

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA                      CRIMINAL ACTION

STATE OF FLORIDA

CASE NO. 06-019906 B - (TSR)

vs.

KEMAR MANLEY JOHNSTON

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EXCERPT TRANSCRIPT OF CLOSING ARGUMENTS

Before the Honorable Thomas S. Reese,  
Circuit Judge, at a hearing in the above-  
styled action, held at the Lee County  
Justice Center, Fort Myers, Florida, on  
January 28, 2010.

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A P P E A R A N C E S

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I N D E X

	Page
CLOSING ARGUMENTS	
By Ms. Doerr	3
By Mr. Lenamon	35
Rebuttal By Mr. Lee	137

1 (FOR PURPOSES OF THIS TRANSCRIPT THE PRECEDING PROCEEDINGS  
2 WERE NOT TRANSCRIBED.)

3 THE COURT: State may proceed.

4 MS. DOERR: Thank you, Your Honor.

5 Good morning.

6 THE JURY: Good morning.

7 MS. DOERR: I want to start out by saying we all  
8 thank you very much for this tremendous commitment that  
9 you've made over the last few weeks, and we all  
10 understand that this is not easy to give up your lives  
11 and your families and your friends and your jobs and  
12 whatever other commitments that you may have in your  
13 lives, and we all do really thank you.

14 As you probably have heard throughout the trial,  
15 there have been other trials in this case with other  
16 defendants, and I've done several closing arguments, and  
17 when I started to write out my closing argument for this  
18 case, I started to proceed the same way, but I heard  
19 something in this case that I had not heard in any other  
20 one --

21 MR. LENAMON: Objection, Judge.

22 THE COURT: Sustained.

23 MS. DOERR: -- William Arciszewski took the stand  
24 and he called himself and his friends a reject  
25 orphanage - remember that phrase, reject orphanage.

1 All of these people, all of these friends who come  
2 in and out are all looking for some place, someone, some  
3 direction, they all want to be part of something. And  
4 this is a group of Mr. Johnston's friends who really  
5 does not much more than drink all day and take drugs all  
6 day and sell drugs all day. They're looking for  
7 direction.

8 This case, as you probably heard, has just about  
9 everything in it, every component you can think of, and  
10 all of them awful. If you take just one act that was  
11 done to just one of these victims, I mean, it's enough  
12 to make you cringe. But when you look at the whole  
13 picture of what happened to these two individuals that  
14 night at Mr. Johnston's house and then, later, in the  
15 industrial park, it's almost uncomprehensible.

16 The Defense, in their opening statement, said - he  
17 told you, This was to be a celebration of life -  
18 remember that phrase, a celebration of life, which,  
19 apparently, was going to be celebrated by seeing who  
20 could drink the most, smoke the most, and pop the most  
21 pills. But, nevertheless, this celebration of life  
22 starts out at a 20th birthday party at Kemar Johnston's  
23 and it leads to a torture session and a double murder of  
24 two young people.

25 And, remember, nine people were indicted on first

1 degree murder charges in this case as a result of what  
2 happened that night starting out at Mr. Johnston's  
3 birthday party. And most people think of a birthday  
4 party as a happy occasion. And, if you recall, due to  
5 the continuing police work, a tenth suspect was  
6 arrested, Michael Balint, about a year and five months  
7 later, a year and a half later. The police had been  
8 looking for the red-haired Mikey that tied the boys up  
9 and they eventually found him.

10 But let's go over what we know. We know Alexis Sosa  
11 is dead and we know Jeffrey Sosa is dead. And it's  
12 almost impossible to comprehend how their young lives  
13 could come to such a violent end at the hands of people  
14 that they know and people that they didn't know.

15 I mean, look at Melissa Rivera. She gets a taser  
16 out - she doesn't even know these boys - she gets a  
17 taser out and she tasers them and she re-carves an F  
18 into one of their backs. Well, why?

19 Michael Balint stops by to buy drugs and, the next  
20 thing you know, he's hogtying these boys. He doesn't  
21 know them. Why?

22 Alexis Fernandez, he doesn't know these guys. He  
23 shows up and, the next thing you know, he's driving them  
24 in his trunk to an industrial park and helping transfer  
25 them from one area to another location where they're

1 eventually killed. Why?

2 I'll tell you why. Because the Defendant is telling  
3 everybody what to do and when to do it. Remember,  
4 everybody gets a piece of this action? Everybody needs  
5 a piece of the action? That's where this peer pressure  
6 comes in. Peer pressure at it's ugliest. This reject  
7 orphanage. And usually when you think of peer pressure,  
8 you think of kids are going to smoke cigarettes or they  
9 may vandalize something or write some graffiti on  
10 something. But here, they have such a need to fit in.

11 And remember, it was Mr. Johnston's place. He's the  
12 one who had the cars, he had a job, he had the money,  
13 he's the one letting them sell drugs out of his place;  
14 they're trying to get his approval.

15 No one of these kids on their own, these young  
16 people on their own would have done this that night. It  
17 took this group mentality, this mob mentality. They  
18 were being encouraged and they were being egged on by  
19 Mr. Johnston until things escalated and escalated and  
20 got completely out of control and ended up with two  
21 people dying.

22 Remember, there was punches thrown; there was pistol  
23 whipping; they were searched; they were tied up; they  
24 were tortured; knives came out; guns came out, all by  
25 people who know them and who didn't know them.

1           There was even some testimony that, perhaps, the  
2 Defendant, himself, didn't know these people. Well, I  
3 ask you this, why didn't somebody just ask them to  
4 leave? I mean, if these people are coming uninvited to  
5 your celebration of life, why not just tell them to get  
6 out? And if you think they're armed or you think you  
7 have a problem with them, they're frisked, they're not  
8 armed, tell them to leave. Instead, the exact opposite  
9 happened; they were prevented from leaving. They were  
10 frisked and their cell phones were taken, their means of  
11 communication to the outside world. They are  
12 surrounded. They're out-numbered. They're tied up.  
13 And why? How can you make sense of all this?

14           Was the Defendant - if he didn't know these people -  
15 trying to help his friends out? Well, remember what he  
16 said, Do you know who you're messing with; Don't mess  
17 with me. He made it personal to him.

18           Jeffrey Sosa, if you remember, was off to the side,  
19 oftentimes praying or pleading for his life, to no  
20 avail.

21           And after all this punching and kicking and pistol  
22 whipping by the Defendant and his friends and they're  
23 tied up and the knife comes out and several of them  
24 carve into these boys' backs after taking their shirts  
25 down, bleach is poured on them. At one point, if you

1 remember, the Defendant says, Somebody bring him his  
2 last cup of water. Does it get any more premeditated  
3 than that?

4 You'll also remember a shot's fired in the kitchen,  
5 and when Mr. Nunes comes out of the bedroom, what does  
6 he see? He sees the Defendant with a gun leaning over  
7 Alexis Sosa checking to see if he's been shot or not.  
8 Bags, at some point, are placed over their heads and  
9 they're loaded into the trunk of a car like garbage and  
10 they're driven to another location. They're not being  
11 driven to another location so that they can be let go -  
12 no, they're still tied up and they have a bag over their  
13 head and bleeding. They're taken to another location so  
14 that they can be killed. Again, premeditation.

15 Why are they taken to another location? Maybe there  
16 was too many witnesses to finish them off in  
17 Mr. Johnston's kitchen? But what we do know is they  
18 were driven to another location. And if that's not  
19 enough, two of them go back and decide to burn the car,  
20 maybe to destroy evidence, maybe to make sure they're  
21 really dead.

22 And all the while that this is going on at  
23 Mr. Johnston -- in Mr. Johnston's kitchen, they're still  
24 a party going on. No one's leaving; they're there,  
25 they're staying there. No one's calling on their cell



1 phones. And we asked some of them, Did you have a cell  
2 phone; Did you call even after you left? No; No; Didn't  
3 do any of that.

4 So let's look at what we have here. Let's look at  
5 what we really have here. We have a young group of  
6 self-absorbed people doing lots of drugs and lots of  
7 drinking at this party - one even brought their mother.  
8 They're all on alcohol. They're all on drugs. They're  
9 continuing to drink. They're continuing to drug.  
10 They're moving from room to room, which explains why  
11 some people see some things and others see other things.  
12 That's why their stories don't match up perfectly.  
13 That's to be expected.

14 You also heard some talk about how messed up  
15 Mr. Johnston was; how many drugs he had taken, pills he  
16 had popped at his party. At one point, it was testified  
17 to he was speaking in a Jamaican accent. Well, let's  
18 think about this Jamaican accent. If he has somebody  
19 down on the ground, isn't speaking in a different  
20 language maybe a control thing; they don't understand?  
21 Maybe to put fear in him? Start talking in a different  
22 language with a gun and a knife?

23 What the evidence showed here was that everything  
24 happened was at Mr. Johnston's house and at  
25 Mr. Johnston's direction. And when they left the house

1 he told them what cars to go in, who to go with who and  
2 where to go to this industrial park a short distance  
3 from his home.

4 And it's true that the witnesses gave different  
5 versions. As the police start to close in on them,  
6 they're getting nervous, more witnesses are coming  
7 forward saying what happened, they're going to try to  
8 protect themselves; that's human nature. They know  
9 they're about to be caught or they have been caught, of  
10 course they're going to minimize their involvement.

11 And the police, Detective Grau told you told you  
12 that this was not your typical case, fortunately. In a  
13 lot of cases there is - whether it's a robbery case or a  
14 murder case or any kind of case, there is generally one  
15 victim and one defendant, whether they knew the victim  
16 or not - could be a stranger, could be an acquaintance,  
17 family member. In this case, you had 10 defendants, 30  
18 to 50 partygoers, four possible crime scenes - you had  
19 Mr. Johnston's kitchen; you had Lex Fernandez's trunk;  
20 you had the Lexus, itself, that they were found in or  
21 about, and you have the industrial park. And some were  
22 strangers and some were not.

23 As Mr. Brener, himself, said, when he was talking to  
24 Justin Greenwell - and I wrote it down - You received a  
25 large amount of evidence in this case. And there was a

1 large amount of evidence in this case, and we showed it  
2 to you. There was all those casings. There were  
3 bullets. There were two blankets. There were three  
4 guns. There were two dead bodies; one they were able to  
5 identify and then you heard how Alexis Sosa had to be  
6 identified because of the condition of his body.

7 And I only want to touch briefly on this one issue.  
8 A lot was made of a Dr. Pepper can. And Dr. Pepper cans  
9 are all over the place. Is everyone who drinks  
10 Dr. Pepper a double murderer? Of course not. And  
11 remember, this was a clearing ground, a dumping ground,  
12 and it had been used such for a long time. We don't  
13 know.

14 I'm going to ask you not to get distracted from the  
15 evidence and the things that we do know and to focus on  
16 the elements and the facts as you decide them when you  
17 go through the evidence.

18 And then another thing, if you remember, these guns  
19 were all sold right after this crime. Roderick  
20 Washington sold one; he sold one to Brian Peters, that  
21 was the .22 found in the canal. Lex Fernandez sold the  
22 .380 that he found in his glove box to a man named Adam  
23 Frederick. And Kemar Johnston sold the Glock to Alex  
24 Suarez.

25 And if you remember when Alex Suarez took the stand,

1 I asked him, Did you have to talk to anybody else about  
2 buying that gun? No; I just talked to Mr. Johnston.  
3 Did he have to ask anyone's permission to sell that gun?  
4 No. Did you deal with anybody else? No; He just sold  
5 it to me for - I gave him some money and, you know,  
6 promised to do some future tattoos on him. I submit to  
7 you he's not going to sell a gun he doesn't own. They  
8 all knew that this gun had been used in this crime.

9 And I'm going to put something up on the screen. I  
10 want to go over the witness list for you. And you saw  
11 the witnesses, and we didn't try to dress them up - I  
12 mean, they came in their jail uniforms and their  
13 shackles and took the stand. But I want you to remember  
14 this one very important fact as we go through this  
15 witness list, and that's this: When the Defendant  
16 decided who his guest list was going to be for his  
17 party, he decided who his witness list was going to be  
18 for his trial. Think about that. These are his  
19 friends. If the Defendant had invited the Chief of  
20 Police to his party, you would have been hearing from  
21 the Chief of Police. If the Defendant had invited Miss  
22 Stacey Defenbaugh from Channel 7, she would have been up  
23 on the stand. But he didn't. He invited the people  
24 that you heard from. He invited his friends.

25 And I want to go over -- this is Alexis Sosa, the

1 older victim of the two. There's Jeffrey Sosa, the  
2 younger one, his nephew. He had - also indicted, you  
3 had Ashley Toye, the girlfriend of Kemar Johnston;  
4 Iriana Santos, the girlfriend of Roderick Washington;  
5 Melissa Rivera, who you heard from, she has children by  
6 Mr. Johnston's brother; Lex Fernandez, who you also  
7 heard from, he was the owner of the red Contour; Cody  
8 Roux, you heard from him, too; Kenneth Lopez; Roderick  
9 Washington; Paul Nunes, you heard from him, and  
10 Mr. Johnston.

11 Here's a picture of Mr. Johnston's duplex as it  
12 looked a couple of days after this all happened, and you  
13 can see the garage area where the two Sosas would have  
14 entered and come in through that kitchen, and you can  
15 see the opening that some of the witnesses talked about  
16 that faced into the kitchen. There's the pantry area  
17 where some of the witnesses said Jeffrey had been over  
18 by, he had been sitting there watching everything going  
19 on initially. That's another view of the kitchen that  
20 looks out into the living room. That's the floor area  
21 where the two Sosas spent hours getting hit and tortured  
22 and even, perhaps, one of them being shot. This is the  
23 living area, and I think you can even see a balloon in  
24 the picture where some of the partygoers just stayed and  
25 hung out. Here's another view of the kitchen and, if

1 you recall, there was people -- it was testified to that  
2 some of the girls had done some cleaning up with some of  
3 the bleach. If you look at that counter top, can you  
4 see how clean that is, the reflection of the toaster in  
5 that counter top? Look how clean that is. And,  
6 remember, there was a party going on there that had 30  
7 to 50 people. Clothes that were found that had been  
8 washed. The trunk of the car at the industrial park  
9 with Alex Sosa in it. There's Jeffrey. And you can see  
10 all the markings that crime scene did with all the  
11 casings and the bullets. You can see when they were  
12 firing into the back which is on the left-hand side  
13 there, all those casings that ejected. You can see the  
14 area behind it, how they pulled the car in there.

15 Now, this is Jeffrey Sosa's back, and, if you  
16 recall, Melissa and some of the other ones talking about  
17 the C and the F, the Cash Feenz that's carved in there.  
18 We don't know what was carved into Alexis Sosa's back,  
19 obviously, but this is Jeffrey. And, as you will  
20 recall, he was found next to the car, and there was  
21 testimony that Ashley Toye had carved a star or an  
22 asterisk into the back.

23 Finally, here's a tee shirt that, apparently, that  
24 they had made up, Free Whizzo, with a C and the  
25 backwards F, and Whizzo is Mr. Johnston's brother, the

1 father of Melissa Rivera's children.

2 Now, these are the people that you heard from. And  
3 like I said before, yes, there was some statements  
4 given; yes, they tried to minimize their involvement;  
5 yes, not everybody saw everything that was going on as  
6 they're moving around the kitchen and while all this is  
7 going on, but I want to go through, and I want to ask  
8 you to focus on the consistencies of this statements of  
9 what they tell you.

10 First, there's Michael Taylor. We know he was at  
11 the party - in fact, he was the one who came with his  
12 mother. He knows both the Sosas. He sees the Defendant  
13 with a gun. He sees the Defendant pistol whip Alexis  
14 Sosa. He sees Rod Washington and Kenneth Lopez with  
15 guns. He sees Rod Washington guarding Alexis and  
16 Jeffrey Sosa with the rifle. He heard the cell phone  
17 message that we heard testified to by several of these  
18 people, allegedly Alexis Sosa's voice on there. He sees  
19 Jeffrey and Alexis Sosa hogtied by a red-haired guy who  
20 we later learned was Michael Balint. He sees the Sosas'  
21 shirts ripped. We know that at least Jeffrey was found  
22 without a shirt on. He sees the Defendant with a knife.  
23 He sees the Defendant carve that CF for Cash Feenz into  
24 Alexis Sosa's back. He sees Washington pour bleach on  
25 Alexis Sosa and he hears Jeffrey praying.

1           Next, you heard from Andrew Touchstone. He was part  
2 of that Chico Unit, a group of guys who want to call  
3 themselves something. He's also at the party. He hears  
4 an argument in the kitchen, which is consistent with the  
5 fight that started in the kitchen that the others heard.  
6 He sees the Sosas arrive into the kitchen, and we know  
7 that everyone testified they didn't go from room to  
8 room, the Sosas were put in that kitchen and they stayed  
9 in there until they were carried out. He sees either  
10 the Defendant or Washington holding a gun on Alexis  
11 Sosa. He sees Cody Roux hit Alexis Sosa and the fight  
12 begins. And, if you remember, even Cody Roux testified  
13 himself that he started to fight with Alexis Sosa, but  
14 Alexis Sosa was getting the better of him so he backed  
15 off. He sees Mr. Johnston, Lopez, Washington and Roux  
16 with guns - again, Cody Roux admitted he had a gun;  
17 Iriana Santos, Melissa Rivera and Ashley Toye in the  
18 kitchen - I think there was all the testimony that those  
19 girls were in the kitchen, whether they were partaking  
20 what was going on or cleaning; sees Alexis Sosa on the  
21 floor with Jeffrey Sosa next to him; sees Alexis Sosa  
22 with his hands and legs tied up, and we know he was  
23 hogtied. Again, he also sees Alexis Sosa's upper back  
24 with that C and the F for the Cash Feenz; Cody Roux  
25 guarding the door with a gun - Cody Roux told you he



1 guarding the door with a gun; the bleach that's poured  
2 on Alexis Sosa, he can hear him screaming, he hears him  
3 talking some sort of jibberish. There was some  
4 testimony that Touchstone, did he get involved in this,  
5 he told you he didn't, that's for you to determine the  
6 facts, determine all what the witnesses say and you  
7 determine what you think happened.

8 Cody Roux went to the party, he was providing the  
9 music - I think he had to provide it a couple of times,  
10 there was some malfunction or something. He knows the  
11 Sosas; sees them in Mr. Johnston's kitchen; gets into  
12 the fight with Alexis Sosa; sees Michael Balint, the  
13 red-haired guy, buy the drugs, which he testified he  
14 went there to buy drugs. He also sees Mr. Johnston with  
15 a gun and says Mr. Johnston gives him a gun and tells  
16 him to guard the door while the fight continues. He  
17 goes back the next day with his friend Tyler Cox, I  
18 think, to retrieve a cell phone charger and Fernandez,  
19 Nunes, Lopez and Washington are all still there, and I  
20 think there was testimony that corroborated that, as  
21 well, that they were all still there.

22 Michael Balint. He goes to the party to buy drugs  
23 because, apparently, he didn't have enough drugs that  
24 day. He doesn't know the Sosas. He sees them in the  
25 kitchen. He's told by the Defendant to tie him up - Who

1 knows how to tie; I do, and he's provided laces, and he  
2 sees Mr. Johnston with a gun. He tells you he also  
3 kicks him and hits him while Alexis Sosa was somewhat  
4 resisting. And he also said he saw Rod Washington poke  
5 Alexis Sosa in the ribs with his gun, with Washington's  
6 gun.

7 Melissa Rivera, who you heard from, she was at the  
8 party. She sees the Sosas in the kitchen. She hears  
9 the voicemail. She's present when the fight breaks out.  
10 She also sees Mr. Johnston and Mr. Washington with guns.  
11 Sees the Sosas tied up in the kitchen - that's pretty  
12 consistent throughout everybody's testimony. She sees  
13 Cody Roux with a gun - that's pretty consistent, as  
14 well. The Defendant tells her to get a taser because,  
15 apparently, they keep a taser - he has a taser and she  
16 tasers people for fun - and she does; she goes and gets  
17 the taser and she tasers Alexis Sosa - someone she  
18 doesn't know. She sees the Defendant with a knife, and  
19 what does he tell her? He hands her the knife and tells  
20 her to do the F over on one of the Sosas' backs. She  
21 sees the Sosas' with bags over their heads - again,  
22 pretty consistent. She hears a shot fired in the  
23 kitchen. And then she goes to go outside but she's  
24 stopped because Mr. Johnston tells her to get into a  
25 car - to get into his car and drive with Iriana Santos

1 and Rod Washington to this industrial park. She's  
2 following them. He tells her to get in the car and  
3 drive his car and she does. She hears shots fired at  
4 that industrial park. And she identified the two  
5 comforters - or one bed skirt and one comforter that was  
6 found at this industrial park as belonging to  
7 Mr. Johnston with Mr. Alexis Sosa's DNA on it. And she  
8 told you while she was at the industrial park, she was  
9 with the two other girls, Santos and Toye, and Rod  
10 Washington and Paul Nunes were by her. What she doesn't  
11 see is Mr. Johnston, Lex Fernandez or Ant Lopez when the  
12 shots are being fired. And she said the Sosas did not  
13 return with them when they all returned back to  
14 Mr. Johnston's house.

15 Alex Fernandez, he went to the party with Jose  
16 Medina, Mike Taylor and Mike Taylor's mother, and they  
17 also left at some point to go a liquor store where they  
18 ran into the Sosas. Lex Fernandez wasn't even invited  
19 to this party by Mr. Johnston, he was invited by his  
20 friends. He sees the Sosas in their Lexus. He sees  
21 Alexis Sosa tied up on the floor and Jeffrey sitting  
22 down on the floor. And, then, at some point, he's asked  
23 for his car keys, which he thinks is just to move his  
24 car, but he's actually told by Mr. Johnston to drive the  
25 car. And when he looks in the trunk of his car, which

1 has been backed up into Mr. Johnston's garage, the trunk  
2 is open and he can see the Sosas in his trunk. He can  
3 see the trash bags over their heads. He doesn't know  
4 where he's going, but Mr. Johnston's in the car with him  
5 and he's the lead car, and they go to the industrial  
6 park - again, a short distance away from Mr. Johnston's  
7 house. He and somebody else - because, remember, he's  
8 really not friends with these people - help move one of  
9 the Sosas into the trunk of their own car, the Lexus,  
10 and he sees the Defendant and someone else shooting -  
11 and there was something made about at one trial he  
12 testified it was Lopez and the Defendant, and then he  
13 said, It was -- And now I can -- It was the Defendant;  
14 I'm not sure of the second person. He only told you  
15 something that he was 100 percent sure of. He wasn't  
16 going to make it up. He wasn't going to -- he didn't  
17 want to mislead anybody, and maybe it's due to the  
18 passage of time or the drugs or the alcohol, but he told  
19 you what he was 100 percent sure of - not even beyond a  
20 reasonable doubt but 100 percent sure of. And who was  
21 in the passenger seat as he drives home to Kemar  
22 Johnston's house? It's Kemar Johnston. And what's  
23 found in his glove box? The .380 that we know was used.

24 Paul Nunes, who you heard from, he went to the party  
25 with Anthony Lopez and Rod Washington. He sees the

1 Sosas walk in through the garage and into the kitchen,  
2 and he sees Kemar Johnston close the garage door behind  
3 them. He sees the Defendant and Washington pull guns on  
4 the Sosas - in fact, he told you he sees the guns being  
5 passed around, and that goes back to this peer pressure  
6 thing I talked to you about earlier. He sees the  
7 Defendant with what? A .380 handgun, the one found in  
8 Mr. Fernandez's glove box. He sees Washington search  
9 the Sosas, which is pretty consistent. He sees the  
10 Defendant pistol whip Alexis Sosa. And he hears the  
11 Defendant ask, Who knows how to hogtie? And then he  
12 sees Balint - Red-Haired Mikey. - hogtying the kids up -  
13 the Sosas up. He hears the Defendant telling Ashley  
14 Toye to get a knife, and we know he's seen with a knife  
15 in his hand; sees the Sosas with their shirts off -  
16 again, consistent. He sees Jeffrey Sosa on the floor  
17 with a star carved into his back, and we know that's  
18 true, we have photographs of that; sees and smells  
19 bleach; sees Melissa Rivera taser Alexis Sosa; hears  
20 gunshots in the kitchen; another one who sees them with  
21 the bags over their head. The Defendant tells him which  
22 car to get into. I think he said he heard seven to ten  
23 gunshots at the industrial park. And he can see others  
24 that he came with firing into the trunk of that Lexus  
25 and into something on the ground.