Afton
21 Avenue incident. There was absolutely no
22 evidence, no factual evidence that anything
23 took place at Afton Avenue.

24 I was expecting -- and I think we all were
25 expecting -- that the defense would call

1 someone as part of their case and chief to
2 establish those facts. They never did. They
3 rested at the close of the plaintiff's
4 evidence. So we have questions based upon
5 facts that are not in evidence in the form of
6 the cross-examination of Dr. Boone and
7 Dr. Johnson dealing with the Afton Avenue
8 incident.

9 For example, wouldn't you find it helpful
10 to know that either mother or father put
11 Kevasha on the phone to beg for her dad's
12 freedom or words to that effect.

13 Since the defense chose to rest and chose
14 never to present any of that evidence, I think
15 those questions in the context that we know now
16 are improper and that that evidence should be
17 struck. The jury should be instructed to
18 disregard it, and the defense counsel should be
19 instructed to make no reference to it in
20 closing argument.

21 THE COURT: Anything else?

22 MR. CUTHBERT: No, sir.

23 THE COURT: Ms. Burton or Ms. Harris?

24 MS. HARRIS: Yes, sir. With regard to
25 Dr. Johnson, her testimony was that she would

1 have been aided had she had that.

2 THE COURT: No. The motion is that since
3 there was no evidence, there is nothing for her
4 to have been aided by. We don't have any
5 evidence that the facts which you posed to her
6 in your question actually took place.

7 MS. HARRIS: Yes, sir. What I'm saying is
8 she stated that she would have been aided had
9 she had that information. That's all that we
10 know at this point. I realize the evidence is
11 not in that that actually took place. The
12 question was, would you have been aided. Her
13 answer is, yes, she would have been aided.

14 THE COURT: Would you have been aided to
15 know that Kevasha was really a child prodigy
16 and she was able to fire a weapon and she was
17 holding a weapon in her hand and she was
18 actually shooting at Sergeant Ingram as
19 Sergeant Ingram was trying to come into the
20 apartment? Would you have been aided in
21 knowing that? I'm sure the witness' answer
22 would have been, yes. You don't think you
23 should be able to ask that question; do you?

24 MS. HARRIS: Your Honor, I'm not so sure
25 the witness' answer would have been yes if the

1 witness was Dr. Johnson. Dr. Johnson stated
2 she would not have been aided by that
3 information.

4 THE COURT: I understand. If you had
5 asked the witness a question -- I'll make my
6 hypothetical even better that Kevasha is
7 actually the person who killed her mother.
8 Would you have been aided in knowing that fact?
9 You have no evidence to show that Kevasha has
10 killed her mother. You shouldn't be able to
11 ask the witness that question; should you?

12 MS. HARRIS: If I did not ask that
13 question with a good faith belief that the
14 evidence could show that, I should not be able
15 to ask that question.

16 THE COURT: I asked you would you have
17 evidence to show that these things took place.
18 You indicated that you would. As it turns out,
19 you didn't.

20 MS. HARRIS: I'm sorry, Judge. She did
21 not deny, so I didn't need to put on the
22 evidence. Certainly, we do have the evidence
23 that it took place.

24 THE COURT: She can't deny it. She said
25 she didn't know that it took place. How can

1 she deny it?

2 MS. HARRIS: Well, she denied that the
3 family told her that.

4 THE COURT: She said nobody in the family
5 told her that.

6 MS. HARRIS: Yes, sir.

7 THE COURT: She could not deny that it
8 took place. She wasn't there.

9 MS. HARRIS: Well, the question wasn't as
10 to whether or not it actually took place. The
11 question was, would you be aided if, in fact,
12 it did take place? The question was not, did
13 it take place? I did not ask her to comment on
14 whether or not it actually did occur.

15 Assuming that it did occur -- which I have
16 a good faith basis for asking because I know it
17 did and the evidence could show that it did. I
18 would not ask the question if I didn't have a
19 witness to be able to testify and say it's so.

20 But assuming that we have a witness
21 available to testify and say that it's so -- we
22 have a good faith basis to ask the question --
23 then the question is, would you be aided? I
24 was not asking her to testify as to whether or
25 not it actually happened. I think it's an

1 appropriate question inquiring for both
2 individuals.

3 THE COURT: Anything else?

4 MS. HARRIS: No, sir.

5 THE COURT: The motion to strike is
6 granted. I will instruct the jury to disregard
7 all of the evidence about the hostage situation
8 and putting Kevasha on the phone because there
9 was no evidence that either of those things
10 ever happened. They cannot speculate that they
11 did.

12 Anything else?

13 MR. CUTHBERT: Your Honor, I would like to
14 get some exhibits from Your Honor if I may.

15 THE COURT: I will put them up after I
16 finish instructing the jury. You can take them
17 to the podium and make whatever use you'd like
18 to make of them.

19 MR. CUTHBERT: Thank you.

20 THE COURT: You can bring the jury in,
21 please.

22
23 (The jury enters.)

24
25 THE COURT: Members of the jury, in just a

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1 minute, I am going to be reading to you the
2 instructions of law which apply to this case
3 and which must govern your deliberations.

4 Before I do that though, there are a
5 couple of things I need to tell you. First of
6 all, you'll see that Captain Buckovich is no
7 longer seated at defense counsel's table. The
8 reason for that is that I have made a ruling of
9 law which dismisses Captain Buckovich from this
10 case, so he is no longer a defendant in the
11 case. Sergeant Ingram is now the only
12 defendant in the case.

13 It's very important that you not allow
14 what I do -- because what I do is a question of
15 law. You all have to find the facts of the
16 case. You must not allow the fact that I have
17 dismissed Captain Buckovich from the case to
18 affect you in any way in deciding this case
19 between Ms. Green and Sergeant Ingram. You
20 can't say, well, the judge has dismissed
21 Captain Buckovich, so that means that Sergeant
22 Ingram must not have done anything wrong. You
23 can't make that conclusion. You also can't
24 say, well, the judge has dismissed Captain
25 Buckovich, and that means that Sergeant Ingram

1 must've done something wrong.

2 Just don't allow what I do to influence
3 you or affect your decision in any way. I have
4 to trust the seven of you not to allow that to
5 happen. If you are talking about the case and
6 one of you says, well, you know, the judge
7 dismissed Captain Buckovich, I want the other
8 six of you to remind that person: Wait a
9 minute. The judge also said that we can't
10 allow that to affect our decision or our
11 deliberations in any way.

12 Do all of you promise me that you will not
13 allow that to affect you in any way?
14

15 (All answer in the affirmative.)
16

17 THE COURT: The other thing I need to tell
18 you is, during the testimony of Dr. Boone and
19 Dr. Johnson, they were both asked questions
20 about whether the fact that Kevasha was
21 involved in a hostage situation and was placed
22 on the telephone by one of her parents to talk
23 to the hostage negotiators or something about,
24 please let my daddy go, or something like that.
25 They were both asked questions about whether

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1 that would influence their diagnosis.

2 That evidence should not have come in
3 because we didn't hear any evidence at all that
4 those facts actually occurred. So you also
5 cannot allow that to play any part in your
6 deliberations.

7 Again, I have to trust you. If anybody
8 talks about this hostage situation or Kevasha
9 being placed on the telephone, I want the other
10 six of you to say, wait a minute. The judge
11 told us that we can't consider that in any way
12 in arriving at our verdict. So again, I have
13 to trust the seven of you to please follow my
14 instructions in that regard.

15 Having said that, I am now going to read
16 to you the instructions of law that apply to
17 this case. Now, you will have these
18 instructions with you when you go into the jury
19 room. I want you to look at them again. I
20 want you to be sure that you understand what
21 they say.

22 I also ask that you pay attention while I
23 read them to you because I'm sure the lawyers
24 will refer to some of the instructions when
25 they make their closing arguments. Obviously,

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1 you need to have at least some idea of what the
2 lawyers are talking about.

3 Now, when you go into the jury room, the
4 first thing you need to do is to select a
5 forelady or foreman to act as your chairperson,
6 that is, to get everybody talking about the
7 case, to keep everyone talking about the case,
8 to conduct your votes, to make sure that your
9 final vote is unanimous; and then to fill in
10 and return the verdict form to the Court after
11 you've reached your verdict. I will explain
12 the verdict form to you in just a minute.

13 These are your instructions: Your verdict
14 must be based on the facts as you find them and
15 on the law contained in all of these
16 instructions. The issues in this case are, was
17 the defendant, George Ingram, grossly
18 negligent? If Defendant Ingram was grossly
19 negligent, was his gross negligence a proximate
20 cause of the accident? If the plaintiff is
21 entitled to recover, what is the amount of the
22 damages? On all of these issues, the plaintiff
23 has the burden of proof. Your decision on
24 these issues must be governed by the
25 instructions that follow:

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1 When a party has the burden of proof on an
2 issue, then such party must prove that issue by
3 the greater weight of all the evidence. This
4 is sometimes called the preponderance of the
5 evidence. It is that evidence which you find
6 more persuasive. The testimony of one witness
7 whom you believe can be the greater weight of
8 the evidence.

9 A proximate cause of an accident, injury,
10 or damage is a cause which a natural and
11 continuous sequence produces the accident,
12 injury, or damage. It is a cause without which
13 the accident, injury, or damage would not have
14 occurred. An injury or damage may have more
15 than one proximate cause.

16 You are the judges of the facts, the
17 credibility of the witnesses, and the weight of
18 the evidence. You may consider the appearance
19 and manner of the witnesses on the stand, their
20 intelligence, their opportunity for knowing the
21 truth and for having observed the things about
22 which they testified, their interest in the
23 outcome of the case, their bias, and if any
24 having have been shown, their prior
25 inconsistent statements, or whether they have

1 knowingly testified untruthfully as to any
2 material fact in the case.

3 You may not arbitrarily disregard
4 believable testimony of a witness. However,
5 after you have considered all of the evidence
6 in the case, then you may accept or discard all
7 or part of the testimony of a witness as you
8 think proper. You are entitled to use your
9 common sense in judging any testimony.

10 From these things and all the other
11 circumstances of the case, you may determine
12 which witnesses are more believable and weigh
13 their testimony accordingly.

14 You must not base your verdict in any way
15 upon sympathy, bias, guesswork, or speculation.
16 Your verdict must be based solely upon the
17 evidence and the instructions of the Court.

18 When one of the parties testifies
19 unequivocally to facts within that party's own
20 knowledge, those statements of fact and the
21 necessary inferences from them are binding upon
22 that party. A party cannot rely on other
23 evidence in conflict with such party's own
24 testimony. This rule applies regardless of
25 whether the testimony in question was

1 deposition testimony or instead was live
2 testimony. However, you must consider such
3 party's testimony as a whole. You must
4 consider a statement made in one part of such
5 party's testimony in the light of any
6 explanation of clarification made elsewhere in
7 such party's testimony.

8 In considering the weight to be given to
9 the testimony of an expert witness, you should
10 consider the basis for the expert's opinion and
11 the manner by which the expert arrived at it
12 and the underlying facts and data upon which
13 the expert relied.

14 The plaintiff called the defendant as an
15 adverse witness. The plaintiff is bound by as
16 much of the defendant's testimony given as an
17 adverse witness as is clear, logical,
18 reasonable, and uncontradicted. The plaintiff
19 is not bound by any of the defendant's
20 testimony given as an adverse witness that
21 conflicts with any of the other evidence in the
22 case.

23 Any fact that may be proved by direct
24 evidence may be proved by circumstantial
25 evidence; that is, you may draw all reasonable

1 and legitimate inferences and deductions from
2 the evidence.

3 Gross negligence is that degree of
4 negligence which shows substantive difference
5 with others as constitutes an utter disregard
6 of caution amounting to a complete neglect for
7 the safety of another person. It is such
8 negligence as would shock fair-minded people;
9 although, it is something less than willful
10 recklessness.

11 You shall find your verdict for the
12 plaintiff, Katina Green, and against the
13 defendant, Sergeant Ingram, if Ms. Green has
14 proved by the greater weight of the evidence
15 that Sergeant Ingram was grossly negligence and
16 that such gross negligence was a proximate
17 cause of Christie Green's death.

18 You shall find your verdict for the
19 defendant, Sergeant Ingram, if Ms. Green has
20 failed to prove either gross negligence or
21 proximate cause.

22 If you find your verdict for Ms. Green,
23 then in determining damages, you may consider
24 but are not limited to any one or more of the
25 following as damages suffered by Kevasha Green

1 and DiQuasha Green which you believe by the
2 greater weight of the evidence was proximately
3 caused by the gross negligence of the
4 defendant.

5 First, any sorrow; second, any mental
6 anguish; third, any loss of solace -- solace
7 may include society, companionship, comfort,
8 guidance, kindly offices, and advice of
9 Christie Green -- and fourth, any reasonably
10 expected loss of services, protection, care,
11 and assistance which Christie Green provided to
12 either or both of her children.

13 If you award damages, you must distribute
14 these damages between Kevasha Green and
15 DiQuasha Green.

16 Your verdict must be for such sum as will
17 fully and fairly compensate Kevasha and
18 DiQuasha Green for the damages sustained as the
19 result of the death of their mother.

20 In determining the life expectancy of
21 Christie Green, you should consider the life
22 expectancy figure of 61.8 years along with any
23 other evidence relating to her health,
24 constitution, and habits.

25 In determining the life expectancy of

1 Kevasha Green, you should consider the life
2 expectancy figure of 71.6 years along with any
3 other evidence relating to her health,
4 constitution, and habits.

5 In determining the life expectancy of
6 DiQuasha Green, you should consider the life
7 expectancy of 73.6 years along with any other
8 evidence relating to her health, constitution,
9 and habits.

10 If you find your verdict for Ms. Green and
11 if you believe by the greater weight of the
12 evidence that the conduct of Sergeant Ingram
13 was willful or wanton or was so reckless as to
14 evince a conscious disregard for the safety of
15 others, then you may also award punitive
16 damages to the plaintiff to punish the
17 defendant for his conduct and to serve as an
18 example to prevent others from acting in a
19 similar way.

20 If you award punitive damages, you must
21 state separately in your verdict the amount you
22 allow as punitive damages. You must distribute
23 these damages between Kevasha Green and
24 DiQuasha Green.

25 Willful and wanton conduct is acting

1 consciously in disregard of another person's
2 rights or acting with a reckless indifference
3 to the consequences of another person when the
4 defendant is aware of his conduct and is also
5 aware from his knowledge of existing
6 circumstances and conditions that his conduct
7 will probably result in injury to another.

8 Your verdict may provide for interest on
9 any sum awarded or any part thereof. It may
10 fix the period at which the interest shall
11 commence.

12 Any statement of counsel referring to the
13 amount sued for and any suggestion by counsel
14 of an appropriate sum of money to be awarded as
15 a verdict are not evidence in this case. They
16 are only statements and suggestions of counsel
17 and are in no way binding on you.

18 Those are your instructions. I know that
19 sounds like a lot. Quite frankly, it is a lot.
20 That's why we give them to you. You will have
21 these with you in the jury room. Please look
22 at them again. Please be sure that you
23 understand them and be sure that you follow
24 them in discussing the case and in arriving at
25 your verdict.

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1 Your job as the jury, of course, is to
2 determine what the facts of this case are. The
3 next time you go into the jury room I'm not
4 going to tell you not to talk about the case.
5 I'm going to tell you to please talk about the
6 case and come up with a verdict.

7 In discussing the case and conducting your
8 deliberations and in arriving at your verdict,
9 you have to apply the law of Virginia. The
10 instructions which I have just read to you and
11 which you will have in the jury room with you
12 contain the law of Virginia which is applicable
13 to this case. So again, it is very important
14 you understand the instructions and that you
15 follow the instructions in arriving at your
16 verdict.

17 In addition to the instructions, you're
18 also going to have with you in the jury room
19 all of the exhibits that were introduced into
20 evidence.

21 The final thing that you'll have is the
22 verdict form. The verdict form contains
23 several statements. I'm going to explain these
24 statements to you now. You need to fill in
25 these statements appropriately and sign these

1 statements depending on what your verdict is.

2 If your verdict is in favor of the
3 plaintiff, Ms. Green, then the forelady or the
4 foreman needs to fill in and sign the first
5 statement on this form. That statement reads,
6 We, the jury, find in favor of the plaintiff,
7 Ms. Green, and assess -- and then there's a
8 dollar sign and a blank. You need to fill in
9 that blank with the amount of your compensatory
10 damages. That's the damages that will
11 compensate DiQuasha and Kevasha for the death
12 of their mother. It says, and assess dollar
13 sign blank. Fill in that blank for
14 compensatory damages.

15 Then there's another dollar sign and a
16 blank. After looking at the instructions and
17 considering the evidence in the case, if you
18 decide that punitive damages are appropriate,
19 then you need to fill in that second blank with
20 the amount of punitive damages that you are
21 awarding in this case.

22 So the first blank is for compensatory
23 damages. The second blank is for punitive
24 damages if you think that punitive damages are
25 appropriate.

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1 To be distributed as follows. Then it has
2 two more dollar signs and blanks, one for
3 Kevasha Green and one for DiQuasha Green.
4 Whatever you decide for punitive and
5 compensatory damages, add those two figures up
6 and then divide them between the two children.
7 You can divide those in a way that you think is
8 appropriate based on the evidence that you've
9 heard.

10 That first statement continues. In
11 addition, we assess \$3,500 to be distributed to
12 the estate of Christie Green on the account of
13 funeral expenses. Now, you don't have any
14 discretion. If you find for the plaintiff, you
15 have to award that amount as punitive damages.

16 Then you have one other decision to make
17 if you are --

18 MR. CUTHBERT: Your Honor --

19 THE COURT: Funeral expense. I'm sorry.
20 Thank you, Mr. Cuthbert.

21 The \$3,500 is the amount that you have to
22 award in funeral expenses. It is up to you to
23 decide compensatory damages and punitive
24 damages.

25 Then you have one more decision to make if

1 your verdict is for the plaintiff. That has to
2 do with interest. Under the law of Virginia,
3 you can award interest on your verdict if you
4 decide that you want to award interest. That's
5 entirely up to the seven of you.

6 If you decide you do not want to award
7 interest, then you check the line that says, we
8 do not award interest.

9 If you decide that you do want to award
10 interest, then you say, we award interest
11 from -- you need to put a date in that first
12 blank. That can be any date from the date of
13 Ms. Green's death up until the present on
14 blank. There's another dollar sign and a
15 blank. You can award interest on the entire
16 amount of your verdict or on any smaller part
17 of your verdict. So you need to tell me the
18 date that you want interest to start running
19 from and the amount of your verdict that you
20 want interest to run on. You don't have to
21 worry about the rate of interest. That's set
22 by statute, and neither you nor I can change
23 that.

24 All of that is if your verdict is for the
25 plaintiff. Then the foreman or the forelady

1 signs that first statement.

2 If your verdict is not for the plaintiff,
3 then you don't fill in any of the blanks that
4 we've just talked about. Instead, you sign the
5 second statement on this form which reads, we,
6 the jury, find in favor of the defendant,
7 Sergeant Ingram. The forelady or the foreman
8 signs one of these two statements and then give
9 it to Mr. Braxton. Then I will read the
10 verdict in court.

11 We have now come to the part of the trial
12 where we're going to hear the closing arguments
13 of the lawyers. Now, you will recall yesterday
14 morning or yesterday afternoon when the lawyers
15 were getting ready to make their opening
16 statements. I told you that what the lawyers
17 were going to say to you in their opening
18 statements was not evidence. Well, the same is
19 true with regard to closing argument.

20 We call this closing argument because
21 that's exactly what it is. This is the only
22 time in the trial that the lawyers get to make
23 an argument directly to the seven of you. They
24 will remind you of what the witnesses said.
25 They will talk about the exhibits and the

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1 instructions. They may even tell you what they
2 think your verdict should be.

3 Remember, you're the jury. If the lawyers
4 are telling you things that you just know were
5 not in evidence or things that you just
6 disagree with, then you have to rely on your
7 recollection and on your judgment. That's why
8 we have the seven of you here.

9 The plaintiff always goes first.
10 Mr. Cuthbert gets to make the first argument to
11 you. Under the rules of court, the plaintiff
12 gets to open and close. That means the
13 plaintiff gets to make the first argument to
14 you and also gets to respond to the defendant's
15 argument. So you will get to hear twice from
16 Mr. Cuthbert. You will only hear once from
17 either Ms. Burton or Ms. Harris.

18 Mr. Cuthbert.

19 MR. CUTHBERT: Thank you, Your Honor. I
20 would like to use it if I may.

21 THE COURT: All right. You can have the
22 exhibits also.

23
24 (Closing arguments are heard, but not
25 transcribed.)

1 THE COURT: Members of the jury, at this
2 time I'm going to ask that you go into the jury
3 room to conduct your deliberations. I remind
4 you, once again, that your verdict has to be
5 unanimous. You can go into the jury room now.
6 I'll send the instructions in to you in just a
7 minute.

8
9 (The jury exits at 4:50 p.m.)

10
11 THE COURT: All right. We'll stand in
12 recess until the jury returns a verdict.

13
14 (Recess taken.)

15
16 THE COURT: Counsel, I'm just going to ask
17 the jury if they want to continue to work
18 tonight or if they want to come back in the
19 morning.

20 MS. BURTON: They just buzzed.

21
22 (TIME: 7:38 p.m.)

23
24 THE COURT: The jury has asked two
25 questions. The first one is, what are the

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1 jury's options concerning not being able to
2 reach a decision? The second one is, can
3 anyone provide further clarification on the
4 definition of gross negligence found on page
5 ten?

6 With regard to the first question, I
7 propose that I read them the Allen charge.
8 With regard to the second, unless counsel agree
9 on further clarification, I'll just tell them
10 that I can't add anything to the instructions
11 that they've already been given.

12 Mr. Cuthbert, do you object to either of
13 those?

14 MR. CUTHBERT: I think those are good
15 ideas.

16 THE COURT: Ms. Burton?

17 MS. BURTON: No objection, Your Honor.

18 THE COURT: You can bring the jury in,
19 please. I just happen to have an Allen charge
20 on top.

21
22 (The jury enters.)

23
24 THE COURT: Members of the jury, you have
25 asked me two questions. The first one is, what

1 are the jury's options concerning not being
2 able to reach a decision? The second one is,
3 can anyone provide further clarification on the
4 definition of gross negligence found on page --
5 I assume instruction number ten.

6 With regard to the second question, I'm
7 sorry that we cannot. You have to conduct your
8 deliberations and reach a verdict based on the
9 instructions that you've been given. I cannot
10 amplify that.

11 With regard to the first question, let me
12 read to you one additional instruction. As you
13 have been told, your verdict must be unanimous.
14 If you can possibly reach a verdict, it is your
15 duty to do so.

16 You should listen to the views and
17 opinions of your fellow jurors with fairness
18 and candor. You should give consideration to
19 what they say. However, you must decide the
20 case for yourself, and you should reach an
21 agreement only if that can be done without
22 sacrificing your individual judgment.

23 During the course of your deliberations,
24 each of you whether in the majority or the
25 minority should not hesitate to re-examine your

1 own views and change your opinion if you are
2 convinced it was wrong. No juror, however,
3 should give up his or her honest opinion as to
4 the evidence solely because of the opinion of
5 his or her fellow jurors or for the mere
6 purpose of returning a verdict.

7 If you can reach a decision without
8 surrendering your conscientious opinion, it is
9 your duty to do so.

10 Now, with that in mind, let me ask you a
11 question: Do you want to continue your
12 deliberations this evening, or would you rather
13 come back tomorrow and start tomorrow?

14 I'll let you go back in the jury room. Go
15 back in the jury room and get an answer to that
16 question. Right now I just want to know if you
17 want to stay here later tonight or whether you
18 want to come back in the morning.

19
20 (The jury exits at 7:47 p.m.)
21

22 THE COURT: Ask them if they want to stay
23 or if they want to come back.

24 THE BAILIFF: They said to give them two
25 more minutes.

1 THE COURT: All right. We'll stand in
2 recess then.

3
4 (Recess taken.)

5
6 THE COURT: Mr. Braxton informs me that
7 the jury would like to go home for the evening
8 and come back in the morning. We'll do that.

9 Anybody that cannot be here at 9:00?

10
11 (No response.)

12
13 THE COURT: You can bring the jury in,
14 please.

15
16 (The jury enters.)

17
18 THE COURT: Members of the jury,
19 Mr. Braxton has told me that you all decided
20 you would like to go home for the evening and
21 come back in the morning. Is that correct?

22
23 (All answer in the affirmative.)

24
25 THE COURT: Then I'm going to ask that you

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1 be back here at 9:00.

2 Please remember all of the things that I
3 told you yesterday about not discussing the
4 case with anyone. It's very important that you
5 not discuss the case at any time during the
6 trial. It's very important that you do not
7 discuss the case now. Now you are in the
8 decision mode. I certainly don't want anyone
9 else intruding upon your role as jurors.

10 The other thing I will tell you is I
11 noticed today we did have at least one reporter
12 in the courtroom. Not now, but he was here
13 earlier. They usually wait until cases are
14 over before they write anything in the paper.

15 If you are reading the paper and you
16 happen to see a headline that looks like it
17 might be this case, please stop reading. Don't
18 read anything about this case. If you are
19 listening to the radio or looking at television
20 and you hear something that sounds like it
21 might be this case, turn the sound off and get
22 up and leave the room. It's very important
23 that you not be influenced by anything other
24 than the facts that you've heard and seen over
25 the last couple of days.

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1 Other than that, have a good evening. I
2 will see you back here tomorrow morning at
3 9:00.

4
5 (The jury exits.)
6

7 THE COURT: All right. Counsel, unless
8 there's something else, we'll stand adjourned.
9 I'll see you in the morning at 9:00.

10
11 (TIME: 8:12 p.m.)
12
13
14
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25

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1 VIRGINIA:

2 IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

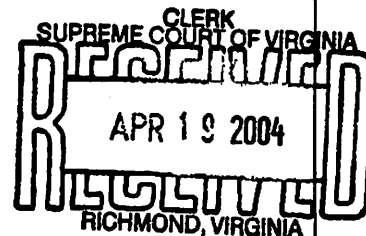
3 -----
4 KATINA GREEN, Administrator
5 of the estate of Christie D.
6 Green

7 Plaintiff,

8 vs.

9 JOHN B. BUCKOVICH, et al.

10 Defendants.
11 -----



12 CASE NO.: LL-2806

13 RECEIVED & FILED
14 CIRCUIT COURT

15 FEB 24 2004

16 BEVILL M DEAN, CLERK
17 By.....D.C.

18 VOLUME III

19 January 22, 2004

20 Richmond, Virginia

21 ORIGINAL

22 Transcript of the above-captioned matter,
23 when heard on January 22, 2004, before the Honorable
24 R. G. Johnson, and a jury.
25

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13 Richmond, Virginia 23219
14 Counsel for the Defendants

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25
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1 (Court reconvened on January 22, 2004, at
2 11:43 a.m.)

3
4 THE COURT: All right. Members of the
5 jury, have you reached a verdict?

6 THE JURORS: No.

7 THE COURT: You have not. Do you think
8 that further deliberations would result in a
9 verdict, or have you reached a point where you
10 think you are just deadlocked and will not be
11 able to unanimously agree on what should happen
12 in this case?

13 MS. VAUGHAN: At this point, Your Honor,
14 we are deadlocked.

15 THE COURT: Do you think that if I let you
16 continue your deliberations that perhaps you
17 might be able to come back with a unanimous
18 verdict? And the reason I ask you that is,
19 obviously this case is very important to the
20 parties. If the seven of you do not reach a
21 verdict, they are going to have to bring all of
22 their witnesses back. They are going to have
23 to do this again.

24 The jury in the next case, the next time
25 that the case is tried, is going to be in no

1 better position than the seven of you to render
2 a verdict. And even though I don't want you to
3 change your mind -- I don't know what the
4 situation is. I don't want any of you to
5 change your mind if you cannot do that in good
6 conscience. I'm just wondering if we give you
7 a little bit more time whether you might be
8 able to reach an agreement, but I have to be
9 guided by the seven of you.

10 And let me do it this way. As I call your
11 name, if you think that you are hopelessly --
12 the emphasis is on the word "hopelessly." If
13 you think that you are hopelessly deadlocked,
14 that is, that you just cannot agree on a
15 verdict, if you'll just tell me that you don't
16 think you can: Ms. Flippen?

17 MS. FLIPPEN: I don't think that we can.

18 THE COURT: You don't think that you can?

19 MS. FLIPPEN: No, sir.

20 THE COURT: Bernice Johnson?

21 MS. JOHNSON: I don't think we can.

22 THE COURT: Angel Nash?

23 MS. NASH: I don't think we can.

24 THE COURT: Well, I'm not going to even
25 call the other names, because if three of you

1 don't think you can -- let me continue to call
2 the names. Pamela Vaughan?

3 MS. VAUGHAN: I don't think we can.

4 THE COURT: Kent Whitehead?

5 MR. WHITEHEAD: No, sir.

6 THE COURT: Amy Nugent?

7 MS. NUGENT: No, sir.

8 THE COURT: Melvin Bolden?

9 MR. BOLDEN: No, sir.

10 THE COURT: All right. I appreciate you
11 trying. It's unfortunate when this happens,
12 but don't let anybody try to blame you. It
13 happens sometimes, and we want good people on
14 our juries who are willing to stand up for
15 their beliefs and for their convictions; and
16 obviously you had different ideas about what
17 the evidence was and how to apply the
18 instructions to that evidence. And I
19 appreciate that very much.

20 You-all have been here now for three days,
21 and I think under the term of court you have
22 one more day to be here. I will talk with the
23 jury office. Most of our jurors only serve
24 once or twice a month during the term, and they
25 usually only serve on a one-day jury. So

1 you-all have already put in more service than
2 most of our jurors do. And I would excuse all
3 seven of you for the remainder of the terms
4 unless any of you would like to come back. I
5 know I did this one time, and I two or three
6 people say, I don't want to be excused; I
7 enjoyed this, and I want to come back.

8 Is there anybody who would like to come
9 back on Tuesday, anybody who wants to come back
10 next Tuesday?

11 In that case, I will excuse each of you
12 from further services. Thank you very much.
13 We appreciate your service this term. You're
14 are free to leave.

15
16 (The jury left the courtroom at 11:48 a.m.)

17
18 THE COURT: Ms. Burton?

19 MS. BURTON: Your Honor, I renew my motion
20 to strike and enter judgement in favor of
21 Sergeant Ingram.

22 THE COURT: Mr. Cuthbert?

23 MR. CUTHBERT: I oppose the motion to
24 strike, Your Honor, and I think at this point
25 we need to set the case down for a new trial.

1 THE COURT: All right.

2 MR. CUTHBERT: I don't know whether Your
3 Honor wants argument on any issues.

4 THE COURT: Either party, if you want to
5 make an argument, this is your time to do it.

6 MS. BURTON: I don't have any new basis on
7 which to ask for a motion to strike.

8 THE COURT: Mr. Cuthbert?

9 I'm sorry, but then if you don't --
10 Mr. Cuthbert?

11 MR. CUTHBERT: I'm not sure what the basis
12 is other than she feels that the evidence does
13 not rise --

14 THE COURT: I meant on the question of
15 whether the evidence is sufficient to show that
16 Sergeant Ingram was guilty of gross negligence.

17 MR. CUTHBERT: Yes, sir. Let me refer
18 Your Honor's attention, if I may, to the
19 decision of the Virginia Supreme Court in
20 Alfonso versus Robinson. I'm sure Your Honor
21 is familiar with it. But there, the Court held
22 that the trial Court had been correct to rule
23 that the evidence presented a question of fact
24 as the willful and wanton negligence.

25 And in that case, the Supreme Court of

1 Virginia emphasized the following -- quote -- a
2 critical characteristic distinguishing the
3 present case from those two cases -- the other
4 side is cited -- is that Alfonso was a
5 professional driver who had received
6 specialized safety training, warning against
7 the very omissions he had made prior to the
8 accident.

9 And that's very similar to our situation.
10 Sergeant Buckovich had received training from
11 the FBI as to these aiming instructions, and he
12 disregarded those aiming instructions with the
13 last four of his five shots. And you couple
14 that with the observation of the Virginia
15 Supreme Court in the American Oil versus
16 Nicholas case, the gasoline/kerosene case, that
17 the common law requires a higher degree of care
18 and vigilance in dealing with a dangerous agent
19 than is required in the ordinary affairs of
20 life and business which involve small risk of
21 injury.

22 And we ask the Court to conclude that
23 clearly we have a submissible issue on willful
24 and wanton and consequently a submissible issue
25 on the subset of gross negligence.

1 THE COURT: Mr. Cuthbert, thank you very
2 much, sir. I appreciate that.

3 Everyone recognizes how tragic this event
4 was. Ms. Burton and Ms. Harris recognized that
5 in their opening statement and closing
6 argument, that no one is happy about what's
7 happened. It's unfortunate. We cannot go back
8 in time and change it.

9 The question, though, is whether the
10 evidence is sufficient to show that Sergeant
11 Ingram was guilty of gross negligence. The
12 instruction that was given to the jury comes
13 from the case of Ferguson versus Ferguson,
14 which defines gross negligence as that degree
15 of negligence which shows such indifference to
16 others as constitutes an utter disregard or
17 causally amounting to a complete neglect of the
18 safety of the another person, such negligence
19 as would shock fair-minded people, although it
20 is something less than willful; recklessness.

21 That definition of negligence was again
22 affirmed and approved in the case of Meagher
23 versus Johnson, which was an appeal from this
24 court, which also involved an action of a
25 police officer. And in the Meagher case, the

1 case of Frazier versus City of Norfolk was
2 cited to again say that negligence -- gross
3 negligence is such egregious conduct which can
4 be classified as a heedless, palpable violation
5 of rights showing an utter disregard of
6 prudence.

7 I don't believe that the evidence in this
8 case reaches that standard or the standard that
9 was set out in Ferguson. If anything -- I'm
10 not making a finding at all that Sergeant
11 Ingram was even negligent -- but if anything,
12 the evidence in this case shows negligence.
13 Again, I'm not saying that it does. I'm not
14 sure that it does, but that's not the question.
15 The question is whether it shows gross
16 negligence.

17 In both of the definitions that I've just
18 read, the Court uses the word "utter disregard,
19 complete neglect of safety, heedless, palpable
20 violation of rights, utter disregard of
21 prudence," and that's not what happened here.

22 The evidence is that Sergeant Ingram was
23 faced with a situation in which he had to use
24 his best judgment in trying to enter the
25 apartment. I think he did that. The evidence

1 is that an unfortunate consequence occurred as
2 a result of his actions, but I don't think that
3 there is any evidence to show that he had an
4 utter disregard for the safety of another
5 person or a complete neglect of the safety of
6 Ms. Green or anyone else or that he was
7 heedless or had an utter disregard of prudence.

8 For those reasons, the Court took the
9 motion under advisement at the end of all the
10 evidence. The Court will now sustain the
11 motion to strike the evidence with regard to
12 Sergeant Ingram, and judgment will be entered
13 in his favor.

14 I note your objection, Mr. Cuthbert.

15 Unless there's anything else, the Court
16 will prepare an order. I thank you-all very
17 much.

18 MR. CUTHBERT: Your Honor, may I just
19 repeat for the record out of concern for
20 waiving any --

21 THE COURT: I don't, Mr. Cuthbert, believe
22 that you have waived anything in this case, but
23 I really don't want to entertain any further
24 motions on the subject of my sustaining the
25 motion to strike. I think what you are getting

1 ready to do is make a motion to reconsider,
2 which I don't want to do five minutes after I
3 make my ruling, sir.

4 MR. CUTHBERT: I understand, your Honor.

5 THE COURT: All right. Thank you-all very
6 much. You will get the order probably the
7 first part of next week.

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9 (The proceeding ended at 11:55 a.m.)
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