

1           **THE COURT:** All right. Okay, is there any  
2 further questions from counsel for this witness?

3           **MR. DUGGAN:** Not for this witness.

4           **THE COURT:** Okay. Then you may be excused.

5           **MR. DUGGAN:** Your Honor, this next witness will  
6 be about five minutes. He has to get away if we could  
7 call him.

8           **THE COURT:** Okay. I may have to hold you to that  
9 or I'm going to keep a lot of other people waiting.

10           **MR. DUGGAN:** I understand. I'll call Paul  
11 Cowley.

12           **THE COURT:** If you'll raise your right hand and  
13 be sworn.

14           Do you swear to tell the truth, the whole truth  
15 and nothing but the truth, so help you God?

16           **MR. COWLEY:** Yes, I do.

17           **THE COURT:** Please be seated.

18                           PAUL COWLEY,

19           Being first duly sworn at 12:25 p.m., testified  
20 on his oath as follows:

21                           D I R E C T   E X A M I N A T I O N

22 **BY MR. DUGGAN:**

23 Q       Please state your name.

24 A       My name is Paul Cowley, C-O-W-L-E-Y.

25 Q       Who are you employed with?

1 A I'm a special agent with the Federal Bureau of  
2 Investigation.

3 Q Did you happen to be in the City of Saginaw on  
4 March 25th, 1998, at approximately 8 p.m. with other  
5 officers and in an on duty capacity in a patrol  
6 type --

7 A Yes. Yes, I was.

8 Q And did you happen to see something occur at or near  
9 Play Style Studio at 1717 East Genesee?

10 A Yes, I did.

11 Q Did there appear to be some type of confrontation at a  
12 '92 Cadillac automobile?

13 A Yes, that's correct.

14 Q And were you in a marked or unmarked vehicle as far as  
15 law enforcement?

16 A I was in an unmarked van accompanied by Sergeant  
17 VanHorn from the state police in -- in our gang task  
18 force regalia.

19 Q So the van didn't have any insignia but you're saying  
20 you had GTF type insignia on your clothing?

21 A That's correct.

22 Q Did you observe for a time at this -- as this thing  
23 happened at the car?

24 A Yes.

25 Q And then you got out?

1 A Yes.

2 Q Did people disperse?

3 A Yes. People left the scene around the car.

4 Q Did you go up to the car to see if anybody was in

5 there?

6 A Yes.

7 Q Had you seen someone in there earlier?

8 A Yes.

9 Q And was it one or more persons?

10 A There was one person in the vehicle.

11 Q And who was that person?

12 A Anthony Thomas.

13 Q Have you seen him testify here in court?

14 A Yes, just briefly.

15 Q And was he in any type of emotional state when you

16 went up to the vehicle, an emotional state?

17 A Yes.

18 Q Okay. And did he say who had just been at his door?

19 A In fact, he left the vehicle on his own accord and

20 then I secured him behind the vehicle and then while

21 he was face down he said it's Peter Rabbit.

22 **MR. GUST:** I'm going to object to that, Your

23 Honor. That's hearsay.

24 **MR. DUGGAN:** It's an excited utterance. He's

25 just been confronted, and we've laid the foundation as

1 to Mr. Thomas, what occurred.

2 **BY MR. DUGGAN:**

3 Q You're talking about Mr. Thomas being at the back of  
4 the car?

5 A Mr. Thomas left his vehicle and I secured him behind  
6 his vehicle in the midst of this altercation.

7 Q Okay.

8 **MR. DUGGAN:** That is the foundation. It's an  
9 excited situation. You have heard the foundation by  
10 Mr. Thomas about what was said in his face in that car  
11 back on March 25th.

12 **THE COURT:** Okay, and I think Mr. Thomas has  
13 already covered this area in his testimony as I  
14 recall.

15 **MR. DUGGAN:** He didn't say what he said to the  
16 officer in an excited mode, though, and since his  
17 credibility was attacked, it's corroborative of him  
18 and rehabilitative of his testimony.

19 **MR. GUST:** Your Honor, I guess in relation to  
20 whether this altercation was supposed to have  
21 occurred, we don't know what's an excited utterance  
22 because this witness is not testifying that he  
23 observed the occurrence. It could have been hours  
24 before. So if it's an excited utterance, I think they  
25 have to somehow lay a foundation that this occurred at

1 the same time as this alleged confrontation.

2 MR. DUGGAN: I'd be happy to do that with that  
3 question.

4 THE COURT: Okay.

5 BY MR. DUGGAN:

6 Q Did you see an altercation?

7 A Yes, I did, and I --

8 Q Describe what you saw.

9 A We were proceeding north on East Genesee and I looked  
10 over the driver's side. I was the passenger in the  
11 vehicle. I noticed an individual standing inside of  
12 the driver's side door of Mr. Thomas's vehicle and he  
13 was attempting -- they were struggling and he was  
14 striking Mr. Thomas with his fist.

15 There was also another -- at least one other  
16 individual with him and another individual on the  
17 other side of the vehicle and --

18 Q A total of three outside the car?

19 A There was at least three people that I saw.

20 Q Okay.

21 A That's correct.

22 Q And that's in addition to a person in the driver's  
23 seat?

24 A That's in addition to Mr. Thomas, that's correct.

25 Q Did you have a chance to see that it was Thomas at

1 that time by later confirmation of seeing him?

2 A Yes. In fact, when I was -- when we interrupted this  
3 incident, we secured one of the subjects on the ground  
4 at the scene. Two others fled. Mr. Thomas at that  
5 time got out of his vehicle. I secured him behind the  
6 vehicle in trying to ascertain what actually was --

7 Q Why did you have to secure the victim of this?

8 A Well, at that point in time there was a lot of  
9 activity out there. We didn't know what exactly had  
10 transpired other than the fact I saw him getting  
11 assaulted.

12 Q Okay.

13 A And that's at that point in time he made these  
14 utterance of --

15 Q How much time in seconds or minutes passed from when  
16 you saw him getting hit or apparently getting hit by  
17 the person standing inside his driver door until he's  
18 saying things to you at the back of his car?

19 A Well, it was within seconds. It was one large  
20 continuum from just turning around, parking the  
21 vehicle, saying stop, police. Two individuals left.  
22 One was secured by Agent VanHorn. I went around. I  
23 chased one of the individuals back behind the  
24 building, came back. Mr. Thomas then rolled out of  
25 his vehicle. I took him out because Mr. -- Sergeant

1 VanHorn was still in the midst of securing the one  
2 subject, and I removed him to the back of the vehicle  
3 to remove him from that immediate area. At that  
4 point --

5 Q And you had him back at the vehicle. Did he say  
6 things without being prompted?

7 A Yes. He was flat down on his stomach. I was above  
8 him. He said it's Peter Rabbit, it's Peter Rabbit.  
9 He also said I'm the one that called, and I didn't  
10 understand what he had meant by that. He said I'm the  
11 one that called. Well, you know, I hadn't had any  
12 radio contact with him, so it didn't make a lot of  
13 sense to me at that point.

14 Q Did you follow up and determine that that was a 911  
15 call?

16 A Yes. He had just prior to this occasion, this  
17 incident, made a 911 call to the City operator.

18 **MR. DUGGAN:** No further questions.

19 **THE COURT:** Okay. Mr. Gust.

20 **C R O S S - E X A M I N A T I O N**

21 **BY MR. GUST:**

22 Q So you didn't see anybody else in the car with  
23 Mr. Thomas? He was in there by himself?

24 A Yes. He was seated in the driver's seat.

25 Q And could you describe the person that was striking

1 him?

2 A Well, at that point in time he was a black male around  
3 30. He had dark clothing on. He was --

4 Q Was that person apprehended?

5 MR. DUGGAN: Well, objection. The witness -- he  
6 was asked to describe him and counsel's interrupted  
7 the description and I think it's responsive.

8 THE COURT: I'll sustain.

9 BY MR. GUST:

10 Q He had dark clothing. I thought that was it.

11 A No. Also, I think I remember he was six foot -- five  
12 ten, six foot, heavy build.

13 Q Okay. Did you apprehend that person?

14 A No.

15 Q Do you recall a marked patrol unit being right there  
16 in the immediate vicinity of that?

17 A Yes, I do.

18 Q All right.

19 MR. GUST: I have nothing further.

20 THE COURT: Further questions?

21 MR. DUGGAN: No further questions.

22 THE COURT: Any questions from the jury?

23 If there are no questions, you may be excused.

24 THE WITNESS: Thank you.

25 THE COURT: We'll take our noon recess then