

Chapter 9

“TURNING” THE PROSECUTION WITNESS: MAKING THE WITNESS YOUR OWN

Steven Sadow

Over the last twenty years, I have had the pleasure of working with some remarkable criminal defense lawyers. What I have learned from the best is that no one type or style of cross-examination is better than another. When I was younger, I thought every witness that hurt my client needed to be hurt by me. I was wrong. I was missing the penultimate objective of cross-examination: Telling the jury what you want it to do with the witness. Do you want the jury to disbelieve the witness? Or do you want the jury to accept the witness, warts and all, as a means of supporting or corroborating your defense?

Most of the time, I lean toward an “attack” cross-examination, hoping the witness will be discredited. However, there are situations when choosing not to attack may make the difference between winning and losing. A recent example of mine is detailed below.

In the early morning hours after Super Bowl 2000, Ray Lewis, star linebacker for the Baltimore Ravens, and several friends and acquaintances were drinking in an Atlanta nightclub, the Cobalt. Somewhere around 3:30 a.m., when the bar closed. Lewis, four attractive African-American females, three African-American male friends (Reginald Oakley, a/k/a AJ); Joseph Sweeting; and Kwame King), and three newly-found African-American male acquaintances, who were friends of the women, left the Cobalt. Most of the people were headed to Lewis’ rented Lincoln Navigator stretch limousine, which was waiting down the street. Two were going to a separate car. The streets were busy with people. It was noisy. Lewis was decked

out in his finest suit, with ostentatious jewelry (gold and diamonds worth over \$50,000), a mink coat and a fur hat.

As they strolled down the street to the limousine, Oakley, Sweeting and King had a brief encounter with two African-American males from Akron, Ohio. Words were exchanged. A knife was observed in the hand of at least one, but possibly two, of Lewis' friends. Lewis broke up the encounter, and shepherded his people into the limousine. Three different African-American men from Akron plus the first two Akron men then walked by the, and words were again exchanged. Oakley reacts to the provocation and jumps out of the limousine. He had a confrontation with one Jacinth Baker. Baker hit Oakley over the head with a champagne bottle and all hell broke loose.

Baker and one of his companions, Richard Lawler, were stabbed multiple times and died. Lawler received five stab wounds, one of which was fatal. Baker received four stab wounds, again, one of which was fatal. Lewis and his friends fled in the limousine, shots were fired, the limousine's tire was hit and went flat. The limousine made it to a nearby hotel (Holiday Inn). Lewis and the others took cabs back to Lewis' hotel (Georgian Terrace). Sweeting stayed at the Holiday Inn.

Lewis was questioned the next day. He lied to the police, and was arrested for murder. Oakley and Sweeting were indicted and surrendered to police within two weeks. Joseph Sweeting was my client.

Lewis, Sweeting and Oakley were charged with aggravated assault, felony murder, and murder. Oakley was alleged to have killed Baker, the person who hit Oakley over the head with the champagne bottle. Sweeting was alleged to have killed Lawler. Lewis was alleged to have aided and abetted Sweeting and Oakley. No other persons were charged.

The prosecution had one major problem: identification. The prosecution believed that Sweeting was one of the males who had the initial encounter with the Akron group. But none of the physical descriptions obtained from the Akron witnesses matched Sweeting and they failed to identify Sweeting from a photo lineup. Two of the Akron witnesses also put a knife in someone else's hand.

Sweeting’s “non-identification” placed him in a very difficult position. Only two days earlier, he had purchased one four-inch Gerber “Chameleon II” folding knife and two small “Lite” folding knives at an Atlanta sporting goods store. This evidence was beyond dispute. The knives had partially serrated blades which were consistent with the stab wounds. Sweeting’s blood/DNA was found in multiple locations inside the limousine. Other evidence suggested Sweeting acted in self-defense and/or defense of others, both affirmative defenses under Georgia law.

Lewis’ attorneys pressed me immediately to rely solely on the affirmative defenses. But there was no proof that Sweeting actually stabbed either of the decedents. An affirmative defense would have conceded Sweeting’s actual involvement, thus making irrelevant the exculpatory, non-identification evidence. Additionally, I had a gut feeling that Sweeting could proceed on a straight reasonable doubt defense because of the perceived inability of the witnesses to agree on a coherent story of what happened and who did what.

Sweeting never admitted or conceded stabbing anyone during the pretrial stage. But at the same time, he never denied stabbing anyone. He raised the umbrella of self-defense but stressed reasonable doubt. The jury was selected and opening statement was made without committing to a particular defense. Witnesses were examined within this same context. All inconsistencies were explored. All versions discussed and contrasted. Obvious evidence like blood was admitted and explained.

The trial went well. The prosecution did not appear to be landing a glove on Sweeting. There was even talk of a directed verdict of acquittal. It was going just as well for Lewis. The only witness that had Lewis involved in an altercation was a con-man who stole people’s identities for a living. The evidence against Oakley was slightly stronger. It was clear that he had been in a fight. It was clear that he had been hit over the head with a bottle. But the limousine driver, who was to be the prosecution’s star witness and who did deliver incriminating testimony against Oakley and Sweeting, stopped short of saying that either had admitted the stabbings, which had been promised by the prosecutor in his opening statement.

Going into the weekend after three weeks of trial, the prosecution's remaining evidence consisted of experts, including the medical examiner. I spoke to Lewis' counsel twice on Sunday to discuss defense strategy. We spoke briefly about the prosecution's motion to take the deposition of the limousine driver, even though he had finished his trial testimony, because the State had not properly laid the impeachment foundation required to introduce his prior unsworn, out-of-court statements. In Georgia, prior unsworn statements are admissible for impeachment and as substantive evidence if the witness is first confronted with them.

Late Sunday night, I received a telephone call from a newspaper reporter. He told me Lewis had cut a deal on that very Sunday to plead guilty to misdemeanor obstruction of justice and receive a 12-month probated sentence. In return, Lewis would testify against Oakley and Sweeting. The deal was publicly announced and accepted in open court on Monday. The trial court then recessed trial until Tuesday to give the defense time to prepare.

Lewis had been thoroughly debriefed on Sunday. His interview was recorded on video and audio tape. Defense counsel reviewed the tape before leaving the courthouse. Lewis said on tape, and would later say in court, that Sweeting had shown him the four-inch Chameleon II knife at the Holiday Inn within minutes of the incident, and Sweeting had demonstrated in a punching-type motion how he had used the knife.

I did not go back to my office but to my home to prepare for Lewis' cross-examination. Confrontation was my first thought. On the surface, it certainly appeared that the reasonable doubt defense was dead. Who would believe that Sweeting had not stabbed at least one of the decedents if Lewis were believed? So logic suggested that Lewis had to be discredited or the reasonable doubt defense abandoned. But I had spent three weeks with Lewis. We had engaged in conversation, laughter and serious discussion. We had shared personal opinions on various subjects. I knew he was a fighter. Someone from the streets. Someone that had one goal, one objective—to be the best linebacker in football. I didn't think he would feel comfortable in his role as the prosecution's "star" witness

but, if attacked, he would fight back like a tiger. And I guessed there were things that he knew which could hurt Sweeting even more.

So I decided to try to “turn” Lewis into our “star” witness. “Turn,” like a vampire’s bite transforms a victim into another vampire. I would not attack his story about the knife. Instead, I would embrace it, point out the surrounding favorable facts, and proceed with the reasonable doubt scenario under the umbrella of self-defense. We would neither admit nor concede anything, even though the legal commentators who were following the trial said we had no choice but to admit the stabbing and argue self-defense.

The trial was being carried live on Court TV. It was being carried live locally in Atlanta. Newspapers from Baltimore and Atlanta were covering the trial. The Internet sites for the television stations and the newspapers all had message boards, which I had been reading. The messages seemed to have one central theme: The prosecution just hadn’t proved Sweeting did it. I posted messages on the boards that Monday night, setting out what Lewis would testify to, and waited for responses. Again, the overriding reaction was “So, that doesn’t mean he actually stabbed someone. It just means he had a knife or that he was punching someone. That’s doesn’t prove he did it.” Of course, this ran counter to what all the commentators were saying, but it corroborated and supported what I felt instinctively.

My wife, who is also a lawyer, had a middle-aged client who mirrored my predominately African-American female jury. She had been following the trial religiously on TV. I had my wife tell her what Lewis would say, and then ask her. “Do I admit the stabbing or not?” “Do I attack Ray Lewis or not?” She said, “Don’t attack. Don’t admit anything!”

Before court on Tuesday, I told my co-counsel, who was the lawyer who had brought me into the case, of my decision. He vehemently disapproved and then stopped talking to me. Lewis testified on Tuesday morning. Prior to his testimony, I told one of his lawyers that I would not attack him. That he should not feel threatened. That I would only bring out the facts that had been recited on tape in a way most beneficial to Sweeting. Just before my cross-examination began, I winked at Lewis and he winked back.

I had spent many hours contemplating Lewis' cross-examination. I use the word "contemplate" because I neither write my questions out in advance nor outline in detail the areas of inquiry. I simply "think" about what I want to accomplish and how best to get there.

On direct examination, Lewis first put Sweeting in the fight:

Q. Now, when this was going on, you were able to look and see the defendant Joseph Sweeting?

A. Yeah, they were—he was fighting, more over around this tree right here, coming around this area.

Q. And when you looked over and saw him, would you illustrate to the jurors what you saw at that time?

A. He was being drug, actually. One guy had him by the shirt, and had his shirt over his head, pulling him, and another guy was behind him, but then when they got up in this area, that's when he regained his footing. That's when he was like, the guy was in front of him. He was trying to hold the guy, and the guy was still trying to hold him. That's when they were just fighting, you know.

Q. And what did you see Joseph Sweeting doing?

A. Fighting back, you know. He was throwing punches, fighting back, trying to get the guys off him.

Q. Now, again, would you—would you turn around, so that the jurors—turn around so they can see what you are talking—

A. He was fighting back, you know, throwing punches, throwing blows, whatever, up in this area.

Mr. Sadow: Could we have a description for the purposes of the record to the area where Mr. Lewis was hitting the dummy appeared to be?

Mr. Howard: Your Honor, I was about to ask the question.

The Court: All right.

By Mr. Howard:

- Q.** You were indicating with your hand a certain portion of the mannequin. Would you indicate the portion of the body that you saw the Joseph Sweeting delivering the punches towards him?
- A.** You know, I'm telling you that they were fighting. I mean, so I can't sit there and point out a specific point that he is punching him, but he was punching, you know. He was trying to hold on, and once he regained his footing, he started punching back, up in the chest area.
- Q.** And how many blows did you see Joseph Sweeting deliver?
- A.** Just fighting. I mean, it could have been six, five, six, it could have—however, I can't tell you exactly.

Mr. Sadow: Could we now have the record reflect that Mr. Lewis on two separate occasions has hit the left upper side of the chest on the dummy, through his demonstration.

The Court: Record will so reflect.

By Mr. Howard:

- Q.** And once you saw that happen, what did you see happen to the man that the blows were being delivered against?
- A.** They were just fighting. They kept fighting and that's like I said, when everybody else had piled out of the limo, that's where the fight ended up at the corner, at the corner where everybody was just fighting and frantic. It was a big pileup down there.
- Q.** Would you take your seat again. Now, you mentioned an incident towards the corner, would you show where that took place?
- A.** Down in this area, right here.

Q. And what did you see take place at the corner?

A. Fighting, everybody was just fighting. It was like a big brawl down here at this corner right here.

Q. And who is it that you saw at the corner?

A. The guys that were fighting Joseph was down here, Joseph was down here, the other two guys that left the limo. I don't want to say it wrong again, but when—after the fight was over, they came from this direction, so I don't know to say if they were down there or not. Lewis then described his encounter with Sweeting at the Holiday Inn.

Q. How long did you stay at the Holiday Inn?

A. We stayed there pretty good amount of time. We sat there and it was getting cold outside, and everybody was standing around the limo at first, and then this car pulled up, this white car, and then everybody started ducking behind the limo, whatever. I don't know why, but everybody started ducking behind the limo, and everybody started walking up to the Holiday Inn.

Q. Did you see Joseph Sweeting at that location?

A. Yes.

Q. Did you have a conversation with Joseph Sweeting?

A. Yes.

Q. And what was that conversation?

A. Well, when I walked into the Holiday Inn, everybody was sitting around the Holiday Inn, and I walked in, and as soon as I walked in, I looked to my right and everybody was standing there, and I walked around the corner and Joseph was standing there and I walked up to him, I was like, "man, what in the hell happened?" He was like, "man, they trip me." I say, "what you mean?" "I saw what happened." He say, "LuLu, every time they hit me, I hit them." I say, "damn you all tripping" and

then when he did that, he had the knife in his—around his hand.

- Q.** Mr. Lewis, would you stand up so that every member of the jury can see you. And with the pointer that you have in your hand, would you indicate the manner in which you saw Joseph Sweeting holding something in his hand.
- A.** He had the knife like in his hand like this. The blade wasn't out or anything like that, but he had the knife like that, and I said, “man, what happened?” He say, “LuLu every time they hit me, I hit them.”
- Q.** Now, you are making a motion with your hand, your right hand. Is that the motion that you saw him make?
- A.** Yes.
- Q.** And would you show the jurors the number of times that you saw him make that motion?
- A.** I don't know the number of times. I just know when I asked him, because right after I asked him that, I looked right back at him, I was like, “damn, you tripping,” like that.
- Q.** You may be seated. So once you had that conversation with the defendant Joseph Sweeting, what did you do after that?
- A.** I left.

In light of Lewis' direct testimony, it was crucial that I begin my cross-examination on a high point. One that would drive home the change in circumstances that had occurred over the weekend. In the prosecutor's opening statement, he had stated unequivocally that the State would prove that all three defendants, listed by name, were absolutely guilty of murder, felony murder and aggravated assault. It occurred to me that I could start my cross-examination of Lewis by asking him in some form or fashion whether he was the same person who had three short weeks ago been labeled “absolutely guilty of murder.” I decided that I would start there and then I would weave a story:

The Court: Mr. Sadow, you may cross-examine.

Here was my cross-examination:

Q. So we meet again.

Are you the same Ray Lewis that was sitting in the seat as a defendant in this case, when Mr. Howard told this jury in its opening statement—

Mr. Howard: Excuse me, Your Honor —

By Mr. Sadow:

Q. —that you were absolutely guilty of murder?

Mr. Howard: I object. Mr. Sadow knows that the opening statement is not evidence, it is simply a guideline for the evidence that we indicated.

The Court: That would be proper redirect, or I'm going to allow him to go into this line of questioning

By Mr. Sadow:

Q. I'll start again.

Are you the same Ray Lewis that was sitting, as a defendant, in this courtroom, a little over three weeks ago when Mr. Paul Howard stood before the ladies and gentlemen of this jury and said that he would show that you were absolutely guilty of the crimes charged in this indictment?

A. Yes, that's me.

Q. That wasn't true, was it?

A. No.

Q. It's never been true, is it?

A. No.

Q. And when Mr. Howard said it to the jury, ladies and gentlemen, you knew it wasn't true, didn't you?

A. Yeah, I knew it wasn't true.

Q. That is you are not guilty of killing Mr. Baker, right?

A. No.

Q. Either by murder or felony murder, correct?

A. Nope.

Q. You did not commit any aggravated assault —

A. No.

Q. —with a knife on Mr. Baker?

A. No.

Q. You are not guilty of murder or felony murder of killing Mr. Lollar?

A. No.

Q. And you are not guilty of committing aggravated assault against Mr. Lollar, correct?

A. No.

Q. And I assume you are still the same Ray Lewis that was sitting there, when this jury was told by Mr. Howard that the evidence would show that Mr. Fassett would say that you approached a tall man who was standing against a tree, and that he drew his hand—his fist back and aimed a blow toward him, and that Fassett would tell you that blow, that blow was a blow that was one that was down in the bottom part of his chest area?

A. That's me.

Q. That's you, right?

A. Yes.

Q. You didn't do that either, right?

A. No, no.

Q. So, therefore, if that's what Mr. Fassett had told Mr. Howard, at any point in time, which would cause Mr. Howard to tell this jury, that would have been a lie, too, right?

A. I wouldn't call him a liar, I just would say he didn't see what he thought he saw.

Q. We don't need to say when somebody's lying or not lying, it just didn't happen the way the man claimed?

A. No, it did not.

Q. And I assume that you are the same Ray Lewis that was in this courtroom, when the State paraded Mr. Chester Anderson, put him on that witness stand and told these ladies and gentlemen of the jury that Mr. Anderson was a believable folk and he saw you kicking somebody, right?

A. That's me.

Q. That's the same Paul Howard that now has called you as a witness, right?

A. Yes.

Q. My how things change?

Mr. Howard: Your Honor, I object to the commentary.

The Court: I'll sustain the objection

As you can see, I got the expected objection from the prosecutor. But I felt the trial court would give me considerable latitude in my cross, and it did. The impact on the jury was noticeable. Why? Because it was immediately thrust to the forefront that a man who had been labeled "a murderer" by the prosecution no more than three weeks before and had been labeled by law enforcement "a murderer" for some five months was not. The prosecution had received its first blow to the head—their own witness had made the prosecutor's words ring hollow.

The next part of the cross-examination was designed to drive home the point that neither Sweeting nor any of the others in Lewis’ group intended to have anything but fun that evening. That there had been no violence or threats of violence; nothing but good-natured partying. And, of course, since Lewis was not going to acknowledge or admit any violent intentions, it stood to reason that he wasn’t going to admit that any of his friends had any such intentions. So I explored the festive environment with Lewis:

- Q.** When you and the others went out partying Super Bowl night, it wasn’t your intention or—it wasn’t the intention of those around you to get into any kind of trouble, was it?

A. No.
- Q.** They were out for a good time, right?

A. Yes.
- Q.** And you had a good time in the Cobalt, right?

A. Yes, yes.
- Q.** And I’m just not talking about you, I’m talking about Joseph and Reginald and all of other folks, right?

A. Yes.
- Q.** No problems in the Cobalt?

A. No.
- Q.** I mean, no agitation, no aggressiveness, no street talking, no trash talking, a good time was had by all, right?

A. Yes.
- Q.** And when you left the Cobalt, I assume it was—it wasn’t your intention and it did not appear to be the intention of anyone else to get into a fight, right?

A. Right.
- Q.** But there were some folks from Akron who changed that, didn’t they?

A. Yes.

At this point, I changed gears completely. I moved Lewis from the nightclub to his hotel room at the Georgian Terrace after the incident. The purpose was two fold: (1) to show Sweeting was not there and therefore anything that happened there did not involve him, and (2) to show Lewis' state of mind from then until his arrest:

Q. Now, I want to skip and go forward. Let's go to the Georgian Terrace?

A. Okay.

Q. Whatever happened out in the incident that you've talked about is already over, and you are back at the Georgian Terrace?

A. Yes.

Q. Joseph Sweeting is not there, correct?

A. No.

Q. Joseph Sweeting did not accompany any of the people back to the Georgian Terrace—

A. No.

Q. —correct?

And we will talk a little bit about this later, but after you saw Joseph at the Holiday. Inn, that's the last contact you had with him until this trial—

A. Yes.

Q. —correct? So you are back at the Georgian Terrace, and you've had a conversation with AJ?

A. Right.

Q. And I think—was Kwame there at the time?

A. It wasn't appointed at AJ he's just who I was talking to but actually to everybody, to whoever it was.

Q. And that conversation was taking place with whoever was there?

A. Right.

Q. Which included Kwame and maybe somebody else?

A. Right, right.

Q. But it's a fact that until you saw the television, that someone said on the television that there had been a stabbing, you had no idea that anybody had been stabbed?

A. You're right.

Q. And this is after you had been at the incident, right?

A. Right.

Q. And this is after you had been at the Holiday Inn?

A. Right, right.

Q. It's back at the Georgian Terrace that, for the very first time, you learn that anybody had been stabbed?

A. Right.

Q. Right?

A. Right.

Q. And you knew that was trouble for you?

A. Right.

Q. Because of all of the people, you were the one that would be most recognizable, right?

A. That prove to be exact.

Q. And your foresight was pretty good, wasn't it?

A. Yeah.

Q. I mean, I don't need to get into how many hundreds of thousands of dollars you have had to spend—

Mr. Howard: I object to him—Your Honor, irrelevant, Your Honor.

The Court: And—

Mr. Sadow: I'll rephrase.

The Court: I sustain the objection.

By Mr. Sadow:

Q. Would it be a fair statement that you've been through the ordeal of a lifetime?

A. Yes.

Q. And did it start—specifically start when Lieutenant Smith came out there and essentially accused you of doing something?

A. Yes.

Q. Now, you listened to Lieutenant Smith on the stand, right?

A. Yes.

Q. You were still a defendant then?

A. Right, right.

Q. Right?

A. Right.

Q. Tell the ladies and gentlemen, did Lieutenant Smith characterize your interaction in a fair way?

A. No.

Q. I mean, did he just tell it like it was, or did he tell it like the police want it to be?

A. He told it like probably the police want it to be.

Q. I mean, did you just stand there and did he ask you a simple question and you give a simple answer and he typed it up that way, or was there more?

A. It was more.

Q. Tell us about it. Tell us what it was that was going on with you and Lieutenant Smith that day?

A. Well, he would ask me a question, and as he would ask the question, he would throw, like, another question in there. He would, like, say, who was all in the limo, who killed these people.

I was like, I don't know who killed these people.

Then he would say—then I say, didn't I tell you I didn't know everybody in the limo, and that's how the conversation was done.

Q. I mean, was it a nice, calm, relaxed environment?

A. No, no.

Q. Did you feel at ease in your location?

A. No.

Q. Did you feel as if you had a nice thing going with Lieutenant Smith?

A. No.

Q. It was just a friendly chat?

A. No.

Q. How did you feel?

A. I felt like I've never felt before.

Q. Did you feel like you were being accused?

A. Yeah.

Q. Falsely accused?

A. Yes.

Q. And if I understand what Mr. Howard has asked you, because of the fact that you simply did not tell Lieutenant Smith the total truth, you wound up being charged in six counts with murder of two people, right?

A. Right.

Q. It seems a bit harsh, doesn't it?

Mr. Howard: Excuse me, again, Your Honor, I object to the extraneous comments said.

It was now time to vividly point out the absence of evidence that Sweeting had actually used a knife to stab anyone. I did not rehash Lewis' direct testimony; I merely placed it in the most favorable context:

Q. Did you ever see any blood on the clothing of Joseph?

A. No.

Q. Did you ever see any blood on any knife?

A. No.

Q. Did you ever see Joseph in possession of a knife when he was standing by the limousine at the point in time that the five or six guys walked by?

A. No.

Q. Did you ever see Joseph with a knife in the limousine?

A. No.

Q. Did you ever see Joseph with a knife other than what you have testified to on direct examination—

A. No.

Q. —at the Holiday Inn?

A. No.

Q. And when you saw the knife at the Holiday Inn, did it have blood on it?

A. No.

Q. Did Joseph's hand have blood on it?

A. No.

Q. Did any part of Joseph, when you saw him at the Holiday Inn, appear to have blood on him?

A. No.

We then moved to the events after leaving the nightclub. It was critical for Sweeting to be cast as an innocent bystander, uninvolved, verbally or physically, with anyone prior to the time that Oakley was hit in the head with the champagne bottle. I took Lewis through the story of the initial encounter with the Akron men; then to the

limousine; then to the interaction again with the Akron men outside the limousine; the emergence of Oakley from inside the limousine; and the bottle being smashed against Oakley’s head. By walking Lewis through the events, I brought them to life so the jury could vicariously share the reality of the encounter between the Lewis group and the Akron group. This was done by referring to Lewis’ taped statements and by raising the element of fear through Lewis’ life experience on the streets. Lewis was more than willing to oblige because it was wholly consistent with the environment that he had attempted to portray through three weeks of trial while still a defendant:

Q. Let’s talk about coming out of the Cobalt. Let’s run through this, okay?

A. Uh-huh.

Q. If I understood correctly—and you know that I have had occasion, now, to look at the videotape of your statement to the police?

A. Right.

B Actually, it wasn’t the police, it was to Mr. Howard, wasn’t it?

A. Right.

Q. It was on Sunday?

A. Correct.

Q. And I’m sure you know that I’ve had a chance to listen to an audio tape?

A. Correct.

Q. And I think that you even had a chance—was it yesterday—to go back over to the district attorney’s office, of course, at the request of Mr. Howard, to go over a transcript that was prepared by maybe the court reporter on the audio tape?

A. Yes.

Q. And you read over it?

A. Yes.

Q. And did you make any modifications or changes?

A. No. I made one small change, but that was probably it.

Q. And we might talk about that; but otherwise, the transcript you looked at yesterday was accurate?

A. Yes, exactly.

Q. So you are walking out from the Cobalt, everybody is headed back to the limo, correct?

A. Correct.

Q. Now, who was it again that was about to make the turn off on to North Fulton?

A. Rehana and Carlos.

Q. Okay. Rehana, although she didn't demonstrate here, was wearing a rather revealing top, correct?

A. Yes, correct.

Q. And that revealing top was not something that wouldn't be noticed by most men, agreed?

A. Yes.

Q. And you were concerned about Rehana's safety, weren't you?

A. Right.

Q. You were concerned about Rehana's safety because of the two guys standing in that corner, right?

A. Right.

Q. Two guys that later became part of the five or six guys in the Akron group, right?

A. Correct.

Q. That's why you told Rehana and Carlos, Carlos and Rehana?

- A. Yes.
- Q. That’s why you, instead of letting them walk down the street to Fulton Street to their car, you wanted them to come along to the limo?
- A. Exactly.
- Q. Your words were “just didn’t feel right,” did it?
- A. Right.
- Q. Your words, not my words, right?
- A. Right.
- Q. Same words you told Paul Howard when you talked to him on Sunday?
- A. Right, correct.
- Q. And I guess, as a result of you sensing that there could be a problem, Rehana and Carlos did come back towards the limo?
- A. Yes.
- Q. And then as you’ve described it, it appeared that maybe some words were exchanged between—I think you’ve described three people, and then the two people that you saw on the corner, right?
- A. Right.
- Q. Now, you were not close enough to hear what was being said—
- A. No.
- Q. —correct.
- A. No.
- Q. For example, you don’t know whether it had something to do with the women?
- A. No.
- Q. Right?
- A. Right.

- Q. Or whether there was something said about any of the men?
A. Right.
- Q. All you knew was that you could hear what sounded to you like something other than just people talking to each other in a nice tone of voice?
A. Right.
- Q. And that caused you to go back to that area where the two guys from Akron were, as well as the three people from the limo are?
A. Yes.
- Q. When you got back there, if I understood correctly, the three people from the limo party are AJ, Joseph?
A. Yes.
- Q. Kwame?
A. Yes.
- Q. Right?
A. Yes.
- Q. When you get there, you hear words, right?
A. Right.
- Q. But Joseph—and I'm only worried about Joseph, Joseph wasn't saying a thing, was he?
A. No, him or Kwame.
- Q. He was just standing there?
A. Right.
- Q. Right?
A. Right, right.
- Q. So at that point in time, you had not seen Joseph being aggressive, correct?
A. No.

Q. You had not seen him do anything that would be an indication of violence, correct?

A. Right.

Q. He was just present there?

A. Right.

Q. Right.

A. Right.

Q. And when you pulled somebody out of there, did I understand you that Joseph and Kwame then walked back, as well?

A. Yes, after I reached the limo.

Q. And everyone got inside of the limo?

A. Yes.

Q. Except you and Joseph?

A. Right.

Q. And you showed us on the diagram that you were kind of standing sideways?

A. Yeah.

Q. That is, you're to Joseph's left; obviously, he is to your right?

A. Right, right.

Q. Thank you.

You agree with me, Joseph is not a big boy, is he?

A. No, he is not.

Q. And he was dressed in a—blue jean pants and some kind of a gray or blue flannel shirt?

A. Yes.

Q. Something like that?

A. Yeah.

Q. I mean, I don't know whether this is still the expression, probably about forty years late with this, but was he dressed to the nines, like the rest of you all were, or was he just dressed in a more casual fashion?

A. More casual fashion.

Q. I hate to even say to you, do you remember this sight, because I'm sure it will burn in your mind forever, but you remember this area, don't you?

A. I remember it.

Q. And you are talking about where the limo was. Did you— have you got that pointer?

Do us the best you can, show us an idea where that limo was.

A. Right here.

Q. And you mentioned something about a tree?

A. Right there.

Q. Big tree, right?

A. Yes.

Q. And the area that I'm pointing to right now, in here.

A. Right there.

Q. You know where that is?

A. Down at the corner.

Q. Down at the corner, right?

A. Yeah.

Q. Okay. And of course, 4:00 a.m., it would look different, but this is a pretty good reproduction of that area?

A. Yes.

Q. So with the limo—I don't think it's going to stay on here, but assuming the limo is right here?

A. Yes.

- Q.** And the door is open, you’ve got you and Joseph right here?
A. Right.
- Q.** And when Joseph is standing there with you, he is not having words with anybody, is he?
A. No.
- Q.** He is not provoking anybody, right?
A. No.
- Q.** He is not being aggressive to anybody, right?
A. Right.
- Q.** He is just standing there?
A. Right, right.
- Q.** In fact, doesn’t he say something like, at some point, when these guys, either go by or they go back, he said, “These guys are tripping, come on, Ray, get in the limo?”
A. He was trying to get me in the limo. I was telling the guys that we was all right, but it was a different demeanor, so he was pushing me in the limo.
- Q.** So, if anything, at that point—and I know you have been labeled as a peacemaker; but if anything, at that point, that’s exactly what Joseph is doing, trying to get you inside of the limo and get out of there, right?
A. Yes.
- Q.** We are not talking about Joseph being violent, we are talking about him being peaceful, at that point, right?
A. Correct.
- Q.** And these guys, these five or six guys, they walk by the limo, they walk down to the end of the limo and, for some reason that I’m sure we will never know, they turned around and come back?
A. Correct.
- Q.** Right?

A. Correct.

Q. And when those five or six guys turned and came back, there was a sense of danger, wasn't there?

A. When I started coming back, I mean, I was wondering why were they coming back.

Q. I mean, you have reached—in some people's mind, you have reached the big time, now. I mean, you are a professional football player, you clearly are making good money. I know you've been through this ordeal, but you've reached the big time?

A. I'm, blessed.

Q. But it hadn't always been that way, right?

A. Right.

Q. Now, I won't use the word, but you've worked your tail off to get where you are?

A. Yes, definitely.

Q. You know what the streets are like?

A. Definitely.

Q. And when five or six guys walk by —

Mr. Howard: Excuse me, Your Honor, I object to speculation.

Mr. Sadow: I'll respond as soon as I understand what the objection is.

The Court: I'll overrule the objection.

Mr. Sadow: Thank you.

By Mr. Sadow:

Q. When five or six guys have walked by you on the street at 4 o'clock in the morning, and they turn to come back to you, your life experience says, "this could be a problem," right?

A. Yes.

- Q.** Now, under that sense of—in your experience, would it run through your mind that somebody in this group was carrying a weapon, might be armed?
- A.** I couldn't say if somebody had a weapon or not. Coming back, they might. I can't say that. I can't say if they did or didn't. I can say, you know, that if they are coming back, I would—you know, they probably would. I don't know.
- Q.** That would be probably would, right?
- A.** Yeah.
- Q.** By that time, did they know you were Ray Lewis?
- A.** Possibly.
- Q.** So you got to figure, five or six guys are turning around and coming back on Ray Lewis, one of the hardest hitting line backers in the history of the game, right?
- A.** That's what they say.
- Q.** Well, I'm not going to disagree with it, but you figure that these guys weren't about just coming back to say can we have an autograph, correct?
- A.** Oh, correct.
- Q.** And if they were coming back and they were going to take you on, it would make sense that they were going to do it because they felt that either by numbers or by otherwise, they could handle you and anybody with you, right?
- A.** Probably.
- Q.** And they came back, didn't they?
- A.** Yes.
- Q.** And you sat in this courtroom and you heard Shinholster and Gwen and Burros, Twitty all say—well, let's break that down. Twitty and Burros said, I don't know what happened, we weren't there, we just came up at the end. They were part of that five and six group of men, weren't they?
- A.** Yes.

Q. So they just lied. That wasn't a mistake, they just lied, right?

A. Yes.

Q. And you heard Shinholster say that he didn't do a thing, he just stood there, he wasn't even with anyone when it was fighting, and he was part of that five or six group, wasn't he?

A. Yes.

Q. And you heard Gwen say, right, that he really wasn't with that—the group, the two people, that he was way down at the other end, he was at the other end of the street and came back?

A. Yes.

Q. And that ain't so, because he was part of this five or six person group, wasn't he?

A. Yes.

Q. So the Akron group, the OH-10 group has done a nice job in this courtroom of protecting themselves, haven't they?

Mr. Howard: Excuse me, Your Honor, I object to that characterization.

The Court: I'll sustain the objection.

By Mr. Sadow:

Q. The OH-10 group was, in fact, a group, wasn't it? They were all together?

A. Yes.

Q. And they turn and they come back towards the limo?

A. Yes.

Q. And if I understand it, at that point, when they get close enough, AJ comes out?

A. Yes.

Q. Right?

A. Yes.

- Q. Now, at the time AJ comes out, Joseph is still just standing there?
- A. With me, with me, right.
- Q. With you?
- A. Right.
- Q. I mean, he hadn't done anything to provoke the situation, right?
- A. Right.
- Q. AJ comes around the two of you, as I understand it, and is walking towards Baker, right?
- A. Right.
- Q. And the next thing that happens is AJ gets smashed on the side of the head or over the head with a bottle, right?
- A. Correct.
- Q. And then, in your words, “all hell broke loose?”
- A. Absolutely correct.

The most difficult part of the cross-examination was now to be played out. I had to take Lewis through the melee. I had to generate a sense of utter fear and confusion through Lewis' testimony. I had to explain Sweeting's conduct as first, in defense of Oakley and second, in defense of himself, but without admitting or conceding that Sweeting ever wielded a knife. It was tricky because Lewis had testified on direct that he was not involved in any physical contact whatsoever; that any witness who had even suggested such physical contact was mistaken or lying. So I assumed that Lewis would agree that he did not come to the defense of either Oakley or Sweeting. But I didn't want to embarrass or humiliate Lewis. The goal was simply to show that Sweeting was on his own out there on the street:

- Q. And the first thing that Mr. Sweeting, Joseph, did was he went to AJ's aid?
- A. Right.
- Q. Right?

- A. Right.
- Q. I mean, he went to protect or help some friend of his that just got hit, right?
- A. Exactly.
- Q. With a bottle?
- A. Right.
- Q. Now, we are not talking about somebody that just got punched, we are talking about somebody just got hit over the head with a bottle, right?
- A. Right.
- Q. Joseph never made it to AJ, did he?
- A. No.
- Q. Because he was grabbed by two men, right?
- A. Right.
- Q. And they began dragging him?
- A. Around the tree.
- Q. Around the tree. With your assistance, sir, and with the assistance of my client, I'm going to have him take his jacket off, his tie off, I want you to come out here and drag him like they dragged him.
Let's go over here. I want the jurors to see.
If I understood you correctly, you said that they dragged him by his shirt up over his head?
- A. Right.
- Q. Grab him like it was and do it.
- A. Had him like this, dragging him around the tree.
- Q. Like that?
- A. Right.

Mr. Sadow: Let the record reflect he has Mr. Sweeting pulled over forward, hands on both of his shoulders pulling his shirt forward.

By Mr. Sadow:

Q. Right?

A. Right.

Q. How many were there, two of them?

A. Yes.

Q. Two of them. How big was they?

A. Fairly bigger than him.

Q. Stand next to him for a minute, right next to him, side by side, looking at the jury. Were they as big as you?

A. Could have been.

Q. They certainly were not small like Joseph, were they?

A. Correct.

Q. Thank you. Come on, Joseph.

Now, I don't mean any disrespect with where I'm going now, but you've had enough problems—that's a bad way, strike that.

You know better than to get involved in violent activity, correct?

A. Right.

Q. The league has rules on that, doesn't it?

A. Correct.

Q. And as much as it might have been the right thing to do to come to the aid of either AJ or to Joseph, that's just not something that you did that night, right?

A. It's not about the NFL; something I do, I don't fight, period.

Q. So, what was going on with Joseph, he was going to have to handle for himself, wasn't he?

A. That's what it turned out to be.

- Q. Well, I mean, at that point in time, everybody is getting out of the limo, but Joseph is being dragged by two men larger than him, back behind the tree, right?
- A. Correct.
- Q. And what would have happened or did happen or could have happened behind that tree, you had no idea at the time, right?
- A. Not at all.
- Q. But the one thing that you can testify to, objectively, from your eyesight, is that it was two against one, against Joseph, right?
- A. Correct.
- Q. Now, at some point when they dragged him, how far did they drag him?
- A. They were fighting, period, all the way around the tree, like I showed previously.
- Q. What do we have on the dragging, five feet, seven feet, ten feet?
- A. Give or take. I'm not good at distance.
- Q. Right?
- A. Right.
- Q. But as the dragging, as you demonstrate?
- A. Right.
- Q. And they get him back behind the tree and they don't just let him go, do they?
- A. No.
- Q. They don't say, we are really sorry, Mr. Sweeting, we are going to let you go now?
- A. They were fighting at that time.
- Q. Two against one?
- A. Right.
- Q. And I think you said, at some point, Joseph regained—

A. His footing.

Q. —his footing?

A. Right.

Q. And then he had one behind him and one in front of him?

A. The two guys were still fighting, they were still fighting.

Q. And the best you can tell, it was a two-on-one fight, right?

A. Right.

Q. And as you told Mr. Howard, on tape, and as I think you've indicated to this jury, Joseph was trying to get these two off of him, right?

A. Correct.

Q. He hadn't started anything, right?

A. Correct.

Q. He had been attacked, when he went to the aid of AJ correct?

A. Right.

Q. Right?

A. Correct.

Q. And until that time, Joseph Sweeting hadn't done a thing to provoke any of those folks from Akron?

A. Correct.

Mr. Sadow: Your Honor, how late do you want to go until lunch?

The Court: This would be a good time to stop.

As the transcript reflects, I had Lewis perform an in-court demonstration. I had to visually bring across to the jury what must have been going through Sweeting's mind at the time he was attacked by two members of the Akron group. Believing that the trial court would allow me to do a demonstration, I decided Lewis should

physically demonstrate how Sweeting was dragged from the sidewalk outside the limousine to behind a large oak tree in the dark at 4:00 o'clock in the morning after a night of partying.

Sweeting was about 5'7", 150–160 pounds. He looked small, and we dressed him small throughout the trial. He appeared among all the participants to be the most vulnerable by physical size alone. Since Sweeting was in custody, I forewarned the courtroom deputies that I would be doing the demonstration. I told Sweeting just before the cross-examination began to simply follow my lead.

At my direction, Sweeting got up, took off his jacket and tie, and walked to the jury box. I had Lewis pull Sweeting's shirt over his head, and drag Sweeting across the floor in the same way Lewis saw Sweeting being dragged by the two men from Akron. The two Akron men were at least Lewis' height, which was 6'3". Lewis weighed approximately 235 pounds. One of the Akron men was 280 pounds and one was lighter than Lewis.

The impact on the jury was devastating. The demonstration brought home in ten seconds the fear Sweeting must have felt when he was attacked after coming to the aide of a friend. The jury already knew from Lewis' testimony that Sweeting had done nothing prior to that of a provoking, insulting, intimidating, or coercive nature. Sweeting had been an innocent bystander having a good time, who came to the aide of a friend. What the prosecutor thought would be his trump card in Ray Lewis became his worst nightmare. Now the jury had a live witness that gave life to Sweeting's fear.

But the cross was not quite over. I still had to highlight certain pieces of evidence that were inconsistent with the story being advanced by the prosecution, including where the gun came from that was fired at the limousine:

- Q.** Mr. Lewis, just before the break, we were talking about your observations of Mr. Sweeting being dragged and beaten by two people, right?
- A.** Yes.

Q. At any time, did you see Mr. Sweeting, did you see Joseph, do anything besides defend himself?

A. No.

Q. At no time did you see Joseph, Mr. Sweeting, have any physical contact whatsoever with Mr. Baker, correct?

A. No, correct.

Q. Correct.

A. Right.

Q. We talked a little bit, other witnesses have talked about it, I think you mentioned it. There were some mink coats that were present on this particular occasion, right?

A. Yes.

Q. But Joseph Sweeting had no mink coat, no mink jacket, no mink at any time right?

A. Correct.

Q. I've got two other areas to cover briefly, and I'll be finished.

After the fighting, and if I understood correctly, everybody ran back to the limo, except you and Jessica, who were still at the limo?

A. Correct.

Q. And everybody immediately got into the limo, right?

A. Correct.

Q. All through the right rear passenger door, correct?

A. Correct.

Q. So all of the people that have been identified as having been in the limo that evening, all of them had to go by the rear right passenger door to get in, right?

A. Correct.

Q. And I'm assuming that people were moving and getting in, being it was just about that time. I think the engine to the

vehicle turned on and it may have even actually started moving a little bit and the gunshots were heard?

A. Correct.

Q. So we are talking about just a few seconds gone by, right?

A. Right.

Q. How fast do you run the forty?

A. Four four.

Q. Pretty quick?

A. Yeah.

Q. Even you, at your fastest speed of all time, wouldn't have had enough time to go from the location where the decedents were to a car in a parking lot and back in the time period that those gunshots were fired, right?

A. Probably not.

Q. It happened so fast that it almost appeared like the gun was present on the scene at the time it was used, wasn't it?

A. It could have been.

Q. I mean, you sat in here, when you heard about the shell casings coming off of Mr. Baker's body, right?

A. Yes.

Q. You heard the lady from the EMS say that one actually fell off his chest, right?

A. Correct.

Q. From where it was located in reference to the limo leaving, what you know as to where that limo was hit by the bullets?

A. Right.

Q. It could have been shot right from there, couldn't it?

A. Yes.

Q. Somebody of that Ohio 10 group could have taken it off one of the bodies and opened fired, correct?

A. Right.

Q. That’s how little time went by, right?

A. Right.

The cross-examination was all but over. It was time to send a clear message and sit down. There was no need to again hammer-home any of the salient points. The jury had heard our story from a witness that they would believe—a witness that had been portrayed as credible by the prosecution. I closed Lewis’ cross-examination by bringing out his faith in God and his commitment under oath to tell the truth. I do not normally use faith as a cross-examination theme. Religion does not translate well in the courtroom. But our jury obviously took great reverence in the Lord. The jurors were predominately African-American, church-going, Bible-reading people to whom an oath to God was sacred, not simply lip service.

Now this may have been a little strong, but since I had told such a vivid story of Sweeting’s attack and his innocence up till the point where he defends Oakley, if the jury accepted that as true, even if they thought Sweeting had stabbed one of the decedents, they might find he acted in self-defense. In Georgia, the prosecution must disprove that the accused acted in self-defense. Lewis swearing to the Lord again that his testimony was truthful would also make it appear to the jury that we believed his testimony had not hurt us, and was therefore consistent with our claim of reasonable doubt:

Q. Before you came in here to testify, and I know this, because I saw it, you made your peace with God, right?

A. All the time.

Q. And when you agreed to plead guilty, as has been outlined, you signed or consented to a plea agreement that had you do one specific thing when you got on the witness stand, right?

A. Right.

- Q. Whether it hurt somebody or helped somebody, didn't make any difference?
- A. Not at all.
- Q. You only agreed to do one thing, right?
- A. Right.
- Q. And you swore to your God to do that one thing, right?
- A. Correct.
- Q. And the one thing that you swore to do, whether it helped or hurt anybody, was to tell the truth, right?
- A. Correct.
- Q. So, I know that you swore to this court that you were going to tell the truth, but a higher body, before you swore to tell the truth?
- A. Right.
- Q. Is there anything what you said about what you witnessed happening to Joseph Sweeting being dragged and beaten by two men that wasn't the truth?
- A. No.
- Q. Are you helping Joseph because he is your friend?
- A. No.
- Q. Are you telling us the truth because that's what needs to be done?
- A. Yes.
- Q. That's all I have to ask you.

The sole purpose of my cross-examination had been to "turn" Lewis into the "star" defense witness. To this day, I remember the pundits who commented on what the audience, the courtroom crowd, should expect from my cross-examination of Lewis when it was first announced that he was cooperating. Everyone thought the only effective cross-examination would be to challenge Lewis' version; to point out the miraculous deal that he had made; what he

had been facing as punishment; what he had been facing in his career; why he had lied and was willing to lie to help the prosecution; and what he had to gain from his cooperation. But they were wrong.

Sweeting and Oakley were acquitted of all charges. Newspaper reports indicated that the jury found Sweeting not guilty in thirty minutes. Was it the cross-examination of Lewis that made the difference? We will never know for sure. But two things are certain: (1) sometimes what appears on the surface to be damaging can be explained away within the broader context of a witness' testimony; and (2) don't simply assume that every prosecution witness that hurts your client must be attacked; sometimes you can "turn" such a witness and make him your own.