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IN THE CIRCUIT COURT OF BOONE COUNTY

STATE OF MISSOURI

STATE OF MISSOURI,)
) Cause No. 04CR165368-01
Plaintiff,)
)
vs.)
)
RYAN FERGUSON,)
)
Defendant.)

DEPOSITION OF CHARLES ERICKSON

Taken on behalf of Defendant

June 30, 2005

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IN THE CIRCUIT COURT OF BOONE COUNTY

STATE OF MISSOURI

STATE OF MISSOURI,)
) Cause No. 04CR165368-01
Plaintiff,)
)
vs.)
)
RYAN FERGUSON,)
)
Defendant.)

DEPOSITION OF WITNESS, CHARLES ERICKSON,
produced, sworn, and examined on June 30, 2005, between the
hours of 8:00 a.m. and 6:00 p.m. of that day at the offices of
the Prosecuting Attorney, Columbia, Missouri, before TRACY L.
THORPE, a CSR and CCR, CCR. No. 939, and Notary Public within
and for the State of Missouri, in a certain cause now pending
in the Circuit Court of the County of Boone, State of
Missouri, wherein State of Missouri is Plaintiff and Ryan
Ferguson is Defendant.

1 A P P E A R A N C E S

2 FOR THE PLAINTIFF:

3 OFFICE OF THE PROSECUTING ATTORNEY

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5 Columbia, Missouri 65201

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7 by: Mr. Kevin M.J. Crane

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9

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15 by: Mr. Charles M. Rogers

16 by: Jeremy S. Weis

17

18 CERTIFIED COURT REPORTER:

19 TRACY L. THORPE, C.C.R. NO. 939

20 MIDWEST LITIGATION SERVICES

21 11 North Fifth Street

22 Columbia, Missouri 65201

23 573-442-3600

24

25 ALSO PRESENT: Kathryn Benson, attorney

1 IT IS HEREBY STIPULATED AND AGREED by and
2 between Counsel for the Plaintiff and Counsel for the
3 Defendant that this deposition may be taken by TRACY L.
4 THORPE, a Certified Shorthand Reporter, a Certified Court
5 Reporter, C.C.R. 939 and Notary Public, thereafter transcribed
6 into typewriting, with the signature of the witness being
7 expressly requested.

8 CHARLES ERICKSON,
9 of lawful age, having been produced, sworn, and examined on
10 the part of the Defendant, testified as follows:

11 DIRECT EXAMINATION BY MR. ROGERS:

12 BY MR. ROGERS:

13 Q. Could you please state your name for the
14 record, sir.

15 A. Charles Timothy Erickson.

16 Q. And, Mr. Erickson, have you ever given a
17 deposition before?

18 A. No, I haven't.

19 Q. Have you ever testified in any type of court
20 proceeding or grand jury proceeding before?

21 A. No.

22 Q. As you know, you have just been sworn to tell
23 the truth. And your obligation to give truthful and complete
24 answers to our questions today is just the same as it would be
25 if you were testifying in court. Do you understand that?

1 A. Yeah. I understand.

2 Q. And when I say "your obligation," I mean not
3 only your legal obligation, but also your moral obligation.
4 You understand that?

5 A. Yes.

6 Q. Okay. I'm going to ask you some questions.
7 Mr. Crane will have an opportunity to ask you questions. If
8 either of us asks you a question that you don't understand,
9 will you stop us and tell us that you don't understand before
10 trying to answer?

11 A. Yes.

12 Q. Okay. And as you can tell, the court reporter
13 is taking down everything that's said on a machine in a sort
14 of a code. And so the machine cannot tell the difference
15 between an uh-huh and an huh-uh and she sometimes is not
16 watching to see whether you're nodding your head or shaking
17 your head or whether you mean yes or no. So I'm going to ask
18 that you give verbal answers such as yes, no or whatever they
19 may be to the questions so that we can have an accurate
20 record. Is that okay?

21 A. Yes.

22 Q. And so if I remind you of that, I'm not trying
23 to be offensive. I'm just trying to make sure we have an
24 accurate record. You understand that?

25 A. Yeah. That's fine.

1 Q. Now, if I ask you a question or Mr. Crane asks
2 you a question and you're not sure of the answer, would you
3 tell us that you're not sure before we -- before giving a
4 guess or an estimate?

5 A. Yes.

6 Q. So are we agreed then that unless you say
7 otherwise, you have understood the question and you're certain
8 of the answers?

9 A. Yes.

10 Q. Okay. Thank you. Now, how old are you, sir?

11 A. I'm 21.

12 Q. And when was your birthday?

13 A. June 23rd, 1984.

14 Q. And so how old would you have been back at the
15 end of October 2001?

16 A. 17.

17 Q. Okay. And at that time what was your
18 occupation?

19 A. I don't believe I had a job actually.

20 Q. Were you a student?

21 A. Yes.

22 Q. And where did you go to school?

23 A. Rock Bridge High School.

24 Q. And what year were you in?

25 A. I was a junior.

1 Q. Okay.

2 A. My second year.

3 Q. As I understand it, in the Columbia school
4 system at the time, you would enter high school --

5 A. Well, the junior high is the freshman year --
6 freshman class was included in junior high and then high
7 school started for sophomore year. So high school is 10, 11,
8 12. So actually it would have been my third year of high
9 school, my junior year, but it was the second year at Rock
10 Bridge.

11 Q. Okay. I think I understand what you're saying.
12 Let me restate it and see if we're both on the same page. So
13 basically when you were a freshman in high school, you
14 actually attended a junior high school?

15 A. Yeah. That's correct.

16 Q. Okay. And then when you became a sophomore in
17 high school is when you started at Rock Bridge High School?

18 A. Yes.

19 Q. And that had just three grades?

20 A. Yeah.

21 Q. Grades 10, 11 and 12?

22 A. Yes.

23 Q. And so the fall of 2001, spring of 2002 would
24 have been your junior year in high school?

25 A. Yes.

1 Q. Which was the second year you were at Rock
2 Bridge?

3 A. Yes.

4 Q. Okay.

5 A. Yeah.

6 Q. And where did you go to junior high school?

7 A. West Junior High.

8 Q. And where's that located?

9 A. I believe it's off of Clinkscapes, I believe is
10 the road that it's off of. I'm not entirely sure on that.

11 Q. And where is Rock Bridge located?

12 A. It's off of South Providence.

13 Q. How far south?

14 A. Past Nifong.

15 Q. Okay. Do you know a man named Ryan Ferguson?

16 A. Yes, I do.

17 Q. How long have you known Ryan Ferguson?

18 A. I've known Ryan Ferguson since my eighth grade
19 year.

20 Q. And in the eighth grade, did you also go to
21 West Junior High School?

22 A. Yes.

23 Q. Did Ryan go there too?

24 A. Yes.

25 Q. Is that how you met him?

1 A. Yes.

2 Q. Did you guys live near each other?

3 A. Yes.

4 Q. Where were you living at the time?

5 A. I lived in Westpoint and he lived about a mile
6 away from me on the same -- off the same road on Chapel Road
7 just past this park named like Twin Lakes. I can't remember
8 the name of the -- the neighborhood he lived in, but it was
9 Kyle Drive I believe was the name of his road.

10 Q. Okay. Had you been to his house?

11 A. Yes.

12 Q. Back when you guys both went to West?

13 A. Yes.

14 Q. And he'd been to your house?

15 A. Yes.

16 Q. Several times?

17 A. Yeah.

18 Q. Okay. Were there another group of kids that
19 you hung around with?

20 A. Yeah. You know, kind of a clique or however
21 you want to call it. David Igleheart, Scott Turner, Ben
22 Blunt.

23 Q. Are we still talking about the time at West
24 Junior High School or is this later?

25 A. Well, yeah. Scott Turner and David Igleheart,

1 we kind of hung out with both of them our freshman year.
2 And -- well, no, Scott -- Scott, he actually transferred to
3 Oakland his eighth grade year and then we started hanging out
4 with him again sophomore year, but -- but Ryan Ferguson, David
5 Igleheart and just a couple other people.

6 Q. Okay. When you moved from West Junior High
7 School to Rock Bridge High School, did you continue to hang
8 out with the same group?

9 A. You know, friends change, you know, but you
10 pretty much -- I mean, yeah, for the most part. Like, I had a
11 steady girlfriend my freshman year so I didn't really -- I
12 kind of got ragged on by my friends a lot, you know, You need
13 to break up with your girlfriend, you're getting ready for
14 high school and all that stuff. So I started hanging out
15 with, you know, different people, more friends, people that
16 went to Jeff Junior High who, you know, I met at Rock Bridge.
17 So, no, you know, I didn't hang out with the same people.

18 Q. And who is the girlfriend in your ninth grade
19 year?

20 A. Liz Lukeheart.

21 Q. Okay. And did you, in fact, break up with her
22 sometime?

23 A. Yeah. I believe it was around February of my
24 freshman year.

25 Q. Okay. But still by the time you got to Rock

1 Bridge, you were basically hanging out with a different group?

2 A. Yeah. Some of the same people from West, but
3 you know, there were more kids and just different people.

4 Q. Okay. I notice your hair is cut very short
5 today; is that correct?

6 A. Yeah. Yes.

7 Q. It appears to be either dark brown or black in
8 color?

9 A. Yes.

10 Q. Is that a fair statement?

11 A. It's brown, yes.

12 Q. Has it always been that color?

13 A. Yes.

14 Q. Have you ever colored your hair?

15 A. No. Not really dramatically. I've done some
16 highlights. Nothing significant though.

17 Q. When would you have done the highlights?

18 A. I want to say it was my seventh grade year, but
19 I'm not entirely certain about that.

20 Q. Okay. During the fall of 2001, was your hair
21 dark?

22 A. Yes.

23 Q. And what color is Ryan Ferguson's hair?

24 A. His hair is for the most part dark also, but he
25 tends to do highlights. Around this time he did highlights

1 off and on.

2 Q. Have you ever worn your hair spiked up in
3 front?

4 A. Yes.

5 Q. When was that?

6 A. Off and on throughout high school.

7 Q. Okay.

8 A. Just depending on the length of my hair. If it
9 was longer, it wouldn't -- I wouldn't spike it up, but, you
10 know, if it was shorter and more close cropped, I would spike
11 it up.

12 Q. Do you remember Halloween night of 2001?

13 A. Yes.

14 Q. Was your hair longer or shorter than?

15 A. It was longer.

16 Q. So it was not spiked up on that night?

17 A. No.

18 Q. Okay. How about Ryan Ferguson? Has he ever
19 worn his hair spiked up?

20 A. Yes.

21 Q. And when would he wear his hair spiked up?

22 A. You know, we would go out and, you know, party,
23 what have you, you know, drank and just kind of hang out with
24 friends. And usually he would just -- he'd spike up his hair
25 when he was going out, stuff like that. I remember he went to

1 a salon, I think Salon de Capello, where he had his hair, you
2 know, specially cut and he would get it highlighted there, I
3 believe. And I don't know. He kind of cared a lot about --
4 about looks and stuff like that, so quite frequently he would
5 wear his hair spiked.

6 Q. Was he wearing his hair spiked in the fall of
7 2001?

8 A. Yes.

9 Q. And was he wearing his hair spiked on Halloween
10 night, 2001?

11 A. That I can't recall.

12 Q. I want to call your attention to November the
13 1st, 2001 and ask you if you went to school that day?

14 A. Yes, I did.

15 Q. And how did you get to school that day?

16 A. Scott Turner drove me.

17 Q. Okay. And do you remember that?

18 A. Yes.

19 Q. Okay. And when you were riding with Scott
20 Turner on the way to school that day, had you heard anything
21 about the death of Mr. Heitholt on the news or read about it
22 in the paper, anything like that?

23 A. Not yet. I don't believe so, no.

24 Q. At that time did you have any belief that you
25 had been involved in the death of Mr. Heitholt?

1 A. Not a conscious one.

2 Q. Okay. So you were not aware of any such
3 belief. Is that a fair statement?

4 A. Yeah. I blocked it out. I mean, consciously I
5 didn't -- I didn't allow myself to become aware of it.

6 Q. I'm not asking you to explain.

7 A. Okay.

8 Q. I'm asking you whether you were aware of any
9 such belief?

10 A. No.

11 Q. Now, throughout that day, did you at any time
12 hear about the murder of Mr. Heitholt?

13 A. I can't recall.

14 Q. Can you recall hearing about it that evening
15 after you got home?

16 A. Yes.

17 Q. And how did you hear about it?

18 A. I believe I heard it on the news.

19 Q. Okay. And when you heard about it on the news,
20 did you have any -- were you aware of any belief that you
21 might have been involved in that?

22 A. No.

23 Q. Okay. And as time went on during the month of
24 November in 2001, was there ever a time during that month when
25 you were aware of a belief that you had been involved in the

1 murder of John Heitholt -- excuse me, Kent Heitholt?

2 A. No.

3 Q. Okay. And is it fair to say there was a great
4 deal of publicity about his death and the circumstances of his
5 death --

6 A. Yes.

7 Q. -- back then?

8 A. Yes.

9 Q. And you read about it in the paper?

10 A. Yes.

11 Q. And you heard about it on television?

12 A. Yes.

13 Q. Saw pictures?

14 A. I discussed it with your client also.

15 Q. Discussed it with Mr. Ferguson?

16 A. Yeah.

17 Q. While we're there, has Ryan Ferguson ever at
18 any time told you that he was involved in the murder of Kent
19 Heitholt?

20 A. Yes. We discussed the murder of Kent Heitholt.

21 Q. Has he ever told you that he did it, is the
22 question?

23 A. The night that we did it, we did. We discussed
24 it. He never said --

25 Q. All right.

1 A. The closest he got to that was he told me that
2 he wouldn't have strangled him if we wouldn't have been
3 arrested a few weeks prior to that. That was the closest
4 statement that he gave me to saying that he was involved with
5 the murder with Kent Heitholt. We spoke about things
6 regarding the murder, but he didn't directly -- I mean, tell
7 me, you know, I -- I killed Kent Heitholt. Why would he know
8 that because I knew that he'd killed Kent Heitholt. Do you --

9 Q. Are all --

10 A. I'm sorry, but --

11 Q. Are all the statements that you're now
12 attributing to Mr. Ferguson, Ryan Ferguson, statements that
13 you say were made the night it happened?

14 A. Yes.

15 Q. Okay. Let me ask a different question. Okay?

16 A. Except for -- see, on the 2nd, Ryan Ferguson
17 took me to school. All right?

18 Q. I'll get there.

19 MR. CRANE: Wait a minute. I think what he
20 was -- how about we do it this way?

21 THE WITNESS: Well --

22 MR. CRANE: Just a second. I think maybe you
23 were going after the murder -- after he'd gotten home on 11/1
24 what statements were made, yeah.

25 BY MR. ROGERS:

1 Q. And basically as a ground rule, I will try to
2 ask questions, you answer them. I'm not saying you haven't
3 been doing so.

4 A. Uh-huh.

5 Q. But wait until I finish the question before you
6 start to answer.

7 A. All right. I'm sorry.

8 Q. Okay. And my question is, after November 1st,
9 2001, has Ryan Ferguson ever talked with you about the murder
10 of Kent Heitholt?

11 A. Yes.

12 Q. And when was that?

13 A. That was on the 2nd of November. And that was
14 later on January 1st -- between December -- it was New Year's
15 of 2003/2004.

16 Q. Okay. We'll get to the New Year's of
17 2003/2004.

18 A. All right.

19 Q. When you say the 2nd of November, do you mean
20 the 2nd of November, 2001?

21 A. Yes.

22 Q. Okay. Now, tell me what you say happened with
23 this conversation on the 2nd of November, 2001.

24 A. Well, Ryan Ferguson picked me up for school
25 that morning. And I had the newspaper with me. And he picked

1 me up in his car and I said, You know, this is -- this is kind
2 of messed up. This happened -- you know, this is messed up
3 that this happened. He kind of got kind of nervous and he
4 said, So? So what? And I said, Well, it's just messed up
5 that this happened two blocks or a couple blocks away from
6 where we were at the club. And that was the end of the
7 conversation.

8 Q. Okay. So he never said that he was involved in
9 it?

10 A. No.

11 Q. And you never said that you were involved in
12 it?

13 A. No.

14 Q. And there was nothing in that exchange which
15 would indicate that either of you attached particular
16 significance to the murder of Mr. Heitholt. Is that a fair
17 statement?

18 A. No. I think his response would have been
19 significant. The way that he responded, the nervousness in
20 him, the -- the nature of the response in general.

21 Q. And his response was, So what?

22 A. It was ecstatic like, So what? So what? We're
23 not going to go there, we're not going to talk about this.

24 Q. He didn't use those --

25 A. No, he didn't use those words, but that was the

1 general meaning that I got from his, So what.

2 Q. That was the impression you drew from that?

3 A. Yes.

4 Q. But you did not at that time start to think,

5 Oh, maybe he thinks we did this, did you?

6 A. I -- I believe that on a certain level, yes, I

7 did.

8 Q. Consciously?

9 A. No.

10 Q. You were not aware of such a thought at the

11 time. Is that a fair statement?

12 A. No, no. Actually I believe that I was, but I

13 believe that -- that I -- I just -- I wouldn't -- I wouldn't

14 allow myself to comprehend that. I just -- it was -- it was

15 too traumatic of an ordeal to bring back up and to -- just to

16 deal with at that point.

17 Q. Okay. You've already told us that in the month

18 of November you did not have any -- you were not aware of any

19 beliefs that you might have been involved in the death of

20 Mr. Heitholt. Correct? Haven't you told us that?

21 A. I believe so, yeah.

22 Q. And this conversation that you're now relating

23 between you and Mr. Ferguson occurred on November 2nd --

24 A. Yeah.

25 Q. -- of 2001?

1 A. Yes.

2 Q. So as a result of that conversation, you did
3 not develop a belief -- an awareness of a belief that you
4 were --

5 A. No. It was underlying. I said I didn't have a
6 conscious belief.

7 Q. And now my question is --

8 A. It was underlying. That's the best way I can
9 put it. I'm not a psychologist. I'm not trying to be rude,
10 but I don't -- I don't really know the terms in which to
11 express the way that I felt about how I did.

12 Q. Well, we'll get there after a while. After
13 this conversation with Ryan Ferguson, were you, on
14 November 2nd, 2001, aware of a belief that you or Ryan
15 Ferguson might have been involved in the death of
16 Mr. Heitholt?

17 A. Subconsciously, yes.

18 Q. Now, let's talk about language. You speak
19 English, do you not?

20 A. Yes.

21 Q. Do you know what the word "aware" means?

22 A. I think there are different levels of
23 awareness.

24 Q. Okay. Let me, for the purpose of this
25 deposition, draw a distinction in the way I'm using the word

1 "aware." Okay? If you're not consciously aware of something,
2 you're not aware of it. So when I say "aware," I mean
3 consciously aware, but let me make that explicit.

4 At any time during the month of November 2001,
5 were you consciously aware of a belief that you or Ryan
6 Ferguson was involved in the death of Kent Heitholt?

7 A. No.

8 Q. Okay. And that's even after this conversation?

9 A. Yes.

10 Q. And it's even during the conversation?

11 A. Yes.

12 Q. Okay. Now, let's move to December of 2001. Do
13 you recall that month?

14 A. Nothing stands out. Nothing particular, no.

15 Q. Okay. During the month of December 2001, did
16 you become consciously aware of a belief that you or Ryan
17 Ferguson might have been involved in the death of Kent
18 Heitholt?

19 A. No.

20 Q. In the winter of 2001/2002, after Christmas
21 break, did you go back to school?

22 A. Yes.

23 Q. And you continued at Rock Bridge?

24 A. Yes.

25 Q. At any time during that -- they call it the

1 spring semester? Is that what they call it?

2 A. I'm not sure.

3 Q. At any time during the spring and early summer
4 of 2002, did you become aware of -- become consciously aware
5 of a belief that you and/or Ryan Ferguson might have been
6 involved in the death of Kent Heitholt?

7 A. No.

8 Q. And did you go to summer school the summer of
9 2002?

10 A. I don't believe so, no.

11 Q. Okay. And did you go back to Rock Bridge in
12 the fall?

13 A. Yes.

14 Q. Okay. In the months of August, September and
15 October of 2002, did you become consciously aware of a belief
16 that either you or Ryan Ferguson or the two of you might have
17 been involved in the death of Kent Heitholt?

18 A. No.

19 Q. Okay. Now, in the end of October and beginning
20 of November of 2002 was the first anniversary of
21 Mr. Heitholt's death; is that correct?

22 A. Yes.

23 Q. And there was a quite a to-do made about it on
24 the television and the newspaper, wasn't there?

25 A. Yes.

1 Q. And it had been a topic of conversation and it
2 again became a topic of conversation; is that correct?

3 A. That's correct.

4 Q. When that resurgence of media coverage occurred
5 around the end of October and beginning of November of 2002,
6 did you become consciously aware of a belief that you and Ryan
7 Ferguson might possibly have been involved in the death of
8 Kent Heitholt?

9 A. No.

10 Q. Okay. Did you have any other conversations in
11 any way involving the death of Kent Heitholt with Ryan
12 Ferguson --

13 A. Huh-uh.

14 Q. -- at any time during the year 2002?

15 A. No.

16 Q. Okay. Now, in 2002, was the beginning of your
17 senior year in high school; is that correct?

18 A. Yes.

19 Q. Did you graduate in 2003?

20 A. Yes, I did.

21 Q. And did Mr. Ferguson also graduate in 2003?

22 A. Technically, I'm not sure because I believe he
23 graduated a semester early. I'm -- I can't be certain about
24 that though.

25 Q. Okay. During your entire senior year of high

1 school, did you ever become consciously aware of a belief that
2 you and/or Ryan Ferguson might have been involved in the death
3 of Kent Heitholt?

4 A. No.

5 Q. Were you and Ryan Ferguson continuing to be
6 friends?

7 A. No.

8 Q. What happened?

9 A. We were friends, but it more went from friends
10 to acquaintances. We didn't really hang out anymore so --

11 Q. And was that kind of the way things happen as
12 you grow up? Friends grow apart, you get new friends?

13 A. To a certain extent, yes.

14 Q. Was there any altercation or break or any
15 incident you can say, well, after this, we were no longer
16 friends?

17 A. I -- we got into a shoving thing. It wasn't
18 anything large, but it was kind of unspoken words after the
19 incident occurred in 2001. But there was no spoken words, it
20 was just I pushed him and he pushed me back. He'd said a
21 couple things, you know, people stop hanging out in high
22 school and stuff like that. I said, you know, I mean, you
23 don't need to explain this to me. I kind of understand. It's
24 not that big of a deal. And we just kind of both started
25 hanging out with separate people, different people.

1 Q. And when you say "a shoving thing," when did
2 this happen?

3 A. I can't be sure on the date. It happened in a
4 garage of John Whitworth. I believe it was in 2002, but I
5 can't be certain on that.

6 Q. Okay. And so that was -- it could have been
7 later, could have been earlier? What?

8 A. It was after the incident, but I can't be sure
9 the date, no. Sorry.

10 Q. Was it warm outside?

11 A. I don't know. I don't want to speculate.

12 Q. You were in a garage?

13 A. Yeah.

14 Q. At Mr. Whitworth's house?

15 A. Yes. There wasn't snow on the ground. It
16 wasn't cold. It wasn't so cold I was uncomfortable outside.

17 Q. Was the garage door open?

18 A. Yes. It was a condo actually or an apartment
19 of John Whitworth's mother.

20 Q. But it still had a garage?

21 A. Yes.

22 Q. With a regular overhead garage door?

23 A. Yes.

24 Q. And that door was open and you were there.
25 Were you wearing a coat?

1 A. I can't remember.

2 Q. And you shoved him?

3 A. Yes.

4 Q. And why did you shove him?

5 A. I'm not sure. I think it was just --

6 Q. Was it horseplay or was it a serious kind of

7 shove?

8 A. I think it included a little bit of both.

9 Q. Had you been drinking?

10 A. No.

11 Q. Okay. So it wasn't one of these deals where

12 you'd been drinking and then you'd start wrestling around and

13 things like that?

14 A. No.

15 Q. Okay. But it was a shove and it was -- had he

16 said anything to provoke you?

17 A. No.

18 Q. Okay. And had he done anything of which you

19 were consciously aware at the time which provoked you?

20 A. No.

21 Q. Okay. And was it after you shoved him and he

22 shoved you back that he said some things?

23 A. Yeah.

24 Q. What did he say?

25 A. Just something to the extent of, you know,

1 people stop hanging out in high school. And that was really
2 it. I can't remember the exact words, but it was something to
3 that extent.

4 Q. So it was basically it's obvious we're not good
5 friends anymore --

6 A. Yeah.

7 Q. -- and we're not going to be hanging out?

8 A. Yeah.

9 Q. And that was okay with you too?

10 A. Yeah. Yeah.

11 Q. And, in fact, had this already started to
12 happen, that you were not hanging out as much?

13 A. Yeah, yeah.

14 Q. And, in fact, by the time you got back -- got
15 to high school when you got to high school in the tenth grade,
16 you were no longer hanging out with Ryan Ferguson like you
17 were in the eighth grade, were you?

18 A. No.

19 Q. Okay. And there was nothing at the time of
20 this shoving incident in the garage of John Whitworth's
21 mother's condo which you would in any way consciously
22 associate with the death of Mr. Heitholt?

23 A. Not consciously, no.

24 Q. Okay. Now, after you graduated from high --
25 well, let me ask you this. During the time that the death of

1 Mr. Heitholt was being investigated in the fall of 2001 and
2 the time that there was a resurgence of media coverage during
3 the fall of 2002, did you see any composite drawings of the
4 suspects that were being circulated either in the paper --

5 A. Not to -- not to my memory. I'm sure I did,
6 but I can't -- I can't -- I can't clearly remember that.

7 Q. Okay. Has --

8 A. I remember reading about it, but I can't -- I
9 can't clearly remember.

10 Q. Okay.

11 A. I mean, I remember they had -- they had
12 pictures, but I don't -- I can't -- I can't remember if I saw
13 a sketch or not at that time.

14 Q. Did anybody ever tell you during 2001 or 2002
15 or 2003 that you resembled somebody in any of those drawings?

16 A. No.

17 Q. Okay. Did you ever see a drawing that you
18 thought looked like you?

19 A. No. I saw the original drawing. I believe
20 there were two drawings and I remember thinking the original
21 drawing looked like Ryan, but --

22 Q. That was my next question, but I'm still on the
23 question --

24 A. No.

25 Q. -- did you ever see any drawing that you felt

1 looked like you?

2 A. That second one resembled me more than it did
3 Ryan, I believe, but I remember distinctly remembering that
4 the first one resembled Ryan. And I -- I remember thinking
5 that the second one didn't -- I mean, it didn't -- it
6 resembled me more than it did him. It really didn't resemble
7 either of us that much though.

8 Q. And the drawing that you saw that you thought
9 resembled Ryan, was that of an individual with dark hair or an
10 individual with blonde hair?

11 A. I don't know.

12 Q. You don't remember what that drawing looked
13 like?

14 A. It was black and white. I'm not sure.

15 Q. Okay. Was the hair colored in dark or was it
16 left open and light?

17 A. I can't be sure of that.

18 Q. Okay.

19 A. I believe it was light, but I don't -- I don't
20 know for certain.

21 Q. And the drawing that you felt looked more like
22 you, did that individual have dark hair or light hair?

23 A. I believe that individual had light hair.

24 Q. Okay. And do you remember anything about the
25 hairstyle in that drawing?

1 A. I believe it was longer and it was supposed to
2 be spiked up, but the -- the -- the artist didn't really
3 portray that very well.

4 Q. Okay. Now, when you're saying you saw these
5 drawings, was this after your arrest?

6 A. No. I saw them after my arrest, and I also saw
7 them before my arrest.

8 Q. Okay. And before your arrest is when you
9 thought to yourself about the first one, that looks sort of
10 like Ryan?

11 A. Yes.

12 Q. And before your arrest is when you thought of
13 the second one, that doesn't look like Ryan, that looks more
14 like me?

15 A. Yes.

16 Q. And in your belief, when you were looking at
17 these drawings, were they supposed to be drawings of the same
18 person or were they drawings of two different people?

19 A. I can't remember what I was thinking at that
20 point --

21 Q. Okay.

22 A. -- regarding that.

23 Q. By the way, if you need a break, just let us
24 know and we can do that.

25 A. Okay.

1 Q. We don't mean to --

2 A. No, that's fine.

3 Q. -- make you uncomfortable.

4 A. That's all right.

5 Q. Let us know.

6 A. I think that's inevitable, you know, but --

7 Q. Sure it is. Because we're going to be here a

8 while.

9 In your eighth grade year in school, did you

10 have somebody who you would have considered your best friend?

11 A. Yes. Probably Eric Allison.

12 Q. Eric Adelstein?

13 A. Allison.

14 Q. Allison?

15 A. Yeah.

16 Q. And in your ninth grade year, which was the

17 year that you were having a steady girlfriend, I think you

18 told us --

19 A. Yeah.

20 Q. -- did you have anybody else who you would

21 consider your best friend?

22 A. I don't know. Maybe David Igleheart. I don't

23 know. I mean, after you get to a certain age, I kind of think

24 that you don't -- maybe it's just for certain people, you

25 know, that have got best friends or stuff like that or maybe

1 it's just, you know, different characters and some people hang
2 out with all different types of people and some people don't
3 really cling to best friends. I mean, I think I kind of grew
4 out of the best friend stage.

5 Q. Okay. And so --

6 A. Maybe it's just because I'm more of a solitary
7 person, I'm not sure.

8 Q. Would it be fair to say that then since you
9 started at Rock Bridge, there's not another person you viewed
10 at any time you would have considered to be your best friend?

11 A. I don't believe so, no.

12 Q. Okay. My question may have been bad. You
13 don't believe that you had a person who you would consider
14 your best friend or you don't believe it's fair to say that?

15 A. No. I didn't really -- I wouldn't really say I
16 had a best friend and stuff like that. I wouldn't really put
17 it like that.

18 Q. All right. And in 2001, was there a clique or
19 a group of people that you considered yourself part of?

20 A. I guess there was a group of guys that, you
21 know, we'd smoke pot together and we'd drink together and, you
22 know, just hang out. Yeah, that would probably constitute
23 David Igleheart, Scott Turner, John Cole and Ryan was like on
24 the outside of that a little bit. He didn't really hang out
25 with us as much, but --

1 Q. All right. Did that group sort of --

2 A. Ben Blunt also probably. But I believe he
3 might have been in Kansas City at the time. He was going back
4 and forth, so --

5 Q. Would that group sort of -- I mean, people
6 might come and go and get more involved or less involved, but
7 was that basically a group that stayed together through high
8 school?

9 A. No. Not really, no.

10 Q. Would you still socialize with people in that
11 group?

12 A. Occasionally, yes.

13 Q. And would you still socialize with Ryan
14 occasionally?

15 A. Occasionally.

16 Q. Okay.

17 A. Not very often.

18 Q. Now, did you know a guy in high school by the
19 name of Nick Gilpin?

20 A. Yes.

21 Q. How long have you known Nick?

22 A. I believe since my sophomore year.

23 Q. When he came to Rock Bridge?

24 A. I believe that's when he came. I'm not
25 entirely sure of that.

1 Q. That's when you got there?

2 A. Yeah. But I -- I believe he was at Hickman
3 actually and then he came to Rock Bridge later.

4 Q. Okay.

5 A. It might have been junior year. I'm not -- I'm
6 not entirely sure. I'd seen him around at parties and stuff
7 like that before he came to Rock Bridge, but I don't believe
8 he started Rock Bridge -- if he started his sophomore year, he
9 started it late.

10 Q. Okay. And did he become part of the group that
11 you hung out with?

12 A. No. There's just -- I mean, there's -- you
13 know, I'd hang out with different people, different groups of
14 people.

15 Q. Right. But not your main clique, so to speak?

16 A. I mean, I don't -- I didn't really have a main
17 clique, you know. I guess to a certain extent I did -- you
18 know, to a certain extent I did, but I mean, I don't know. I
19 mean, do you know how it is in high school? I mean, people,
20 they stop hanging out as much and things of that nature.
21 That's the best way I can really describe it.

22 But, I mean, I'd hang out with different
23 people. I didn't really -- you know, some people they would
24 say, you know, I'm not going to hang out with that person and
25 some people were kind of stuck up and things of that nature.

1 And I didn't really -- you know, if someone was nice to me and
2 they were fun to be with and hang out with, I didn't really
3 care, you know -- there's kind of a social standing or
4 whatever in high school and I didn't really -- I tried not to
5 subject myself to that.

6 Q. And you would spend your time with people who
7 were doing the same kind of things you wanted to do?

8 A. Yes.

9 Q. And people that acted like they liked being
10 around you and you liked being around?

11 A. People that were fun to hang out with. People
12 that did the same things, people that liked to drink and smoke
13 pot and things like that.

14 Q. Was there anybody that you felt particularly
15 close to that you wanted to share things with, talk about your
16 thoughts, feelings, hopes, dreams, aspirations, those kind of
17 things?

18 A. No. Not particularly. I mean, to a certain
19 extent, you know, you just talk about, you know -- I can talk
20 in class about what I want to do when I grow up and things
21 like that. But, I mean, no, there wasn't really anyone that
22 I'd confide in or anything like that.

23 Q. Did you know a guy by the name of Jon Alder or
24 Jonathan Alder?

25 A. Yeah.

1 Q. When did you get to know him?

2 A. I'd say the end of my sophomore year, maybe the
3 middle of my sophomore year.

4 Q. And was he also at Rock Bridge?

5 A. Yes.

6 Q. Was he somebody that you would hang out with?

7 A. Yes.

8 Q. Was he somebody you'd confide in?

9 A. Confide is a broad term. It would -- I mean,
10 to a certain extent, yeah, I believe so, but it would just --
11 it would depend on the circumstances.

12 Q. Okay. Is he somebody who you would confide
13 things in that you wouldn't confide in everybody else?

14 A. Well, you know, there's some things that you'll
15 say behind closed doors and some things that, you know, you'll
16 say to a group of friends that you won't say in a room of
17 strangers.

18 Q. Right.

19 A. To that extent, yes. But nothing -- nothing --
20 nothing special.

21 Q. In other words, you might confide in him as a
22 friend, but you wouldn't confide your innermost secrets. Is
23 that a fair statement?

24 A. Yeah. There's some things we don't share with
25 anyone, so -- I mean, even our family.

1 Q. Now, you mentioned, I believe, the name of Jon
2 Cole?

3 A. Yeah. Yes.

4 Q. And was he also at Rock Bridge?

5 A. No. He was at Hickman.

6 Q. How did you know him?

7 A. I believe I met him through Scott Turner. Jon
8 Cole had gone to Oakland and --

9 Q. Sorry. I'm not from Columbia, but am I correct
10 that Oakland is another junior high school?

11 A. It's a junior high, yeah. Yeah.

12 Q. And it's kind of north central part of town as
13 opposed to east or west?

14 A. Yeah. I believe it's north, yeah.

15 Q. Okay. Anyway, you were saying that you met him
16 through Scott Turner and that Mr. Cole had gone to Oakland?

17 A. Yeah. He was a year older than me, so he was
18 actually in high school when I was a freshman -- or he was a
19 sophomore when I was a freshman. And I want to say I was
20 hanging out with him my -- after my freshman year, around the
21 end of my freshman year. Scott Turner knew him and I knew
22 Scott from West and I started hanging out with Scott a lot
23 then.

24 And Ben Blunt I also knew from West and I think
25 he went to Hickman with -- with Jon. And so through those

1 two, I believe that's when I started hanging out with Jon Cole
2 more often.

3 Q. Did Scott Turner then go to Hickman or did he
4 go to Rock Bridge?

5 A. Scott went to -- I believe he started out in
6 Rock Bridge. He might have started in Hickman. I can't be
7 certain of that though.

8 Q. Was he a year older?

9 A. No. Scott Turner was in my grade.

10 Q. Okay. So how did he know Cole, if you know?

11 A. He went to Oakland with Cole. He transferred
12 from West his eighth grade year.

13 Q. To Oakland?

14 A. To Oakland. And then Jon would have been a
15 freshman. And he knew some of the girls, Sarah St. Romeijn,
16 Torrie Nichols, Heather Ramsey and a few other people who know
17 Jon Cole. And my other friend, David, started dating this
18 girl named Heather.

19 And then, you know, me and Scott and Jon Cole
20 and -- and Heather and this girl named Tracy who went to
21 Oakland starting dating Scott and we all -- you know, we went
22 to the Sigma Gamma dance and Jon Cole rented the room with us
23 even though he didn't go to the dance. And he just -- you
24 know, he liked to do the same things we do. I don't think
25 he -- we kind of introduced him to pot, but he'd been drinking

1 for a while, but anyway, sorry.

2 Q. Okay. And when you say "Heather," was there
3 just Heather Ramsey? You said Heather Ramsey at one point and
4 then you said a girl named Heather. Are we talking about the
5 same girl?

6 A. No. Heather Ramsey and a girl named Adro -- I
7 can't remember her name -- her last name, but I kind of took
8 her to the dance as a favor because Scott was going out with
9 this girl named Tracy Fleener and Adro was Tracy's friend and
10 Adro didn't have a date and he talked me into it. Anyway,
11 sorry.

12 Q. You also mentioned -- I believe you first of
13 all said Heather Ramsey?

14 A. It was just one Heather.

15 Q. And one Heather?

16 A. Yes.

17 Q. And that's Heather Ramsey?

18 A. Yes.

19 Q. And you said David. And is that David
20 Igleheart?

21 A. Yes. And those two began -- kind of became,
22 you know, an item or whatever.

23 Q. Okay.

24 A. And we just started to -- to mingle and to --
25 you know, the two -- two groups of friends kind of became one.

1 Q. Was Ryan Ferguson in that blended group?

2 A. Yeah. I'd say so, yes.

3 Q. Was he in it or on the fringes or what?

4 A. Yeah. Probably on the fringes more or less.

5 Q. Okay. Do you recall him, for example, being

6 involved when you went to the dance and rented the room?

7 A. I can't recall if he was there or not.

8 Q. Okay. Did you know a guy named Dallas Mallory?

9 A. Yes.

10 Q. How did you know him?

11 A. I knew him through a friend of mine named Hayes

12 Baroli.

13 Q. Named?

14 A. Hayes Baroli.

15 Q. Hayes Baroli?

16 A. Yes. And Hayes went to West for a short amount

17 of time. And I believe Dallas supplied Hayes with pot and

18 they kind of smoked pot together and stuff like that. And the

19 first time I met Dallas, actually we kind of just drove

20 around, he had his old Impala, I want -- '60-something and we

21 smoked pot and just kind of hung out and stuff like that.

22 Q. Was Dallas roughly your same age?

23 A. No. Dallas was -- I believe he was a senior

24 when I was a freshman, but I am not en-- maybe he was a senior

25 when I was a sophomore. I can't be sure about that though.

1 I'm not sure of his age.

2 Q. Do you know where he went to high school?

3 A. I believe he went to Rock Bridge.

4 Q. Do you recall him being there while you were
5 there as a sophomore?

6 A. Dallas didn't spend a lot of time at school.
7 That was my impression. And I don't -- I don't -- I don't
8 recall seeing him.

9 Q. Okay. And he might have graduated or dropped
10 out or whatever?

11 A. Yeah.

12 Q. Okay. Now, you have entered into what's called
13 a plea bargain with the State; is that correct?

14 A. Yes.

15 Q. And what is your understanding of the terms of
16 your agreement with the State?

17 A. I have to be complete and truthful with you, to
18 be complete and truthful with him (indicating), I have to
19 testify truthfully, I have to participate in any conversations
20 that he asks of me (indicating).

21 Q. And when you say "he" you're pointing to
22 Mr. Crane?

23 A. Yes. Yes. Sorry.

24 Q. That's all right. I'm just clarifying that for
25 the record.

1 A. And I have to undergo any examinations he asks
2 of me and any court -- you know, anything the judge orders and
3 just things of that nature. I'm not sure of the specifics,
4 but --

5 Q. And you say testify truthfully and give
6 truthful information during this deposition, for example --

7 A. Yes.

8 Q. -- and to other people that ask you questions.
9 Who's the judge of whether your information's truthful or not?

10 A. I don't know.

11 Q. Okay. Do you have an understanding as to what
12 they expect the truth to be if you're going to fulfill your
13 part of the bargain?

14 A. Yes.

15 Q. What's your understanding of what they expect
16 the truth to be?

17 A. My understanding of the truth.

18 Q. I don't think we're communicating, but I'll get
19 there a different way.

20 A. Well --

21 Q. Let me go back to something --

22 A. -- wouldn't that -- that would be what it would
23 be. Right? It would be my understanding of the truth and
24 what I know to be true. That's the -- really the best way
25 that I can put it.

1 Q. But obviously this is an agreement between the
2 two sides, you and your lawyer on one side --

3 A. Uh-huh.

4 Q. -- Mr. Crane representing the State of Missouri
5 and Boone County on the other side. Correct?

6 A. Yeah. Yes.

7 Q. And so you will agree that the only way that he
8 knows what you understand the truth to be is what you tell
9 him?

10 A. Yes. And what he can -- what he can prove.

11 Q. Right. But what I'm saying is he cannot make
12 your understanding the test of whether or not it's truthful
13 because he can't read your understanding?

14 A. No. He has to trust me, yes, that's correct.

15 Q. So let me ask another question. If today --
16 this is what's called a hypothetical question. It starts with
17 the word "if."

18 A. Uh-huh.

19 Q. If today you were to decide that maybe Ryan
20 Ferguson was not involved and if you were to say that and if
21 you believed it when you said it and told Mr. Crane that that
22 was what the truth really is, do you think you would still
23 have the benefit of your agreement with the State?

24 A. No. Because I would be a liar.

25 Q. No, no. I said if --

1 A. No, I wouldn't.

2 Q. So you're --

3 A. If I told them that, I don't know. That would
4 be up to him, I suppose. But in terms of my agreement, if he
5 thought that I was lying, I guess -- I guess I understand what
6 you're getting at. He's the judge of whether I'm telling the
7 truth or not. If he believes that I've been untruthful or I
8 haven't come forward with all the information I know, then he
9 takes the plea agreement with away. So this man, Kevin Crane,
10 is the judge of that.

11 Q. And your belief is that even if at the time you
12 said it, you were truthful in relating what is in your mind
13 and memory, unless what is in your mind and memory is
14 consistent with the guilt of Ryan Ferguson, probably he's not
15 going to believe it. Is that a fair statement?

16 A. No.

17 MR. CRANE: Wait a minute. Wait a minute.
18 What? Hold it. Let me make -- if your question is asking him
19 hypothetically were the truth something other than what he's
20 stated before in the proffer, etc., and he said that, what
21 would happen, then you're actually asking for a hypothetical
22 and speculation -- speculation based on a hypothetical.

23 MR. ROGERS: Well, actually what I'm asking for
24 is what his expectation would be.

25 MR. CRANE: Well, and he's testified already

1 that it -- what's expected of him is to tell the truth --

2 MR. ROGERS: Okay. I'm asking --

3 MR. CRANE: -- whether that be --

4 MR. ROGERS: -- his expectation under that
5 hypothetical. Let me rephrase that and make that clear. Is
6 that --

7 MR. CRANE: Okay.

8 BY MR. ROGERS:

9 Q. Okay. And the hypothetical question is, if you
10 truly sincerely believed that you were not certain of Ryan
11 Ferguson's involvement in the death of Kent Heitholt and if
12 you relate that true and sincere belief, what do you expect
13 would happen to your plea agreement?

14 A. I can't be certain. I would expect that it
15 would be thrown out, but that's speculation on my part. I
16 don't know. I'm not sure. Maybe something else would be
17 arranged. I don't know. And I don't really feel comfortable
18 speculating, so I mean --

19 Q. Now, in return for you entering into this
20 agreement, what are you getting?

21 A. 25 years in the Department of Corrections.

22 Q. And how's that going to be broken down?

23 A. 15 years for second-degree murder to be run
24 concurrent with 15 years for first-degree robbery and then a
25 consecutive sentence of armed criminal action for 10 years.

1 Q. Okay. And what is your understanding of the
2 time that, at a minimum, you would be required to serve?

3 A. The minimum that I would be required to serve
4 would be 12 years and 9 months.

5 Q. And how does that break down?

6 A. Basically it -- to my understanding, I don't
7 know if -- you know, I might not be right about this, but the
8 15 years for the second-degree murder and the 15 years for the
9 first-degree robbery are run concurrent.

10 The 10 years for the ACA, the parole board can
11 decide whether or not they want to run that time in with the
12 rest of my time even though it is a consecutive charge. And
13 so that would mean that I've got 12 years, 9 months. Or the
14 parole board can decide to make me do 3 years of that 10-year
15 sentence since it was my first offense and so that would be
16 something like 15 years, 9 months. It will depend on, you
17 know, my conduct and how the parole board felt when it came to
18 that time.

19 Q. Okay. And that's your expectation of what
20 you're getting in return for entering into this agreement
21 and --

22 A. Well, can you be more specific? I mean, my
23 expectation -- I don't -- I don't know what to expect because,
24 I mean --

25 Q. Well, you've told us what you expect in terms

1 of a sentence.

2 A. Well, I mean, I don't know what to expect. I
3 know I've got 25 years hanging over my head. I know I've got
4 to do at least 12 years and 9 months of it, which is now about
5 11 years and 3 months because I've been in county jail. But I
6 don't know what's going to happen in the next 10 or 11 years.
7 I don't know what laws are going to change.

8 And I don't know -- I mean, prison's not a fun
9 place to be and there isn't exactly self-defense in prison.
10 And, you know, if I've got to defend myself or, you know, who
11 knows what else, you know, I could end up having to do
12 25 years. I mean, I don't know what to expect. I hope that I
13 don't have to, but as far as expectations, I don't know what
14 to expect.

15 Q. Okay. But you have been told by the State what
16 sentence to expect. Correct?

17 MR. CRANE: The 25 years?

18 THE WITNESS: Yeah.

19 BY MR. ROGERS:

20 Q. The 15 and 15 concurrent and 10 consecutive?

21 A. Yes, yes.

22 Q. And you've been told by your lawyer the legal
23 minimums that have to be served under those sentences and what
24 would have to make -- what would have to happen to make the
25 consecutive sentence treated as if it were concurrent?

1 A. No. He hasn't explained what would have to
2 happen. Well, he would explain the parole board would have
3 to -- you know, they would have to decide that, yes, yes.

4 Q. And he's also explained to you that that's not
5 a guarantee?

6 A. Yes.

7 Q. Okay. Now, aside from that sentence, has any
8 other agreement -- is there any other part to the agreement
9 between you and the State about anything?

10 A. No.

11 Q. So there's no agreement about where you'll
12 serve your time?

13 A. No.

14 Q. No agreement about what will happen to
15 information you provide?

16 A. No.

17 Q. And no agreement about what will happen to your
18 mental health records?

19 A. No.

20 Q. No agreement that they will not be disclosed?

21 A. I don't know that I have to comment on that.
22 And I don't know that I know the answer either.

23 MR. CRANE: Well, he's asking you whether or
24 not there's any agreement --

25 THE WITNESS: No, there is no agreement

1 regarding my mental --

2 MR. CRANE: -- with respect to your testimony
3 about your -- what did you say, mental health records?

4 MR. ROGERS: Right.

5 THE WITNESS: No. I don't know -- there's no
6 agreement about that, no.

7 BY MR. ROGERS:

8 Q. And I'm not clear as to your answer.

9 A. No, no. There is no agreement regarding
10 disclosure of my mental health records after -- after this is
11 through.

12 Q. Well, how about during the pendency of this
13 case? Is there any agreement about disclosure of your mental
14 health records?

15 A. That I'm not going to disclose them unless I'm
16 ordered by a judge. That's the only agreement that I know of.
17 I mean, that's -- that's -- that's what I've stated and that's
18 what's been agreed upon.

19 Q. Okay. So that is an agreement?

20 A. Yeah.

21 Q. Okay.

22 A. Yeah.

23 Q. And that's important to you?

24 A. Yes. I think so. Because I don't think it's
25 any of your or your client's business.

1 Q. So you value your privacy with regard to your
2 mental health records?

3 A. Yes, I do.

4 Q. And one of the reasons that you are --

5 MR. CRANE: Well, let me clarify something.
6 Can I voir dire the witness about the mental health agreement?

7 MR. ROGERS: I really don't see any need to,
8 but go ahead. It seems to me what you're trying to do is to
9 tell him how to answer these questions.

10 MR. CRANE: No, no. Not at all.

11 THE WITNESS: I don't think he's done that
12 whatsoever.

13 MR. ROGERS: Good. Then have at it.

14 MR. CRANE: Let me just say the first -- I
15 think what Mr. Rogers is talking about is there any agreement
16 between the State, the prosecution, and you in terms of your
17 testimony -- truthful and complete testimony in the agreement
18 that's written out about mental health records and their
19 disclosure?

20 THE WITNESS: No.

21 MR. CRANE: Okay. And, you know, this may be
22 discussed later in questioning, but --

23 THE WITNESS: Like I said --

24 MR. CRANE: Wait. Let me just ask the
25 question.

1 Your attorney and you may have discussed how,
2 if disclosed, whatever records they are would be delivered to
3 the defense. Correct?

4 THE WITNESS: Well, and his prior counsel came
5 to me with a request to disclose my records and I denied that.

6 MR. CRANE: But wait a minute --

7 THE WITNESS: But, yeah -- yes.

8 MR. CRANE: Hang on a second. This is --

9 THE WITNESS: Sorry.

10 MR. CRANE: Nothing about the mental health
11 records that may be out there and their disclosure have
12 anything to do with your agreement to testify in this case.
13 That's a matter between you and your attorney.

14 THE WITNESS: Yes, that's correct.

15 MR. CRANE: Okay. That's --

16 THE WITNESS: I'm subject to examinations if
17 you request them. That's -- I mean, I don't know what those
18 entail, so I mean --

19 BY MR. ROGERS:

20 Q. Let me ask you some more questions.

21 A. Okay.

22 Q. First of all, there is a written plea agreement
23 that you signed. Right?

24 A. Yes.

25 Q. Okay. And there's nothing in that about mental

1 health records?

2 A. No.

3 Q. But my questions have not been limited to that,
4 have they?

5 A. No.

6 Q. And, in fact, what I'm asking is your
7 understanding of any other things that are not in the written
8 agreement that are also part of your understanding of what's
9 going to happen as a result of your cooperation with the State
10 of Missouri in this case. Correct?

11 A. That's correct.

12 Q. And that's what we were talking about in terms
13 of you're not going to have to give up your mental health
14 records in the absence of a court order?

15 A. Yeah, that's correct.

16 Q. All right. And you do have records that you
17 are concerned about your privacy with regard to. Correct?

18 A. Yes.

19 Q. And those are including records of your
20 treatment by Dr. Bauer?

21 A. I suppose, yes.

22 Q. Okay. Do you not care about the treatment by
23 Dr. Bauer?

24 A. I thought you were going somewhere else with
25 this, but --

1 Q. I probably --

2 A. No, I don't think I'm going to release those
3 either, you know, without a court order.

4 Q. And records concerning your treatment or
5 evaluation by Dr. Dean?

6 A. That's correct.

7 Q. Is that where you thought I was going?

8 A. That's where I figured you were going.

9 Q. All right.

10 A. But --

11 Q. And records --

12 A. So hold on. So you were asking, you know, I'm
13 not going to release those without a court order. That's what
14 you're asking?

15 Q. I'm asking, are these records that you want to
16 keep private?

17 A. Yes.

18 Q. That you have an interest in keeping private?

19 A. Yes, yes.

20 Q. And are these records that your interest in
21 keeping private is a partial motivating factor for your
22 cooperation with the State?

23 A. No.

24 Q. Okay.

25 A. Not whatsoever.

1 Q. So --

2 A. I want to keep these -- that has nothing --

3 MR. CRANE: Let's wait for him to ask a
4 question. How about if we do it that way.

5 BY MR. ROGERS:

6 Q. Let's talk about other types of records. You
7 have talked with various staff of the Boone County Jail about
8 mental health issues?

9 A. Yes.

10 Q. And are those records that you're interested in
11 keeping private as well?

12 A. Yes.

13 Q. And you have talked with members of the staff
14 of the Callaway County Jail about mental health issues?

15 A. No.

16 Q. No?

17 A. No.

18 Q. Haven't done that? How long have you been at
19 Callaway County?

20 A. About three months.

21 Q. Okay. And during the time you haven't talked
22 to anybody there about mental health types of situations?

23 A. I've talked to staff at the Boone County Jail
24 at Callaway County, but I haven't talked to anybody at
25 Callaway County regarding my mental health.

1 Q. And have you talked to --

2 A. Not formally anyway.

3 Q. -- inmates at the Boone County Jail about your
4 concern for the privacy of your mental health records?

5 A. Possibly it may have come up. Not that I
6 remember. I mean, it may have come up, but nothing that I
7 can -- I mean --

8 Q. Have you talked with other inmates of the Boone
9 County Jail about your belief that as a result of your
10 cooperation with the State, you could keep those records
11 private?

12 A. Not that I remember.

13 Q. Have you told another inmate at the Boone
14 County Jail that you have been assured by Mr. Crane that your
15 records could be kept private?

16 A. I don't remember.

17 Q. Okay. You don't know whether or not you
18 have -- you told somebody that?

19 A. It's -- I don't think so. I believe I may have
20 said that my records will be kept private unless there's a
21 court order, but I don't believe saying anything regarding
22 Kevin Crane. I might have, but I mean, I can't -- I can't
23 remember specifically.

24 Q. Okay. Now, during the time between
25 November 1st, 2001 and March 10th, 2004, did you discuss with

1 any mental health professional any thoughts, feelings,
2 beliefs, dreams that you may have had concerning the death of
3 Kent Heitholt?

4 A. No. No.

5 Q. Since your arrest and incarceration on
6 March 10th, 2004, have you spoken with any mental health
7 professional concerning any thoughts, beliefs, feelings,
8 dreams that you might have had concerning the death of Kent
9 Heitholt?

10 A. Yes.

11 Q. And since your entering into a plea agreement
12 with the State of Missouri, have you talked with any mental
13 health professional concerning any thoughts, beliefs, feelings
14 that you might have had about the death of Kent Heitholt?

15 A. Yes, I believe so.

16 Q. Okay.

17 A. I can't remember specifics of the
18 conversations, but I believe so, yeah.

19 Q. And were any of these mental health
20 professionals employed by Boone County, Callaway County, the
21 State of Missouri, the City of Columbia or any other
22 governmental agency?

23 A. I'm not really sure who employs her. I believe
24 it's Boone County. Her name's Pascha. I'm not sure of her
25 last name. She's a psych nurse and she's really the only

1 person I've talked to other than they had one, you know,
2 student who I talked to, one -- like a resident or whatever.

3 Q. Okay.

4 A. I don't know who employed her. I'm sure it was
5 the State, but I don't know who specifically.

6 Q. And were you told at the time that you had
7 these conversations that they were part of your lawyer's
8 investigation of the case?

9 A. My lawyer's investigation of the case?

10 Q. In other words, your lawyer didn't tell you to
11 go talk to these people as part of his preparation; is that
12 correct?

13 A. I talked --

14 MR. CRANE: Which people are we talking about?

15 THE WITNESS: Yeah. You're talking about the
16 State?

17 BY MR. ROGERS:

18 Q. The nurse and the student.

19 A. You're not talking about Dr. Dean then?

20 Q. I'm not talking Dr. Dean yet.

21 A. No. I -- no --

22 Q. Okay.

23 A. No.

24 Q. And you initiated the conversations? They
25 weren't questioning you. You're the one who said, I want to

1 talk to you. Right?

2 A. No. It was required because -- do I have to
3 answer questions about my medication?

4 MR. CRANE: Well, I mean, we've got a situation
5 where I think he and his attorney --

6 THE WITNESS: Yeah, this is something that --

7 MR. CRANE: -- have talked about --

8 THE WITNESS: -- I don't even know if I can
9 discuss.

10 MR. CRANE: -- his mental health records. You
11 know, the situation, just historically, was back when Scott
12 was still representing Ryan, that he requested me to get the
13 jail records. And I gave a release to Chuck to sign. And
14 based on my conversations with Mr. Kempton, he'd indicated at
15 that time that although it didn't have anything to do with the
16 homicide, there were other issues that had arisen -- and I
17 don't know whether this was jail personnel or some other
18 doctor -- that he didn't want disclosed and he'd prefer it be
19 either an in-camera viewing by the court or whatever.

20 Now, today I gather that what we're talking
21 about is privilege insofar as non-jail people are concerned.
22 If you're talking about Kempton's examination. You said you'd
23 get into that later.

24 MR. ROGERS: Right.

25 MR. CRANE: Now it sounds like you're talking

1 about treatment he may -- or conversations he may or may not
2 have had with jail people.

3 MR. ROGERS: Right.

4 MR. CRANE: And, you know, I guess he can
5 assert a privilege with respect to that if that's what his
6 advice of counsel is or we can take it up later.

7 MR. ROGERS: Well, I haven't asked him for the
8 content of the conversations, but what I'm doing --

9 MR. CRANE: Well, I'm assuming that's where
10 you're going.

11 THE WITNESS: Well --

12 MR. CRANE: Wait a minute, Chuck.

13 MR. ROGERS: But I'm laying the foundation.

14 MR. CRANE: So, I mean, while -- I don't know
15 what his situation is with his attorney. I mean, I imagine
16 ultimately you'd be able to inquire about that.

17 BY MR. ROGERS:

18 Q. But basically what he's telling me, as I
19 understand it, is that you were required to talk to these
20 people as a precondition for receiving some sort of treatment,
21 which I don't think we finished with?

22 A. Yes. That's correct.

23 Q. But I'm gathering by your question to Mr. Crane
24 that there was some medication you were getting?

25 A. Yeah.

1 MR. ROGERS: And I do intend to inquire about
2 that. I think that's certainly relevant.

3 MR. CRANE: Well, you know --

4 MR. ROGERS: And I don't think it's privileged
5 and I don't think the other stuff is privileged, by the way.

6 MR. CRANE: Well, I understand.

7 THE WITNESS: I'm going to have to call my
8 lawyer probably, I'm thinking.

9 MR. ROGERS: Well, I mean --

10 MR. CRANE: You know, all I'm saying is
11 ultimately, you know, if Mark Kempton files some type of a
12 motion with respect to this, you know, we'll deal with it.
13 And it may even engender another deposition, you know

14 MR. ROGERS: I intend to at least ask the
15 questions. And if he asserts privilege --

16 MR. CRANE: Right.

17 MR. ROGERS: -- and you instruct him not to
18 answer based on that assertion, then I guess we have a choice
19 of litigating it by way of motion or by way of certified
20 question or whatever. And I have not gotten to, with regard
21 to what he told them, anything that --

22 MR. CRANE: Yeah, I hear you.

23 MR. ROGERS: -- asks for the content of those
24 statements, but it seems obvious to me that they're straight,
25 flat, Brady/Giglio statements of par-- or of a witness you

1 intend to call made to agents of the State. And it can't get
2 more discoverable than that.

3 BY MR. ROGERS:

4 Q. Now, having said that, let me go on. And if
5 you want to consult with your lawyer, that's fine. In fact --

6 MR. CRANE: You see the position I'm in?

7 MR. ROGERS: -- I could use a break anyway.

8 MR. CRANE: I don't know that I can sit there
9 and in this forum force the witness not to talk to his
10 attorney --

11 MR. ROGERS: I don't --

12 MR. CRANE: -- or to not answer the questions.

13 MR. ROGERS: I am somewhat surprised that
14 Mr. Kempton's not here today, but I'm -- like I said, I could
15 use a break anyway and this would be a good time for you to
16 get on the phone with Mr. Kempton.

17 MR. CRANE: Or you could talk to Kempton. We
18 could see if we could resolve the matter.

19 MR. ROGERS: My guess is we probably can't and
20 it would be a waste of our valuable time, but go ahead and
21 call him. Quite frankly, I think we're going to get them and
22 maybe it's easiest to get them -- why don't you call Kempton
23 and talk to him and then I'll talk to him when you're done.
24 How's that sound?

25 MR. CRANE: Would it be possible to go to

1 another topic, because it seems like he's still ready to go,
2 or do you want to do that -- stop and do that right now?

3 MR. ROGERS: I'm ready for a break too and it's
4 11:30 already.

5 MR. CRANE: I don't know if we can get him on
6 the phone.

7 MR. ROGERS: Let's see if we can do that before
8 lunch maybe.

9 MR. CRANE: And if you want to talk to Mark,
10 you can.

11 MR. ROGERS: Let's let Mr. Erickson talk to
12 Mark first.

13 (A recess was taken.)

14 BY MR. ROGERS:

15 Q. We're back on the record.

16 Mr. Erickson, you've had a chance to talk with
17 your attorney on a couple of occasions and Mr. Crane and I
18 have talked with your attorney also. So I'm going to state my
19 understanding of where we're at and if that's different than
20 your understanding, let me know. And then at the end, I'm
21 going to ask if you're in agreement with that understanding.
22 Okay?

23 A. Yes.

24 Q. It's my understanding that I will continue to
25 ask about things that you told jail personnel, including the

1 psychiatric nurse and the student. I will also ask questions
2 about medications.

3 I will not ask questions about your
4 relationship with Dr. Dean and anything that might have gone
5 on there because Mr. Kempton, your attorney, and I, will talk
6 later about that. He apparently has some concerns about that,
7 but that it's his belief and my belief that we can reach an
8 agreement about the extent of the release of that information
9 and that if we are able to do so, we'll go ahead and get the
10 information from Mr. Kempton or Dr. Dean or whatever.

11 A. Well, yeah. You're going to need my approval
12 also.

13 Q. But you would agree to that?

14 A. No.

15 Q. After -- well, okay. We'll get there.

16 Mr. Kempton and I will work on that. And if we can work
17 something out, we will; and if not, we'll seek a court order
18 and bring you back for more depositions. Right?

19 A. Yeah.

20 MR. CRANE: That was my understanding.

21 THE WITNESS: Yeah.

22 MR. CRANE: One quick caveat. With respect to
23 jail personnel that had to do with, you know, mental health
24 issues, it's my understanding that you will answer those
25 questions.

1 THE WITNESS: Yeah. I'll answer those
2 questions.

3 MR. CRANE: You said you were going to ask them
4 and I'm just clarifying he's going to answer them.

5 BY MR. ROGERS:

6 Q. And also with regard to some medication --

7 A. Yes.

8 Q. -- you're not asserting any kind of privilege
9 with regard to those things to keep from answering those
10 questions?

11 A. No.

12 Q. All right. So let's talk, first of all, about
13 medications. Are you currently on any medications?

14 A. Yes.

15 Q. And what medications are you on?

16 A. Prozac.

17 Q. Prozac?

18 A. Yes.

19 Q. How long have you been on Prozac?

20 A. About a month and a half. I'm not too --
21 somewhere around there.

22 Q. Okay. And --

23 A. Maybe a little longer.

24 Q. And before you were on Prozac, were you on any
25 other medications?

1 A. Yeah. I was on Lexapro before that.

2 Q. And how long were you on that?

3 A. About four months, five months. I'm not -- I'm
4 not too certain about that.

5 Q. And before that, what were you on?

6 A. I took Wellbutrin to quit smoking cigarettes
7 for -- I don't know how long the prescription was written for,
8 but honestly I didn't take it -- I mean, I took it a few times
9 but I didn't take it faithfully.

10 Q. Have you had any other medications since you've
11 been in jail?

12 A. Yeah.

13 Q. What?

14 A. Minocycline, which is like antibiotics for acne
15 and stuff, and Keflex or --

16 Q. Another antibiotic?

17 A. Yeah.

18 MR. CRANE: Did you ask when he was on
19 Wellbutrin, the quitting cigarette stuff?

20 BY MR. ROGERS:

21 Q. I didn't ask what time period that was. When
22 was that?

23 A. I'm not sure. Sometime in high school.

24 Q. Oh, not while in jail?

25 A. No, no, no.

1 Q. Okay. While in jail --

2 A. Yeah. Just Keflex, Minocycline, Lexapro and
3 Prozac.

4 Q. What's the Keflex for?

5 A. It was just an antibiotic.

6 Q. For?

7 A. It was a head wound I had.

8 Q. Okay.

9 A. So they gave it to me so it doesn't get
10 infected.

11 Q. And did I understand correctly that you believe
12 that you had to talk with this jail psychiatric nurse in order
13 to get medications?

14 A. Well, no. The medication was prescribed to me
15 and then I was told that in order to stay on the medication, I
16 was going to have to periodically talk to a jail psych nurse.

17 Q. Okay. And before that, had you talked to the
18 jail psych nurse?

19 A. No.

20 Q. When was this that you first started getting
21 any medication prescribed for you -- psychotropic medication,
22 I'll call it?

23 A. I'm not sure of the date. It was a couple
24 months -- maybe around May, I'd say. I mean, that's -- that's
25 just an estimate.

1 Q. Of?

2 A. Of 2004.

3 Q. Okay. So after you'd been in jail just a
4 couple of months?

5 A. Yeah.

6 Q. Let me ask you this --

7 A. Yeah. It might have been June.

8 Q. Did you talk to any jail personnel within the
9 month of April about your thoughts, beliefs, feelings
10 concerning the death of Mr. Heitholt?

11 A. I'm not sure.

12 Q. Okay.

13 A. I don't believe so though, no. I think that it
14 was -- it had been a couple months since -- since I was
15 incarcerated that I started taking medication. Then after
16 that period, I began talking to the psych nurse.

17 Q. And you didn't talk to -- is there more than
18 one nurse at the jail?

19 A. There's -- there is more than one psych nurse,
20 but I only talked to one psych nurse.

21 Q. Okay. Is there more than one other nurse?

22 A. Yes. There are medical nurses, yes, that's
23 correct.

24 Q. Did you talk to any of them about your
25 thoughts, feelings, beliefs, dreams, concerning the death of

1 Mr. Heitholt?

2 A. Yeah. I believe so.

3 Q. Who was that?

4 A. I don't remember her name.

5 Q. Okay. And when would that have been?

6 A. After a couple months, I think. It might have
7 been April. I'm not real sure.

8 Q. Okay. Of 2004?

9 A. Yeah.

10 Q. Now, are you then willing to release the
11 records of the conversations -- basically your jail medical
12 records, including those related to mental health?

13 A. Yeah.

14 Q. Okay. And once again, we'll cross the Dr. Dean
15 bridge when we come to it. Correct?

16 A. Yeah.

17 Q. All right. Now, before you were arrested on
18 March 10th, 2004, --

19 A. Uh-huh.

20 Q. -- had you ever been arrested before?

21 A. Yes.

22 Q. When were you arrested before?

23 A. I was arrested a few different times. I can't
24 really be sure of the dates. I was arrested my eighth grade
25 year. I was arrested later again I believe my freshman year.

1 Q. What were you arrested for your eighth grade?
2 year?

3 A. Well, let's see. I was arrested for felony
4 forgery my eighth grade year.

5 Q. And were you charged as a juvenile with that?

6 A. Yes. Yes, I was.

7 Q. Was that adjudicated? Did you go to court?

8 A. No, I didn't. I was given juvenile probation.

9 Q. And was it even -- you didn't even have to go
10 to court to get put on probation. Is that a fair statement?

11 A. I don't believe so, no.

12 Q. Okay. So you got what they call an informal
13 adjustment?

14 A. Yes.

15 Q. Okay. Go ahead. And then you said again in
16 your freshman year?

17 A. I believe it was my freshman year. It might
18 have been my sophomore year. I'm not -- I'm not -- I'm not
19 entirely sure on that. But I was arrested for possession of
20 marijuana.

21 Q. And were you charged as a juvenile with that?

22 A. Yes.

23 Q. Were you still under any type of probation
24 supervision from the first arrest?

25 A. I don't think so, but I'm not sure. But I

1 don't think so.

2 Q. Okay. You don't remember having a probation
3 violation as a result of being arrested the second time?

4 A. No.

5 Q. Okay. And what happened to that arrest?

6 A. I was put on juvenile probation again.

7 Q. Did you have to go to court again or -- did you
8 ever have to go to court on it is my question?

9 A. No.

10 Q. So, once again, an informal adjustment?

11 A. Yeah.

12 Q. How much marijuana was it?

13 A. A very small amount.

14 Q. When you were arrested in your eighth grade
15 year, did they take your fingerprints?

16 A. Yes. I believe -- I believe they did, yes.

17 Q. And when you were arrested for the possession
18 of marijuana, did they take your fingerprints?

19 A. Yes. I believe they did.

20 Q. And were those taken by a juvenile officer?

21 A. No. A police officer.

22 Q. And then when were you next arrested after your
23 possession of marijuana arrest?

24 A. Oh, it was either late September or early
25 October of 2001, I believe.

1 Q. Okay. And what was that arrest for?

2 A. Minor in possession of alcohol.

3 Q. And what police department arrested you?

4 A. Columbia Police Department.

5 Q. And was that an arrest that happened while you

6 were with Ryan Ferguson?

7 A. Yeah.

8 Q. He was also arrested at the same time?

9 A. Yes.

10 Q. Were you fingerprinted as a result of that

11 arrest?

12 A. I don't remember. I believe I was, but I -- I

13 can't -- I can't be certain.

14 Q. Okay. After that minor in possession arrest,

15 were you arrested before March 10th of 2004 --

16 A. Yes.

17 Q. -- for anything?

18 When was that?

19 A. I'm not sure the date. I was arrested for

20 possession of marijuana, possession of drug paraphernalia and

21 another minor in possession of alcohol. And --

22 Q. When was that?

23 A. I'm not sure.

24 Q. What year?

25 A. I believe -- sorry. I believe it was 2003.

1 Q. All right. And where were you arrested for
2 that?

3 A. I was arrested in Columbia in the parking lot
4 of D&H Drugstore.

5 Q. Where is D&H Drugstore?

6 A. It's off of Broadway.

7 Q. Whereabouts off of Broadway?

8 A. What is that? Is that Broadway and West
9 Boulevard? Yeah. Yeah, Broadway and West Boulevard.

10 Q. All right. Were you charged with anything as a
11 result of that arrest?

12 A. Yeah. Minor in possession of alcohol,
13 possession of marijuana and possession of paraphernalia.

14 Q. How old were you at that time?

15 A. I'm pretty certain I was 18 still.

16 Q. So did you have to go to court?

17 A. Yeah.

18 Q. Where did you go to court?

19 A. Yeah. Oh, wait -- you didn't ask the question
20 if I went to court for the MIP with Ryan, did you?

21 Q. No, I haven't.

22 A. I didn't think so. Yeah, I did have to go to
23 court for that. I had to go to court for both of them. But
24 to answer your last question, yes, I did have to go to court
25 for that.

1 Q. And where did you have to go to court?
2 A. Municipal court downtown.
3 Q. In Columbia?
4 A. Yeah.
5 Q. So you were charged with city ordinance
6 violations?
7 A. Yes.
8 Q. And what happened to you as a result of that?
9 A. I pleaded guilty and I was given fines both
10 times.
11 Q. Were you placed under any sort of probation
12 supervision?
13 A. No.
14 Q. Let's go back, and thank you for reminding me.
15 With regard to the arrest for the minor in possession of
16 alcohol in October or September of 2001, at the time you were
17 arrested along with Mr. Ferguson. Correct?
18 A. Yeah.
19 Q. Did you go to court on that?
20 A. Yes.
21 Q. To a juvenile court?
22 A. No.
23 Q. To adult court?
24 A. Yes.
25 Q. How old were you at the time?

1 A. 17.

2 Q. Okay. And so you went to an adult court?

3 A. Yeah.

4 Q. Where did you go?

5 A. Municipal court.

6 Q. What happened to you in this?

7 A. I pleaded guilty.

8 Q. What did you get?

9 A. A fine.

10 Q. How much?

11 A. Somewhere in the neighborhood of \$200.

12 Q. And did Mr. Ferguson go to court at the same

13 time you did?

14 A. I can't recall.

15 Q. Okay.

16 A. No, I don't believe so. Because I believe he

17 was a juvenile at the time.

18 Q. So you don't know -- or do you know what

19 happened to him as a result of that?

20 A. I can't recall.

21 Q. Okay. Did you ever ask him?

22 A. I can't recall.

23 Q. Did you guys --

24 A. It was -- so many of my friends were getting

25 arrested, it just -- it -- it wasn't something that I, you

1 know, thought I needed to retain.

2 Q. All right. So it wasn't that big a deal --

3 A. No.

4 Q. -- in your mind?

5 A. No. I mean, it was only minor in possession --
6 well, he had, like, paraphernalia and an alcohol charge. It
7 wasn't really a big deal. He was pretty upset about it, but I
8 didn't think it was that big of a deal.

9 Q. And you don't know what, if anything, happened
10 to him, whether he went to court in juvenile court or whether
11 he had an informal adjustment or whether they just threw it
12 out or what?

13 A. What I think happened was that he turned 17 and
14 they released him, but I don't know. I mean, that's just --
15 that's -- that's an assumption so -- I don't know what
16 happened though.

17 Q. All right. Thank you. Any other arrests we
18 haven't talked about until March 10th?

19 A. Yeah. I was arrested one more time, this is
20 the last time though, for receiving stolen property.

21 Q. When was that?

22 A. I believe that was the fall of 2003, but I -- I
23 can't -- can't be sure.

24 Q. And what was the property they claimed you
25 received?

1 A. Cash.

2 Q. And who did they think it had been stolen from?

3 A. A guy named David. I'm not sure of his last
4 name.

5 Q. Not David Igleheart, clearly?

6 A. No.

7 Q. Okay. And what happened to you as a result of
8 that arrest?

9 A. The charges were not formally pressed or
10 whatever. I was never formally charged. I was arrested, but
11 I guess pros-- the prosecutor decided not to follow up with
12 it. The charges were dropped. They were never filed.

13 Q. You were never charged?

14 A. Well --

15 Q. Arrested, but not charged?

16 A. I was arrested and I was charged in the police
17 station, but I guess I -- formally I was -- the charges were
18 never filed is the best way I know how to do put it.

19 Q. And did you have to post a bond?

20 A. I don't think so, but I can't be for sure.

21 Q. Okay. Did they at the time of your arrest --

22 A. I don't think they did, because it was under
23 \$700. And if -- I'm not -- I'm not sure if I posted a bond or
24 not.

25 Q. Okay. Was money recovered from you at the time

1 of your arrest that they thought was the stolen money?

2 A. I don't think so, but I can't recall for
3 certain.

4 Q. Okay. Do you know what led to that arrest?

5 A. Yes. People I knew had burglarized someone and
6 they had taken money and then they claimed that they gave me
7 money.

8 Q. Did they, in fact, give you the money?

9 A. Yes.

10 Q. Okay. And did you give that money back to --
11 or give that money to the police to be given back to the
12 rightful owner?

13 A. No. It had been -- it had been spent. It was
14 like a -- I think a couple days later when the police came and
15 arrested me.

16 Q. So they didn't let you loose because they got
17 the money back?

18 A. Can you --

19 Q. The police did not let you go because they got
20 the money back?

21 A. You mean they didn't -- they didn't charge me
22 because they got the money back? I don't know. I don't know
23 why they decided not to follow up with charges.

24 Q. Okay. So if they got the money back, they
25 didn't get it from you because you'd spent it?

1 A. I believe one of the perpetrators gave some
2 money back. That would have been Stephen Hildebrand. The
3 majority of the money, I don't know if it was recovered or
4 not. All I know is two of the participants gave me money and
5 I got arrested for it afterwards.

6 Q. And why would they give you the money?

7 A. Just because they had a lot of money and I --
8 it was actually like a loan. I just needed to borrow some
9 money and I knew they had cash and they just gave me some cash
10 and they told on me afterwards.

11 Q. Did you know where they got the cash from?

12 A. Yeah. I got a pretty good idea where they got
13 the cash from.

14 Q. They told you?

15 A. Yeah.

16 Q. So you did, in fact --

17 A. I mean, I don't, in fact, know the money that
18 they gave me was the money that was taken from the house. I
19 knew they had performed a burglary and they gave me money, you
20 know. I mean, I guess I could have assumed that the money was
21 taken from the house, but I don't know for certain that the
22 cash they gave me was the money that was actually taken from
23 the house.

24 And I think that might have been the main
25 reason why charges weren't followed because it wasn't like

1 someone stole a bike and gave it to me. Someone gave me
2 currency and who's to say whether the currency came from the
3 bank from the person that gave it to me or the cash that came
4 from the house. You know, I don't think anyone can say that
5 for sure except for the people that gave it to me.

6 Q. Did you explain that to the police at the time
7 of your arrest?

8 A. No. I believe at the time of my arrest I
9 pretty much denied it. And then I was -- then I didn't really
10 care. I just told them, you know, we was like -- the other
11 two basically had given themselves up and said that, you know,
12 he gave -- you know, we gave him money. And so then I was
13 just like, you know, whatever, I'll tell you, you know, what
14 happened just, you know, maybe work something out.

15 Basically I just didn't want to be arrested in
16 front of my family because they came to my house and arrested
17 me in my house and everything. And figured if I gave them a
18 statement or whatever, they wouldn't arrest me because I
19 didn't think it was that big a deal. So anyway, I told them
20 what happened and they charged me anyway and took me down to
21 the station.

22 Q. At the time you first of all told the police
23 you didn't know anything about it, right, just generally?

24 A. I believe -- I believe -- I mean, I believe at
25 first -- yeah, I believe I did deny it at first, yes.

1 Q. And then when that didn't work, you thought,
2 well, maybe if I tell them I got money from these guys, I know
3 they did the burglary but I don't know whether this is the
4 burglary money or some other money that that --

5 A. I don't believe I got into the burglary money
6 and some other money with the officer or not.

7 Q. You did then at your house admit to the officer
8 that you got money from the guys that you knew had taken money
9 in a burglary?

10 A. Yeah.

11 Q. Okay. And then you were arrested and taken
12 down to the police station?

13 A. Yeah. Yeah.

14 Q. And released later and you don't know whether
15 you had to post a bond or not?

16 A. Yeah. I don't believe I had to, but I don't
17 want to make that definite answer because I'm not sure.

18 Q. Any other arrests we haven't talked about up
19 until March the 10th?

20 A. No.

21 Q. Okay. And how much money did you get from the
22 burglary guys?

23 A. Somewhere in the neighborhood of about 3- or
24 400 dollars, somewhere around there. I can't -- I can't -- I
25 can't recall really.

1 Q. And these people you got it from are kids your
2 age, more or less?

3 A. Two of them were younger than me and one of
4 them was my age -- well, he was younger than me but he was in
5 the same grade.

6 Q. So they weren't people that you would expect to
7 have that kind of money legitimately?

8 A. No. I -- the guy who did it had given -- you
9 know, kind of -- this Stephen Hildebrand had explained to me
10 that he had thought about doing this before and so I -- like I
11 kind of -- I think -- I knew they were going to do it or
12 whatever or I knew he was going to do it.

13 I didn't really know who was going to go with
14 him and how it was going to be done and things of that nature.
15 But I think he might have even wanted to take me with him, but
16 I had class and I didn't -- I didn't even know he was going to
17 go do it at the time. Whether or not I would have gone or
18 not, I don't know. That's an honest answer. But I knew -- I
19 knew beforehand, yeah, that he was going to do it. And I knew
20 afterwards they did it that they had done it.

21 Q. All right. Let me move to January of 2-- well,
22 let me ask you first off, with regard to that arrest, were
23 your fingerprints taken?

24 A. Yes. I believe -- I believe they were.

25 Q. Okay. So there's no question that the police

1 had your fingerprints on file before January of 2004?

2 A. Yeah.

3 Q. Okay. And you have received what's called
4 discovery in your case, haven't you?

5 A. Yes.

6 Q. Which means you've got copies of all the police
7 reports?

8 A. I'm not sure -- I don't have all of them, but I
9 have -- yes, I have discovery.

10 Q. And do you have a police report which indicates
11 that in January of 2004 there was a CrimeStoppers call that
12 indicated that you and Ryan Ferguson were possible suspects in
13 the murder of Kent Heitholt? Have you seen that report?

14 A. No. It didn't -- that -- that report didn't
15 get into whether or not we were suspects in the murder of Kent
16 Heitholt. That report went over us discussing at a party
17 whether or not -- I mean, I don't think it got into specifics
18 of being suspects of Kent Heitholt or anything like that. I
19 might be wrong, but --

20 Q. Let me hand you a document. And I don't think
21 we even need to mark it unless it becomes necessary, but just
22 to tell you what I'm referring to because you're obviously
23 talking about something different.

24 A. No, I am. I just don't think that they got to
25 the point --

1 Q. I'm handing you what is marked at the bottom
2 with 780, which I guess is a discovery page number. And up at
3 the top it's supplemental report No. 237.

4 MR. CRANE: Can I just take a look at this?

5 BY MR. ROGERS:

6 Q. Is that the report you're talking about?

7 A. I was talking about the report that --

8 Q. And I don't care what report you were talking
9 about now that we've clarified that that's not the one.

10 A. No. I mean, I've read this -- I remember
11 reading this, but that wasn't the one.

12 Q. And you've read this since you've been
13 arrested?

14 A. Yeah.

15 Q. Okay. Back on March 10th, 2004 when you were
16 first arrested and that entire day until you were taken to
17 jail -- and to jail as opposed to the police station. Right?

18 A. Yeah.

19 Q. Did the police ever tell you that your
20 fingerprints and Ryan Ferguson's fingerprints had been
21 compared with the fingerprints left at the crime scene?

22 A. I can't remember.

23 Q. Okay. Did they ever tell you that your
24 fingerprints were not found at the crime scene and that Ryan
25 Ferguson's fingerprints were not found at the crime scene?

1 A. I can't remember.

2 Q. Okay. If they had told you that, would that

3 have perhaps had an impact on the way you dealt with the

4 police that day?

5 A. I don't know.

6 Q. Okay.

7 A. I don't believe so, but I -- I can't -- I don't

8 know.

9 Q. When you were arrested, you were first

10 questioned by a Detective John Short; is that correct?

11 A. Yeah.

12 Q. And you at that time -- I saw you were

13 arrested, but actually you agreed to go to the police station,

14 didn't you?

15 A. Yeah, I did.

16 Q. You had left your house going to school --

17 A. Uh-huh.

18 Q. -- correct?

19 A. Yeah.

20 Q. Okay. I'm making sure you answer with words.

21 Okay?

22 A. Sorry.

23 Q. And you were then a student at the Columbia

24 campus of the Moberly Area Community College; is that correct?

25 A. Yes. Yes.

1 Q. And you were followed from your house by an
2 undercover police officer detective?

3 A. That's what I'm assuming, yes. I don't
4 remember being followed -- I mean, I didn't -- I didn't know
5 that I'd been followed, but that's the assumption.

6 Q. When you got to the parking lot of the
7 college --

8 A. Yeah.

9 Q. -- a guy came up to you, showed you a badge,
10 identified himself as Detective Piester. Correct?

11 A. I don't think he identified himself as anyone.
12 I think he just showed me his badge and -- go ahead.

13 Q. Did he then tell you that the detectives wanted
14 to talk to you downtown?

15 A. Yes.

16 Q. And did you agree to accompany him?

17 A. Yes.

18 Q. And did you know what it was about?

19 A. They told me that they wanted to talk to me in
20 regards to my car, but I -- at that time, yes, I knew that it,
21 in fact, did not have anything to do with my car and that they
22 were going to question me in the murder of Kent Heitholt.

23 Q. But you said it was with regard to your car?

24 A. Yes.

25 Q. What was wrong with your car?

1 A. Nothing. I mean, not that I know of. I don't
2 think my taillight was out. I knew -- I knew that he was
3 lying, that he wasn't really taking me downtown to talk to me
4 about my car, you know. I wasn't going to put up a fuss
5 either way, but I'm assuming that the reason he told me he
6 wanted to talk to me about my car is so he didn't have any
7 problems with taking me to the police station, like me running
8 or pulling a weapon out of my trunk or, you know, who knows.
9 That's what the police do. But I mean, I knew I was being
10 taken to the police station in regards to the murder of Kent
11 Heitholt.

12 Q. Did you believe that you had a choice as to
13 whether or not to go?

14 A. Yes, I believe I did.

15 Q. And do you believe that you could have said, If
16 I don't have to go, I don't want to go?

17 A. Yes.

18 Q. And what do you think would have happened if
19 you'd done that?

20 MR. CRANE: I'm just going to bookmark this,
21 just object it calls for speculation, but go ahead and answer
22 the question.

23 THE WITNESS: I don't know. I figured that if
24 they wanted to arrest me and charge me, then they could have
25 taken me down for questioning. I know that they could have

1 held me for 24 hours for questioning. At least I'm assuming
2 that. I don't know if that's right or not. But I mean, I
3 didn't know what was going to happen, you know. And I just --
4 I didn't care. I mean, to tell you the truth, I wanted to go
5 police station and talk, so --

6 BY MR. ROGERS:

7 Q. Okay. Now, you were with various detectives
8 all day that day. Correct?

9 A. Yes.

10 Q. And at the end of the day you were taken to the
11 Boone County detention center?

12 A. Yes.

13 Q. And you were booked for robbery in the first
14 degree and second-degree murder?

15 A. No. I was booked before they took me to Boone
16 County Jail. They booked me in the --

17 Q. At the police station?

18 A. -- at the police department. And after I'd
19 been charged, they took me to the jail.

20 Q. And when you say "charged," you mean charged in
21 court over here, not at the police department?

22 A. Not in court. I mean, I was charged at the --

23 Q. A document was filed in court?

24 A. I don't know. I didn't -- I mean --

25 Q. Okay. You were taken then -- but you didn't

1 appear before a judge at that time?

2 A. No.

3 Q. When did you first appear before a judge?

4 A. My arraignment was --

5 Q. Now, I didn't --

6 A. No, no. I had video court, that's right. I
7 think it was a couple days after my arrest. I can't be
8 certain how -- it wasn't too long after my arrest though.

9 Q. Could have been the next day?

10 A. I'm not sure if it was or not.

11 Q. Okay. And then you appeared in person at a
12 thing that you called an arraignment; is that correct?

13 A. I think the arraignment was just done in video
14 court and then they took me to a preliminary, but I can't --
15 I'm not sure.

16 MR. CRANE: Are you with him on that?

17 MR. ROGERS: Yes.

18 MR. CRANE: It's in person, but he's not
19 actually transported from the jail to court.

20 BY MR. ROGERS:

21 Q. And when you talk about an arraignment, what
22 you're really talking about is your first appearance before
23 the associate circuit court; is that correct?

24 A. I'm not sure what circuit it was.

25 Q. Okay. And then you had what's called a

1 preliminary hearing?

2 A. Yeah. But I waived my preliminary hearing.

3 Q. Okay. And then you had another arraignment in
4 circuit court?

5 A. I can't recall. I'm not sure.

6 Q. All right. We'll get there. At the time that
7 you first went to the police station, was it your intention to
8 tell them everything you could concerning your beliefs about
9 the death of Mr. Heitholt?

10 A. Yes.

11 Q. Okay. So you weren't hiding anything from them
12 consciously?

13 A. No.

14 Q. Okay. And at that time, in your own mind, were
15 you certain that you had been involved in the death of
16 Mr. Heitholt?

17 A. I'm not sure.

18 Q. Okay. And, in fact, you told Detective Short
19 during your initial interview that it might just be a dream,
20 didn't you, or that you might have just made it up?

21 A. Yeah. I said something to that extent, yes.

22 Q. And that was true, wasn't it? That was an
23 accurate portrayal of what was going on in your mind at the
24 time?

25 A. Yes.

1 Q. Okay.

2 A. I didn't really -- I didn't really know what to
3 think. It was just --

4 Q. Let me ask some more questions.

5 A. Okay.

6 Q. I mean, have you answered the question I did
7 ask?

8 A. Well, let me expand a little bit, I guess. I
9 don't know. After putting something out of your mind for so
10 long, you know, it's hard to come to terms with it. I don't
11 know if you have any experience with repressed memories and
12 things of that nature or whatever, but I mean, it took, I
13 mean, some time to allow myself to recall a lot of what
14 happened.

15 Q. And --

16 A. And to recall it accurately.

17 Q. And we'll get there.

18 A. Okay.

19 Q. During your conversation with -- well, let's go
20 back before this. You first became -- or began to have some
21 feeling or notion or suspicion or concern about the death of
22 Mr. Heitholt when?

23 A. Consciously -- I mean, there were memories in
24 the back of my mind --

25 Q. Consciously.

1 A. -- that I just wouldn't address. And I can't
2 really put a date on that. The point at which I really
3 allowed a lot of these things to surface was October 31st of
4 2003.

5 Q. And that was the second anniversary of
6 Mr. Heitholt's death?

7 A. Yes.

8 Q. And there was a big deal with it in the media?

9 A. Yeah.

10 Q. And in the paper?

11 A. Yeah.

12 Q. And they published copies of those sketches
13 again --

14 A. Yeah.

15 Q. -- correct?

16 A. Yeah.

17 Q. You looked at them?

18 A. Uh-huh.

19 Q. And then you began to think, Hey, maybe I had
20 something to do with that; is that correct? Began to
21 consciously think that?

22 A. Yeah.

23 Q. And did you have dreams about it?

24 A. No.

25 Q. Did you ever have dreams about it before your

1 arrest on March the 10th?

2 A. No.

3 Q. Did you ever have tell anybody you had a dream
4 about it?

5 A. Not in those words. I had said that, you know,
6 I'd had things that I thought may have been dreams that I
7 might have been confusing with memories and things that I
8 wasn't certain about. But did I -- I don't believe I ever
9 said I had a dream about killing Kent Heitholt.

10 Q. Okay.

11 A. I believe I was more specific in my wording
12 than that.

13 Q. Okay. And so at some point you told somebody
14 that you had things that you thought were dreams, but they may
15 have been memories or things you thought were memories, but
16 they may have been dreams. Is that what I heard?

17 A. Yeah.

18 Q. Okay.

19 A. Basically.

20 Q. And who were you telling that to?

21 A. I'd said that to -- to Nick Gilpin and Art
22 Figueroa.

23 Q. Okay.

24 A. And I also said that to Ryan Ferguson.

25 Q. Okay. And let's talk about your conversation

1 with Mr. Ferguson. When did that occur?

2 A. That occurred on New Year's of 2003/2004.

3 Q. And was that a party you were at?

4 A. Yes.

5 Q. Whose house?

6 A. Jonathan Whitworth's mother, I believe.

7 Q. And had you seen Ryan for a while?

8 A. No. No.

9 Q. But he came to that party?

10 A. Yes. I saw him at a party before that and then

11 I saw him at that party also -- at the party -- a party the

12 same night at some other person's house. I can't remember

13 their name. I think it was Tyler Wright, but I'm not sure of

14 the owner of the house.

15 Q. Okay. So you'd seen him at another party that

16 same night?

17 A. Yeah.

18 Q. But you hadn't seen him for a while before

19 then?

20 A. Yeah.

21 Q. Do you know where he had been?

22 A. I knew he'd been around, you know, but I don't

23 know specifically. I don't know.

24 Q. Had he been going to school someplace out of

25 town?

1 A. I don't know if he was or not.

2 Q. Okay. This is during the holiday season?

3 A. Yeah.

4 Q. So people would be home from school if they
5 were going to school?

6 A. Yeah.

7 Q. And --

8 A. I believe he was getting ready to go to school
9 in Kansas City at that point. I'm not sure though. I
10 wouldn't -- I hadn't talked to him for a while so I didn't
11 know what his activities were.

12 Q. Okay. And tell me about your conversation with
13 him at the party at Jon Whitworth's mother's house. Is that
14 the same condo where you were in the garage, by the way?

15 A. No.

16 Q. Different house?

17 A. Yes.

18 Q. Same mother?

19 A. Yes.

20 Q. Okay.

21 A. Yes. Well, I asked him to go outside and have
22 a cigarette with me because there were some things I wanted to
23 talk to him about. And we got outside and I said, you know,
24 Do you know what a repressed memory is? And he said, you
25 know, I don't know, I think so. I said, Well, you know, I

1 think I've had a few of those and --

2 Q. Let me stop you a minute there.

3 A. Yeah.

4 Q. Where was this conversation taking place?

5 A. This was on the back -- on Jon Whitworth's back
6 patio behind the house.

7 Q. Was anyone else outside there smoking?

8 A. Yeah. People came out periodically to smoke,
9 but not -- I don't think anybody heard our conversation
10 outside on the back patio. I'm not sure about that, but I
11 don't think anybody did.

12 Q. Was your purpose in going out there to have a
13 private conversation?

14 A. Yes.

15 Q. So if somebody would have come out in the
16 middle, you would have stopped the conversation or talked
17 about something else?

18 A. Or lowered my voice, yeah.

19 Q. And you don't remember that happening?

20 A. People came out, yes, I do.

21 Q. And did you lower your voice?

22 A. Yes. Yes, I would.

23 Q. So you told him that you thought you'd been
24 having some repressed memories?

25 A. Yeah.

1 Q. What was his reaction?

2 A. And at first I didn't -- I don't -- I don't --
3 he had a knowing look, but he didn't express really any
4 emotions. And --

5 Q. Had you been drinking?

6 A. Yes, I had been.

7 Q. Had he?

8 A. Yes.

9 Q. Had you been doing any other mind-altering
10 substances?

11 A. Yes.

12 Q. What had you been doing?

13 A. Cocaine.

14 Q. How much?

15 A. I'm not sure.

16 Q. Okay. And had you seen Ryan Ferguson do any
17 cocaine that night at that party?

18 A. Not at that party. I'd seen him go into a room
19 with the person who I split coke -- my cocaine with for the
20 reason of doing cocaine. I didn't physical-- I didn't see him
21 doing cocaine, but that's what I assumed that, yes, he was
22 doing cocaine.

23 Q. You assumed that?

24 A. Yeah.

25 Q. But was that at the --

1 A. This is the party prior to Jon Whitworth's.

2 Q. Yeah.

3 A. And this is my friend Arturo Figueroa who I
4 split the cocaine with. And he told me that he was taking
5 Ryan Ferguson down to a room to do some.

6 Q. To give him some of the cocaine?

7 A. Yes.

8 Q. And then you saw them go to a room, so you're
9 assuming that's what happened?

10 A. Well, I saw -- and I saw them -- you know, they
11 went to the bathroom and they were messing around on the -- on
12 the bathroom counter. And I -- but I didn't go in the room
13 or -- I mean, I pretty much knew what they were doing and it
14 didn't really matter to me.

15 Q. You made that assumption because that behavior
16 was similar to what you had just done yourself?

17 A. Well, when -- and Art had told me that that's
18 what he was doing. He said, I'm going to go give some of this
19 to him.

20 Q. That's what Art said?

21 A. Yes.

22 Q. Did Art ever tell you anything about that later
23 or did you ever ask him?

24 A. It was nothing worthwhile -- I mean, it was --
25 I mean, it's pretty obvious what happened. And, I mean, it

1 wasn't -- it didn't need to be spoken about. There was no --
2 no purpose for that.

3 Q. And how long was this before the conversation
4 on the back patio of Jon Whitworth's house?

5 A. A couple hours. At least two, maybe three.

6 Q. Had you done any other drugs in the meantime?

7 A. I may have smoked some marijuana, but no -- I
8 did some more cocaine, but I didn't do anything else, no.

9 Q. You did more cocaine in between those times?

10 A. Yeah. Yes.

11 Q. And had you seen Ryan smoke any marijuana
12 between those times?

13 A. I could -- I don't recall.

14 Q. Had you seen Ryan do any more cocaine?

15 A. I don't know. I don't believe so.

16 Q. Had you seen anything which led you to conclude
17 that Ryan may have done more cocaine in between those times?

18 A. Besides his behavior, no.

19 Q. Okay. And so now we're back to the
20 conversation. You tell Ryan -- you ask Ryan, Do you know what
21 a repressed memory is? He says, I think so. And I believe
22 you said that you then said, I think I've been having some
23 repressed memories?

24 A. I think I've had some.

25 Q. Had some repressed memories?

1 A. Yeah.

2 Q. And he got what you described as a knowing
3 look?

4 A. Yeah. Just to where, you know, he didn't -- he
5 knew what I was talking about, he knew where I was going with
6 the conversation and it didn't appear that he wanted to
7 continue on with it.

8 Q. That --

9 A. But that's an assumption.

10 Q. That's your assumption?

11 A. Yeah.

12 Q. And basically he just didn't say anything in
13 response. Correct?

14 A. Uh-huh. And --

15 Q. Is that correct?

16 A. Yes. Yes.

17 Q. Thank you. And so then what did you do?

18 A. I said, you know, I think we messed someone up
19 real bad a while ago and I think we -- I think we -- I think
20 we killed a man.

21 Q. What did he say?

22 A. He said, you know -- he brought up the fact --
23 he said, You mean -- he mean like -- I mentioned a couple
24 other things, I can't remember specifically what they were,
25 just that I thought we'd killed someone. He said, You mean

1 the guy -- the Tribune guy? And I said, Yeah, the night, you
2 know, of Halloween we were out at the club, you know. You
3 know, I'm pretty sure --

4 Q. Okay. Let clarify that a little bit, if I can.

5 A. All right. Sorry.

6 Q. You had told him that you thought that you and
7 he had messed somebody up pretty bad, in fact, killed
8 somebody?

9 A. Yeah.

10 Q. And did he look like he was trying to figure
11 out what you were talking about so you had to tell him other
12 things that made him say, The Tribune guy?

13 A. No. Not really.

14 Q. What are you telling him in between the two
15 parts of the conversation before he said -- you said you said
16 a couple of other things and then he said, Oh, you mean the
17 Tribune guy?

18 A. Yeah. I just said that I thought that we had
19 messed someone up and I'm pretty sure I remember that, you
20 know, we killed someone. And he said, You mean the Tribune
21 guy?

22 Q. Well, wait a minute. You're not understanding
23 my question.

24 A. I didn't say --

25 MR. CRANE: Wait a minute. Let him ask a

1 question.

2 BY MR. ROGERS:

3 Q. And let me make sure I'm hearing right too.

4 A. All right.

5 Q. You told us about saying that to Mr. Ferguson
6 and then you said, And then I told him a couple of other
7 things. Okay? So my question is, what are the couple of
8 other things?

9 A. I mentioned that I thought we'd done this the
10 night that we were -- that we went out on Halloween and the
11 night that we were out at the club By George's.

12 Q. And this is when he said, Oh, you mean the
13 Tribune guy?

14 A. I can't remember if he said that before or
15 afterwards.

16 Q. Okay.

17 A. That's honest. I mean --

18 Q. Okay. Did I miss hear you earlier when you
19 said that you told him the couple of other things before he
20 said, Oh, you mean the Tribune guy?

21 A. Yeah. I think -- I mean, I think I did say
22 that, but I'm not -- I'm not sure if -- if that happened
23 before or afterwards.

24 Q. Anyway, then he says, Oh, you mean the Tribune
25 guy?

1 A. Yeah.

2 Q. And --

3 A. I'm fairly certain I said that before he said,
4 The Tribune guy.

5 Q. Okay. Because --

6 A. But I'm not --

7 Q. It's obvious the Tribune guy was, in fact,
8 killed the night you were at By George's?

9 A. Yes.

10 Q. And you talked about it in the car two days
11 later on the way to school?

12 A. Yes.

13 Q. Because it was there in the newspaper and you'd
14 had that conversation so that --

15 A. Yeah.

16 Q. Okay. So then he says -- after he says, Oh,
17 you mean the Tribune guy, what did you say?

18 A. I don't believe I said anything else. He said,
19 No, you know, we've -- we've broken in some cars and stolen
20 some stuff and a few other things, but we've never done
21 anything like that, you know.

22 Q. Okay. And had you, in fact, broken into cars
23 and stolen stuff?

24 A. I don't think that I ever broke into a car with
25 Ryan. I might have. I -- we stole some beer from one of his

1 neighbor's garages one time.

2 Q. Okay.

3 A. You know, I think -- I don't really think that
4 I'd done anything else with him. I might be wrong about that,
5 but I'm not sure.

6 Q. Okay. And you're certainly not claiming that
7 he said that Halloween night of 2001 you broke into cars and
8 stole stuff?

9 A. No. He didn't say that.

10 Q. Okay. But he was saying, you know, back in our
11 wild and younger days --

12 A. Yeah, we've done some stupid stuff but we've
13 never done anything like that.

14 Q. And you did, in fact, steal beer from a
15 neighbor of his once?

16 A. Yes.

17 Q. And I assume that being an under-aged frequent
18 drinker of alcohol, you'd have to steal it now and then
19 because you can't buy it legally?

20 A. Sneak it from parents or whatever.

21 Q. Sneak it from parents --

22 A. Yeah.

23 Q. -- or stuff like that?

24 A. Yeah.

25 Q. Or get somebody of age to buy it?

1 A. Yeah. Yeah.

2 Q. Or get a fake ID?

3 A. We called them Hey Misters actually. Hey
4 mister, would you buy us some beer?

5 Q. And so he says, We've done that kind of thing,
6 but we never hurt anybody or killed anybody; is that correct?

7 A. I don't -- he didn't get into that. He said
8 we'd never done anything like that.

9 Q. Okay. And then what did you say?

10 A. I said, I don't know. And I was still doubtful
11 and I still -- I had these memories and I just -- I wanted to
12 talk about it and resolve it somehow. And I -- and I
13 wanted -- I wanted to hear it from him and I wanted to, I
14 don't know, get some closure on it, I guess.

15 Q. And he told you, We never did anything like
16 that, but that wasn't the closure you were looking for?

17 A. No. Because I know -- I knew that we'd done it
18 and I wasn't going to stop until I got him to admit to it.

19 Q. But you really didn't know, you just thought
20 maybe. Correct?

21 A. No. I -- I -- down subconscious I knew.

22 Q. Let's talk consciously. I mean, I cannot take
23 a deposition of your subconscious. I don't have that kind of
24 license. Okay?

25 A. Well, I don't really have the kind of license

1 to speculate on that either.

2 Q. Let's talk about --

3 A. Because, I mean, I knew about it, there were
4 things I remembered and there were things I wouldn't accept.
5 And I don't know if I would call that conscious or
6 subconscious or not.

7 Q. I, quite frankly, am not asking you about what
8 you have learned or been taught or come to believe since you
9 have been arrested. What I'm asking you about was what was in
10 your conscious mind at the times that we're talking about.

11 Now, I'm asking about what's in your conscious
12 mind New Year's Eve or around New Year's of 2003/2004 when
13 you're having this conversation with Ryan Ferguson. Okay?

14 A. Yeah.

15 Q. Are we on the same page there?

16 A. I was --

17 Q. Excuse me. Are we on the same page?

18 A. Yeah. I was -- I was -- yes, I was uncertain
19 to -- to a certain extent, yes.

20 Q. Right. And, quite frankly, you remained
21 uncertain for a time after that, didn't you?

22 A. Yes.

23 Q. And you remained uncertain at the time of your
24 arrest on March the 10th?

25 A. Yes.

1 Q. And you shared that uncertainty with the police
2 more than once?

3 A. Yes.

4 Q. Okay. Now, let's go back to the conversation.
5 He told you we hadn't done it -- that you and he had never
6 done anything like that?

7 A. Uh-huh.

8 Q. And what was said next?

9 A. We'd stop talking and go and, you know, hang
10 out with other people for a little bit and drink and stuff
11 like that. And then I'd call him back outside and keep
12 badgering him about it and things like that.

13 Q. Did he ever tell you, Hey, yeah, you're right,
14 we did that?

15 A. No. The next thing that I remember of
16 significance was that after I had -- he said something about,
17 Hey, you're not wearing a wire, are you, when I asked him to
18 go outside again. And I said, you know, No, you know.

19 Q. Was he saying that jokingly?

20 A. No. I don't believe so.

21 Q. Because you were being so persistent --

22 A. Yes.

23 Q. -- in keeping asking about that stuff?

24 A. Yeah.

25 Q. All right.

1 A. Yes. And -- like, I actually remember asking
2 him if he was. I don't know why, but I was just -- I don't
3 know, but -- anyway, so then the next thing that -- I think
4 after I questioned him about it again we were going back
5 inside and he said, you know, But I'd always wanted to kill
6 someone before I was 60 anyway.

7 Q. He told you that?

8 A. Yes. That was when we were coming back inside.
9 It was in the kitchen. There was like a -- I think there's
10 like a table setting and then the kitchen's over -- it's
11 separate or whatever. And the table setting is near the patio
12 door. And we were coming inside and he said, you know, I'd
13 always wanted to kill someone before I was 60 anyway. And I
14 stopped and I thought about it and I looked at him and I said,
15 Man, that's not the first time you've said that to me.

16 Q. What did he say?

17 A. He got kind of distraught and he said, So -- so
18 what? And -- and that kind of aggravated me a little bit
19 because it seemed to me like he was trying to make a joke or
20 get some enjoyment out of bringing this back up to me again,
21 which I guess we can get into later, but he had said that same
22 thing to me the night that this happened.

23 Q. We'll get there. Wait a minute. This is a
24 conversation that's happening at the end of 2003, beginning of
25 2004. Correct?

1 A. Yeah.

2 Q. Ryan Ferguson was how old then, 19? Maybe 20?

3 A. I think he was --

4 Q. 19?

5 A. -- I think he was 18 still.

6 Q. Okay.

7 A. Or maybe -- yeah, he was 19 I guess.

8 Q. So if he wanted to kill somebody before he

9 turned 60, he had 40-some years to work on it?

10 A. Yeah.

11 Q. Okay. All right. Now, was that the end of

12 that conversation that night at the party?

13 A. No.

14 Q. What else?

15 A. Well, I kept on bringing it up to him, you

16 know. And I -- I mentioned saying something to the police

17 about it. And at that point he said, If you do that, if you

18 say anything to the police or anyone about it, I'm going to

19 kill you. And he also said, you know, No -- at -- around the

20 same point he told me that, this is when we're in the kitchen,

21 he got rather loud and he said, No, we didn't kill anyone.

22 And at that point -- and he kind of pushed me,

23 he got a little physical and I got back in his face and I

24 said, you know -- you know, because I was having -- I didn't

25 want other people to hear our conversation, you know, and I

1 was having a private conversation. There were other people
2 around and I said, Shut -- you know, shut up, you know. You
3 know, people are going to hear what you're saying and all
4 this.

5 And then at another point he just kept on
6 denying it and -- and, you know, I was -- I said, you know,
7 That's not something you forget, you know. That's messed up
8 what we did. And I remember leaving the party, I just kept on
9 saying, That's not something that a person can forget. And --
10 and that's when -- that's about the time I left the party.

11 Q. Okay. Now, let me go back and break that down
12 into chunks. At some time you say that he told you, If you
13 say anything about this, I'm going to kill you?

14 A. Yes.

15 Q. And that's what you said he said in a loud
16 voice --

17 A. No.

18 Q. -- inside?

19 A. He didn't say that in a loud voice. What he
20 said in a loud voice was, We didn't kill anyone. That's what
21 he said in a loud voice.

22 Q. And he kept saying that --

23 A. Yeah.

24 Q. -- throughout the conversation?

25 A. Yeah.

1 Q. I mean, throughout these repetitive recurring
2 conversations --

3 A. Yes.

4 Q. -- correct?

5 A. Yeah.

6 Q. Who was around who could have heard him say
7 that?

8 A. Jon Alder, Travis Jeffries, Kim Bennett, Nicole
9 Bennett, I guess there was a girl named Sarah Harper, Tiffany
10 Burks.

11 Q. And they were all in a position to hear this
12 loud, We did not kill anybody, comment?

13 A. Yeah.

14 Q. Okay. And who was around --

15 A. Erica Timmerman.

16 Q. Erica who?

17 A. Erica Timmerman, Jon Whitworth was there, Greg
18 Perry. There were a lot of people I can't remember who were
19 there.

20 Q. But who were there close enough to hear this
21 loud comment?

22 A. I can't be certain that. Maybe Jon Alder,
23 Travis Jeffries, I think Sarah Harper might have been standing
24 behind me, but I'm not certain. I don't know.

25 Q. And throughout that -- who was in a position to

1 hear the, If you ever tell the police I did this or we did
2 this, I'll kill you?

3 A. Just those were the -- oh, that? No one was in
4 a position to hear that.

5 Q. Where did that conversation take place?

6 A. That happened in the kitchen, but that was
7 under hush tones. That was him like he -- I mean, that was
8 him -- that was more like -- it was like a growl -- not like a
9 growl, but I don't -- you know, If you keep on telling -- you
10 know, if you tell anyone else this, I'm going to kill you,
11 with clenched teeth. You see what I'm saying?

12 So it wouldn't have been easy for someone to
13 make out what they were saying unless they were standing right
14 next to him talking to him. And plus, we were talking in
15 hushed tones anyway. The only thing I think anyone could have
16 heard when he kind of got loud and said, We didn't kill
17 anyone. And that was when I kind of -- he got in my face and
18 I kind of pushed him back and said, you know, Man, just shut
19 up, you know, just chill out.

20 Q. Let me pick up on what you said. Did he say,
21 If you keep on saying that, I'm going to kill you?

22 A. No. He said that, If you -- if you -- if you
23 say anything to anyone about this, I'm going to kill you.

24 Q. But a minute ago you said --

25 A. That wasn't correct.

1 Q. -- If you keep on saying --

2 A. Yeah. That wasn't correct.

3 Q. As a matter of fact, he was irritated by the
4 fact that you kept bringing up this conversation that he
5 thought was over when he said, No, we didn't do it --

6 A. Yes.

7 Q. -- right?

8 And that's what he was talking about, If you
9 keep on bugging me and saying that kind of shit?

10 A. No, no.

11 MR. CRANE: Well --

12 THE WITNESS: Don't put words in my mouth.
13 Sorry, but I -- I had said something about talking to the
14 authorities and some things of that nature and that was when
15 he said, If you say anything to anyone, I'm going to kill you.
16 I -- the keep on part, I'm sorry, I misspoke earlier and that
17 wasn't what I intended to say. But when he said, If you
18 keep -- he said -- when he said, If you tell anyone about
19 this, I'm going to kill you, it was in regards to primarily
20 law enforcement.

21 BY MR. ROGERS:

22 Q. And it was just a slip when you said, If you
23 keep on?

24 A. Yes.

25 Q. And that wasn't what he actually said?

1 A. That's correct.

2 Q. And he wasn't growling at you to express his
3 irritation in you continuing to bug him --

4 A. The best way --

5 MR. CRANE: Let him finish his question.

6 BY MR. ROGERS:

7 Q. -- about a conversation that should have been
8 over in his mind?

9 A. I'm sure he was -- he was irritated about that
10 also, yes.

11 Q. All right. Now, after that night at that
12 party, did you leave first or did he leave first?

13 A. I left.

14 Q. And after that, when is the next time you saw
15 Ryan Ferguson?

16 A. When we were arrested.

17 Q. Okay. So you didn't see him at any time after
18 that?

19 A. No.

20 Q. Okay. And --

21 A. I had talked to him, but I never saw him.

22 Q. When did you talk to him?

23 A. I was getting ready to go to Breckenridge,
24 Colorado and I'd called him meaning to talk about the murder
25 and I was kind of just -- I -- you know, I wasn't going to

1 leave him alone, I don't think, until I'd concluded that,
2 but -- as far as my mind, I guess. But I'd -- there were
3 other people in the car and I needed a snowboard to go to
4 Breckenridge, Colorado and I knew he snowboarded so I asked
5 him if he still had the snowboard he had and he said, no, he
6 didn't, so --

7 Q. Now, you were going snowboarding in
8 Breckenridge?

9 A. Yeah.

10 Q. And how long after the party was that?

11 A. That was supposed to take place I think three
12 days after -- two or three days after I got arrested. It was
13 I think the 12th or 13th I was going to be leaving for
14 Breckenridge.

15 Q. Of March?

16 A. Yeah.

17 Q. And --

18 A. It was my spring break.

19 Q. -- you called Ryan?

20 A. Yeah.

21 Q. And where was he when you called him?

22 A. I don't know. I called him -- I was at a party
23 and I called him from someone else's phone.

24 Q. What number did you call?

25 A. I don't remember.

1 Q. Did you call --

2 A. I think it was just in the phonebook and --
3 someone might have even hit his name and handed the phone
4 after it was calling him, but I didn't know his number and I
5 just had someone else -- it was a girl I was with.

6 Q. Okay. And so how long was that before you were
7 arrested?

8 A. Oh, I can't be certain. Maybe a month or two.
9 It might -- it was probably like a month, month and a half
10 after I'd spoken to him.

11 Q. After the party?

12 A. Yeah. So it was about halfway in between the
13 time that we spoke at the party and the time that I was
14 arrested.

15 Q. And was that before you had a conversation with
16 Nick Gilpin about Kent Heitholt?

17 A. I believe so. I believe so.

18 Q. And so you call up Ryan Ferguson --

19 A. I might be wrong about the timing, but it was
20 around the time I was planning the Breckenridge trip that I
21 also told Nick Gilpin about this. So, I mean, I'm not quite
22 sure on the time.

23 Q. So this guy, Ryan Ferguson, that you have this
24 running conversation with at the party --

25 A. Yeah.

1 Q. -- is the guy that threatens to kill you.
2 Right?
3 A. Yeah.
4 Q. And you call him up to borrow his snowboard?
5 A. Yeah.
6 Q. Okay. And you don't know whether you called a
7 cell phone or a landline?
8 A. It was -- I'm not sure.
9 Q. And you're calling on a cell phone?
10 A. Uh-huh.
11 Q. Yes or no?
12 A. Yeah.
13 Q. Okay. The reason --
14 A. I know that sounds ludicrous, but another
15 reason was kind of a buffer because really I hadn't talked to
16 him about it since then anyway, but anyway -- anyway, I don't
17 really --
18 Q. You call him and ask to borrow his snowboard
19 and he says he doesn't have it anymore?
20 A. Yeah.
21 Q. And that's the end of that conversation?
22 A. Yeah. Pretty much. I told him I was going to
23 call him back because I wanted to talk to him about what I'd
24 been talking to him about at the party, and there were other
25 people in the car when I talked to him and I wasn't going to

1 talk to him about --

2 Q. Did you tell him why it was you were going to
3 call him back or did you just say, I'm going to call you back?

4 A. I think I just said, I'm going to call you
5 back.

6 Q. And the reason I asked you that is because you
7 said, I told him I was going to call him back because I wanted
8 to talk to him about what we were talking about at the party.
9 And my question is, that's not what you told him that's why
10 you would call him back?

11 A. Yes. Yes.

12 Q. Fair enough. And you never did call him back?

13 A. No.

14 Q. Okay. And is it fair to say -- fair to say
15 that Ryan Ferguson has never told you since November 1st of
16 2001 that he or you killed Kent Heitholt?

17 A. Yes.

18 Q. Okay. And, in fact, when confronted by you
19 about it, he has consistently denied it. Correct?

20 A. Except for in terms of what he said about
21 wanting to kill someone before he's 60. That -- I mean, he --
22 can I go back?

23 Q. Just answer my question.

24 MR. CRANE: Well, other than that comment?

25 THEE WITNESS: Yeah. Other than that comment,

1 then, then -- then, yeah, he's denied it.

2 (Off the record.)

3 BY MR. ROGERS:

4 Q. All right. Now, let's go to conversations with
5 people other than Ryan Ferguson. Between October 31st, 2003,
6 when you say you started to have these -- consciously have
7 these thoughts --

8 A. Uh-huh.

9 Q. -- and the party, had you talked with anyone
10 other than Ryan Ferguson about those thoughts?

11 And when I say "those thoughts," you understand
12 I'm talking about your intimations that you might have been
13 involved in the death of Heitholt?

14 A. Yes. But more vaguely. I didn't get into
15 details about it. Just expressing guilt and not really
16 knowing what to do. But I didn't -- I didn't -- I never
17 stated anything about -- you know, I -- I -- I'd asked a
18 friend, Have you ever done anything, you know, that -- just
19 something so horrible, you know, you didn't really know what
20 to do about it and things of that nature.

21 Q. Who was that?

22 A. That was like Corey Iranpour and I believe
23 Arturo Figueroa was there and so was Nick Gilpin and Chase
24 Davis and Matt Maddox, and I believe Jon Alder was there.

25 Q. So were they all in a position to hear you --

1 A. No. They weren't all -- they were at the same
2 place. Mostly it was just Corey that was in a position to
3 hear me and I think I said some things to Art too.

4 Q. Corey?

5 A. Iranpour.

6 Q. Iranpour?

7 A. And Matt Maddox and -- but I can't really be
8 certain.

9 Q. But you didn't mention the name of the Heitholt
10 or referring to the Tribune guy --

11 A. No.

12 Q. -- or even a murder --

13 A. No.

14 Q. -- is that a fair statement?

15 A. Yes.

16 Q. And then after the New Year's Eve party, before
17 the conversation with Gilpin, did you talk to anybody else
18 about thoughts, feelings, beliefs, concerning the death of
19 Mr. Heitholt?

20 A. No. After the New Year's Eve party, on the
21 way -- we were leaving the New Year's party, I told Art that
22 Ferguson was a coward, but I didn't elaborate on that at all.

23 Q. You told Art that Ferguson was a coward?

24 A. Yeah. He asked me why and I wouldn't
25 elaborate.

1 Q. And did you mean that you believed that he was
2 cowardly in not agreeing with your impressions that you might
3 have been involved?

4 A. With not taking responsibility for what he'd
5 done, yes.

6 Q. But you at that point still were not
7 consciously certain that he had done anything, were you?

8 A. No.

9 Q. Okay. And you weren't consciously certain that
10 you had done anything, were you?

11 A. No.

12 Q. You were just having thoughts -- you were
13 consciously having some thoughts that appeared strange?

14 A. I was analyzing memories and feelings and
15 having trouble addressing --

16 Q. Okay.

17 A. -- things from my past, I guess.

18 Q. Now, let's go to the conversation with Gilpin.
19 Let me first make sure that only the conversations with Art
20 Figueroa after -- while leaving the party or on the way home
21 from the party, I guess I should say, that's the only time you
22 talked with anybody about that whole subject matter before the
23 conversation with Gilpin; is that correct?

24 A. Yeah.

25 Q. Okay. Now, let's go to the conversation with

1 Gilpin. Where did this take place?

2 A. It started at Jon Alder's house and the
3 conversation continued until we went -- we went back to
4 Gilpin's house and that's where the conversation ended.

5 Q. Where were you when you started it at Jon
6 Alder's house?

7 A. I believe I was -- we were parked in front of
8 his house and that's when I started talking about it. And
9 then we went into his house and then we continued discussing
10 it in the kitchen. And then after that, I went out back and
11 continued discussing it out there in the -- on the patio.

12 Q. And who all was present at Jon Alder's house
13 that you know of?

14 A. Jon Alder, Ryan Alder was there.

15 Q. Who's Ryan?

16 A. Jon's older brother.

17 Q. How much older?

18 A. Three years, I believe.

19 Q. Okay. Who else?

20 A. I can't remember. There were a couple of
21 Ryan's friends, but I can't remember who they were.

22 Q. Okay. Were you having this conversation with
23 everybody or just with Nick?

24 A. Just with Nick.

25 Q. And were you doing it in a way to make sure

1 that nobody else heard the conversation?

2 A. Yeah.

3 Q. And when you say you started talking about it
4 on the way over there in the car, what did you say?

5 A. It wasn't on the way over there. It was parked
6 in front of the house.

7 Q. Parked in the front of the house. Okay. What
8 did you say there?

9 A. Let's see. I said, you know, I think that, you
10 know -- pretty sure that I had did something really messed up.
11 And -- and that -- then basically I just --

12 Q. What was Nick's reaction to that?

13 A. He was -- he didn't -- he was basically in
14 shock. He didn't really know what to say. A lot of it was
15 just disbelief, you know. And he thought that I might have
16 just been -- you know, like I didn't know what I was talking
17 about and that I might have just thought that I'd done
18 something that I really didn't do and things of that nature,
19 but --

20 Q. And was that also, to some extent, consistent
21 with your conscious mind, you weren't certain or sure? You
22 still consciously were not sure that you --

23 A. I didn't want to accept it.

24 Q. Consciously were you certain that you had done
25 it at that point when you're talking to Gilpin?

1 A. No.

2 Q. Okay. Now, and I think we've already said
3 this, but I keep going back to it because even later when
4 you're arrested and you're talking to the police, you're not
5 consciously certain. Correct?

6 A. Yeah. I didn't -- I didn't want to accept it.
7 That's true.

8 Q. But the truth is that you were not consciously
9 certain that you did it. Correct?

10 A. Yeah. That's the best -- I mean, that's the
11 best way I can describe it.

12 Q. And I'm not asking for your motivations or your
13 insights you've gained from therapy or anything like that.

14 A. I haven't had any insights through therapy. I
15 haven't discussed this case hardly at all in therapy, and I'd
16 appreciate it if you not make assumptions based on that.

17 Q. Well, I'm asking you --

18 A. Deep down I knew that I'd done this, but I
19 wasn't -- I didn't want to accept it and I didn't want to --
20 I --

21 Q. But what --

22 MR. CRANE: Let him answer the question now.

23 THE WITNESS: I don't know how to explain it to
24 you because it's really not something that it's easy to deal
25 with. When you do something like this and -- and, I mean, I'd

1 appreciate it if we keep this respectful, please.

2 BY MR. ROGERS:

3 Q. Have we had a conversation more than once today
4 about the fact that when I ask you a question about the state
5 of your conscious mind, I want an answer about the state of
6 your conscious mind, not what you have later come to believe
7 caused the state of your conscious mind? Have we had that
8 conversation?

9 A. Yes.

10 Q. More than once?

11 A. Yes.

12 Q. Okay. Doesn't that conversation apply to the
13 question I asked you?

14 A. Yes.

15 Q. Okay. And would you please answer the question
16 I asked you?

17 MR. CRANE: Which is?

18 BY MR. ROGERS:

19 Q. Which is, even later, after your arrest on
20 March 10th, you were not consciously certain that you had
21 actually been involved in the death of Mr. Heitholt, were you?

22 A. No.

23 Q. Thank you. Now, I forgot where I was going,
24 but I'll get back there.

25 So you're talking with Mr. Gilpin in the car in

1 front of the house?

2 A. Yeah.

3 Q. And Gilpin is expressing disbelief and
4 questioning whether your concerns or beliefs are, in fact,
5 valid. Correct?

6 A. Yeah. Yeah.

7 Q. And had you had experiences in the past of
8 thinking you had done something that you really hadn't done?

9 A. No.

10 Q. Had you had experiences in the past of having
11 done things that you didn't remember doing?

12 A. Yes.

13 Q. Tell me some of those.

14 A. I don't know. I mean, I don't know
15 specifically. I mean, there are certain things. I don't
16 know. Just like breaking stuff, stumbling into stuff, you
17 know, wrestling with someone when I was drunk, stuff like
18 that. Just -- I mean, I've had a few blackouts before, yeah.

19 Q. Do you remember being drunk one night and
20 tearing up someone's fence and not remembering it the next
21 day?

22 A. Yeah.

23 Q. And that's truly what happened. Right?

24 A. Yeah.

25 Q. You were drunk and blacked out and didn't

1 remember doing it although it was clear that you had?

2 A. Yeah.

3 Q. In fact, you showed up at Brian Dunn's house --

4 A. Brian Dunn's.

5 Q. -- with pieces of the fence?

6 A. Yes.

7 Q. And when Brian asked you about it the next day,

8 you couldn't remember doing it, but it was obvious that you

9 had --

10 A. Uh-huh.

11 Q. -- is that a fair statement?

12 A. Yeah.

13 Q. Okay. And your friends knew all about this?

14 This is part of the history that goes back there. Right?

15 A. Yeah.

16 Q. So had you also made up stories of trying to

17 pass them off as true to your friends?

18 A. No.

19 Q. Said that you had done things with girls that

20 you really hadn't done, things like that?

21 A. No.

22 Q. Never did that?

23 A. No.

24 Q. Okay. So in the part of the conversation with

25 Gilpin that took place in the car in front of Jon Alder's

1 house, did you go into any details of what you were talking
2 about, Heitholt or the Tribune guy or anything like that?

3 A. Yeah.

4 Q. That was out in the car in front?

5 A. Yeah.

6 Q. Okay. And then did you tell him that you were
7 not certain?

8 A. Yeah.

9 Q. Did you tell him that it might have been dreams
10 that you thought were memories?

11 A. Yeah.

12 Q. Okay. And was that the extent of the
13 conversation out in the car?

14 A. Yeah.

15 Q. Okay. Now, did you then -- you said, I think,
16 you went in the house and then you continued this conversation
17 in the kitchen --

18 A. Uh-huh.

19 Q. -- is that correct?

20 A. Yes.

21 Q. Okay. And in the kitchen was anybody else in a
22 position to hear what you and he were saying?

23 A. No.

24 Q. And were you making an attempt to speak in low
25 enough tones that somebody in another room couldn't

1 accidentally overhear?

2 A. Yes.

3 Q. And what was the conversation in the kitchen?

4 A. Just that I didn't really know what to do. I
5 guess it was kind of a moral dilemma. I didn't know if I
6 should turn myself in. I'd had thoughts of suicide and there
7 were other feelings. I didn't really know how to proceed.
8 You know, I wanted to turn myself in, but I didn't -- I didn't
9 really know what to do and I just couldn't -- it wasn't
10 something I could really deal on my own --

11 Q. Did you --

12 A. -- with.

13 Q. -- again, express your conscious uncertainty as
14 to whether this was reality or not reality?

15 A. Yes.

16 Q. Okay. And what was Nickolas's reaction?

17 A. At first, you know, he didn't -- he really
18 didn't -- he didn't -- he didn't -- he didn't think that I was
19 serious and didn't think that -- you know, he thought that I
20 might have just been -- you know, didn't know what I was
21 talking about. And later, you know, after I -- after we kind
22 of finished talking, you know, he said, You know you did this
23 and --

24 Q. Was that still in the kitchen?

25 A. No. That was -- that was -- that was later.

1 He didn't really say a whole lot. I mean, it was basically me
2 just talking, you know.

3 Q. In the kitchen?

4 A. Well, and then we went out back and then I got
5 more emotional out back behind his house -- behind Jon Alder's
6 house.

7 Q. What happened out there?

8 A. I just got more emotional. I didn't really --
9 you know, I didn't really know what to think. I didn't really
10 know what to say. And I just -- I just -- you know, I just
11 told him that I really thought that we'd done this and I
12 didn't know -- I didn't know what to do.

13 Q. Had you been drinking that day?

14 A. Yes.

15 Q. How much?

16 A. I couldn't drive. I had him drive my car.

17 Q. You knew that you were too drunk to drive?

18 A. Yeah.

19 Q. Okay. And had he been drinking?

20 A. Yes.

21 Q. How much?

22 A. I'm not sure.

23 Q. Obviously less than you or else you wouldn't
24 have had him drive his car?

25 A. Either that or he just had a better tolerance.

1 I'm not sure.

2 Q. When you're out back, did you tell him any of
3 the details of who you thought did what to Mr. Heitholt?

4 A. I can't remember.

5 Q. Okay. Did you ever tell him that you think you
6 hit Mr. Heitholt?

7 A. I can't remember.

8 Q. Okay. Did you at that point --

9 A. I -- I -- I believe I said something to the
10 extent of, you know, we beat and strangled a man. And -- and
11 I think that was really the -- the -- that was to the extent
12 of what I said.

13 Q. All right. Now, you had read in the paper back
14 when it happened and at the first anniversary in 2002 and the
15 second anniversary in 2003 that Mr. Heitholt had been beaten
16 and strangled, hadn't you?

17 A. Yes. Yeah.

18 Q. So that was not a secret?

19 A. No.

20 Q. And you also had read in the paper that there
21 were two men seen leaving the scene?

22 A. Yes.

23 Q. And so that wasn't a secret?

24 A. Right.

25 Q. And you knew from your own conscious memory --

1 A. Uh-huh.

2 Q. -- that you and Ryan Ferguson were together
3 that night at By George's. Correct?

4 A. Yes.

5 Q. Okay. Did you tell Nick Gilpin anything beyond
6 the obvious facts you had read in the paper and the conscious
7 memory of being with Ryan?

8 A. Yes. I -- I told him that I -- I remember
9 telling someone to go get help. I remember our -- I told
10 him -- I said that I thought I'd thrown up. And I told him I
11 remember seeing Ryan standing over the victim strangling him
12 and I remember hitting him with a tire iron. And I -- I also
13 told him about what Ryan had said to me on New Year's and --

14 Q. What Ryan had told you on New Year's?

15 A. Yes.

16 Q. And what else did you tell Mr. Gilpin?

17 A. I'm trying to think. I know he -- I probably
18 said -- I said some other stuff about what had happened that
19 night. Yeah, I remember I talked to him about driving back by
20 the scene after we'd done it -- after -- after we'd -- we'd
21 gone and done it and gone back to the club and then we --
22 after that, we left the club and drove back by and we saw that
23 he'd died. And I'm -- I'm fairly certain I told him about
24 what Ryan told me about always wanting to kill someone before
25 he was 60 anyway.

1 Q. And are those things that you now say that you
2 told Gilpin out back of Alder's house?

3 A. No. Those were things that I told him at
4 Gilpin's house after we left Alder's.

5 Q. All right. You're ahead of me. In terms of --

6 A. Well, I told you the extent of what I said was
7 that we'd beaten and strangled someone. That was at Alder's
8 house. And after -- remember, I told you after --

9 MR. CRANE: I think you just stated the time
10 frames of the location.

11 BY MR. ROGERS:

12 Q. That's what I'm trying to clarify. And I think
13 we're there now.

14 So basically the extent of the conversation
15 behind Alder's house was, We beat and strangled somebody?

16 A. Yeah.

17 Q. So now I asked a question about did you -- and
18 let me limit that. At Alder's house, behind Alder's or in
19 Alder's kitchen or in the car sitting in front of Alder's
20 house before you went in --

21 A. Uh-huh.

22 Q. -- did you tell Nick Gilpin anything about the
23 death of Heitholt which you hadn't read in the paper or put
24 together with the fact that you and Ryan were together at By
25 George's that night?

1 A. I don't believe so, but I can't be certain.

2 Q. Okay. But as I understand your testimony, you
3 left Alder's house and you and Gilpin went to Gilpin's house?

4 A. Yes.

5 Q. And is it at Gilpin's house we have this later
6 conversation or is it on the way or both?

7 A. It's both. But mostly when I get into further
8 detail, it's in Nick Gilpin's kitchen.

9 Q. Who else is at Nick Gilpin's house?

10 A. His roommate may have been there, but I don't
11 remember seeing anyone else while we were there.

12 Q. Okay. And that's when you gave the details
13 that you have now listed regarding talking to somebody there
14 at the scene, driving back -- going back to By George's and
15 driving back by the scene after that?

16 A. Yeah. I think I also said something about
17 seeing Dallas Mallory, but I can't be certain of that.

18 Q. Okay. And you also said something about what
19 Ryan said to you at the party?

20 A. Uh-huh.

21 Q. Which I assume to mean the remark you say that
22 he made about wanting to kill somebody before he was 60?

23 A. Yeah.

24 Q. Okay. Is that everything that you remember
25 telling Gilpin at Gilpin's house?

1 MR. CRANE: Wait a minute. Are you recapping
2 his previous answer?

3 MR. ROGERS: I was recapping the answer. Now
4 I'm asking a follow-up question.

5 MR. CRANE: Well, you left out various things
6 he just said, but if that's the way you want to ask the
7 question --

8 BY MR. ROGERS:

9 Q. Aside from what you've already told us -- and
10 I'm asking the questions and not taking the notes so I am at a
11 disadvantage to ask some extent. But besides what you've
12 already told us --

13 A. Uh-huh.

14 Q. -- is there anything else that you recall
15 telling Nick Gilpin at his house?

16 A. No. That's -- that's really all that I can
17 remember right now. I mean --

18 MR. ROGERS: Okay. All right. Now is probably
19 a good time to have a break.

20 (A recess was taken.)

21 BY MR. ROGERS:

22 Q. Back on the record. Mr. Erickson, before
23 lunch, we had I think concluded talking about the conversation
24 with Mr. Gilpin; is that correct?

25 A. Yeah.

1 Q. And not too long after that conversation -- by
2 the way, did you spend the night at Mr. Gilpin's house that
3 night?

4 A. Yes.

5 Q. And where did you go the next day?

6 A. I went home.

7 Q. And how long was it between the night you spent
8 at Nick Gilpin's and your arrest on March the 10th?

9 A. Around a week, maybe 10 days.

10 Q. Okay.

11 A. I'm not -- I'm not sure. It wasn't very long.
12 Probably around -- a little more than a week probably.

13 Q. During that week or 10 days, did you have any
14 conversations with anyone about your conscious beliefs or
15 thoughts or feelings concerning the death of Mr. Heitholt?

16 A. Yes.

17 Q. Who did you talk to during that week or 10 days
18 about that?

19 A. Arturo Figueroa.

20 Q. Okay. When did you talk to him?

21 A. Probably about three or four days after I
22 talked to -- to Nick.

23 Q. Okay. And did you tell him that you were not
24 consciously certain that these were accurate memories and that
25 they could be something you dreamed about or something that

1 you dreamed up?

2 A. Yes.

3 Q. Okay. And that was after your conversation
4 with Nick?

5 A. Yes.

6 Q. And was that an accurate description of your
7 conscious mind at that time?

8 A. Yes.

9 Q. Okay. And what did you tell Mr. Figueroa?

10 A. That I think that -- that Ryan and I had -- had
11 killed Kent Heitholt and I wasn't sure if my memories were
12 accurate or whether they were dreams. And that was really
13 honestly to about the extent of it and that I didn't know
14 whether to turn myself in.

15 I knew that they'd taken DNA for the case and
16 that I was -- I knew that they'd subjected some people to DNA
17 tests and I was going -- I was considering going and
18 submitting my DNA. And -- and also I think I might have
19 mentioned like suicide and stuff -- some stuff like that
20 nature, but I didn't really --

21 Q. Would you characterize Mr. Figueroa as a good
22 friend of yours?

23 A. Yeah.

24 Q. Somebody that you did confide really intimate
25 details with?

1 A. Uh-huh.

2 Q. Aside from this case, just in general?

3 A. Yeah.

4 Q. Okay. And did you tell him any details of what
5 you thought or believed or could have remembered?

6 A. Yeah. That I -- I believe I told him that I
7 hit Kent Heitholt over the head with a tire iron and that
8 afterwards, Ferguson strangled him.

9 Q. And did you tell him anything about what you
10 thought or believed Ferguson strangled him with?

11 A. No. I might have said I believed he strangled
12 him with his hands, but I can't remember for certain.

13 Q. Okay. And you mentioned the subject of DNA
14 testing. Had that been in the newspapers?

15 A. Yeah.

16 Q. And after you were arrested and charged, did
17 you learn that your DNA had been compared with DNA recovered
18 from hairs found in Mr. Heitholt's hand?

19 A. I'm -- I wasn't -- I thought that it was from
20 cigarette butts or something. I don't -- I just knew that it
21 had been compared to DNA found at the scene. I don't remember
22 what specifically it was. I thought that it was cigarette
23 butts, but I'm not sure --

24 Q. All right.

25 A. -- about the hand and the hair.

1 Q. Let me tell you about two different things.

2 A. All right.

3 Q. Initially when you read about it in the paper,
4 you knew that DNA had been found at the scene. Correct?

5 A. Yes.

6 Q. And was the paper specific or did you remember
7 whether the paper was specific about what was found?

8 A. No, it wasn't specific.

9 Q. Okay. And then after you were arrested and
10 charged, you learned that cigarette butts had been recovered?

11 A. Yes.

12 Q. And you discussed that with your lawyer. And I
13 don't want to get into what you and your lawyer said, but you
14 became aware that saliva contains cells with DNA in them?

15 A. Uh-huh.

16 Q. You have to say yes or no.

17 A. Yes. Sorry.

18 Q. And you learned that -- then you became aware
19 that the saliva that stays on a cigarette butt or cigar butt
20 can be tested for DNA?

21 A. Yes.

22 Q. And you submitted DNA samples at the time of
23 your arrest?

24 A. Yes.

25 Q. You knew from information you received in

1 discovery that Mr. Ferguson submitted DNA samples at the time
2 of his arrest?

3 A. Yes.

4 Q. Did you also submit hair samples?

5 A. Yes.

6 Q. And did you also know Mr. Ferguson had
7 submitted hair samples?

8 A. Yes.

9 Q. And do you know that all of those samples were
10 compared to whatever DNA was available?

11 A. Yes.

12 Q. And have you been told that those comparisons
13 were all negative?

14 A. Yes.

15 Q. And that there is DNA recovered at the scene
16 which is neither yours nor Ryan Ferguson's?

17 A. Yes.

18 Q. And my understanding is that your belief is
19 that that is the DNA on the cigarette butts; is that correct?

20 A. Yeah. It was at the time.

21 Q. Okay. And since then have you --

22 A. It had been a thought. I thought that we might
23 have been smoking at the time we did this and the cigarette
24 butts at the scene might have been ours.

25 Q. And have you also learned that Mr. Heitholt's

1 hands contained several hairs?

2 A. I may have remembered hearing that. I'm not --
3 I'm not sure.

4 Q. At the time that you decided to enter your plea
5 agreement, did you know that those hairs were tested through
6 DNA and that those hairs are not yours and those hairs are not
7 Ryan Ferguson's?

8 MR. CRANE: Actually I think it's one hair.

9 MR. ROGERS: I thought there were three.

10 MR. CRANE: Yeah. But after you got to talking
11 about that the other day, I started looking at it and I
12 believe I'm correct that one hair was submitted to
13 mitochondrial. Is that what you're talking about?

14 MR. ROGERS: I thought they were all submitted,
15 all tested. It would certainly be criminally negligent not to
16 test them all.

17 MR. CRANE: The question is --

18 BY MR. ROGERS:

19 Q. Whatever tests were performed excluded you and
20 Ferguson as the donors of those hairs?

21 A. Yeah. I think I remember hearing something
22 about that, yes.

23 Q. Okay.

24 A. I'm not entirely certain.

25 Q. Okay. Let me ask you this. If you had known

1 that at the end of 2003 and the beginning of 2004, would you
2 have been more willing to accept Ryan Ferguson's denial of
3 involvement?

4 A. No.

5 Q. Okay. If you had known that when you talked to
6 Nick Gilpin, would you have been even less certain about the
7 accuracy of your conscious memories?

8 A. No.

9 Q. If you had known that when you talked to Art
10 Figueroa, would you have been even less certain about the
11 accuracy of your conscious memories?

12 A. No.

13 Q. So even though you were talking to Art about
14 should I submit my DNA to find out whether or not this is
15 real, if you had submitted your DNA and found out that it
16 didn't match, that wouldn't have made any difference to you?

17 A. No.

18 Q. Okay.

19 A. Because it didn't affect what I remembered.

20 Q. Okay. And those are the memories that you were
21 questioning when you talked to Art?

22 A. Yes.

23 Q. Okay. Though it wasn't the answer to the
24 question that you were looking for?

25 A. It wasn't my question.

1 Q. Okay. Now, is that the substance and sum of
2 what you told Art Figueroa, that you wanted to know if you
3 should submit your DNA, you'd been considering suicide and
4 that you were not certain, but that you -- you were
5 consciously not certain, but that you believed that you might
6 have hit him with a tire iron and Ryan might have strangled
7 him with maybe his hands or you're not sure about whether or
8 not it was with the hands. Is that a fair statement?

9 A. Yes.

10 Q. Okay. Anything else that you talked with Art
11 Figueroa about concerning Mr. Heitholt? I mean, I'm sure you
12 talked about lots of stuff.

13 A. Yeah. I'm trying to think. I don't -- no, I
14 don't think so, no.

15 Q. Okay.

16 A. I talked to him -- I mean, I talked to him
17 later a couple days later on the phone. He said, It's really
18 messed up what you told me, it's really none of my business.
19 And that was really the extent of it.

20 Q. This was before your arrest?

21 A. Yeah. This is on the phone. I remember I was
22 at work and I think he asked me if I was serious or if I was
23 just messing with him. And I said, No, I was serious about
24 that conversation. And he said, That's really messed up, but
25 it's not really any of my business. And that was -- after

1 that, I didn't -- I didn't really talk to him again about it.

2 Q. Okay. And are those the only two times that
3 you had -- before your arrest, that you had conversations with
4 Mr. Figueroa about it?

5 A. Yeah. Yes.

6 Q. Thank you. Anybody else other than
7 Mr. Figueroa who you talked to between the time you spent the
8 night at Nick Gilpin's house, after having three separate
9 conversations -- I guess four separate conversations with him,
10 with Gilpin, about your thoughts and beliefs?

11 A. No. No.

12 Q. Now, you were arrested, we've already talked
13 about, on March 10th, 2004 --

14 A. Yeah.

15 Q. -- in the morning as you got out of your car in
16 the parking lot of your school --

17 A. Uh-huh.

18 Q. -- correct?

19 A. Yes.

20 Q. And during your conversations with police, did
21 you tell them that the shoes that you had worn on Halloween
22 night 2001 were still at your house?

23 A. I believe I remember telling them that if I
24 still had them, that they were at -- they would have been at
25 my house. That was if I still had them. I remember saying

1 that I wasn't sure if I still had them or not.

2 Q. Okay. What kind of shoes were you wearing?

3 A. I -- I can't recall accurately. I'm not sure.

4 It -- I want to say I was wearing boots, but I can't -- I

5 can't remember honestly.

6 Q. Okay. When you say "boots," do you mean

7 leather boots?

8 A. Yes.

9 Q. Did you have a pair of leather boots?

10 A. Yes.

11 Q. And what kind of leather boots did you have?

12 A. At the time I had a pair of I think American

13 Eagle boots and a pair of Timberland boots, but I can't -- I

14 can't be sure.

15 Q. Let's talk about those boots. You say American

16 Eagle boots. Were they western style? Were they work boots?

17 What kind of boots were they?

18 A. They were like work boots.

19 Q. And did they have a leather sole or did they

20 have a composition-type sole, or do you know?

21 A. I believe it was like rubber.

22 Q. Okay. And was there a pattern on the rubber

23 sole?

24 A. I believe so. It had an A and an E on it, but

25 I'm not sure about that.

1 Q. All right. And was there any other type of
2 tread pattern?

3 A. I -- I mean, I can't recall what it was besides
4 the A and E. That's pretty distinctive, but --

5 Q. And was the A and E on the heel part or on the
6 front part of the sole?

7 A. I believe it was on the heel.

8 Q. Okay. And do you know anything about any
9 possible tread part on the front part of the sole?

10 A. No. I mean, I don't -- I can't recall a
11 distinct pattern, no.

12 Q. What size boot or shoe did you wear back then?

13 A. It varies. But usually about a 10, 10 1/2.

14 Q. Okay.

15 A. Just depending on what brand of shoes they are.

16 Q. Okay. And you also mentioned that you had a
17 pair of Timberline or --

18 A. Timberland.

19 Q. Timberland --

20 A. Yeah.

21 Q. -- boots?

22 And are those like hiking boots?

23 A. No. They're like -- they're pretty big. I
24 guess they're like snow boots. I'm not sure. They're
25 leather. They had a rubber sole.

1 Q. Okay. And do they have a tread on the soles?

2 A. Yes.

3 Q. What kind?

4 A. I don't -- I'm not sure.

5 Q. Is it one of these big waffle treads like you'd

6 use for walking on snow surfaces?

7 A. No. I mean, it would be the same as probably

8 the American Eagle only -- except for the AE, I guess. I'm

9 not real -- I'm not sure on the sole of the tread.

10 Q. And your belief is that you were wearing one or

11 more of those pairs of boots on that night?

12 A. That's what I think, but I don't -- I don't

13 know for certain.

14 Q. Did you also have athletic shoes?

15 A. Yes.

16 Q. What kinds?

17 A. Nike, K Swiss, New Balance, that was about it.

18 Q. Did any of those have tread patterns on the

19 sole?

20 A. Yes.

21 Q. And did you own them back in 2001?

22 A. Yes.

23 Q. Okay.

24 A. I may have been wearing those, but I

25 can't -- I can't be certain of what -- what type of shoes I

1 was wearing.

2 Q. All right. Earlier that night, on the night of
3 Halloween, you had been at a party someplace; is that correct?

4 A. Yes.

5 Q. Where was that party?

6 A. At Ryan Swilling's house.

7 Q. And who did you go there with?

8 A. With Jon Cole, David Igleheart and Scott
9 Turner.

10 Q. Okay. And did you stop over at Cole's house or
11 Turner's house or somebody's house to get clothing?

12 A. We stopped at Jon Cole's house. I'm not
13 sure -- I might have been dropped off there by my mom and then
14 left Cole's house or Scott Turner might have picked me up, I
15 can't remember. But either way, we left Jon Cole's house and
16 went to the party.

17 Q. Do you know what you were wearing at that time?

18 A. I was just wearing regular street clothes when
19 I went to Jon Cole's house and then I changed into some '70s
20 attire that his parents had in their storage area in their
21 basement.

22 Q. What kind of '70s attire were you wearing?

23 A. I had some shoes on, they were like penny
24 loafers, I think. And I also had some like bellbottom pants
25 on and --

1 Q. What kind of bellbottom pants?

2 A. They were jeans.

3 Q. Bellbottom blue jeans?

4 A. Yeah. They were light blue like the wall

5 actually. And I -- I had a shirt that was light blue like the

6 wall also. And that -- I think the -- it was like a button-up

7 color shirt and I think the sleeves were -- I mean, it was

8 kind of retro I guess a little bit. The sleeves were a little

9 bit wider and I think the collar was too maybe a little bit.

10 Q. So you're basically wearing penny loafers, blue

11 jeans -- bellbottom blue jeans and a blue button collar shirt.

12 Were the sleeves puffy?

13 A. No.

14 Q. What made it look '70s?

15 A. Just the -- I guess, like, I had them

16 unbuttoned too and that's just like the sleeve -- it was just

17 wider than like a shirt, like at the cuffs.

18 Q. The cuff was wider?

19 A. The cuff was wider and the cuff was longer, I

20 guess.

21 Q. Okay.

22 A. And the collar was -- was larger also.

23 Q. Okay. Anything else you were wearing that made

24 it into a costume?

25 A. No. I don't believe so, no.

1 Q. Okay. Did you then go to the party with Cole
2 and Igleheart -- and who else did you say?
3 A. Scott Turner.
4 Q. Turner?
5 A. Yes.
6 Q. And when you got to the party, did you see Ryan
7 Ferguson?
8 A. No.
9 Q. Okay. Did you see him later that night --
10 A. Yes.
11 Q. -- at the party?
12 A. No.
13 Q. Okay. So you never saw Ferguson at the party?
14 A. Correct.
15 Q. Okay. And --
16 A. To the best of my memory.
17 Q. That's all I'm asking you for.
18 A. Yeah, yeah.
19 Q. At the party did you see Dallas Mallory?
20 A. Yes.
21 Q. What was Mallory wearing?
22 A. A policeman's uniform.
23 Q. Describe that for me, please.
24 A. It was dark blue and he had the badge and I
25 think he -- he had -- he had some of the, like, insignias or

1 whatever of the police. And I believe at the time he had his
2 sleeves rolled up, but I can't remember for sure.

3 Q. Was he wearing any type of headgear?

4 A. I can't remember.

5 Q. Okay. Did you ever see a policeman's cap that
6 would have matched the blue color of his police uniform, or do
7 you know?

8 A. I can't remember.

9 Q. Okay. Now, what happened that caused you to
10 leave the party?

11 A. The police showed up.

12 Q. Okay. Where is Ryan Swilling's house?

13 A. I'm not sure of the exact road. I think it
14 might be High Ridge. It's across from the Forum Shopping
15 Center across -- it's like behind a Dairy Queen off to the
16 right. If you're facing Forum, it's off to the right and
17 behind the Dairy Queen.

18 Q. So that would be west of Forum Boulevard or
19 Avenue or whatever it is, the road name for it?

20 A. Is that right?

21 Q. And it would be south of Stadium Drive?

22 A. Yeah. It would be south of Stadium.

23 Q. There's a Forum theater that's up there?

24 A. Yes.

25 Q. And this is across the street from -- and

1 behind the Dairy Queen, which is across the street from the
2 Forum theater?

3 A. Yes.

4 MR. CRANE: Well, the theater or shopping
5 center? The theater is actually on around the back.

6 MR. ROGERS: You know better than me.

7 THE WITNESS: Well, it's --

8 MR. CRANE: Are you okay with the party
9 residence being across Forum --

10 THE WITNESS: It's across --

11 MR. CRANE: -- roughly from the Forum Shopping
12 Center?

13 THE WITNESS: -- we'll say the Smokehouse
14 restaurant.

15 MR. CRANE: Well, the whole thing is what I'm
16 trying to get to.

17 THE WITNESS: It's across from the Forum
18 Shopping Center. Sorry.

19 BY MR. ROGERS:

20 Q. Is that very far from where you lived at the
21 time with your parents?

22 A. No.

23 Q. About how far?

24 A. Less than 2 miles.

25 Q. Okay. Where did Jon Cole live?

1 A. Jon Cole -- I can't remember the exact name of
2 the street, but he lived off of -- his street was off a street
3 named Texas, I believe. And he lived north of town near Cosmo
4 Park.

5 Q. So quite a ways away from where this party was
6 as Columbia goes?

7 A. Yeah.

8 Q. The party's at the south end and he's at the
9 north end?

10 A. Yes.

11 Q. And Cosmo Park, is that the park that has the
12 golf course?

13 A. No, that's LA Nickell, I think. Cosmo Park
14 is --

15 Q. Is that the park that has the frisbee golf
16 thing?

17 A. I'm not sure. There's a bunch of baseball
18 fields there and soccer fields and stuff like that. I think
19 there's baseball fields anyway.

20 Q. Anyway --

21 A. The road that it runs on runs parallel to I-70.

22 Q. And about where is it east/west?

23 A. Let me think. It's west of Forum.

24 Q. All right. In fact, do you take Stadium
25 Boulevard to sort of get from there to Forum?

1 A. Yeah.

2 Q. And who was driving when you went from Cole's
3 house on the north side of town to Swilling's house behind the
4 Dairy Queen?

5 A. I believe David Igleheart.

6 Q. Okay. What happened to cause you to leave the
7 party?

8 A. The police showed up.

9 Q. Do you know what time that was?

10 A. Around 10:30.

11 Q. Okay. And where did you go after the police
12 showed up?

13 A. I -- I left. And I remember seeing -- I walked
14 out front and I -- I was kind of at the rear of the party and
15 I walked out front and my ride was -- they were leaving
16 without me. So I just wanted to get away from the house at
17 that point and so I started walking down the road and I was
18 going to -- I was either going to ask someone else for a ride
19 or I was just going to walk to my house because it really
20 wasn't that far.

21 Q. Okay.

22 A. And I started walking away from Forum on High
23 Ridge and that's where I saw Ryan Ferguson.

24 Q. Okay. And if you were actually walking to your
25 house from the party location, you would go down High Ridge

1 and then cut over to Chapel Hill Road and take it to Grant and
2 then go up to where you live? Is that how you'd do it?

3 A. Not to Grant. I'd probably meet up with Chapel
4 Hill or -- I'd probably just meet up with Chapel Hill at some
5 point and just go, you know, back behind the neighborhood or
6 whatever until I met Chapel Hill and then just walked to my
7 house from there.

8 Q. Okay. But you ran into Ryan Ferguson?

9 A. Yes.

10 Q. So you hadn't talked with him at the party?

11 A. No.

12 Q. And, in fact, you don't know whether he'd been
13 there or not? You didn't see him?

14 A. Yes.

15 Q. Was it a pretty big party?

16 A. Yeah. There were quite a few people there.

17 Q. And there were people all over the ground floor
18 of the house?

19 A. Yes.

20 Q. And in the various rooms and --

21 A. Yeah.

22 Q. -- in back?

23 A. In the garage. I don't know if there were
24 people out back. I think they tried to keep people in the
25 garage. There were a lot of the people in the basement and

1 that's basically where I stayed most of the time was in the
2 basement and the garage.

3 Q. So somebody could show up and be someplace else
4 and you wouldn't even though they were there?

5 A. Yes.

6 Q. Okay. And you did not have any plan to go
7 anywhere with Ryan Ferguson at the time that you left the
8 party because you didn't even know he was around that night.

9 Is that a fair statement?

10 A. Yes.

11 Q. Okay. So you ran into Ryan?

12 A. Yes.

13 Q. And you have not -- you're coming directly from
14 the party?

15 A. Yes.

16 Q. You haven't been back to Cole's house?

17 A. No.

18 Q. Haven't been any place else?

19 A. No.

20 Q. And by the time that you got out of the party
21 when the police show up, Igleheart and the guys you came with
22 have already gone?

23 A. Yeah. Well, like, I saw them -- like, they
24 were getting in their car and I was pretty sure, like, they'd
25 just driven off. And I wasn't going to try to run them down.

1 Q. But you didn't have any conversation with them
2 or say, Hey, guys, wait for me or --

3 A. No. I didn't get a chance.

4 Q. -- or etc.?

5 Okay. So at that point were you wearing a coat
6 of any kind?

7 A. No.

8 Q. Was it chilly?

9 A. Yes.

10 Q. Kind of cool for -- it was, after all, the end
11 of October?

12 A. Yes.

13 Q. And it's night?

14 A. Yes.

15 Q. And so all you were wearing was this blue
16 button down -- is that what they call a oxford cloth shirt?

17 A. Yes.

18 MR. CRANE: Did you say button down? Did you
19 say button down?

20 BY MR. ROGERS:

21 Q. Button down collar? Is that what we're talking
22 about? Are we on the same page?

23 A. I think it had a button down collar. I can't
24 remember though.

25 MR. CRANE: I thought you meant button, like

1 this has buttons on it. It's also a button --

2 BY MR. ROGERS:

3 Q. That's both a button down and a button up. And
4 that was the kind of shirt you were wearing too as far as you
5 can remember?

6 A. I don't remember.

7 Q. It buttoned up the front?

8 A. I don't think it had buttons on the collar, but
9 it buttoned up the front, yeah. And it had -- I believe had a
10 pocket on it.

11 Q. And do you know for sure whether or not it had
12 buttons on the collar?

13 A. No.

14 Q. Okay. That's a fair answer.

15 You then saw Ryan Ferguson. Did he pull over?

16 A. Yeah. I didn't even see him actually. And I
17 guess he was off to the right and I was on the sidewalk, I
18 remember. And he was on -- off to my right on the road. And
19 he said, Hey, Chuck, and he kind surprised me. And I went to
20 his car and I got in.

21 Q. Okay. And had you seen him recently?

22 A. I may have seen him at school, but I can't -- I
23 can't remember --

24 Q. Okay.

25 A. -- for sure.

1 Q. Fair to say that sometimes you guys went to
2 school and sometimes you didn't?

3 A. Yeah.

4 Q. True for both you and Ryan?

5 A. Yeah.

6 Q. But not necessarily together? I mean, you
7 could be --

8 A. No.

9 Q. One of you could be at school and one of you
10 could be ditching out and vice-versa?

11 A. Yeah. On certain days he took me to school.
12 It just depended on the schedules because I didn't have my car
13 yet, so on certain days he would take me to school. But we
14 didn't really -- I think -- I'm not sure that we had any of
15 the same classes my sophomore year.

16 Q. Okay. So he says, Hey, Chuck, and you go over
17 and get --

18 A. Or my junior year, I'm sorry.

19 Q. I'm sorry.

20 A. Yeah.

21 Q. He says, Hey, Chuck, and you go over and get in
22 his car?

23 A. Yeah.

24 Q. And did you ask him to give you a ride any
25 place?

1 A. I -- I don't really remember. Basically it was
2 just -- I was just getting in the car because the cops were
3 there. And, like, I didn't -- he was like, Hey, come on, and
4 so I just ran and got in his car.

5 Q. How far had you gotten from the house?

6 A. Not very far. Like a few houses down.

7 Q. It's not a situation where the police show up
8 and everybody scatters, is it?

9 A. Yes.

10 Q. It's a matter of here's a party being broken up
11 and we're leaving?

12 A. Everybody scattered pretty much.

13 Q. Are you running?

14 A. I might -- I can't remember. It was
15 definitely -- I was getting out of there, so --

16 Q. Did it look like the party was being raided?

17 A. I'd been enough to parties that were broken up
18 before to know that eventually -- that was an eventuality
19 that -- I mean, the police were at the party, you know, we're
20 underaged, we're drinking, you know, there's drugs around, we
21 need to get out of there so that's just what I did.

22 Q. And so you got in Ryan's car. Where did you
23 go?

24 A. At first, we stopped and I believe we -- we
25 waited and I can't remember if we turned around or went past

1 the cop or not because the cop was parked on the road. I
2 can't remember that for certain. He mentioned that he thought
3 his sister could get us into the club and he asked me if I
4 wanted to go to the club and I said, Yeah. And I might have
5 called someone else, another friend named Scott Turner and
6 asked him if he wanted to go with us, and which he didn't
7 and --

8 Q. So you didn't talk to Scott about going to
9 clubs while you were still at the party though?

10 A. No.

11 Q. And Scott's one of the guys you came with --

12 A. Yeah.

13 Q. -- who has left you when the party was being
14 broken up the police?

15 A. Yeah, yeah.

16 Q. But you still call him and see if he wants to
17 go along?

18 A. Yeah.

19 Q. Okay. And did you use your phone or --

20 A. His phone.

21 Q. Ryan's phone?

22 A. Ryan's phone.

23 Q. To call Scott?

24 A. Yeah.

25 Q. Okay. And did Scott want to go to the club?

1 A. No.

2 Q. Did you ask anybody else to go?

3 A. I don't think so, no.

4 Q. Did you ask Scott to check with any of the guys

5 that he was with and ask if they wanted to go?

6 A. I don't remember.

7 Q. Okay. Those were the guys you came to the

8 party with?

9 A. Yeah.

10 Q. And that was Jon Cole and --

11 A. David Igleheart.

12 Q. -- David Igleheart. Right?

13 A. Yeah.

14 Q. Okay. So I assume you were making that phone

15 call while Ryan's still driving in the car?

16 A. Yes.

17 Q. Okay. Where did you go?

18 A. After that, I went to my house to change.

19 Q. So Ryan drove you to your house --

20 A. Yes.

21 Q. -- to change?

22 Q. What did you change into?

23 A. I believe I was wearing Lucky jeans, and I

24 can't be for sure on that, but I also put on a Tommy Hilfiger

25 shirt, a gray shirt that had lines in the fabric, vertical

1 lines and a blue Tommy printed -- just said Tommy on the left
2 breast. And I also put on a kind of a heavy, puffy, blue,
3 Nautica coat. It was reversible and one side was kind of
4 shiny, it had like a gloss to it or whatever.

5 Q. And were both sides blue?

6 A. Yes. The shiner glossy color was a darker blue
7 like a turquoise and the other side was a lighter blue.

8 Q. And what else were you wearing?

9 A. That -- that was it.

10 Q. You didn't change shoes?

11 A. Yeah. I did, but I can't remember what shoes I
12 put on.

13 Q. What shoes did you take off?

14 A. The shoes that I got from Jon Cole's parents.

15 Q. The penny loafers?

16 A. Yeah.

17 Q. And what was Ryan wearing?

18 A. I can't remember specifically. I'm fairly sure
19 he had, like -- he had an Abercrombie shirt on, but I know for
20 certain he had -- it was either -- it was like a blue Polo
21 jacket or a vest and it was puffy and I remember that for
22 certain. And it had RL on the sleeve and had a red stripe on
23 it.

24 Q. It had RL on the sleeve?

25 A. Like Ralph Lauren.

1 Q. So it couldn't have been a vest if it had a
2 sleeve?

3 A. Yeah. That -- yeah, you're right. Sorry.

4 Q. No. I'm just --

5 A. Yeah. Either that or it was somewhere else on
6 the coat, but I guess it must have been -- must have been a
7 coat.

8 Q. Okay. And what color was it?

9 A. It was darker than mine. It was either dark
10 blue or black.

11 Q. And you say he was wearing an Abercrombie
12 shirt?

13 A. Yeah, I think underneath it. I can't remember
14 for sure.

15 Q. Let's go back to your Tommy Hilfiger shirt.

16 A. Okay.

17 Q. Is that a T-shirt or a long-sleeved pullover
18 shirt or --

19 A. Just like a T-shirt, like an undershirt.

20 Q. When you say "like an undershirt," it didn't
21 have sleeves on it?

22 A. No, it did have sleeves on it.

23 Q. It's not what they call a wife beater shirt?

24 A. No.

25 Q. It's short sleeves or long sleeves?

- 1 A. Short sleeves.
- 2 Q. And did it have any printing on the back?
- 3 A. No.
- 4 Q. But it was knit in stripes?
- 5 A. No. They weren't knit it. They were just like
6 lines in the fabric is the best way to describe it. It was a
7 pretty thin shirt. It just had lines like in the fabric and
8 then there was -- it was a blue Tommy and just said Tommy
9 printed on -- it was the left breast.
- 10 Q. Okay. And was Ryan's Abercrombie shirt
11 long-sleeved or short-sleeved?
- 12 A. I can't remember.
- 13 Q. Do you know what color it was?
- 14 A. I think it was gray.
- 15 Q. And did he ever change clothes that night that
16 you know of?
- 17 A. When we went and did the robbery, he took his
18 coat off.
- 19 Q. Did he ever change clothes that night that you
20 know of?
- 21 A. No.
- 22 Q. Okay. When you went to your house to change
23 clothes, who was there?
- 24 A. I believe my parents and my sister.
- 25 Q. Did you talk to them?

1 A. No.

2 Q. Did they see you?

3 A. No. They were asleep.

4 Q. And about what time was this?

5 A. Around eleven o'clock.

6 Q. How old's your sister?

7 A. She is 17 now.

8 Q. So she would have been 13?

9 A. About 13.

10 Q. Then after you change clothes, did Ryan come
11 in?

12 A. No.

13 Q. What did he do while you were changing clothes?

14 A. He dropped me off out front and then he went
15 and parked on Grant Street and I believe he made some phone
16 calls.

17 Q. Okay. You don't know because you weren't
18 there?

19 A. When I came back, he was on the phone with
20 Holly Admire.

21 Q. Holly Admire?

22 A. Yes.

23 Q. Okay. And about what time would that have
24 been?

25 A. Somewhere around eleven o'clock.

1 Q. Okay. And then when you came back, having
2 changed clothes, where did you go?

3 A. I went to By George's.

4 Q. Okay. With Ryan?

5 A. Yes.

6 Q. Where did he park?

7 A. In By George's?

8 Q. Yes.

9 A. He parked off of First Street past -- past
10 George's -- I'm not for certain, but it was -- it was on the
11 right side of the road and it was down -- it was down First
12 Street past George's because there was a lot of activity and
13 there were a lot of people that were parked in front of
14 George's so we had to park down the road.

15 Q. And I'm taking you then northbound on First
16 Street from Broadway. And as you go on First Street north
17 from Broadway, By George's was on the left; is that correct?

18 A. Yes.

19 Q. And it has a fairly small parking lot right
20 there by it?

21 A. Yes.

22 Q. Is that lot totally full?

23 A. Yes.

24 Q. And then there are cars also parked on both
25 sides of the street down there?

1 A. Yes.

2 Q. And then did you go -- how many blocks did you
3 have to go up First Street before you found a parking space?

4 A. At least one, possibly two.

5 Q. As you go north on First Street a block north
6 of George's, is that where the dirty bookstore place is, the
7 Olde Un?

8 A. It wasn't quite that far. I don't think that's
9 right though. I'm not sure.

10 Q. All right. You don't know how far you went?

11 A. I mean, I know that we went, like,
12 approximately -- at least like a couple hundred feet past
13 George's.

14 Q. Do you recall crossing another street?

15 A. Yes. At least -- at least one other street
16 on -- as we were coming -- if we pass George's and George's is
17 on our left, we would go through -- I think we went through
18 one intersection and then we parked after that.

19 Q. Okay. And had Ryan Ferguson told you how he
20 planned for you guys at the age of 17 to get into By George's?

21 A. Yes.

22 Q. How was that?

23 A. His sister knew the bouncer.

24 Q. His sister knew the bouncer?

25 A. Yes.

1 Q. Had he talked to the sister while you were
2 there in the car?

3 A. He talked to his sister on the way to the club.
4 I believe he talked to her on the way taking me to my house
5 and then he called her again to make sure that she was still
6 in front of the club waiting for us.

7 Q. Okay. So she was there when you got there?

8 A. Yes.

9 Q. Who else was with her?

10 A. She had a friend with her. I don't know her
11 name. She was -- she was Asian. That's all I really
12 remember.

13 Q. Okay. And how would they be able to get you
14 guys into the club by knowing the bouncer?

15 A. Because the bouncer was the person that carded
16 you at the door and at the door you received a bracelet. And
17 it -- just signifying that you were 21 or older. And by
18 knowing the bouncer, he, you know, bent the rules, broke the
19 rules or whatever.

20 And I was supposed to go in as his sister's
21 boyfriend and he was supposed to go in as her friend's
22 boyfriend. And we got into the club because they knew the
23 bouncer and I don't know if they paid him or talked him into
24 it or what, but there was some agreement and he let us in.

25 Q. So the girls knew the bouncer and he was going

1 to let them in and he let you in because you were supposedly
2 their dates so he's assuming if they're okay, you're okay or
3 something so that effect?

4 A. Yeah.

5 Q. And did they give you a bracelet?

6 A. I mean, no, I don't think it was something to
7 that effect. I don't think he was assuming that we were of
8 age. I think they had -- by knowing the bouncer, we got into
9 the club. There was no, you know --

10 Q. You don't think the bouncer was fooled --

11 A. Yes.

12 Q. -- is that correct?

13 A. Yes.

14 Q. Okay. But you're thinking the bouncer let you
15 in because --

16 A. Of who we were with.

17 Q. -- because you were with these girls that he
18 wanted to let in?

19 A. Yes.

20 Q. And you were -- if he was fooled, it was to the
21 notion that you were actually their dates, which --

22 A. Yes.

23 Q. -- was probably not correct?

24 A. Yes.

25 Q. Okay. Now, how much money did you have with

1 you?

2 A. Not much. I can't recall except that it wasn't
3 much. I think that it was enough to pay for all the cover or
4 maybe just some of the cover and then Ryan covered me after
5 that.

6 Q. What was the cover charge?

7 A. I believe around \$10.

8 Q. And was there a band there?

9 A. No. I don't -- I don't -- I don't believe so,
10 no.

11 Q. So what's the cover charge for?

12 A. For drinks and just for -- just to get in.
13 It's like a Halloween party.

14 Q. Okay. But you had to buy the drinks?

15 A. Yeah, you had to buy the drinks. But it was
16 just -- I guess it was just for the Halloween party so you had
17 to pay a cover to get in.

18 Q. But there was no entertainment that you
19 remember?

20 A. No.

21 Q. And were you pretty intoxicated by this time?

22 A. Yeah. I was pretty buzzed, yeah.

23 Q. Okay. So is it possible that your memory's not
24 real accurate about what was going on inside the club?

25 A. No. I mean, I remember pretty well what went

1 on inside the club.

2 Q. And you said they gave you bracelets to signify
3 that you were over 21?

4 A. Yes.

5 Q. What did the bracelets look like?

6 A. I can't remember. They gave us hand stamps
7 too, I believe, because I remember I had the stamps on. I
8 think they looked like frogs or something, but I can't
9 remember what the bracelet looked like.

10 Q. Was the hand stamp an actual visible ink kind
11 of stamp?

12 A. Yes.

13 Q. It wasn't one of these stamps that glows around
14 the light?

15 A. No.

16 Q. And also a bracelet. Did you have to give the
17 bracelet back when you left?

18 A. No.

19 Q. So you could leave with the bracelet?

20 A. Yes.

21 Q. So if somebody who was 21 --

22 A. I believe -- I'm pretty sure we had bracelets.
23 I could be wrong about that, but I'm pretty certain we had
24 bracelets.

25 Q. If somebody who was 21 went in, got the

1 bracelet and then went back out, they could give the bracelet
2 to somebody that was underage?

3 A. Yeah. Yes.

4 Q. And that underage person could get back in
5 without a problem?

6 A. Yes.

7 Q. And the 21-year-old could show their ID and be
8 21 still and get back in. Is that the deal?

9 A. Well, they'd have to pay another charge.

10 Q. Yeah. But they'd probably get paid by the guy
11 that they gave the bracelet to. Wouldn't you think?

12 A. Yeah.

13 Q. Kind of like the Hey Misters when they buy the
14 beer?

15 A. Yeah.

16 Q. About what time do you think it was when you
17 got to By George's?

18 A. Between 11:30 and 12:00.

19 Q. And did you stay with -- did you know Ryan's
20 sister, by the way, before that?

21 A. I'd met her. I wasn't -- I didn't really know
22 her, no.

23 Q. Do you know her name?

24 A. Her name's Kelly.

25 Q. Okay. Did you stay with Kelly after you got

1 in?

2 A. No.

3 Q. Did Ryan stay with the Asian girl after you got
4 in?

5 A. No.

6 Q. What did they do?

7 A. They just kind of went and hung out with people
8 they knew.

9 Q. And what did you do?

10 A. Basically me and Ryan just went and sat by
11 ourselves and just kind of drank and watched people dance and
12 stuff like that.

13 Q. Did you stay together?

14 A. Yeah. Well, for the most part, but we were
15 separated a few times.

16 Q. Were you looking for girls your age?

17 A. Well, there weren't really any girls my own age
18 there. There was another girl who was my own age, but she'd
19 come with another guy. Basically I kind of felt out of place
20 because we were 17, we didn't really know anyone and,
21 honestly, I can't dance so -- but I'd never really been to a
22 club before, you know.

23 Q. What were you drinking?

24 A. Amaretto Sours.

25 Q. What was Ryan drinking?

1 A. Amaretto Sours and I believe he might have been
2 drinking rum and Coke also, but I can't be certain about that.

3 Q. And did they have waitresses that came around
4 to sell drinks or did you have to go up to the bar and buy
5 drinks? How did that work?

6 A. They did have waitresses that served drinks,
7 but to my memory, Ryan would go and he would buy the drinks at
8 the bar.

9 Q. Okay. And how long did you guys stay there as
10 far as you know the first time?

11 A. About two hours.

12 Q. Okay. So that would have put it -- if you got
13 there between 11:30 and 12:00, it's between 1:30 and 2:00.
14 Correct?

15 A. Yes.

16 Q. Did anybody yell last call or time to close the
17 bar or anything like that?

18 A. No.

19 Q. So none of that had happened?

20 A. No.

21 Q. Where did you go?

22 A. We went to his car.

23 Q. And why did you go to his car?

24 A. Because we ran out of money and his sister
25 wouldn't give him any more money.

- 1 Q. Had he asked for more money from his sister?
- 2 A. At least once. I think two or three times.
- 3 Q. And you're sure about that?
- 4 A. No.
- 5 Q. Were you right there when that happened?
- 6 A. No. But when we left, that's what he told me
7 he was going to do. And when he came back, he had money for
8 more drinks, so that's -- I mean, I assume that's what he did.
- 9 Q. You're sure about that?
- 10 A. Yes.
- 11 Q. And how much were the drinks?
- 12 A. They were pretty expensive. About four bucks a
13 drink or something like. I'm pretty sure I remember seeing
14 him approach her also. I didn't -- I don't remember seeing an
15 exchange of money, but I remember, I'm pretty sure, seeing him
16 approach her asking for money.
- 17 Q. How many drinks did you have while you were
18 there the first time?
- 19 A. At least two.
- 20 Q. And do you know how many drinks Ryan had?
- 21 A. No.
- 22 Q. Would it have been roughly the same?
- 23 A. Yeah.
- 24 Q. When he got himself a drink, do you think --
- 25 A. I think he probably drank more than I did.

1 Q. Was he dancing?

2 A. Not that I remember, no. Not that I saw.

3 Q. Was he talking to any girls?

4 A. Not that I remember. There -- there may have
5 been a few people there that we knew, but I don't -- I don't
6 remember seeing him talking to many people. He went off,
7 like, a couple times and came back and stuff like that, but I
8 don't -- I don't -- I don't remember. I think he might have
9 talked to like Christian Blankenship and Julie Dunn and I
10 think it was Matt Game (ph.) and Matt Maddox were there and he
11 might have talked to them a little bit. They were a grade
12 older than us so I didn't really know them too well. So I
13 think he went off and talked to them for a little while.

14 Q. But you didn't talk to them?

15 A. I might have said a few -- you know, How's it
16 going, you know. I don't remember engaging any significant
17 conversations or anything.

18 Q. Was that a costume party there at the bar?

19 A. Yes.

20 Q. But you weren't in any costume?

21 A. Yes, that's correct.

22 Q. Was Kelly, Ryan's sister, in a costume?

23 A. Yes. I think she was.

24 Q. What kind?

25 A. I think -- I think it was a tiger, but I

1 can't -- I can't be sure. I can't be certain. I could be
2 completely off and that was another girl I saw there. But I
3 think she had a costume on. I might be wrong.

4 Q. How about the Asian girl?

5 A. I can't remember.

6 Q. Okay. So at some point after you'd been there
7 a couple of hours, you say Ryan runs out of money; is that
8 correct?

9 A. Yes.

10 Q. And his sister won't give him any more?

11 A. Yes.

12 Q. Is that what he told you or did you hear that
13 exchange?

14 A. I remember he went and he came back and she
15 wouldn't give him any more money.

16 Q. Okay.

17 A. She hadn't given him any more money.

18 Q. And then did you guys have a conversation there
19 in the bar?

20 A. Not that I remember, no. It was just we'd run
21 out of money, it was getting pretty late, I had school the
22 next day and it was -- you know, it was really just agreed
23 upon that we were going to leave.

24 Q. Okay. So did you leave?

25 A. Yes.

1 Q. And then what happened?

2 A. We got out to his car and he wanted to call a
3 couple other people and he was kind of -- he wanted to stay
4 out and party a little bit more.

5 Q. Who did he call?

6 A. He said he -- he said he tried to call Brian
7 Dunn.

8 Q. Did you see him make that call?

9 A. I saw him try to make a few phone calls. I
10 don't -- I can't remember if he got through or -- or who he
11 talked to.

12 Q. Do you recall him actually talking to anybody?

13 A. Yeah. I think that he -- I thought that he'd
14 talked with Brian Dunn and that Brian said, you know,
15 nothing's really going on here, we're just going to sleep, but
16 I could be wrong about that. That could have been earlier in
17 the night.

18 Q. All right. All right. But you're sure that
19 after you leave By George's, when you go back to the car,
20 Brian makes some phone calls?

21 A. Yeah.

22 MR. CRANE: Did you say Ryan?

23 MR. ROGERS: Yes. At least I meant to say Ryan
24 if I didn't. I realize we're talking about Brian Dunn, so I
25 could have been confused.

1 BY MR. ROGERS:

2 Q. Ryan makes some phone calls, but you can't
3 remember -- was he sitting in the car when he made the calls?

4 A. He may have started on the way back to the car,
5 but I can't -- I can't remember. I mean, I do remember he was
6 on the phone trying to make phone calls, trying to find
7 something to do in the car. I was sitting next to him in the
8 passenger's seat.

9 Q. So you're sitting in the car?

10 A. Yeah.

11 Q. And has he started the engine?

12 A. I can't remember.

13 Q. Okay. Are you okay?

14 A. Yeah, I'm all right. Sorry. I'm used to
15 eating jail food.

16 Q. And, once again, if you need to take a break
17 for any reason, just let us know. Okay?

18 A. All right. Thank you.

19 Q. This is not a trial by ordeal.

20 A. Yeah.

21 Q. What happened while you're sitting there in the
22 car after he's done making phone calls?

23 A. Well, it was kind of a debate about what to do.
24 I wanted to go home.

25 Q. And wasn't he willing to just go home?

1 A. No. He pretty much wanted -- he wanted to stay
2 out. And he was just set on doing something. And he brought
3 up the idea that, you know, if we get some more money, we
4 could go, you know, drink some more and buy some more drinks
5 at the club. And he came up with the idea to rob someone so
6 we could get some more money to have more drinks at the club.

7 Q. Now, you'd had to have Kelly Ferguson and her
8 friend to get into the club the first time?

9 A. Yeah.

10 Q. Okay. Were they going to come back out and
11 help you get back in?

12 A. I'm pretty sure we had the wristband and I know
13 we had the stamps. And with those, we didn't have to pay a
14 cover charge and we didn't need them to get back in. We could
15 leave, you know, go back and forth.

16 Q. Bar was still open?

17 A. Yeah.

18 Q. People coming in, going out?

19 A. Yes.

20 Q. Okay. Any police around at that time?

21 A. No.

22 Q. Didn't ever see any police cars while you were
23 out there walking to Ryan's car and he's there talking on the
24 phone?

25 A. No. Not that I remember, no.

1 Q. Did he drive any place?

2 A. No.

3 Q. And you had not had any of -- any conversation
4 before you left By George's except let's leave and your
5 understanding that you were leaving to go home. Correct?

6 A. Yeah. I mean, we were definitely leaving the
7 club because there wasn't really a point in sitting around.
8 We couldn't buy more drinks and it was -- we were just -- we
9 were leaving. I assumed we were going home.

10 Q. Okay.

11 A. And that was when he kind of, you know, tried
12 to find something else to do.

13 Q. And nobody inside the club, neither you nor
14 Ryan, had said anything like, Let's leave and get some more
15 money?

16 A. Not to my memory, no.

17 Q. Okay. So then what happens when you're sitting
18 in the car and he's made the phone calls and there's nothing
19 else going on?

20 A. Then he brings up the idea that we can -- we
21 could rob someone to get some more money.

22 Q. Were there a lot of people around on the
23 streets?

24 A. There were -- there were a few people going
25 back and forth to the club.

1 Q. Okay. Was that what you thought he was talking
2 about?

3 A. Yeah. I just had the impression -- I'd never
4 done a robbery and I didn't know -- I guess we were going to
5 do a pickpocket or -- I'm not -- I don't know. I wasn't
6 really sure what we were going to do and, yeah, I --

7 Q. Did you ask him?

8 A. Well, no. We got out of the car first after I
9 agreed to do the robbery with him.

10 Q. And you agreed without asking him what he had
11 in mind?

12 A. Yeah.

13 Q. Okay.

14 A. And I still had the assumption that we were
15 just going to do a pickpocket or -- I wasn't really sure what
16 we were going to, you know, go about doing really. And we got
17 out of the car and I kind of figured that we were just going
18 to rob someone in the area. And he mentioned that we need to
19 leave, you know, the area of the bar and head towards downtown
20 where there's more people out because there's more bars and
21 stuff like that.

22 So I start walking away from the bar and, you
23 know, I was like, you know, if we're going to do this, let's
24 get it over with or whatever. And he stops me and he says,
25 you know, We need to take something with us in case it gets

1 fucked up is what he said, because we're young and we weren't
2 very big and in case things went bad we would --

3 Q. You say you weren't very big. How tall were
4 you back then?

5 A. Probably -- I haven't grown that much since
6 then. Five-seven, five-eight.

7 Q. Okay. Is that about how tall you are now?

8 A. Yeah.

9 Q. Were you skinner then than you are now?

10 A. I was about the same size then.

11 Q. How about Ryan? How tall was he?

12 A. He was about my height. He might have been a
13 little -- I can't remember. We were -- we were pretty much
14 around the same height.

15 Q. About the same build as well?

16 A. No. He's stockier, he's pretty stocky.

17 Q. Ryan's stockier than you?

18 A. Yeah, he's pretty stocky.

19 Q. And when you said we ought to get something,
20 what happened?

21 MR. CRANE: Wait a minute. I thought you
22 said -- did you say you started to walk away from the car and
23 he said, We ought to take something with us or I think maybe
24 you said someone?

25 THE WITNESS: I said something.

1 MR. CRANE: I thought you said someone. I was
2 confused.

3 THE WITNESS: No, no.

4 BY MR. ROGERS:

5 Q. And then what happened?

6 A. He went to his trunk and he popped his trunk.
7 He said, Come here, and he popped his trunk and he grabbed
8 this tire tool out of his trunk.

9 Q. Did you look in the trunk?

10 A. Yeah.

11 Q. What did you see?

12 A. There were a lot of clothes and crap like that.
13 I can't -- I can't remember, like, a lot of it. I remember
14 that he didn't have to look around for the tire tool, that it
15 was just -- it was like he moved, like, one -- one or two
16 things and it was pretty easily accessible.

17 Q. And what was the tire tool like?

18 A. It was pretty heavy, it was long like that
19 (indicating).

20 Q. When you say "like that" you're demonstrating
21 what looks to me to be 16 to 18 inches --

22 A. Yeah.

23 Q. -- is that a fair statement?

24 A. Yeah. I'm pretty sure it had a crook off like
25 this (indicating), but it wasn't -- it wasn't like angled like

1 a hook, you know. It wasn't like a tire iron. The angle
2 wasn't as -- as direct, I guess.

3 Q. Okay. Let's see if we can be clear for the
4 record because she can't put down what your hands are doing.
5 When you said it wasn't like a hook, you made a sign that
6 would be like the shape of a shepherd's crook?

7 A. It wasn't like a 90-degree angle. It was -- it
8 was --

9 Q. It was less acute than a 90-degree angle?

10 A. Yeah. I think that's right.

11 MR. CRANE: Why don't you not draw it on my
12 notes.

13 THE WITNESS: Sorry.

14 BY MR. ROGERS:

15 Q. We'll give you a yellow piece of paper to draw
16 it on.

17 A. Thank you. I believe it was more like that
18 (drawing). I could be wrong about that.

19 (Defendant's Exhibit E was marked for
20 identification.)

21 BY MR. ROGERS:

22 Q. Handing you what's been marked for
23 identification as Defendant's Exhibit E, that's the drawing
24 you just made to show the approximate angle of the tire tool?

25 A. Yeah.

1 Q. Okay. Now, it's got a long end and a short
2 end. Is that a fair statement?

3 A. Yeah.

4 Q. What's on the end that --

5 A. I believe it's -- it had attachments and
6 whatnot. And that might have just been the attachment that it
7 had on there at the time, but I remember that you could -- you
8 could remove -- you could remove pieces. And primarily what I
9 had was the handle.

10 Q. Okay. But you only had one piece?

11 A. Yes.

12 Q. Okay. Did you actually -- are you the one who
13 actually took physical possession of this item?

14 A. Yes.

15 Q. And you carried it?

16 A. Yeah.

17 Q. And on the short end after the bend, was there
18 any type of device?

19 A. On the short end -- I don't -- I don't
20 remember -- I -- what do you mean? There was only --

21 Q. Was there a lug wrench? Was there a --

22 A. There were different attachments, I think.

23 Q. But on the one piece that you had --

24 A. No.

25 Q. How were the attachments secured to the piece

1 that you had?

2 A. There was a button that you could press. You
3 could just attach them on and I guess you could press -- I
4 remember you could press to take it off. And -- and I
5 remember sitting here looking at this thing with this
6 attachment and this button on it and thinking, you know, if
7 somebody had to use this thing, you know, what if you hit the
8 button while you're holding it and the thing falls off -- the
9 attachment falls off. And so that's why I took the attachment
10 off.

11 Q. So you took an attachment off?

12 A. Yes.

13 Q. What did you do with it?

14 A. We left it in the trunk.

15 Q. When you say "we," who put it in the trunk?

16 A. I can't remember which one of us did that.

17 Q. When you put it in the trunk, did you notice
18 anything other than clothing and stuff like that in the trunk?

19 A. There may have been speakers in the trunk, but
20 I can't remember for sure.

21 Q. When you say "there may have been speakers,"
22 what kind of speakers would be in the trunk?

23 A. Three Memphis 12-inch subwoofers and a Memphis
24 amplifier.

25 Q. Huge speakers?

1 A. Yes.

2 Q. Built into the trunk?

3 A. Not built into the trunk.

4 Q. But big and sitting in there?

5 A. Yeah.

6 Q. And you don't know whether or not those were
7 there?

8 A. I can't remember if they were at the time or
9 not.

10 Q. But you've seen them there?

11 A. Yes.

12 Q. And you saw them there before that time?

13 A. I can't remember if I saw them there before
14 that time or not. I remember he had speakers in his trunk. I
15 can't remember if he had them that night or not.

16 Q. All right. And whatever type of attachment was
17 on the end of this implement, you took off --

18 A. Yes.

19 Q. -- and put back in the trunk?

20 A. Yes. One of -- it was removed. One of us took
21 it off, it was removed, and one of us put it back in the
22 trunk. I can't remember which one did that, but there was a
23 discussion regarding the tire tool and -- and what we were
24 going to take with us. And then there was a decision made
25 regarding not taking the attachment with the handle.

1 Q. And did you tell us just a minute ago that you
2 personally are the one who took it off -- pushed the button
3 and took it off?

4 A. Yeah. I mean, I believe that -- that -- that I
5 was the one that removed it. I remember playing with it, but
6 I don't -- I can't -- I can't remember if it was removed
7 before that or not.

8 Q. After that's removed and put in the trunk,
9 where do you go?

10 A. After that, we walked down First Street and we
11 took a right on -- I can't remember the -- I don't know the
12 name of the street.

13 Q. When you say you "walked down First Street,"
14 did you walk towards Broadway?

15 A. Away from Broadway.

16 Q. Away from Broadway?

17 A. Yeah.

18 Q. In the same direction as the car, only further?

19 A. Yes.

20 Q. So that's north; is that correct?

21 A. Yes.

22 Q. All right. So you're going further north on
23 First Street?

24 A. Yes.

25 Q. Okay. Now, other than what you've already told

1 us about at the car, did anything else happen while you were
2 there at the car?

3 A. No.

4 Q. Then you go north on First Street. Where do
5 you go?

6 A. We take a right. I believe it's -- we take a
7 right at the first road that goes off to your right
8 afterwards, College Park, and we head towards Providence.

9 Q. Okay. And when you got to Providence, did you
10 go straight to Providence?

11 A. Yes.

12 Q. Walking on the sidewalk?

13 A. Yes.

14 Q. And when you got there, what did you see?

15 A. There's a kind of bridge with like an over--
16 like an over-- not an overpass, but the place where people
17 will walk or whatever going I believe to the left. And then
18 there's a BreakTime I believe and then there was a photo shop
19 to my right. And there was a bank behind me and to my right.

20 Q. Okay. Now, when you say "a BreakTime," is that
21 a brand of filling station?

22 A. Yes.

23 Q. And also like a convenience store?

24 A. Yes.

25 Q. And --

1 A. And I believe that was off to the left.

2 Q. As you face --

3 A. Facing Providence.

4 Q. -- Providence?

5 Where did you go?

6 A. Then we went right on Providence and we got

7 about --

8 Q. Did you cross Providence?

9 A. No. Not yet. We started walking right on

10 Providence.

11 Q. So you'd be going south towards Broadway?

12 A. Yeah. And there's an alley that kind of

13 intersects with the road. And we're standing at Providence --

14 the intersection of Providence and this alley is when we see

15 Kent Heitholt in the Tribune parking lot.

16 Q. How far away is he?

17 A. About 100, 150 feet maybe. I'm not sure --

18 Q. And --

19 A. -- exactly.

20 Q. -- you're on the opposite side of Providence?

21 A. (Witness nodded head.)

22 Q. What was Heitholt doing?

23 A. He was walking out to his car.

24 Q. From where?

25 A. From the Tribune building.

1 Q. Could you see him come out the door?

2 A. Yes.

3 Q. Did you see anybody else by the door?

4 A. I saw someone else walking around, but I don't

5 remember seeing if they came out of the door or not.

6 Q. Walking around outside the building?

7 A. Yeah.

8 Q. Okay. What did that other person look like?

9 A. I can't remember.

10 Q. Then what happened?

11 A. Then we -- we decided that was the person we

12 were going to rob. And we walked down the alley and we

13 stopped at a trash -- there's an enclosure for Dumpsters and

14 we stopped there and hid behind that kind of just not knowing

15 really what to do.

16 And also we saw that there was another person

17 in the parking lot so we were going to wait for that person to

18 leave before we decided to rob this man. So that's what we

19 did, was we -- we kind of hunkered down behind this --

20 these -- this Dumpster enclosure and waited until we thought

21 the right time to commit the robbery was.

22 Q. And then how long did you wait?

23 A. Probably about two or three minutes.

24 Q. Had Heitholt gotten in his car?

25 A. No. Not yet.

1 Q. What was he doing?

2 A. He had stuff and he had it on top of his car
3 and he was kind of messing with his stuff and loading it into
4 his car at the same time.

5 Q. And what happened to the other person who had
6 been in the parking lot?

7 A. We waited behind the Dumpster until that person
8 had got in a car and drove off.

9 Q. So that person had already gone?

10 A. Yes.

11 Q. Heitholt is still outside his car?

12 A. Yeah.

13 Q. Then what happened?

14 A. Ryan told me, you know, We need to go get this
15 over with, just go do it. And I had the tire tool in my hand
16 and I didn't really know what to do. And I don't know. I
17 just -- I approached him and I guess -- I don't know, just out
18 of not knowing what else to do or just -- I just -- I hit him.
19 And --

20 Q. Now, when you hit him, how were you holding the
21 tire tool?

22 A. In my hand like this (indicating).

23 Q. Were you holding the long end or were you
24 holding the short end after the bend?

25 A. No. The bend isn't on there anymore, I'm

1 pretty sure. I'm pretty -- well, there's a small thing on it,
2 but I mean, the -- the big attachment isn't on there. I'm
3 holding the handle like -- when you're using the tire tool,
4 I'm using --

5 Q. All right. We're going to have to go back to
6 the tire tool a minute.

7 A. All right.

8 Q. Let me stop you and go back there. What you've
9 drawn on Exhibit E shows a longer line and then a curve of
10 some kind of angle, then a shorter line. Right?

11 A. Yeah. And then I believe an attachment
12 attaches to that.

13 Q. Okay. But --

14 A. I'm holding the longer end.

15 Q. Did it still have a bend in it? Was there
16 still a longer and shorter end after you took the attachment
17 off?

18 A. Yes. I believe so. Yes.

19 Q. Okay. All right. And you're holding the --

20 A. The longer end.

21 Q. -- end with the longer end.

22 Was there anything there to keep that from
23 slipping out of your hand?

24 A. No.

25 Q. Was the end of the longer end round, flat,

1 pointed, shaped like a screwdriver? What was it like?

2 A. It had -- it had that little crook in it.

3 Q. I'm talking about the -- not the crook, but the
4 long end.

5 A. Nearest my hand.

6 Q. The end nearest your hand.

7 A. It was slender, I guess. It was just -- you
8 know, it was just -- it was in a cylinder shape.

9 Q. And it just came to an end in a cylinder shape?

10 A. Yeah.

11 Q. It did not have a flat part for prying off
12 hubcaps or anything like that?

13 A. Not that I remember, no.

14 Q. And with regard to the end at the end of the
15 crook once you've taken off whatever attachment there was,
16 what did it look like?

17 A. It had a round slender, like, cylinder shape
18 like a donut. And, like, in the center of the donut, say,
19 like, is where you'd put the attach-- that's where the
20 attachment would connect.

21 Q. So that's where the attachment would snap into
22 the center of the donut. Is that --

23 A. Well, the end of it looked like a donut or like
24 a -- like a washer or any -- what have you, a tire, whatever.

25 Q. A circle?

1 A. Yes. And the attachment would click into that,
2 yes.

3 Q. And so the circle had some sort of
4 spring-loaded device that would hold the attachment in
5 place --

6 A. Yes.

7 Q. -- is that what you're telling me?

8 A. Yes.

9 Q. So it did have a flat end you could use for
10 prying open a hubcap?

11 A. I don't believe so, no.

12 Q. Now, back to Mr. Heitholt. You are holding the
13 long end that just ends in a cylinder. Correct?

14 A. Yeah.

15 Q. And did you attempt to tell Mr. Heitholt, Give
16 me your money so I don't have to hit you or anything like
17 that?

18 A. No. I don't believe so, no.

19 Q. Your goal, however, was to get money?

20 A. Yes.

21 Q. And your goal was to get money so you could go
22 back to By George's and drink more?

23 A. Yes.

24 Q. Okay. So you went up there and hit him?

25 A. Yes.

1 Q. And Mr. Ferguson had never said explicitly, Go
2 hit him?

3 A. Yes, he did. He said, Go -- well, no. He
4 said, We need -- we need to get this over with. And I was
5 assuming that's what Mr. Ferguson meant by saying that.

6 Q. You were assuming that's what Mr. Ferguson
7 meant?

8 A. Yeah.

9 Q. And based on that assumption, you ran up behind
10 Heitholt and hit him; is that correct?

11 A. Yes.

12 Q. And where was Heitholt at the time?

13 A. He was facing his car.

14 Q. Was the car door driver's side door open or
15 closed?

16 A. Yes, it was open. He was facing the
17 driver's -- driver's door is open and we would have been to
18 the left of him. He was facing his open car door.

19 Q. And what was he doing?

20 A. At that time he was getting ready to put stuff
21 in his car -- or he was getting ready to finish putting things
22 in his car.

23 Q. And how many times did you hit him?

24 A. Until he was -- until he was down.

25 Q. All at once? You didn't hit him and then stop

1 and then wait and do more?

2 A. I hit him a couple times and I was delayed --
3 he kind of put his arms up, you know, in a defensive posture
4 and --

5 Q. Where did he put his arms up?

6 A. Like that (indicating).

7 Q. And you're indicating putting your arms in
8 almost a triangular shape?

9 A. Like covering your face (indicating).

10 Q. Okay. That's how come I'm stopping to ask.

11 A. Yeah. I mean, I don't know. Like a defensive
12 position (indicating).

13 Q. But you don't know what specific kind?

14 A. No. I don't remember.

15 Q. Okay. And when you first did it, you put your
16 arms up in almost a triangle shape like this (indicating).
17 Right?

18 A. Yes.

19 Q. And then you put them together and --

20 A. Well, I mean, that wouldn't have been
21 effective, I guess.

22 Q. -- parallel. Correct?

23 A. Yes.

24 Q. But in both times you have the hands turned so
25 the back of the hand is away from the head?

1 A. Yeah. I mean, I can't -- I can't be certain.
2 It happened pretty fast and he was moving and --
3 Q. And so did you continuously hit him?
4 A. Yeah.
5 Q. How many times?
6 A. I don't know.
7 Q. Did you always hit him with the same end of the
8 implement?
9 A. Yes.
10 Q. You never switched the implement?
11 A. No.
12 Q. Okay. And did he ever turn around?
13 A. Yes.
14 Q. Did he ever try and take any offensive action
15 against you other than holding his hands in a defensive way?
16 A. No.
17 Q. Did he ever strike you or try to?
18 A. No.
19 Q. Did he ever kick you or try to?
20 A. No.
21 Q. Did he ever try and tell you, Don't do this,
22 I'll give you whatever I've got?
23 A. No.
24 Q. Did he say anything?
25 A. No.

1 Q. Did you say anything?

2 A. No.

3 Q. Where was Ryan Ferguson while all this is
4 happening?

5 A. Behind me.

6 Q. And you were away from Mr. Heitholt who's next
7 to his car? In other words, he was between you and the car --

8 A. Yeah.

9 Q. -- constantly?

10 A. Yes.

11 MR. CRANE: "He" being?

12 BY MR. ROGERS:

13 Q. "He" Heitholt between you and the car?

14 A. Yes.

15 MR. ROGERS: Okay. I thought that was the
16 antecedent to the pronoun, but I wanted to make it clear and I
17 appreciate you pointing that out.

18 BY MR. ROGERS:

19 Q. Did Mr. Heitholt fall to the ground?

20 A. Well, he came to -- I remember hearing him
21 groan and he came to his knees first. And then I believe I
22 hit him a couple more times and then he came to the ground.

23 Q. When he came to his knees, was he by the
24 driver's side door?

25 A. Yeah. But he was -- I mean, he was not as

1 close to the driver's side door as he was when I started
2 hitting him.

3 Q. In other words, he would have moved away from
4 the door during this attack?

5 A. Yeah.

6 Q. And did he move away from the car or did he
7 move towards the rear of the car or towards the front of the
8 car? How away from the door did he move?

9 A. He moved to the rear of the car.

10 Q. And when his driver's side door was open, was
11 the dome light on?

12 A. I can't remember.

13 Q. You don't remember seeing the dome light ever?

14 A. (Witness shook head.)

15 Q. You're shaking your head but you have to
16 answer.

17 A. No. I can't remember. Sorry.

18 Q. And after he had been beaten to his knees, did
19 he then fall to the ground?

20 A. Yes.

21 Q. Did you continue to hit him?

22 A. No.

23 Q. Did you hit him after he was on his knees?

24 A. Yes.

25 Q. And how many times while he was on his knees

1 did you hit him?

2 A. I don't remember.

3 Q. Okay. After he fell to the ground, is that
4 when you quit hitting him?

5 A. Yes.

6 Q. And why did you quit hitting him?

7 A. A lot of it was the blood and a lot of it was
8 the moan that he made and just -- I don't know. Kind of
9 realizing what I'd done, I guess.

10 Q. So while you were actually doing the hitting,
11 you were not focused on, I've got to get money from this guy,
12 you were sort of in the zone. Is that a fair statement?

13 A. Yes. I -- yes.

14 Q. And that was your decision?

15 A. Yes.

16 Q. And did you believe after he went to the
17 ground, that he was probably dead?

18 A. I didn't know.

19 Q. You didn't know one way or the other?

20 A. (Witness shook head.)

21 Q. Okay.

22 MR. CRANE: You got to answer.

23 THE WITNESS: I mean, I didn't --

24 MR. CRANE: You just shook your head no. Was
25 your answer no?

1 THE WITNESS: Well, I didn't know if he was
2 dead or not.

3 MR. ROGERS: Thank you. I appreciate that.
4 I've been trying to watch, but sometimes I miss.

5 BY MR. ROGERS:

6 Q. And then what happened?

7 A. Then I kind of -- I don't know. I sat back
8 against -- there was a wall that kind of goes around this
9 garden area and I sat -- I'm pretty sure I sat against that or
10 a parking block. And I remember just kind of looking at the
11 ground and not really knowing what to do and just, you know,
12 blood and everything and feeling nauseous and --

13 Q. You say "feeling nauseous." Did you throw up?

14 A. No.

15 Q. Did you ever believe that you had thrown up?

16 A. Yes.

17 Q. And did you ever remember throwing up?

18 A. I know I throw up -- threw up after the
19 robbery, but I -- I didn't throw up there.

20 Q. Did you ever remember throwing up there or
21 believe that you remembered throwing up?

22 A. Yeah. I thought I had. I thought I had thrown
23 up there,

24 Q. And you thought you remembered that?

25 A. Yes.

1 Q. And you thought you remembered that just like
2 you thought that you remembered everything else about it?

3 A. Yes.

4 Q. And at the time that you believed that, you had
5 no distinction in your own mind from that perceived memory and
6 anything else that you think that you remember about the
7 evening; is that correct?

8 A. No. There was definitely a distinction
9 because, I mean, at that point I was kind of in -- I mean, I
10 was in -- I mean, I was kind of in shock, kind of just -- I
11 mean, feeling sick, you know, but -- I mean -- I think -- yes,
12 there is a distinction between that and other things that I
13 remembered, yes.

14 Q. Okay. Let me be more specific. In terms of
15 your conscious memories at the time that you thought you
16 remembered throwing up, that was a conscious memory that you
17 thought you had. Right? Is that correct?

18 A. Yes.

19 Q. Just as --

20 A. I had the conscious memory of feeling sick and
21 that led me to believe that I had thrown up.

22 Q. And we're getting into the same thing we got
23 into earlier. I'm not talking about the source of the belief
24 or the source of the disbelief or what you have since decided
25 may have led you to believe things. I'm asking about the

1 conscious state of your mind at the time that you believed
2 that you remembered throwing up at the scene. Okay?

3 A. Uh-huh.

4 Q. Are we clear?

5 A. Yeah.

6 Q. And you did have that state of mind? You
7 consciously believed that you remembered throwing up at the
8 scene. Correct?

9 A. Yeah. I thought that I may have thrown up at
10 the scene. I wasn't -- I wasn't sure if I had or not. I said
11 that I think that I might have thrown up at the scene. I
12 remember -- and I -- I say that because I remember feeling
13 sick at the scene, but I didn't -- I don't know if I truly
14 believed that I threw up at the scene or not.

15 Q. And that's during a time when you did not know
16 whether you truly believed that you were even there. Correct?

17 A. Yes.

18 Q. Okay. So at that time, the state of your mind,
19 your conscious mind, with regard to the memory of throwing up,
20 was the same as the state of your conscious mind with regard
21 to the memory of taking part in the death of Kent Heitholt.
22 Correct?

23 MR. CRANE: Even if it's even possible, that
24 question's been asked and answered several times. And that is
25 so -- what those terms even mean is so difficult to interpret,

1 I don't know how this witness can answer it. But I guess it's
2 a deposition and I can make my objection and --

3 BY MR. ROGERS:

4 Q. Go ahead.

5 MR. CRANE: -- we'll deal with it later.

6 THE WITNESS: I remember feeling sick at the
7 scene and I remember thinking that, yes, I may have thrown up
8 at the scene. And I -- I said that because I thought that,
9 yes, I may have thrown up at the scene. Whether I truly
10 consciously believed that, I wasn't sure if I had or not. I
11 thought that I might have, but I wasn't sure whether or not
12 that I had.

13 BY MR. ROGERS:

14 Q. And at that time you were also not sure whether
15 or not you had even been there. Correct?

16 MR. CRANE: At what time?

17 BY MR. ROGERS:

18 Q. At the time that you said that.

19 MR. CRANE: Which was when?

20 THE WITNESS: When I was first being
21 interrogated on March 10th is what you're saying?

22 BY MR. ROGERS:

23 Q. Right.

24 A. Yes.

25 Q. Okay. And, again, you were -- that was during

1 the conversation you had with Detective Short; is that
2 correct?

3 A. I believe so. There were a few of them. There
4 was Detective Short, Detective Liebhart. I'm not sure which
5 one it was. They came in and out of the room, so --

6 Q. But during the one interview that was not
7 videotaped. Right?

8 A. I don't know if it was videotaped or not. I
9 don't know.

10 Q. Okay. All right. Then after feeling sick to
11 your stomach -- now we're shifting not to your memory when you
12 were talking to Short or Liebhart or anybody else except your
13 present memory as you currently believe it to be. Okay?

14 A. Yes.

15 Q. Which is what we've been talking about until we
16 got off onto the vomiting part. Right?

17 A. Yes. This is very complicated. I think we can
18 all see that, but --

19 Q. It's complicated.

20 Presently what is your memory as to what
21 happened after you went and sat down and were sick to your
22 stomach?

23 A. I remember looking up and I remember having the
24 idea of not being real sure what to do, to run or whatever.
25 And I remember looking up and I see Ryan and he's standing

1 over the victim and he's got something in his hand and he's
2 pulling the victim's neck (indicating).

3 Q. Okay. Now, you're indicating the left hand; is
4 that correct?

5 A. Well, I'm pretty sure he had both hands like
6 this (indicating) and I'm fairly certain he had his left
7 foot --

8 Q. I can't see what you're doing, but that's okay.
9 Go ahead. And then what I'm going to do is let you go ahead
10 and demonstrate it and then I will describe what I'm looking
11 at and ask you whether that's accurate or not. Okay?

12 A. He had his left foot like this on top of the
13 victim (indicating) and he was facing -- the car is facing
14 that way and he had his back to the front of the car -- like
15 to -- to where the car was facing.

16 And the victim was -- his head was near, like,
17 the rear of the trunk of the car and he had the belt in his
18 hands and he was pulling up like this (indicating). And I'm
19 pretty sure he had his left foot on the victim's back and he
20 was pressing down with his foot (indicating) as he was pulling
21 up.

22 Q. All right. And what you are doing is you are
23 standing bent at an angle with your hands together in front of
24 you with your arms slightly bent --

25 A. If this --

1 Q. -- and with your left foot extended and
2 indicating that would be in the middle of the person's back.
3 Is that a fair description?

4 A. Yes.

5 Q. And your hands are basically together as if
6 they were holding something?

7 A. Yes.

8 Q. Okay. Thank you. And you used the word
9 "belt." And do you remember specifically a belt being used or
10 is that something you've been told?

11 A. That's what I remember.

12 Q. And is that something you --

13 A. I've been told that also, but that was -- no,
14 that wasn't something I always remembered, no.

15 Q. But you're saying a belt now?

16 A. Yes.

17 Q. Okay. And you're sure it's a belt?

18 A. Yes.

19 Q. And did you ever see that belt again?

20 A. After that night?

21 Q. Again that night.

22 A. Yes.

23 Q. When was that?

24 A. When I took it off of his throat after I pushed
25 Ryan off of the victim.

1 Q. All right. Let's get back to that. I guess
2 I'm getting ahead of myself. All right. So your memory is
3 now that you saw Ryan standing there pulling on the belt --

4 A. Yes.

5 Q. -- with his left foot in the middle of
6 Mr. Heitholt's back?

7 A. Yes.

8 Q. And then what do you remember seeing next?

9 A. I remember seeing Ryan pulling on the belt and
10 then I remember kind of thinking, you know, what -- what has
11 this kind of come to. You know what I mean? I don't know.
12 You probably don't. And I pushed Ryan off kind of to the --
13 away from the car and off of the victim and I kind of -- kind
14 of came at him and was just like, you know, look -- look what
15 we've done basically. And then I --

16 Q. Did you actually say anything?

17 A. I -- yeah, I did, but I don't -- I was just
18 kind of --

19 Q. Do you know what you said?

20 A. No. Not exactly. Just -- I mean, that was the
21 extent of what I just said was, you know, What are you doing,
22 you know? What are we -- what are we doing here, you know?

23 Q. And then what happened?

24 A. And then I -- I grabbed the belt and I --
25 between the victim's neck and the belt and I -- I ripped it

1 off. And I remember --

2 Q. How was the belt fastened around the victim's
3 neck?

4 A. The end of the belt came through the belt loop.

5 Q. When you say "the belt loop," you mean the
6 buckle?

7 A. Yeah.

8 Q. So the end of the belt was just through the
9 buckle and pulled tight?

10 A. Yes.

11 Q. Okay. And you took it off?

12 A. I -- I kind of -- I mean, I honestly just
13 ripped it off. I mean --

14 Q. Took it back out through the buckle?

15 A. Well, I grabbed -- I grabbed the belt and I --
16 yeah, and I pulled it -- I guess like the part that was
17 attached to the buckle and I pulled it. And the -- the -- I
18 don't know if -- if the belt came through the loop or the belt
19 buckle broke, but I remember when I pulled it and I kind of
20 yanked it off of him, I remember hearing the sound of a belt
21 buckle on the ground.

22 Q. Okay. And so you reached between -- your hand
23 around between the belt and Mr. Heitholt's neck --

24 A. Yeah.

25 Q. -- and pulled on the belt?

1 A. Yes.

2 Q. And that's when you heard the belt come loose
3 and you heard some sound of something falling on the ground?

4 A. Yes.

5 Q. Okay. Then what happened?

6 A. After that, I kind of started freaking out and
7 started hollering at -- at Ryan and I didn't really know what
8 to do.

9 Q. Were you --

10 A. He started --

11 Q. What were you saying to him?

12 A. I don't remember. I don't know. I just
13 remember -- I mean, I just remember not knowing what to do,
14 whether to --

15 Q. But you do remember hollering at him?

16 A. Yeah.

17 Q. Shouting -- hollering means shouting. Right?

18 A. Yeah.

19 Q. And you don't know which words you shouted?

20 A. No. I can't remember.

21 Q. Then did he say anything?

22 A. Just -- he emphasized that we needed to get out
23 of there and that -- he started going through the victim's
24 pockets and he got in the car and --

25 Q. When you say "got in the car" --

1 A. Yeah.

2 Q. -- did he ever sit inside the car?

3 A. I guess he was looking for money. I don't

4 know.

5 Q. But when you said he got in the car, do you

6 mean he actually got in the car like you got in the car to

7 ride over there?

8 A. Well, yeah.

9 Q. Okay.

10 A. Yeah. Well, he stooped up and leaned inside

11 the car.

12 Q. Leaned inside of the car?

13 A. Yeah.

14 Q. That's what I'm asking.

15 A. Yeah.

16 Q. Okay. So when he leaned inside the car, did

17 you see him get anything?

18 A. No.

19 Q. Did you see him take anything from the guy's

20 pockets?

21 A. I remember seeing keys and I remember him --

22 I'm pretty sure I remember him messing with his watch. And I

23 can't -- other than that, I really can't remember.

24 Q. Okay. Then --

25 A. I think I might have been -- I might have sat

1 back down because I -- on the -- on the wall because I
2 remember, like, at some point he was kind of coaxing me up
3 trying to get me to go, but I don't remember if that was
4 before people came outside the first time or not.

5 Q. We'll get there in a minute. You don't know
6 what, if anything, you say Ryan took from the car. When you
7 next looked up and saw Ryan, was the car door open or closed?

8 A. It was open.

9 Q. Still?

10 A. Yes.

11 Q. Always? Was it always open all the time you
12 were there?

13 A. Yeah. To the best of my memory, yeah.

14 Q. So to your best memory, the car door was never
15 closed?

16 A. Yes.

17 Q. All right. And when you were shouting at Ryan,
18 did you see anybody else around?

19 A. No.

20 Q. How long was it after you were shouting at Ryan
21 that you saw anyone else?

22 A. Maybe a minute, maybe no more -- no more than
23 two minutes. We were there for a considerable -- considerable
24 amount of time. We were there for a long time.

25 Q. Seemed like?

1 A. Well, yeah. I guess it -- it seemed long,
2 yeah.

3 Q. And tell me about when you first saw someone
4 other than you and Ryan and Mr. Heitholt.

5 A. I saw someone come -- I saw like a door open
6 and a light --

7 Q. Where was the door?

8 A. I believe it was a garage door, but I can't be
9 for sure.

10 Q. Like an overhead door?

11 A. Yeah. Well, I believe -- I remember like
12 hearing activity and seeing -- seeing light. And I thought I
13 remembered seeing someone with a cord kind of in a silhouette
14 of the door -- seeing their silhouette in the light from the
15 building.

16 Q. What do you mean by "a cord"?

17 A. Like a cord for a vacuum or cord for something.

18 Q. Like an extension cord kind of thing?

19 A. Yeah.

20 Q. Electrical cord?

21 A. Yeah. Yeah.

22 Q. And you believe that was in the silhouette of
23 the garage door, the overhead door, or the silhouette of some
24 other door, or do you know?

25 A. I think -- I think it was a garage door, but

1 there might have been another door that came open at the same
2 time. I can't be certain.

3 Q. And what kind of person did you see there in
4 the silhouette?

5 A. I saw a woman I thought at least. And -- and
6 after -- I mean, after that, I didn't really -- I guess I kind
7 of -- I stooped down and -- like, Ryan got down before I did,
8 but I remember stooping -- like I remember -- I remember
9 seeing someone and thinking, you know, oh, shit, you know, and
10 my mind was kind of going two different directions at the same
11 time. I was kind of thinking about self preservation and
12 thinking about, you know, this person on the ground too.

13 Q. Did you say anything?

14 A. No. I don't think at that point, no.

15 Q. Okay. Did Ryan say anything?

16 A. Not that I can remember.

17 Q. Did whoever it was in the door say anything?

18 A. I don't think so.

19 Q. All right. Then what happened?

20 A. Then --

21 Q. Did that person stay in the door?

22 A. No. No. And then --

23 Q. What did you see happen with the door?

24 A. They went back in the building pretty quick.

25 I'm -- I'm pretty sure anyway. And --

1 Q. Was that door then left open or closed or what?

2 A. It was closed.

3 Q. Was that the overhead door that got closed or

4 was it a swinging --

5 A. I believe it was a swinging --

6 Q. -- walk-through door?

7 A. -- walk-through door, but --

8 Q. Are you okay?

9 A. Yeah. Can I go on?

10 Q. Go on. I'm sorry.

11 A. And after that, kind of just -- I remember I

12 was -- I was trying to figure out what to pick up and trying

13 to remember what I had touched, you know, as far as leaving

14 fingerprints and stuff like that. And I remember him telling

15 me, No, you know, don't touch that. That's not ours, we

16 didn't touch that. And I'm pretty sure he told me not to

17 touch -- not to grab a cell phone, but I'm not sure about

18 that. And --

19 Q. You were looking for stuff to grab?

20 A. Just -- I was trying to remember all that I'd

21 touched. And, like, I -- I just -- just so we didn't leave a

22 trace of -- of ourselves at the scene basically.

23 Q. And how long was that?

24 A. I don't know. Not -- probably 30 seconds or

25 so. I'm not sure.

1 Q. Then what happened?

2 A. Then people came back outside.

3 Q. How did they come out?

4 A. They came out I believe through the swinging
5 door.

6 Q. And how many people?

7 A. There were at least two people at least.

8 Q. Who were outside through the swinging door?

9 A. Yeah.

10 Q. Did you say anything to any of those people?

11 A. Yeah.

12 Q. Did they say anything -- did any of those
13 people or either of those people say anything?

14 A. Yeah. Something to the effect of, you know,
15 What are you doing? They yelled something before that. I
16 can't remember what it was.

17 Q. Was it a man's voice or a woman's voice?

18 A. A man's voice.

19 Q. And was that all roughly the same time that
20 these people came back out the second time?

21 A. Yeah.

22 Q. There hadn't been any yelling in between those
23 two times?

24 A. No. Not that -- not to my memory, no.

25 Q. And what was said?

1 A. I told them that someone was hurt and to -- to
2 go get help or -- that was -- that was really -- that was all
3 I said.

4 Q. And who did you say that to?

5 A. I believe I said it to the woman. I remember I
6 was kind of -- like, I thought I said something to them and
7 they kind of just stood there, but -- like, I remember when
8 I -- I mean, I might have repeated myself but I thought I was
9 kind of -- I mean, I was pretty upset anyway, but I mean, I
10 was really upset when I said it. So I guess I was kind
11 frantic when I said it, so --

12 Q. Then what happened?

13 A. Then people -- they went back inside and then
14 that's when we left.

15 Q. And where did you go?

16 A. We walked through the parking lot and --

17 Q. In what direction?

18 A. We -- well, we walked toward First Street. And
19 then we started to -- I started to go away from Broadway on
20 First Street and he stopped me.

21 Q. On First Street?

22 A. Yeah. Well, on the sidewalk next to the
23 Tribune building. And Ryan stopped me.

24 Q. You said First Street.

25 A. Yeah.

1 Q. I'm not from Columbia, but First Street is
2 where By George's is, isn't it?

3 A. Or maybe -- I guess it's Fourth Street.

4 Q. Okay.

5 A. Fourth Street. I just got the two confused.

6 Q. Let me ask you this --

7 A. Yeah, it was Fourth Street I think.

8 Q. -- when you leave the parking lot, are you
9 going towards Providence Road or away from Providence Road?

10 A. Away from Providence.

11 Q. Okay. So then you go to whatever street that
12 is?

13 A. Yeah.

14 Q. Then where did you go?

15 A. I'm pretty sure it's Fourth Street. Sorry.

16 Q. Were you walking, running?

17 A. When we left, it was kind of just like a brisk
18 walk. We weren't really running yet. And then I started to
19 run to the left. And after -- when I turned to go left, like,
20 Ryan pulled me back and he stopped me and he -- he said, No,
21 we need to go the other way. And so we went in the other
22 direction towards Broadway.

23 Q. Let me stop you there. At that time, as you
24 were leaving the parking lot, had anybody come back out of the
25 building that you saw?

1 A. Yeah. I remember -- I believe it was after he
2 turned me around and I was -- we were going the other way and
3 I saw people to my right in the parking lot and I heard more
4 voices. And then that's -- that's when we really took off,
5 started running at that point.

6 Q. And at that point were you carrying anything?

7 A. Yes.

8 Q. What were you carrying?

9 A. I had the belt.

10 Q. And was Ryan carrying anything?

11 A. Yes.

12 Q. What was he carrying?

13 A. The tire tool.

14 Q. Was anybody carrying any money, any wallet,
15 any --

16 A. I don't remember.

17 Q. -- other items?

18 A. I don't remember seeing him have -- have -- I
19 don't remember seeing him have anything. But I remember -- I
20 remember seeing him take the items from the scene, but I
21 didn't -- when we turned to run, I don't remember seeing
22 anything on his person, no.

23 Q. All right. Once again, we're talking about
24 your present memory that you believe. Correct?

25 A. Yeah.

1 Q. All right. So where did you go?

2 A. We went down Fourth Street and we went across
3 Broadway and we went --

4 Q. What was across Broadway?

5 A. Well, we went across Broadway and we went into
6 the diner parking lot. I remember stepping over -- there's a
7 chain that kind of goes around the perimeter of the diner and
8 I remember going over the chain. And I can't -- I can't
9 remember for certain whether or not we went behind the diner
10 or not, but I'm -- I'm pretty sure that -- I mean, I know we
11 went through the dining parking lot. I think that we went
12 behind the diner.

13 And -- and after that, I remember him -- or one
14 of us -- one of us anyway kind of pointing to the park across
15 the road. And I don't know if that's still Fourth Street
16 there or not, but after that, we went into a park and we
17 went -- I went across the creek.

18 Q. You mentioned earlier that you presently
19 remember being sick and throwing up some place other than the
20 scene of Mr. Heitholt's death. Where was that?

21 A. I want to -- I want to say it was Osco parking
22 lot.

23 Q. Osco?

24 A. But I can't -- I can't be certain of that. I'm
25 not -- I'm not -- I'm not real sure of where I threw up.

1 Q. Could it have been The Broadway Diner parking
2 lot?

3 A. It could have been.

4 Q. Okay. And then when you went into the park,
5 where did you go?

6 A. I went to the creek. And I remember I had
7 blood on my hands, on my person and I -- I put my hands in the
8 creek and tried to get the blood off my hands. And then I
9 went -- we went across the creek and we went up kind of like
10 an incline, I think there's, like, rocks -- like, a rock wall
11 or something. I remember having to -- having a problem
12 getting over all that stuff. And -- and after that, I
13 remember coming out and I think -- I'm pretty sure a gas
14 station was to our left and we came out onto Providence.

15 Q. Okay. And when you say "a gas station," you
16 mean the Phillips 66 station?

17 A. Yeah.

18 Q. And you've known that station for a while being
19 a kid in Columbia. Right?

20 A. Yeah.

21 Q. Do you always call that the Phillips station?

22 A. Yeah.

23 Q. Okay. Do you need a break?

24 A. No, I'm all right.

25 Q. I've been asking you that a couple of times and

1 you've been acting as if you're uncomfortable due to your
2 lunch or something?

3 A. No, I'm just -- I'm tired. Like, I'm really --
4 I'm all right. I didn't really get much sleep last night, to
5 tell you the truth, so I'm kind of -- I'm a little -- I'm a
6 little tired though.

7 Q. This is probably not the most relaxing day
8 you've ever spent.

9 A. No, no.

10 Q. Having said all that, you recall coming out
11 of -- crossing the creek, washing your hands in the creek,
12 climbing up this steep place that might be a rock wall or
13 something --

14 A. Yeah.

15 Q. -- struggling getting up to the street level at
16 Providence Road. Is that a fair statement?

17 A. (Witness nodded head.)

18 Q. Then where did you go?

19 A. We came to an intersection that I'm not sure of
20 the name of the road. It was Providence and -- it was in
21 front of the Phillips station, I'm fairly sure. Like, we
22 got -- we came out onto Providence and then we talked a-ways.
23 I'm pretty sure we walked away from the Tribune building. We
24 walked away --

25 Q. Would that be south on Providence?

1 A. Yeah.

2 Q. Towards where you lived?

3 A. Yeah. And I saw a person I knew.

4 Q. Who was that?

5 A. That was Dallas Mallory.

6 Q. And you saw him where?

7 A. In a car at the intersection.

8 Q. By?

9 A. The Phillips station.

10 Q. By the Phillips station?

11 A. Yeah.

12 Q. And you definitely remember that?

13 A. Yeah.

14 Q. What was Dallas doing?

15 A. He was sitting in there with a couple other
16 girls. It was a blue older model I want -- I think it was a
17 Prelude.

18 Q. Had you seen Dallas in that car before?

19 A. No. It was someone's car who I recognized. I
20 can't be sure of the name, but I want to say it was Justin
21 Enright (ph.). I'm not completely -- I'm not sure of the name
22 of the person's car it was. I think I recognized it.

23 Q. Are you saying you're not sure it was Justin's
24 car or you're not sure the person you're thinking of is named
25 Justin Enright?

1 A. I'm not sure of the person I'm thinking was
2 named Justin Enright. And I'm also not sure it was that
3 person's car.

4 Q. All right. And go ahead. So where's he going
5 or which direction is he pointing or is he in the roadway or
6 is he pulled over to the sidewalk? What's the deal?

7 A. He's at the stoplight and he is facing south on
8 Providence. And I didn't -- I -- I just -- I didn't know what
9 to do so I just told him -- I was kind of just in shock and
10 just not knowing what to do about what we did. And I just
11 told him pretty much that I, you know, didn't -- I didn't know
12 what to do and I'd -- I'd beat this guy up and that -- I
13 remember I told him Ryan -- it was Ryan's idea and --

14 Q. So you're telling him that right there in the
15 middle of the street?

16 A. Yeah. Actually, I am. And I guess I wanted a
17 ride. I mean, I don't -- -- I don't really -- like, I didn't
18 really -- I just -- I didn't know what to --

19 Q. Okay. Let me go back a minute. You say he
20 stopped at the stoplight southbound on Providence?

21 A. Yeah.

22 Q. So the light is then red; is that correct?

23 A. Yes.

24 Q. Okay.

25 A. Sorry. Sorry.

1 Q. That's all right. A little yawn there. We can
2 get you more coffee.

3 A. I think I'm all right. Thank you.

4 Q. Already had enough of that.

5 So the light's red?

6 A. Yeah.

7 Q. And that means there's a green light for you
8 and Ryan to be crossing Providence; is that accurate?

9 A. Yes.

10 Q. So you walk halfway across the street and
11 recognize that's Dallas in the car?

12 A. I recognize it was Dallas, yes.

13 Q. Okay.

14 A. I don't think -- I think I was walking
15 alongside Providence, excuse me, and that's when I saw that it
16 was him. And that's when I approached his car.

17 Q. And then you're talking through the driver's
18 side window?

19 A. Yes.

20 Q. And you say, I just beat a guy up and it was
21 Ryan's idea. And did you actually ask for a ride?

22 A. No. I don't think I got around to doing that.

23 Q. Okay. And you're holding this belt in your
24 hand?

25 A. I think I'd put it in my pocket by that time.

1 Q. You had the belt in your pocket?

2 A. Yeah.

3 Q. What kind of clothing are you wearing?

4 A. I'm pretty sure I put it in my pants pocket. I
5 can't remember what kind of pants I was wearing though.

6 Q. Blue jeans?

7 A. Before we went and did the robbery, I'd taken
8 off my Nautica coat and I'm pretty sure that I'd put a
9 sweatshirt on, an Abercrombie zip up hooded sweatshirt that
10 I'd left in Ryan's car. And the reason it was in the car is
11 because he frequently took me to school and I'd leave clothes
12 and whatnot in his car. And I guess I just put that on to be
13 less conspicuous and also it was cold out, so --

14 Q. So it was cold so you've taken off your coat
15 but you did put on this hooded sweatshirt?

16 A. Yeah.

17 Q. Did you have the hood up?

18 A. Yeah.

19 Q. Were you wearing a hat or anything like that?

20 A. No. Not to my memory, no.

21 Q. Okay. Did you usually wear a hat?

22 A. Sometimes, yeah.

23 Q. What kind?

24 A. A Notre Dame hat that was fitted. That was
25 really about it.

1 Q. I don't know what you mean when you say
2 "fitted."
3 A. Like, it didn't have the clip on it. But I --
4 I don't know --
5 Q. I'm still confused.
6 A. It didn't have like a plastic -- you couldn't
7 change the size on it.
8 Q. Okay. It was a baseball cap?
9 A. Yeah.
10 Q. But not an adjustable baseball cap?
11 A. Right.
12 Q. It's made at a certain size?
13 A. Back to the hood, I don't think I -- I'm pretty
14 sure I didn't have the hood on the entire time. I might have
15 had it on when we started off, but I'm pretty sure I laid it
16 down after a while.
17 Q. And you're pretty sure you weren't wearing a
18 cap at that time?
19 A. Yes. I'm fairly certain I wasn't wearing one.
20 Q. Okay. Now, we got distracted about the cap.
21 A. Sorry.
22 Q. So you had put this sweatshirt on back at
23 Ryan's car after you left By George's. Is that what you're
24 telling us?
25 A. Yes.

1 Q. And it was a long-sleeved sweatshirt with a
2 hood on it?

3 A. Yes.

4 Q. What color?

5 A. It was gray.

6 Q. Gray.

7 Q. Yeah. And you had left your Nautica coat in
8 Ryan's car?

9 A. Yeah. He took his coat off also.

10 Q. And what did he put on?

11 A. Nothing. Not that I remember anyway.

12 Q. Do you know whether or not he put something on?

13 A. I can't remember.

14 Q. Okay. But from your point of view it was
15 cold -- too cold to be going around in short sleeves. Right?

16 A. Yeah.

17 Q. Okay. Now, back to Dallas Mallory. You're
18 there talking in the middle of the street. Do you know where
19 Ryan is while you're talking to Dallas?

20 A. He's behind me.

21 Q. How far behind you?

22 A. Right on my heels. He's not too far behind me.

23 Q. Are you together?

24 A. I'm pretty sure he's directly behind me.

25 Q. Like 2 feet, 6 feet, 12 feet, what?

1 A. 2 or 3 feet.

2 Q. Okay. And so he can hear whatever you're
3 saying to Dallas?

4 A. Yeah.

5 Q. And Dallas can see him?

6 A. Yes. I assume.

7 Q. Okay. And that's when you say, I just beat a
8 guy up, it was Ryan's idea. And then what happens?

9 A. I don't -- I was kind of just frantic and --
10 just out of not really knowing what to do -- he was smoking
11 pot and -- at the time and I remember I asked him for a hit of
12 whatever he was smoking on and --

13 Q. So Dallas is sitting there at the stoplight
14 smoking pot?

15 A. Yeah.

16 Q. Did he give you a hit?

17 A. No, no.

18 Q. What did he do?

19 A. That was basically when the conversation ended
20 and we saw police sirens off to the right and behind us. And
21 that was when Dallas kind of freaked out and he almost ran me
22 over actually. He peeled out and drove away like really,
23 really fast.

24 Q. And had the light changed from red to green?

25 A. I don't know. I wasn't paying attention.

1 Q. But you did see him there stopped at a red
2 light?

3 A. I assume it was red, yeah.

4 Q. That's what he was doing there stopped at the
5 light?

6 A. It could have been green. I don't know. I
7 wasn't paying attention. He was stopped at an intersection.
8 I don't know if -- I'm assuming it was red. Most people stop
9 at red lights.

10 Q. Didn't you tell us earlier he was stopped at a
11 red light?

12 A. I was assumed he was stopped at a red light.

13 Q. And that's what you told us?

14 A. Yes.

15 Q. I didn't make that up, did I?

16 A. No. Sorry.

17 Q. Then where did you go?

18 A. We ran across Providence and went up through
19 kind of like a grassy area in front of Osco and it was kind of
20 like a small incline. And then we ran through a parking lot
21 and we came up onto the entrance of -- of -- of the same --
22 the Osco parking lot and there's a Baskin-Robbins there and a
23 Office Depot or Office Max or something. And we came out of
24 that -- the entrance with this little mini mall or whatever
25 and across Broadway. And then we went back and passed onto

1 First Street and I remember the bouncer was still out there,
2 the same bouncer that let us in.

3 Q. Was he standing outside?

4 A. Yeah. And I walked past.

5 Q. Were the doors open?

6 A. I can't remember.

7 Q. Go ahead.

8 A. I walked past and, in fact, I don't think that
9 the door was open at that point, but I don't -- I'm not sure.
10 That's what I think.

11 Q. But there were still a lot of cars in the
12 parking lot?

13 A. Still people there.

14 Q. And could you hear noise from inside the club?

15 A. Yeah, yeah. And I'm walking and I remember I
16 kind of cover up the front of me because I've got blood on my
17 shirt and walking like this (indicating) with my arms crossed.

18 Q. You're indicating you have your arms folded and
19 sort of hunched forward; is that fair?

20 A. Not hunched. You know, I'm walking.

21 Q. You're walking with your arms closed folded?

22 A. Yeah. And we walk past the club and the club's
23 off to our left and we're going down First Street and we go
24 back to Ryan's car.

25 Q. And what happened then?

1 A. Then he popped his trunk and he put the tire
2 tool and the keys in the car. I'm assuming he put the watch
3 in the car also.

4 Q. Did he just throw them in there?

5 A. No. He had a plastic -- like a plastic grocery
6 bag. I don't remember what the -- what store it was, but he
7 had something of that nature in the back of his trunk -- or in
8 his trunk. And at first I was just going to throw the belt in
9 there and he stopped me and he said, Hold on, he fished this
10 thing out and he put the stuff he had in there and put the
11 belt in last. And I took my sweatshirt off.

12 Q. Let's go back. You say "the stuff he had."
13 And you've mentioned the keys. What else did he put in there?

14 A. The tire tool.

15 Q. Okay.

16 A. And the watch.

17 Q. And the watch?

18 A. Yeah.

19 Q. Did you say the wallet?

20 A. No.

21 Q. You didn't see a wallet?

22 A. The watch. I didn't see him put the watch in
23 there, but I'm assuming that he did.

24 Q. Okay. Then you put the belt in the same bag?

25 A. Yeah. And I'm fairly certain that I took my

1 sweatshirt off and put it in the car also, but I might have --
2 I might have just put my jacket on top of that. I know I put
3 my coat back on and -- and then I can't remember if he put his
4 coat on or not. And then we went back into the club.

5 Q. Now, you went back into the club. Did the
6 bouncer check your --

7 A. Actually, I don't think he even checked us
8 because he knew -- we'd been in and out of there so he knew
9 that --

10 Q. So you think he recognized you from having left
11 before?

12 A. Yeah. I don't even think he checked us.

13 Q. Okay. And the club was still open?

14 A. Yeah.

15 Q. And you ordered drinks?

16 A. I can't remember.

17 Q. Why did you go back in?

18 A. I don't know. It wasn't my idea. It was
19 Ryan's idea. I guess just to give the impression that we
20 were -- you know, we had stayed at the club the entire time.

21 Q. But, I mean, it was -- the whole idea of being
22 there was to drink. Right?

23 A. Yeah.

24 Q. So don't you think you drank when you went back
25 there?

1 A. I don't think so. He might have ordered me a
2 drink, but I think -- I just sat at the table and I didn't
3 know what to think, honestly.

4 Q. And how long were you there?

5 A. At least an hour.

6 Q. After you came back?

7 A. Yeah. I mean, I think. It might have been
8 shorter than that, it might have been longer than that. I'm
9 not sure, but we were there for a good amount of time.

10 Q. Were you there when the place closed?

11 A. Yeah.

12 Q. And what happened when the club closed?

13 A. Well, before the club closed, I remember we
14 were going to leave, but there was a policeman outside, out
15 front in front of George's. And --

16 Q. Where?

17 A. To the -- in -- if you're facing First Street,
18 it was off to the right in front of the parking lot.

19 Q. Okay. On Broadway?

20 A. No. On First Street.

21 Q. On First Street?

22 A. Yeah.

23 Q. Right at the corner of First and Broadway by --

24 A. No. Not at the corner. In some from Broadway,
25 like in front of George's parking lot.

1 Q. Okay.

2 A. He wasn't there when we came back into the
3 club, but after we were going to leave, Ryan -- Ryan -- he --
4 I remember, like, he kept on going to the door and checking
5 and he said, No, we can't leave, there's a cop out front, you
6 know, no, we can't leave. Like, he would go back and forth.
7 And finally it came to the point where they were making
8 everybody leave the club so we walked out with the crowd, with
9 everyone else.

10 Q. So you walked out with the crowd when the bar
11 closed?

12 A. Yeah. With the policeman out front.

13 Q. And the policeman was still there?

14 A. Yeah.

15 Q. And was he doing anything to the people who
16 were leaving the club?

17 A. No. I don't remember exactly what he was
18 doing. I think he was just kind of observing -- observing the
19 people, but I'm not -- I'm not really certain. I remember
20 seeing him and -- and just trying to look as -- just trying to
21 not stand out, I guess. And I just -- I just walked, you
22 know, straight down through the parking lot and just took a
23 left and we went straight to the car after that.

24 Q. And where did you go?

25 A. We got in Ryan's car.

1 Q. And where did you go in Ryan's car?

2 A. We went down First Street and we took a right
3 I'm pretty sure at the same place that we'd walked down to get
4 to Providence -- the same road we'd walked to get to
5 Providence. And we took another right on Providence and we
6 drove past the Tribune building.

7 Q. Going south on Providence?

8 A. Yes.

9 Q. And where did you go on from there?

10 A. Well, the traffic was kind of bad because of --
11 the club let out and everything. And I think -- there were,
12 like, a lot of other people going home, you know.

13 Q. All the clubs were closing at the same time?

14 A. I guess. I'm not -- I don't know. I just -- I
15 just -- I don't know if the clubs were closing at the same
16 time or not. I doubt it, but --

17 Q. Let me ask you something. This is the first
18 time you had ever been in a bar; is that correct?

19 A. Yeah.

20 Q. For real?

21 A. Yeah.

22 Q. Okay.

23 A. I mean, yeah, to my -- to my -- it's the first
24 time I'm pretty sure I've ever drank at a bar, yes.

25 Q. Okay. And when it got time to close, did

1 anything happen? Did they say, Last call, we're closing the
2 bar in 20 minutes or anything like that?

3 A. I can't remember.

4 Q. Okay. Have you seen that on movies and TV
5 shows and stuff?

6 A. Yeah.

7 Q. But you don't remember whether or not that
8 happened that night?

9 A. I'm almost certain it didn't happen because we
10 were -- I can't -- I can't -- to my memory, that never
11 happened. They just basically told everyone to leave. So to
12 my memory, there was no last call or anything.

13 Q. Did they turn the lights on?

14 A. I can't remember. I just remember that Ryan
15 said, you know, We got to go now, it's time to go.

16 Q. And when you're going down south on Providence,
17 is there traffic coming both directions, both westbound coming
18 out of downtown and eastbound coming from the direction of By
19 George's?

20 A. I can't remember.

21 Q. You said that there was a lot of traffic
22 though?

23 A. Going the way we were, so that we were at a
24 near stop and -- in front of, you know, the BreakTime and the
25 Tribune parking lot and --

1 Q. Okay. And so were you just stopped waiting for
2 the light or because this was a traffic jam?

3 A. We were stopped waiting for traffic to go
4 through. And I remember I was going to -- I was really upset,
5 I was going to even get out of the car and just go up and tell
6 them what we'd done and Ryan kind of -- he stopped me, you
7 know, and talked -- I don't know, just -- just I guess -- you
8 know, I mean, I could have gotten out if I wanted to, but I
9 just --

10 Q. So you're now saying you remember having a
11 conversation with Ryan that night about, I want to get out and
12 turn myself in?

13 A. I don't even think it was a conversation. It
14 was just -- I don't know. I mean, I just -- I remember -- I
15 remember doing that -- I remember opening the door and he
16 stopped me and, you know, put his arm out. And I could have
17 gotten out if I wanted to, I just -- I don't know.

18 Q. Do you remember what you saw in the Tribune
19 parking lot?

20 A. There were a lot of police cars, a lot of
21 people walking around. I think I remember seeing a news
22 thing.

23 Q. Okay.

24 A. I might be wrong about that, but -- and I
25 thought I saw like a wrecker doing something, but I could be

1 wrong about that also.

2 Q. By "a wrecker" you mean a tow truck?

3 A. Yeah. I'm not sure though.

4 Q. Anything else you remember seeing in the
5 parking lot?

6 A. No.

7 Q. Okay. When the traffic moved on enough for you
8 to go south more, what route did you take?

9 A. We took a right onto Broadway.

10 Q. And where did you go?

11 A. After that, we went down Broadway and we
12 stopped at a gas station so Ryan could get cigarettes and he
13 stopped at --

14 Q. Where was the gas station?

15 A. It was either the Texaco in Crossroads Shopping
16 Center or the BreakTime right across the street from that. I
17 can't -- I can't remember which one exactly.

18 Q. And those are both located near the
19 intersection of Broadway and Stadium Drive?

20 A. No. Well, Crossroads is, yeah. It's
21 Broadway -- or no, Stadium and -- I can't remember the name of
22 the -- the other road.

23 Q. Okay. There's a BreakTime there and there's
24 also a Texaco across the street from it?

25 A. Yeah.

1 Q. Okay. And then where did you go from there?

2 A. After that, we got onto Fairview. And after
3 that, Ryan took me home.

4 Q. Okay. Does Fairview lead pretty directly to
5 your house?

6 A. Fairview runs into Chapel Hill and Chapel Hill
7 is where my house is -- is off of.

8 Q. Also where Brian's -- Ryan's house is?

9 A. Yeah.

10 Q. Did Ryan make any cell phone calls after you
11 left By George's the second time?

12 A. I don't remember. I don't think so.

13 Q. Don't remember him calling anybody?

14 A. (Witness shook head.)

15 Q. Okay. Do you remember him calling a Holly
16 Admire that night?

17 A. Yeah.

18 Q. When was that?

19 A. I'm -- I remember when I was -- when I got into
20 the car after I left my house and he was parked on Grant Lane,
21 he either said that he was going to call Holly or he had her
22 on the phone or one of -- I remember he was messing with his
23 phone and I -- I want to say he was talking to her when I got
24 in the car, but -- but I can't be for certain.

25 Q. So that would have been around eleven o'clock

1 or some time like that?

2 A. Yeah.

3 Q. Okay. And you were with Ryan after you left By
4 George's the first time when he made some cell phone calls you
5 say to Brian Dunn; is that correct?

6 A. Yeah.

7 Q. But he didn't talk to Holly at that time, did
8 he?

9 A. I don't believe so.

10 Q. Okay.

11 A. He might have and I just didn't remember it,
12 but I'm not sure.

13 Q. Okay. But you're sure you don't remember it?
14 Let me put it that way.

15 A. Yeah.

16 Q. Okay. And you certainly don't remember a long
17 conversation with her?

18 A. No.

19 MR. ROGERS: Okay. Why don't we take about a
20 10-minute break, if I might?

21 (A recess was taken.)

22 BY MR. ROGERS:

23 Q. Now, you mentioned that when you and Ryan went
24 back to By George's the second time, that you stopped and got
25 your Nautica coat out of Ryan's car and put it on either over

1 the sweatshirt or left the sweatshirt and put the coat on; is
2 that correct?

3 A. Yeah. I can't remember which one I did.

4 Q. But one of those?

5 A. I know I put the coat on.

6 Q. Okay. And did you wear the coat the entire
7 time you were inside By George's?

8 A. Yeah.

9 Q. And so you wore it when you left again.
10 Correct?

11 A. Yes.

12 Q. So that coat was not taken by anybody at By
13 George's?

14 A. No.

15 Q. Okay. And if you ever told anybody that, that
16 was wrong?

17 A. Yes.

18 Q. Okay. Do you remember telling anybody that?

19 A. I might have. I don't -- yeah, I think I did
20 say that, but I couldn't -- yeah, I think I did say that. I
21 said that to a detective, but it was -- I -- I don't know. I
22 couldn't remember what happened to it and it was just one
23 possibility, I guess.

24 Q. But you said that?

25 A. Yeah.

1 Q. And you said that to a detective on
2 March the 10th of 2004?

3 A. Yeah. I think so, yeah.

4 Q. And during a conversation where you were trying
5 to give the police as much accurate information as you could.
6 Correct?

7 A. Yeah.

8 Q. So at that time did you honestly believe that
9 your coat had been stolen in By George's?

10 A. I thought I might have sat it down and someone
11 might have taken it, but --

12 Q. Okay. Now that you've had plenty of time to
13 think about that particular coat --

14 A. Uh-huh.

15 Q. -- do you know where it is today --

16 A. No.

17 Q. -- what happened to it?

18 A. I'm fairly certain I left it in Ryan's car the
19 night that this happened, but I didn't -- I didn't take it
20 home with me after that.

21 Q. When did you first come to that realization?

22 A. Just -- it was just a thought that -- since I
23 couldn't find it. I remember I thought that I'd either left
24 it in his car or I'd left it at a friend's house named Brian
25 Walther.

1 Q. Did you remember asking Brian Walther, Hey, is
2 my coat over there?

3 A. Yeah. And he said he couldn't find it.

4 Q. Do you recall in the fall of 2001 realizing,
5 Hey, my coat's not here?

6 A. Yeah. When I called -- I think it might have
7 been later than that, but I don't know. I think I called
8 Brian Walther when I realized I didn't have my coat yet.

9 Q. And when do you think that was?

10 A. I'm not -- I can't be for certain. It was
11 either late 2001 or early 2002.

12 Q. So you hadn't noticed it missing before then?

13 A. No, not really. My mom had just -- actually
14 the day before this happened my mom had just bought me a new
15 Columbia jacket and basically that's what I started wearing.

16 Q. Coincidentally?

17 A. Yeah. The night that -- the night that -- it
18 was either the -- on the 31st or the 30th she bought me a
19 Columbia jacket.

20 Q. Okay. And so when you went to school on the
21 1st of November -- and who did you ride to school with then?

22 A. Scott Turner.

23 Q. Yeah. When Scott picked you up for school,
24 what were you wearing?

25 A. I can't remember. I think that I might have

1 worn the -- the liner to the Columbia jacket. It has like a
2 fleece liner that zips out and it's kind of -- it's like
3 separate but you can zip it in or whatever for extra warmth.
4 And I think I wore that, but I can't -- I'm not -- I'm not
5 entirely sure about that.

6 Q. And then the next day, November 2nd, when Ryan
7 took you to school, did you look for your coat in his car?

8 A. No. I don't remember mentioning it, no.

9 Q. But you do distinctly remember wearing the coat
10 as you got out of By George's the second time?

11 A. Yeah.

12 Q. And then got in the car and went to the gas
13 station to buy cigarettes?

14 A. Yes.

15 Q. And drove down Fairview to your house?

16 A. Yes.

17 Q. And you didn't take the coat off there in the
18 car, did you?

19 A. I can't remember whether I did or not.

20 Q. Do you remember whether you had the sweatshirt
21 on still?

22 A. I can't remember.

23 Q. Do you remember having the sweatshirt at your
24 own house the next day?

25 A. No.

1 Q. Do you remember having your coat at your own
2 house the next day?

3 A. No.

4 Q. Have you ever woken up at your house and looked
5 and seen clothing with blood on it?

6 A. No.

7 Q. You never took your shoes or boots off that
8 night after you changed clothes and left the penny loafers at
9 your house, did you?

10 A. Yeah.

11 Q. Not until you got home?

12 A. I left the penny loafers at my house when I
13 went home the first time that night.

14 Q. Right. After that?

15 A. But after that, I mean, I assume I took my
16 shoes off when I went to sleep. I don't remember what I did
17 with them after -- after that.

18 Q. You don't remember waking up and looking at
19 your shoes and seeing that there's blood on them and getting
20 rid of them?

21 A. No.

22 Q. And you never recall taking your pants off that
23 night until you got home at the end of this long night.
24 Right?

25 A. I don't remember taking -- I mean, I just -- I

1 just remember going home and going to sleep. I don't remember
2 whether I took clothes off or not.

3 Q. Okay. Let me ask you this. Do you remember
4 waking up sometime in November of 2001 and saying, Oh, my,
5 there's blood on my pants?

6 A. No.

7 Q. Okay. And you don't remember deciding that you
8 need to get rid of clothing that's got blood on it, do you?

9 A. No. I may have left the clothes in the car
10 with Ryan. I can't remember.

11 Q. Your pants?

12 A. I might have.

13 Q. You might have left your pants in Ryan's car?

14 A. I might have. I -- I don't -- I don't
15 remember.

16 Q. Okay. I don't even want to know what you're
17 doing taking your pants off in Ryan's car, but I'm not going
18 to ask you.

19 A. It's possible I went to my house in my boxers.
20 I mean, I can't be certain.

21 Q. Okay.

22 A. I mean, after -- after we'd kind of left the
23 club, I was -- I was really upset and just not really with it.

24 Q. But you're not saying that you remember taking
25 your clothes off and leaving them in Ryan's car. Correct? Is

1 that right?

2 A. Yes.

3 Q. And that includes not only your pants or your
4 shoes or your sweatshirt or your T-shirt or your Nautica
5 jacket. Is that a fair statement?

6 A. Yes.

7 Q. Okay. You just don't know now what happened to
8 them?

9 A. Yes.

10 Q. And at the end of October 2003 when you first
11 started having thoughts that you might have something to do
12 with the death of Mr. Heitholt, is the first time you started
13 wondering whatever happened to those clothes. Is that a fair
14 statement?

15 A. I really wasn't thinking about the petty things
16 like clothes. I was more just concerned about what I'd done.

17 Q. Okay. And whether or not you'd done it?

18 A. Right.

19 Q. In fact, when you were arrested on March 10th,
20 you still were not sure that you were actually involved in
21 this thing. You thought it might be something that you would
22 just had dreamed about; is that correct?

23 A. Correct.

24 Q. And you were questioned by the police all day
25 long. Correct?

1 A. Yes.

2 Q. And you first talked with Short; is that right?

3 A. Yes.

4 Q. And to describe him, he's a middle-aged white
5 guy with slightly more hair than me, but not much?

6 A. Yeah. He's short.

7 Q. Short and bald?

8 A. Yes.

9 Q. And you were questioned by him for a while and
10 then he said he was going to take a videotaped statement; is
11 that correct?

12 A. I don't remember.

13 Q. Okay.

14 A. I don't remember him saying anything about a
15 videotape.

16 Q. Do you recall a videotape being taken?

17 A. I knew that there was a camera in the room, but
18 that's all I really remember as far as -- I figured that I was
19 being videotaped. I don't remember anyone saying anything
20 about putting a videotape in or removing a videotape.

21 Q. Okay. And you don't remember him leaving the
22 room to go get the videotape turned on?

23 A. No.

24 Q. And then you talked with him some more; is that
25 correct?

1 A. Yes.

2 Q. Okay. And have you seen a videotape of that
3 interview by Short?

4 A. Yes.

5 Q. So you've gone over that and seen that?

6 A. Yes.

7 Q. And it shows what it shows?

8 A. Yes.

9 Q. And during that videotape, were you trying to
10 lie to him about anything?

11 A. No.

12 Q. Were you doing your best to tell him everything
13 that you could?

14 A. Yes.

15 Q. Were you describing your memories as they
16 existed in your conscious mind at that time?

17 A. Yes.

18 Q. And was that true of the first interview,
19 whether or not it was videotaped?

20 A. Yes.

21 Q. And so do you recall telling him during the
22 first interview that you thought Ryan might have strangled
23 Mr. Heitholt with a shirt?

24 A. Yes.

25 Q. Okay. And that's the way you remembered it

1 then?

2 A. That's -- yes. That -- that's -- that's what I
3 thought that might have happened, yes.

4 Q. Okay. And then you were asked in the videotape
5 with Mr. Short to show how Ryan -- or you weren't asked to
6 show. You were asked how did Ryan strangle Heitholt and you
7 demonstrated with your hands a gesture like somebody would
8 make if they were choking somebody with their hands. Correct?

9 A. Yes.

10 Q. And that was your memory at that time?

11 A. That was -- that was the -- to the -- yeah, to
12 the best to what I thought, yeah.

13 Q. Okay. And then you were interviewed and during
14 this interview both Detective Short and Detective Liebhart.
15 Is that his name?

16 A. I believe so.

17 Q. They were both in and out of the room and they
18 would both be asking you questions at one time or another. Is
19 that a fair statement?

20 A. Yes.

21 Q. Okay. And then after that, is that when you
22 went and rode around in the car with three police officers?

23 A. Yeah.

24 Q. Okay. And during that time, that was being
25 videotaped by one officer in the front seat?

1 A. Yes.

2 Q. Another officer was driving. Correct?

3 A. Yes.

4 Q. And there was a third officer in the backseat
5 with you?

6 A. Yes.

7 Q. And that was Jeff Nichols?

8 A. I believe that's correct.

9 Q. Okay. And could you describe him for us,
10 please?

11 A. I believe he had a -- he had a mustache, like a
12 black mustache and black hair. And he wasn't -- he was -- he
13 wasn't too tall, he was average build maybe, he might have
14 been like six foot, something like that. He wasn't too big,
15 just kind of average size I guess.

16 Q. Fairly burly?

17 A. Yeah, a little -- a little bit. Not real --
18 not real big, but --

19 Q. Yeah. Okay. And at the time that you started
20 that trip in the car, you had told the police your best memory
21 of what happened that night that you had. Correct?

22 A. Yes.

23 Q. And you had told them that you had left the
24 parking lot going towards Providence past the BreakTime; is
25 that correct?

1 A. Left the Tribune building?

2 Q. Yeah. The Tribune building?

3 A. Yeah. I believe that -- yes.

4 Q. And you told them that it was at the BreakTime

5 that you saw Dallas Mallory stop for the stoplight?

6 A. Yes. I believe so.

7 Q. Okay. And you told them that you crossed

8 Providence there and then you climbed up some sort of wooden

9 fence or wooden retaining wall or something like that --

10 A. Yes.

11 Q. -- is that right?

12 And that was the way you remembered it then?

13 A. Yes.

14 Q. And you --

15 A. That was -- that was what I pieced together

16 with the memories -- memories I had at that time.

17 Q. Right. And so you drove around with them and

18 saw a wooden retaining wall behind the bank and thought that

19 that looked like the wall you had climbed?

20 A. I thought that -- yes, that it -- yes, it

21 resembled it.

22 Q. And you weren't trying to lie to them, were

23 you?

24 A. No.

25 Q. Not trying to mislead them?

1 A. No.

2 Q. You were trying to tell them what you
3 remembered at the time --

4 A. Yes.

5 Q. -- correct?

6 And you also were still in the situation where,
7 in your own mind, you weren't certain whether your memories
8 were real or not; is that true?

9 A. Yes.

10 Q. Okay. And so then you also -- they drove you
11 south on Fourth Street from the Tribune building, didn't they?

12 A. Yes.

13 Q. Pointed out The Broadway Diner. Correct?

14 A. I believe so. I can't -- I can't be for sure.

15 Q. And if they asked you if that looked familiar
16 and you said no; is that right?

17 A. Yes.

18 Q. And they took you on south to I believe Locust
19 Street and across to Providence where the Phillips station is.
20 Right?

21 A. Yes.

22 Q. And asked you if that looked familiar and you
23 told them no. Correct?

24 A. Yes.

25 Q. And then that's when they went back and saw the

1 retaining wall behind the bank on the north side of Broadway
2 and on the west side of Providence. Correct?

3 A. Yes.

4 Q. Okay.

5 A. I believe so.

6 Q. And there was no confusion in your mind about
7 which was the BreakTime and which was the Phillips, was there?
8 I mean, you knew the BreakTime was the BreakTime and you knew
9 the Phillips was the Phillips?

10 A. Yes.

11 Q. And you didn't call the Phillips the BreakTime
12 and you didn't call the BreakTime the Phillips. Correct?

13 A. That's correct.

14 Q. Okay. Then after that, there was another
15 interview with Detective Nichols. Right? The guy with the
16 black mustache?

17 A. Yes. I believe so.

18 Q. And do you remember him yelling at you?

19 A. Yeah.

20 Q. Okay. So let's put that interview in your
21 mind. Let me go back before that to the interview with
22 Detective Short. You tried to tell Detective Short that you
23 weren't certain about what you were saying, you were just
24 telling him impressions you had and that you weren't sure
25 whether they were real or something you just dreamed up.

1 Right?

2 A. Yes.

3 Q. And he didn't want to hear that, did he?

4 A. No. I imagine he didn't.

5 Q. And he told you, Oh, no, you told us stuff that
6 only the guy who did it would know, didn't he? Remember that?

7 A. Yes.

8 Q. And you asked him what and he said, Well, about
9 the cleaning lady. Right? Remember that?

10 A. Yes.

11 Q. And do you remember what your response was?

12 A. I could have read that in the newspaper.

13 Q. You said, I read that in the newspaper. Right?
14 And that's true, you had read that in the newspaper, hadn't
15 you?

16 A. No. I'd read that someone had been told to go
17 get help or something of that nature. I don't believe that I
18 remember -- I don't believe that I read that a cleaning lady
19 was told to go get help. I believe that -- it wasn't -- it
20 wasn't that precise.

21 Q. Okay. And in your memory, is it the cleaning
22 lady who was told to go get help? In your current memory
23 today.

24 A. Yes.

25 Q. Okay. Not the man, but the lady who was told

1 to go get help?

2 A. Yes.

3 Q. And you're sure of that then?

4 A. Yes.

5 Q. As sure as you are about the rest of what you
6 believe today you remember?

7 A. Yes.

8 Q. Okay. Then in your --

9 A. Well, I told --

10 Q. Go ahead.

11 A. I was -- I was just -- I was just telling the
12 people -- I mean, I remember seeing the woman and she was in
13 front and I guess -- I mean, I was telling both of them for
14 the most part, I mean.

15 Q. And you remember them both being there when
16 that was said?

17 A. Yeah. I remember two people, yes.

18 Q. Okay. The man and the woman?

19 A. Yes.

20 Q. Okay. Now, going back to March the 10th when
21 Detective Nichols yelled at you, do you remember why he yelled
22 at you?

23 A. Because I was hesitating and I was not giving
24 him concise answers and I wasn't -- I -- I still wasn't quite
25 sure about --

1 Q. Right.

2 A. -- what had happened.

3 Q. You were trying to tell him that you weren't
4 really sure and he yelled at you?

5 A. Yes.

6 Q. And you didn't like being yelled at?

7 A. No.

8 Q. And so you tried to be as sure as you could?

9 A. Yes.

10 Q. And he, again, was trying to tell you that you
11 were giving them information that only the perpetrators could
12 know. Correct?

13 A. Yes.

14 Q. And at that time you believed that?

15 A. Yes.

16 Q. Even though you still were not confident in
17 your own mind that these were accurate memories?

18 A. Yes.

19 Q. And do you recall being asked again about what
20 was used to strangle Mr. Heitholt?

21 A. Yes.

22 Q. Do you recall saying it was -- you thought a
23 bungee cord?

24 A. I -- I think so. I'm not sure.

25 Q. Okay. And do you recall him asking you, Well,

1 could it have been a belt? Do you remember that?

2 A. I think so.

3 Q. And you said, I don't know or words to that
4 effect? You were not sure. Is that a fair statement?

5 A. Yes.

6 Q. And then he said something like a bungee cord
7 that looked like a belt?

8 A. I don't know. I don't remember exactly.

9 Q. All right. But that's the first time that the
10 word "belt" entered your mind in connection with this case as
11 the implement used to strangle Heitholt, wasn't it?

12 A. Except for November 1st.

13 Q. Okay. Let me rephrase that question. That was
14 the first time --

15 A. After November 1st.

16 Q. -- after November 1st, 2001 that the word
17 "belt" entered your mind as something used to strangle
18 Mr. Heitholt; is that correct?

19 A. That's correct.

20 Q. Your conscious mind?

21 A. That's correct.

22 Q. Okay. At the conclusion of the Nichols'
23 interview, did you think that any chance that you might have
24 of persuading somebody that you really didn't do it or that
25 your memory of maybe having done it was not a certain memory

1 was pretty much gone?

2 A. I don't know.

3 Q. I'm talking about how you felt then. Did you
4 feel like, hey, I've told them what I've told them, I tried to
5 do tell them I wasn't sure, they didn't want to hear that.
6 They claimed that I must be sure and I think it's pretty much
7 over?

8 A. I -- I didn't -- I never really thought that,
9 you know, it was pretty much over. I still had a lot that I
10 had to think about and deal with in my own mind. So, no, I
11 didn't -- I didn't think that it was final.

12 Q. Do you think that your situation --

13 A. I was happy that I was able to get some closure
14 out of it regardless what the circumstances were. And I was
15 happy that I was able to, you know, do my best to take
16 responsibility for what I'd done and give that man's family
17 some closure.

18 Q. But you still weren't certain that you had
19 actually done it; isn't that correct?

20 A. No, I wasn't 100 percent certain, no.

21 Q. And what, if any, increased certainty you had
22 was the result of the police telling you that you had given
23 them information that was not generally available and at least
24 some of that information you knew you could have read in the
25 paper; isn't that fair?

1 A. Not the information that the police told me
2 that wasn't disclosed, no. But anything else that I'd said, I
3 mean -- there are other things that I said that had been
4 disclosed in the paper. I don't know. Do you -- how specific
5 do you want to get with that?

6 Q. Well, on the videotape what they told you was
7 the undisclosed information was the fact about the cleaning
8 lady or about somebody being told this guy needs help. Right?

9 A. No. What it said in the newspaper was that a
10 cleaning lady went and got help. It didn't say anything about
11 a person telling the cleaning lady to go get help, which is
12 what I did.

13 Q. And so you don't think that that information
14 ever appeared in the paper, that one of the suspects
15 supposedly said, Somebody needs help here?

16 A. I don't think so, no. I might be wrong about
17 that.

18 Q. Okay. When Short gave that to you as an
19 example of something that you had said that only the
20 perpetrator would know, you told him you read it in the paper,
21 didn't you?

22 A. I told him I read that a cleaning lady went to
23 get help, but I -- I didn't tell him that I read that a
24 cleaning lady was told to go get help.

25 Q. Okay. And whatever -- your exact words will be

1 on the videotape. Right?

2 A. Yeah.

3 Q. We don't need to worry about those, but --

4 A. Yeah.

5 Q. Now, back to the end of those interviews. You
6 were taken to jail. Correct?

7 A. Yes.

8 Q. When were you first represented by Mr. Kempton?

9 A. First, I was -- oh, shit, I was represented by
10 someone else and I -- I only spoke to them a couple times and
11 for the life of me I cannot remember his name.

12 Q. Was that somebody who had been hired by your
13 parents or was that somebody who had been provided without
14 charge?

15 A. That was someone that my -- that wasn't a state
16 appointed attorney. That was someone my dad knew and that was
17 appointing me and counseling me until I could get better
18 counsel.

19 Q. Somebody who didn't -- somebody who was not --

20 A. I don't believe we were charged, no. It was
21 just kind of like a favor.

22 Q. Right. Professional courtesy, as they call it?

23 A. Yeah.

24 Q. And your father's a lawyer too; is that
25 correct?

1 A. No. Not anymore. He used to be a lawyer. Now
2 he works for Columbia Insurance.

3 Q. Okay. He's still a lawyer, but he doesn't
4 practice. Is that what you're telling me?

5 A. Yeah, I guess.

6 Q. He hasn't been disbarred --

7 A. No.

8 Q. -- etc. Right?

9 A. No.

10 Q. And what kind of law did he used to practice
11 before he went to work for Columbia Insurance?

12 A. I'm not sure. He was a -- he got his bar
13 and -- he's got it in New York and in Illinois and I think it
14 was criminal law, but I'm not -- I'm not certain because --

15 Q. You have an Uncle Fred; is that right?

16 A. Yeah, that's correct.

17 Q. And he's a lawyer in Illinois?

18 A. Yeah.

19 Q. And he does criminal work?

20 A. Yes.

21 Q. Okay. And do you have any other lawyers in the
22 family?

23 A. My Uncle Bruce is a lawyer.

24 Q. Where is he?

25 A. He's -- he -- no longer practices, but he's

1 also in Illinois.

2 Q. And what kind of law did he practice?

3 A. I'm not sure.

4 Q. Okay. And you have not talked about this case
5 with your Uncle Bruce or your Uncle Fred. Is that a fair
6 statement?

7 A. Not in depth, no.

8 Q. Have they come to visit you?

9 A. No.

10 Q. Have you talked to them on the phone?

11 A. No.

12 Q. So you haven't --

13 A. Not that I remember. I mean, I've written to
14 them.

15 Q. Okay.

16 A. But I didn't -- no, I didn't get in -- into any
17 real detail about my case, no.

18 Q. And you were not writing to them to ask for
19 legal advice, were you?

20 A. No. They gave me -- you know, they said, Don't
21 talk about your case with other people you're in jail with
22 and, you know, just -- that was basically it.

23 Q. Which certainly every lawyer would probably
24 say, but also a lot of non-lawyers would also say?

25 A. Yeah. Yes.

1 Q. And let me go back a minute to the belt. And
2 now I'm not asking you about when you told people then but I'm
3 asking about your present memory. What is your present memory
4 as to where the belt came from?

5 A. I -- I didn't see where the belt came from.

6 Q. Okay. So you have none --

7 A. That's correct.

8 Q. -- correct?

9 Okay. To your knowledge, was Ryan wearing a
10 belt that night?

11 A. I don't remember.

12 Q. Okay. And then you don't remember whether it
13 was his belt or somebody else's?

14 A. That's correct.

15 Q. All right. You know it wasn't yours?

16 A. Yes.

17 Q. Okay. All right. How long was it until you
18 first met Mr. Kempton? I'm not going to ask you what you and
19 he talked about.

20 A. A couple of weeks, maybe a week.

21 Q. Okay. And during that time had you had
22 conversations with the jail nurse about your case?

23 A. Yeah. I might have -- just kind of vague
24 stuff.

25 Q. Okay. And during at that time, you were still

1 not certain that you had been actually been involved in --

2 A. She asked me -- like they got into it and she
3 asked me, she goes -- one of them said, you know, He doesn't
4 know or whatever because they were asking me about it. And I
5 said, Yeah, I guess, you know, whatever. Just pretty much
6 just so they'd stop asking me about it. I wasn't -- and then
7 another nurse came in and said, you know, You don't need to
8 talk to him about this without his lawyer here. But that's
9 what I told her, yeah, that I wasn't sure, yeah.

10 Q. And you weren't sure. Correct?

11 A. Yeah.

12 Q. Even after you talked to the police and had
13 been in jail for a while?

14 A. Yeah.

15 Q. And you talked about this conversation in a
16 phone call to your mother, didn't you?

17 A. Yes. I believe so.

18 Q. And you knew at the time that the phone calls
19 were recorded?

20 A. Yeah.

21 Q. And that you didn't have any expectation that
22 people wouldn't be able to listen to them, did you?

23 A. No. I figured that since -- why would you
24 record it if you weren't going to listen to it?

25 Q. Exactly.

1 A. Yeah. I didn't really care, to tell you the
2 truth, but --

3 Q. And you told your mother, Yeah, I just talked
4 to the nurses and they were like, Well, did you do it? And I
5 was like basically I explained to them that I wasn't sure, you
6 know, really --

7 A. Yeah.

8 Q. -- and I told them just basically that some of
9 the things that I had said the cops -- that I had to say, the
10 cops correlated with what had actually happened and that I
11 told one of my friends about it and then basically, I mean,
12 after that it was over. Do you remember telling your mom
13 that?

14 A. Yeah. Something like that.

15 Q. And that accurately described your state of
16 mind at that time?

17 A. Yeah.

18 Q. You thought you had talked to the police and
19 talked to your friends and the cops had told you that it
20 correlated with other stuff and you thought, oh, it was over?

21 A. Yeah.

22 Q. And it was after that, that you and Mr. Kempton
23 met and that you got the discovery and that you decided to
24 enter into a plea bargain?

25 A. It was some time after that --

1 Q. Yeah.

2 A. -- but, yeah.

3 Q. These are all things which happened after that
4 situation?

5 A. Yes.

6 Q. Okay.

7 A. That's correct.

8 Q. And, in fact, even after that, you met several
9 times with Mr. Kempton and reviewed the discovery and all the
10 police reports and lab reports and the crime scene reports and
11 all of those things, didn't you?

12 A. Yes.

13 Q. And after that, you and Mr. Kempton met with
14 Detective Short again?

15 A. Yes.

16 Q. Was that right here in this room?

17 A. I believe so.

18 Q. Okay. It was certainly in the prosecutor's
19 office? I'm not saying -- no?

20 A. Actually, no, I'm wrong. Sorry.

21 Q. Where was that?

22 A. It was at the Major Crimes -- at the Major
23 Crimes Unit.

24 Q. In the police department?

25 A. Yeah. There's been meetings every place.

1 Sorry.

2 Q. Fair enough. And I'm not trying to trick you.
3 Sometimes I don't remember where things happen or when they
4 happen. But that would have been in October of 2004?

5 A. I think so.

6 Q. Okay.

7 A. I'm not sure.

8 Q. And that's the first time that you gave anybody
9 in authority an account of your leaving the Tribune parking
10 lot, which had you going south on Fourth Street, crossing
11 Broadway, going across the creek, climbing up the steep rocky
12 wall or bank and encountering Dallas Mallory at the stoplight
13 by the Phillips station. Correct?

14 A. Yeah. Yes, that's correct.

15 Q. Okay. So when you were talking to Detective
16 Short on March the 10th and you said BreakTime, you meant
17 BreakTime. You didn't mean Phillips?

18 A. Yeah.

19 Q. But when you were talking to Detective Short
20 after having read all the reports, that's when you said
21 Phillips?

22 A. Yes.

23 Q. And you meant Phillips, you didn't mean
24 BreakTime?

25 A. Right.

1 Q. Since you have been in jail accused of this
2 case, have you been keeping a diary?

3 A. No.

4 Q. Did you ever start keeping a diary?

5 A. I -- there are sometimes when I wrote down how
6 I was feeling and certain things like that, but I mean -- just
7 on certain dates, but it wasn't something like I did every
8 day. I actually only did it for -- for like a few days and
9 then I stopped doing it.

10 Q. Do you still have those?

11 A. No.

12 Q. What happened to them?

13 A. I believe I threw them out.

14 Q. Why?

15 A. Just to get rid of them.

16 Q. Okay. Did you throw them out before or after
17 you reached your agreement to cooperate with the State?

18 A. I don't remember honestly. I'm not sure.
19 They -- they -- I might still have them, but I'm pretty sure
20 that I threw that stuff out. Like, I had -- there was a --
21 like, mostly it was just because like I was kind of, like,
22 collecting quotes and stuff like that because I was doing a
23 lot of reading and putting quotes in the back of this thing.

24 And every once in a while I would -- you know,
25 if I was getting really stressed or whatever you know, I would

1 just write how I was feeling and what I felt about the case
2 and -- and stuff like that.

3 Q. Okay.

4 A. But, I mean, I might still have it.

5 Q. Let me ask you this. Now that I've brought it
6 to your attention -- and I'm not trying to say you've done
7 anything improper in the past, but now that I've brought it to
8 your attention, do you believe that this document, if it still
9 exists, would be something that you were obligated to disclose
10 to Mr. Crane under your agreement because it contains your
11 thoughts and feelings about the case?

12 A. Yeah. If I still have it, then --

13 Q. And you'll be willing to do that?

14 A. Yeah. My folks have it if it's still there.
15 Because they got all my property. So I don't know if they
16 still have it or not.

17 Q. So you don't still have it at whatever jail
18 you're in?

19 A. No, no. Because my -- they actually, like,
20 took it from me because it was leather bound and they --
21 they -- they -- like, I had it for a long time and then this
22 guard who did a shakedown, she took -- she took it anyway and
23 so she put it in my property and my folks -- I had my folks
24 pick up my property and -- and along with -- that was along
25 with it and that was where I -- I do writing and stuff. And

1 so they've got it.

2 Q. Okay. So you have no quarrel or no objection
3 to Mr. Crane getting it from them and giving us a copy. Is
4 that a fair statement?

5 A. That's -- I don't really see a problem with it.
6 I don't think there's anything in there.

7 Q. And I don't know. I haven't seen it.

8 A. Yeah.

9 Q. You certainly did not write it with the
10 expectation that jail people couldn't look at it, did you?

11 A. No. I -- it was my personal writing. I mean,
12 I didn't -- I didn't want anyone to look at it.

13 Q. But you knew they could because you're in jail.
14 They can look through all your papers, can't they?

15 A. I don't know. I don't know. I don't know.

16 Q. It's not something --

17 A. I don't know if they can do it or not. It
18 doesn't really matter to me.

19 Q. Okay. That's the bottom line.

20 A. Maybe I should talk to my lawyer about it.
21 Maybe -- I mean, I don't know.

22 Q. I certainly do not want to discourage anybody
23 from talking to their lawyer about anything. I do, however,
24 want to make it clear that I --

25 A. Well, can I ask you something? I mean, am I

1 required to let him read it?

2 MR. CRANE: I don't even know what it is.

3 THE WITNESS: They said it's a -- it's like --
4 I wrote like how I was feeling a few days, it like a leather
5 bound book.

6 MR. CRANE: Well, I mean, of course, they're
7 going to want to say, you know, hey, look, he dreamed it, you
8 know, he thinks he did it but he didn't and then snicker and
9 read it and stuff, you know. I mean, that's -- but if it's
10 something that --

11 THE WITNESS: Do I have to let them read it?

12 MR. CRANE: I don't even know what it is.

13 THE WITNESS: It's -- I don't even think that
14 there's anything in there. But, I mean, do I have to let them
15 read it? Am I going to violate my agreement if I say, No, you
16 can't read it?

17 MR. CRANE: If it doesn't have anything to do
18 with anything or if it has something to do with the case,
19 yeah, let's see if your folks have got it and we'll get it and
20 we're obligated to give it to them.

21 THE WITNESS: Do you want me to call them now
22 and you all can just pick it up on your way out?

23 MR. ROGERS: After we're done.

24 MR. CRANE: We can just set it up to where they
25 can give it to me and I'll give it to them.

1 THE WITNESS: That's fine.

2 MR. CRANE: If they've got it. Just so we
3 don't set up some -- like there's a conspiracy here where
4 we're --

5 MR. ROGERS: I don't anticipate --

6 MR. CRANE: If it's thrown away, we don't have
7 it.

8 THE WITNESS: I don't think they threw it away,
9 but I'm telling you, man, I really don't think there's
10 anything in there.

11 BY MR. ROGERS:

12 Q. That's fine. I spend probably three-fourths of
13 my professional life looking at stuff that doesn't matter.

14 A. I mean, I just -- I mean, there's nothing in
15 there. It's been --

16 Q. Fine. Thank you. I appreciate that.

17 MR. CRANE: Any other questions?

18 MR. ROGERS: Yeah.

19 MR. CRANE: How much longer do you think you're
20 going to be?

21 MR. ROGERS: I think this is kind of my last
22 question.

23 MR. CRANE: Does it have the word "conscious"
24 in it?

25 MR. ROGERS: Not the first part at least.

1 MR. CRANE: Great.

2 BY MR. ROGERS:

3 Q. After you were arrested the first couple of
4 months, you had some pretty strange dreams, didn't you?

5 A. I don't -- I don't -- I don't -- I don't
6 remember if they were -- I don't think so, no.

7 Q. Do you remember talking to your sister about
8 crazy dreams?

9 A. Not really, no.

10 Q. Do you remember telling your sister that you
11 were having crazy dreams, some really insane shit?

12 A. I don't know. Did I say that? I guess I did
13 say that.

14 Q. Yes, you did.

15 A. I don't remember saying that.

16 Q. My question is what you were talking about?

17 A. I don't know. I don't remember saying that.

18 Q. Okay.

19 A. Are you saying after I got arrested?

20 Q. After you got arrested, talking on the phone.

21 A. Yeah, I was -- I got -- I mean, I guess I
22 probably did say I had some weird dreams. I don't remember
23 exactly what I said though. I don't know -- this was a year
24 ago, so I don't -- I talk to them so often I don't know what I
25 was talking about or --

1 Q. Okay. So you don't know what kind of dreams
2 you were having back then?

3 A. Huh-uh.

4 Q. And do you think they might have been dreams
5 related to the stress of deciding whether what you told the
6 cops was real or not?

7 A. No.

8 MR. ROGERS: I believe that's all the questions
9 I have.

10 CROSS-EXAMINATION BY MR. CRANE:

11 Q. Just a couple real quick ones. I stepped out
12 and I might have missed something. You were talking about
13 when you left George's the first time before the murder. And
14 I think I heard you saying at some point you took off -- you
15 both took off your coats?

16 A. Yes.

17 Q. Don't look at my notes.

18 And you put on the sweatshirt or zip-up thing
19 after you took off the coat?

20 A. Yeah.

21 Q. And where was that? Where had that been?

22 A. I'm pretty sure it was just in the back of his
23 car -- Ryan's car.

24 Q. Why would that be?

25 A. Because he takes me to school -- he took me to

1 school periodically.

2 Q. Okay. And other than leaving your coats in the
3 car, what else did you leave in the car?

4 A. My wallet and I believe my keys and I believe
5 Ryan left a cell phone in the car along with his wallet.

6 Q. Okay. Did you mention that before? Because I
7 stepped out and --

8 A. No. They never asked me about that.

9 Q. So you left your wallets, keys -- well, I guess
10 he took his keys because he had to get back in the car?

11 A. Yeah, yeah, yeah.

12 Q. And then you took off after you left your coats
13 too?

14 A. Yes.

15 Q. Okay. You're down there on Providence after
16 you took the jog over from the street you'd been on when you
17 left George's and you took a little jog to the south on
18 Providence?

19 A. Yeah.

20 Q. And you indicated you looked up the alley
21 towards the direction of the back of the Tribune building?

22 A. Yes.

23 Q. And you indicated at some point, I believe to
24 Mr. Rogers, that you saw another individual out there?

25 A. Yes.

1 Q. Aside from Mr. Heitholt?

2 A. Yes.

3 Q. And you didn't know it was Mr. Heitholt at the
4 time?

5 A. No.

6 Q. And did you see that person leave?

7 A. Yes.

8 Q. And did they leave on foot or were they in a
9 motor vehicle?

10 A. They got in a car and left.

11 Q. And left Mr. Heitholt there by himself on the
12 lot?

13 A. Yes. Yep.

14 Q. And did you see what type of vehicle that
15 individual left in?

16 A. I want to say it was red, but I can't -- I
17 can't be sure.

18 Q. Was it a red car or a red truck?

19 A. I think it was a red car. I'm not certain
20 about that though.

21 Q. And you, I believe, stated that when you went
22 back into George's the second time, that he might have bought
23 another drink?

24 A. Yeah.

25 Q. And that you later went to a filling station or

1 a convenience store -- we'll just generically call it a
2 BreakTime somewhere off of --

3 MR. ROGERS: BreakTime or Texaco.

4 BY MR. CRANE:

5 Q. BreakTime or Texaco or something down around
6 the Crossroads West Shopping Center on Stadium --

7 A. Yes.

8 Q. -- north of Broadway?

9 A. Yeah.

10 Q. You with me?

11 A. Yeah.

12 Q. Did you indicate that earlier?

13 A. Yeah.

14 Q. And that who went in and bought cigarettes?

15 A. Ryan.

16 Q. And with respect to that drink and those
17 cigarettes, where did the money come from?

18 A. I'm not sure if he had -- if he got any money
19 off the victim or not. But when we got back to the club, I'm
20 pretty certain he found, like, a wadded 20 in his wallet that
21 he just had folded up that he just didn't know about.

22 Q. And did he say anything about that? I mean,
23 was --

24 A. He was kind of grinning about it like, man, we
25 just did that -- I remember saying something like, We just --

1 you know, we just did that for nothing, you know.

2 Q. While inside George's the first time, do you
3 recall him, Ryan, using his cell phone inside?

4 A. No. I'm pretty sure that he went -- he went
5 outside to use his cell phone. It was pretty loud in the
6 club.

7 Q. Okay. Was it always easy for him or could you
8 tell whether it was easy for him to locate Kelly?

9 A. Well, no. It -- it had taken him some time a
10 couple of times, you know, like a few minutes at least to find
11 her.

12 Q. So you don't know who -- if he called somebody
13 on the cell phone, you don't know who it was while he was in
14 there or stepped outside?

15 A. No.

16 Q. And during the time you guys were together
17 starting with Swilling's party --

18 A. Uh-huh.

19 MR. ROGERS: I'm going to interpose an
20 objection here because I don't think -- I don't think he said
21 they were together --

22 MR. CRANE: Outside Swilling's party -- outside
23 the residence of Swilling's party. How about that?

24 MR. ROGERS: Thank you.

25 BY MR. CRANE:

1 Q. Were you all generally together the whole
2 night?

3 A. Yes.

4 Q. Other than breaks of a few minutes?

5 A. Yes.

6 MR. CRANE: I think that's all I have.

7 REDIRECT EXAMINATION BY MR. ROGERS:

8 Q. When was the first time that you have told
9 anybody in authority in this case, not counting your lawyer,
10 about Ryan taking out a \$20 bill after you got back to the car
11 after the Heitholt incident?

12 A. After we got back to the club, I believe the
13 last time that I said --

14 Q. No, the first time.

15 A. I think this is the first time I've said that.

16 Q. To anybody?

17 A. No. I said that to him on last Friday, but
18 before that, I -- I don't think I said anything to anyone
19 about it.

20 Q. So the first time you've said that to anybody
21 other than your lawyer --

22 A. I --

23 Q. I don't get to ask you what you've told your
24 lawyer.

25 MR. CRANE: Let him finish his question.

1 BY MR. ROGERS:

2 Q. The first time you said that to anybody other
3 than your lawyer was saying it to Mr. Crane last Friday?

4 A. Yes.

5 Q. Okay. And did he ask you about that to make
6 you remember that or did you volunteer that on your own?

7 A. I -- I volunteered that.

8 Q. And so he didn't ask you where the money came
9 from and that's when you said, Oh, he had this 20? You just
10 came up with it?

11 A. Well, I mean, he asked me about how we bought
12 drinks, yes.

13 Q. Just like he just did now?

14 A. Yes.

15 Q. Okay. Because when I asked you did he buy
16 drinks, you weren't sure, but you thought maybe he had. And I
17 didn't ask you how he got the money.

18 A. Yeah.

19 Q. And you didn't volunteer to me anything about
20 the 20?

21 A. Yeah.

22 Q. But now that Mr. Crane has asked you, when he
23 asked you last Friday, you told him about the 20 and now
24 you've told us that again. Is that a fair statement?

25 A. Yes.

1 Q. And is that something that you remembered
2 before now and nobody just -- nobody just ever asked you or
3 was it something that you have recently remembered that you
4 just have then told him?

5 A. It's something that I recently remembered, yes.

6 MR. ROGERS: That's all the questions I have.

7 THE COURT REPORTER: Signature?

8 MR. ROGERS: Same deal. Right?

9 MR. CRANE: Yeah. We'll get a copy of the
10 deposition and you read it over. All right?

11 (PRESENTMENT WAIVED; SIGNATURE REQUESTED.)

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1 CERTIFICATE OF REPORTER

2

3 I, Tracy L. Thorpe, CSR, CCR and Notary Public within
4 and for the State of Missouri, do hereby certify that the
5 witness whose testimony appears in the foregoing deposition
6 was duly sworn by me; that the testimony of said witness was
7 taken by me to the best of my ability and thereafter reduced
8 to typewriting under my direction; that I am neither counsel
9 for, related to, nor employed by any of the parties to the
10 action in which this deposition was taken, and further, that I
11 am not a relative or employee of any attorney or counsel
12 employed by the parties thereto, nor financially or otherwise
13 interested in the outcome of the action.

14

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16

Tracy L. Thorpe, CSR, CCR
Notary Public State of Missouri
(Commissioned in Boone County)
My commission expires December 16, 2005.

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1 Midwest Litigation Services
2 11 North Fifth Street
3 Columbia, Missouri
4 Phone 573-442-3600 * 573-636-7551

5 July 13, 2005

6 Mr. Kevin M.J. Crane
7 705 East Walnut
8 Columbia, Missouri 65201

9 In Re: State of Missouri vs. Ryan Ferguson

10 Dear Mr. Crane:

11 Please find enclosed your copy of the deposition of Charles
12 Erickson taken on June 30, 2005 in the above-referenced case.
13 Also enclosed is the original signature page and errata sheet.

14 Please have the witness read your copy of the transcript,
15 indicate any changes and/or corrections desired on the errata
16 sheet, and sign the signature page before a Notary Public.

17 Please return the errata sheet and notarized signature page to
18 Mr. Rogers for filing prior to the trial date.

19 Thank you for your attention to this matter.

20 Sincerely,

21 Tracy L. Thorpe, Certified Court Reporter

22 Enclosure

23 cc: Mr. Charles Rogers
24
25

1 STATE OF _____)

2 COUNTY OF _____)

3 I, CHARLES ERICKSON, do hereby certify:

4 That I have read the foregoing deposition;

5 That I have made such changes in form and/or
6 substance within the deposition as might be necessary to
7 render the same true and correct;

8 That having made such changes thereon, I hereby
9 subscribe my name to the deposition.

10 I declare under penalty of perjury that the foregoing
11 is true and correct.

12 Executed this _____ of _____, 2005, at _____

13 _____
14 _____

15 Notary Public

16 My commission expires: _____

17 _____
18 CHARLES ERICKSON

19 Signature page to Mr. Crane
20 TLT/CE, 07/13/05
21 State of Missouri vs. Ryan Ferguson

22
23
24
25

1 WITNESS ERRATA SHEET

2 Witness Name: Charles Erickson
3 Case Name: State of Missouri vs. Ryan Ferguson
4 Date Taken: June 30, 2005

4 Page: Line: Should read:
Reason for change:

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23 Reporter: Tracy L. Thorpe, CSR, CCR
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COURT MEMO
IN THE CIRCUIT COURT OF BOONE COUNTY
STATE OF MISSOURI

State of Missouri,)
vs.) Case No. 04CR165368-01
Ryan Ferguson,)

CERTIFICATE OF OFFICER AND
STATEMENT OF DEPOSITION CHARGES
(Rule 57.03 (g) (2) (a) & Sec., 492.590 RSMO 1985.)

DEPOSITION OF CHARLES ERICKSON
TAKEN ON BEHALF OF DEFENDANT
JUNE 30, 2005

Name and address of person or firm having custody of the
original transcript: Mr. Charles Rogers
1000 Walnut, Suite 1600
Kansas City, MO

TAXED IN FAVOR OF: MR. CHARLES ROGERS
TOTAL.....\$_____

TAXED IN FAVOR OF: MR. KEVIN CRANE
TOTAL.....\$_____

Upon delivery of transcripts, the above charges had not been
paid. It is anticipated that all charges will be paid in the
normal course of business.

Notary Public

My Commission Expires:

