

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

P R O C E E D I N G S

October 18, 2005

- - -

The following proceedings were held out of the presence of the jury:

THE COURT: Case 165368, State of Missouri versus Ryan William Ferguson. What says the state?

MR. CRANE: Ready, Your Honor.

THE COURT: The defendant?

MR. ROGERS: Ready, Your Honor.

THE COURT: Mr. Crane, we had another case scheduled for today.

(Matters not pertaining to this case were heard.)

THE COURT: Jury ready then to come in?

DEPUTY COURT MARSHAL BAER: Yes, Judge.

THE COURT: All right. If you would bring the jurors in, please.

- - -

The following proceedings were held in the presence of the jury:

THE COURT: Good morning, ladies and gentlemen. I trust you had a restful evening. I don't know if you were informed about the Cardinals' good fortune.

JUROR: Yes, we were.

THE COURT: All right. A miracle. In the ninth

1   inning.

2            Anyway, if you would please answer as your names are  
3 called, please.

4            (Roll call by Eileen Moore, Deputy Clerk.)

5            THE COURT:  The clerk may be excused at this time.

6            (Clerk excused.)

7            THE COURT:  When we concluded last evening, there  
8 had been a video played.  I believe it was Defendant's  
9 Exhibit D.  And you may inquire further in cross-examination  
10 of this witness.

11           MR. ROGERS:  Thank you, Your Honor.

12   - - -

13   CHARLES TIMOTHY ERICKSON,

14 resumed the stand and testified further:

15   RESUMED CROSS-EXAMINATION

16 BY MR. ROGERS:

17            Q.  Good morning, Mr. Erickson.  As the Court has just  
18 reminded us, at the end of yesterday's session we watched the  
19 video of your interrogation by Detective Jeff Nichols; is  
20 that correct?

21            A.  That's correct.

22            Q.  And were you paying attention to that?

23            THE COURT:  Pardon me just a minute.  The  
24 microphones are not on.  And there is a mic on the bench,  
25 both near you as well as near this witness.  If we could turn

1 it on, please.

2 It's on now. All right.

3 MR. ROGERS: Did anyone have trouble hearing my last  
4 question?

5 Thank you.

6 Q. Now, Mr. Erickson, is that videotape from yesterday  
7 afternoon still fresh in your mind?

8 A. Yes.

9 Q. We don't need to see it again before we ask you  
10 questions about it.

11 A. No.

12 Q. Thank you. First of all, during that videotaped  
13 interrogation, you drew a picture or a diagram of the tire  
14 tool that you said Mr. Ferguson took from his car and handed  
15 to you; is that correct?

16 A. Yes, I did.

17 Q. I'm going to show you what has been marked for  
18 identification as State's Exhibit 22.

19 A. Okay.

20 Q. You see that?

21 A. Yeah.

22 Q. Is that, in fact, at least this drawing here, in the  
23 upper left-hand corner of it, what you drew for Detective  
24 Nichols on March 10th, 2004?

25 A. That's correct, yes.

1 MR. ROGERS: Your Honor, at this time I would move  
2 the admission of State's Exhibit 22. And --

3 MR. CRANE: I meant to ask the witness about it when  
4 I had him. I don't have any objections to it.

5 THE COURT: State's Exhibit 22 is admitted.

6 - - -

7 State's Exhibit 22 admitted into evidence.

8 - - -

9 MR. ROGERS: And ask permission to publish it.

10 THE COURT: As long as you are publishing it through  
11 a video means. If we have individual copies, we have to have  
12 enough for each of the jurors. But if you're publishing it  
13 on a video display, that's fine.

14 MR. CRANE: Yeah. You know, this is the thing that  
15 works better with that -- dimming the lights on. Here,  
16 I'll -- is that okay, Judge?

17 THE COURT: Yes. You may turn them off -- dim them  
18 somewhat, if it...

19 (Lights dimmed.)

20 Q. Mr. Erickson, is that what you drew?

21 A. Yes.

22 Q. And the notation over here, "18-24 inches," was  
23 written by Mr. Nichols?

24 A. Yeah. That's correct.

25 Q. And you saw, on the videotape, how you showed how

1 long you thought it was, and he moved up to you and moved  
2 your hands out a little bit and then told you, was that 18 to  
3 24 inches? Right?

4 A. I don't know.

5 Q. Okay. You don't know whether that happened on the  
6 videotape?

7 A. I can't remember, no.

8 Q. But you do remember agreeing with him, saying that  
9 it was 18 to 24 inches.

10 A. Yeah. It was -- I can't do it now, but it was  
11 somewhere in that neighborhood.

12 Q. All right.

13 A. I mean, that's an estimate. I'm not sure how long  
14 exactly it was.

15 Q. And you told us yesterday, I think, that you had  
16 taken an attachment off of this tool?

17 A. Yeah. Yes, I did.

18 Q. And was that down at this end?

19 A. No. Basically I was having problems. I couldn't --  
20 I knew that there was something on the end of it. On the top  
21 part. The part that I -- I used to strike the victim with.  
22 And I couldn't remember exactly what was -- what was on  
23 there. I was having -- I was having problems remembering  
24 that. And that was -- that was what I thought at the time  
25 that might have been there, but I was wrong.

1 Q. So is the attachment that you took off down at this  
2 end, where you've drawn the crook?

3 A. Yeah.

4 Q. And that was your best memory as of March 10th, when  
5 you were telling Detective Nichols, of what this looked like.

6 A. Yeah, that was a possibility, yeah.

7 Q. A possibility.

8 A. Yeah.

9 Q. So you were not --

10 A. I mean --

11 Q. -- certain?

12 A. I wasn't certain, yeah, that's correct. I wasn't  
13 certain.

14 Q. Because you were not certain on March 10th, talking  
15 to Detective Nichols, that you were even there; right?

16 A. On some level I was certain, but.

17 Q. And on that level, were you certain this is what it  
18 looked like?

19 A. No.

20 Q. That's what you drew for him.

21 A. Yeah.

22 THE COURT: Are you going to be using the video for  
23 any other exhibits at this point?

24 MR. ROGERS: I don't believe so, Your Honor.

25 THE COURT: We can turn the -- if we can turn the

1 lights back on then. Don't want anyone falling asleep.

2 MR. ROGERS: Especially not me.

3 THE COURT: Well, hopefully that wouldn't happen,  
4 sir.

5 Q. It's fair to say, Mr. Erickson, that several times  
6 during your interview with Detective Nichols, you attempted  
7 to tell him that you were not sure that you had been involved  
8 in the death of Mr. Heitholt. Isn't that correct?

9 A. That's correct.

10 Q. And, in fact, towards the beginning of the  
11 interview, he told you what Ryan Ferguson had told the police  
12 that same day.

13 A. That's correct.

14 Q. And what Ryan told the police, paraphrasing what  
15 Mr. Nichols told you, was: "I didn't do it. I didn't -- I  
16 wasn't there. And if Chuck says I did, he must be crazy."

17 A. Yeah. That didn't change my memory, though.

18 Q. Okay. Well, that's what Mr. Nichols told you. And  
19 your response to that was: "Well, I don't know," wasn't it?

20 A. There was a lot that I didn't want to accept at that  
21 point. The more I accepted, the more I remembered; the  
22 bigger the price I had to pay; the higher the cost.

23 Q. Did you hear the question?

24 A. Yeah. I just answered you.

25 Q. The question was: Your response to that statement

1 by Detective Nichols, about what Ryan Ferguson had said, was  
2 "I don't know," wasn't it?

3 A. Yeah.

4 Q. And when you said that, you meant to convey that you  
5 did not know whether you were being accurate in what you  
6 were -- what you had told Detective Short earlier and  
7 Detective Nichols earlier during the drive around the  
8 neighborhood.

9 A. Yeah, I knew some things were accurate. I wasn't  
10 certain that everything was accurate.

11 Q. But what you said "I don't know" in response to was  
12 the statement that Ryan Ferguson wasn't there, had nothing to  
13 do with it, and if you're accusing him, you must be crazy.  
14 Right?

15 A. No. I don't know.

16 Q. That's not what you said "I don't know" in response  
17 to?

18 A. I'm not sure.

19 MR. ROGERS: Would you, Mr. Weis, play the segment  
20 "I don't know."

21 MR. WEIS: Which one?

22 MR. ROGERS: "I don't know."

23 (Excerpt played.)

24 Q. Do you remember saying that?

25 MR. CRANE: Well, whoa, wait --



1           A. I mean --

2           MR. CRANE: -- what was the question? Where are we  
3 at there?

4           MR. ROGERS: Could you back that up maybe about 30  
5 seconds?

6           MR. WEIS: No.

7           MR. ROGERS: Okay.

8           MR. CRANE: All right. Well, I guess I'll withdraw  
9 my objection. He said, "I don't know."

10          Q. Well, let me ask you this.

11          A. I don't know what was said before that. I mean --

12          Q. You don't know what was said before that. Would you  
13 dispute that the question was: "Okay. I wanted to start off  
14 by just telling you a little bit about what -- what I've  
15 learned. And that is that, you know, the officers, they've  
16 gone to Kansas City, and they've gotten in touch with Ryan.  
17 And to make a long story short, Ryan is saying, 'I don't know  
18 anything; wasn't there. I don't know what Chuck's talking  
19 about. He's crazy. You know, if it happened, if it went  
20 down the way he said, obviously he did it himself.' And  
21 pretty much that's what's happening."

22                 Now, that's what's said by Detective Nichols. And  
23 then you have the response that we just saw. "I mean" --

24          A. Not that -- I said "I don't know" after that?

25          Q. Right.

1           A. I don't know what I meant by that. Honestly. I was  
2 just -- I mean --

3           Q. Well, after --

4           A. I really thought I had done this. And I knew that  
5 if I did it, he was with me. And he's sitting here denying  
6 it. Then I didn't really know what to think at that point.  
7 And I was just -- like I said, I was -- I was unsure, I was  
8 hesitant, and I didn't want to accept what I had done.

9           Q. And Detective Nichols then went on to talk to you  
10 about Ryan's denial, didn't he?

11          A. Yes.

12          Q. And then you again said to Detective Nichols, "I  
13 don't know. I mean, I don't even -- it's just so foggy.  
14 Like, I could just be sitting here and fabricating all of it  
15 and not know. Like, I don't know. I don't." Do you  
16 remember saying that?

17          A. Yeah.

18          Q. Do you remember seeing yourself say that on the  
19 video yesterday?

20          A. Yes.

21          Q. And there's no question that what you were trying to  
22 tell Detective Nichols is that you didn't know at that point  
23 whether you had participated in the Heitholt homicide or not;  
24 correct? Isn't that what you were trying to say?

25          A. Yes.

1 Q. And you told him even that you might be sitting  
2 there fabricating it; right?

3 A. Yeah. That's what I was hoping.

4 Q. And by "fabricating," you mean making it up.

5 A. That's what I was hoping, yes.

6 Q. And you were hoping that.

7 A. Yes, I was.

8 Q. And you were hoping that that was what was really  
9 going on.

10 A. Yeah. That's correct. I was hoping that.

11 Q. And then he tried to tell you, "Oh, you can't be  
12 fabricating it, because you've told us things that only  
13 somebody who was there would know." Right?

14 A. Yeah. I believe he said something like that.

15 Q. And your response to him was: "Hey, I read about  
16 all this stuff in the paper."

17 MR. CRANE: Well, I'm going to object to that. What  
18 section are you talking about where he says "all this stuff  
19 in the paper"?

20 MR. ROGERS: I'm not -- that's a paraphrase.

21 MR. CRANE: Okay. If you're going to -- Judge, I  
22 would ask, if he's going to paraphrase, that he indicate  
23 that, because he's -- he's got a record. They gave me a  
24 transcript of it yesterday. And appropriate impeachment  
25 would be that he not paraphrase, because that's the

1 indication. He was indicating that that's what the witness  
2 said on the video. And the witness is trying to remember,  
3 after seeing it yesterday, what he said on the video. I  
4 think. But if he paraphrases and represents that it's from  
5 the transcript or the video, I don't think that's fair.

6 MR. ROGERS: I was not making that representation,  
7 Judge, and I'm happy to make it clear that I was not making  
8 that representation, and I will, in fact, quote directly.

9 Q. And my question will be: Do you remember saying  
10 that during the videotaped interview of -- by Detective  
11 Nichols? Detective Nichols asked you: "This is -- all  
12 right. This is after reading the newspaper article in  
13 October." And you say, "Uh-huh." Do you remember that?

14 A. Yeah.

15 Q. And then he says -- excuse me. I'm sorry. This is  
16 you, saying to Detective Nichols -- I'm getting my Qs and As.  
17 Detective Nichols' question: "And my understanding is -- and  
18 I'm just going to try to briefly explain to you what my  
19 understanding is, is that you guys needed money." And then  
20 you say to Detective Nichols, "This is -- all right. This is  
21 after reading the newspaper article in October." And he  
22 says, "Uh-huh." Does that sound better?

23 A. Yeah. I was more or less explaining everything. It  
24 wasn't just that. I was trying to -- I mean, I wanted to --  
25 I wanted to explain it, and I wanted to try to remember it,

1 but -- I mean, I'm trying to explain my response, so if  
2 you'll just hold on a second. But at the same time, I didn't  
3 want to. I didn't want to take that leap. I didn't want to  
4 sacrifice all that I had. I didn't want to go to prison for  
5 the rest of my life.

6 Q. But what you said to Detective Nichols in the  
7 videotape is: "And this is kind of put together with -- I  
8 mean, I don't know if I'm just flipping out or whatever."

9 A. Yeah, but I also said that I was --

10 Q. Excuse me. I'm not done yet.

11 MR. CRANE: Can you tell me where you're at?

12 MR. ROGERS: I'm on page 5, beginning at line 14.

13 Q. "And this is kind of put together with -- I mean, I  
14 don't know if I'm just flipping out or whatever. But, I  
15 mean, this is kind of what I put together with what could  
16 have happened. I remember we were at the club. We ran out  
17 of money. Like, he'd been asking his sister to borrow money.  
18 And from there on, I'm just kind of presuming what happened.  
19 I'm making presumptions based on what I read in the  
20 newspaper." Do you remember saying that?

21 A. Yes, I do.

22 Q. And that was an accurate description of what was  
23 going on in your mind at the time you were talking to  
24 Nichols, wasn't it?

25 A. Not completely, no.

1 Q. So you were lying to Nichols.

2 A. I wasn't lying, but I was worried about myself also.

3 Q. And so you're trying to deflect responsibility from  
4 yourself by trying to sound like you read everything in the  
5 newspaper? Is that what you're telling us?

6 A. What I was saying was: I was still unsure about it.  
7 And that was one possibility that had crossed my mind, and  
8 that was something that I was hoping had happened.

9 Q. So you were trying to tell Detective Nichols: "I'm  
10 not sure. I could be making this all up. I read all this  
11 stuff in the newspaper, you know. The part I remember is  
12 being at the club with Ryan." Is that the gist of what you  
13 were trying to convey to Nichols?

14 A. I don't know. I'm not sure.

15 Q. Okay.

16 A. I mean, not -- not completely. Not as far as you're  
17 taking it, no.

18 Q. Well --

19 MR. ROGERS: Could you play the part marked  
20 "newspaper"?

21 (Excerpt played.)

22 Q. Do you remember it?

23 A. Yeah, I remember saying that --

24 Q. Okay.

25 A. -- but I'm saying, I don't think that was an

1 accurate description of what was going on in my mind at the  
2 time. I -- I was backing off a little bit once I realized  
3 how serious the situation was. I'm -- do you understand?

4 Q. Claiming you didn't realize how serious the  
5 situation was before then.

6 A. Well, I did, but it took a little while to kick in.  
7 I mean, one -- at one time I'm sitting here telling a friend  
8 that I think I may have done something, and the next thing I  
9 know I'm sitting in the police station. And I'm -- I don't  
10 know. Maybe if you had been through something like this, you  
11 would understand where I'm coming from.

12 Q. Well, we'll go on and talk about that, because  
13 that's when Detective Nichols tells you: "Well, you're  
14 making accurate presumptions that, like I said, you would  
15 only know if you were there." Do you remember him telling  
16 you that?

17 A. Yes.

18 Q. And you asked him: "Like what? The lady, the  
19 cleaning lady?"

20 A. Yeah.

21 Q. Do you remember that? And he said, "That's one."  
22 Correct?

23 A. That's correct.

24 Q. And you said, "That was in the newspaper."

25 A. But that wasn't in the newspaper.

1 Q. Was?

2 A. Was not.

3 Q. Was not.

4 A. No. In the newspaper it said I believe a janitor  
5 cleaning lady went to go get help. It didn't say anything  
6 about one of the suspects told the cleaning lady to go get  
7 help. That was never in the newspaper.

8 Q. We'll see what was in the newspaper, but --

9 A. Okay.

10 Q. What you told him was, "That was in the newspaper,"  
11 isn't it?

12 A. I -- I thought it may have been, I was hoping it may  
13 have been, because at that point, if it was in the newspaper,  
14 then there was a possibility that I was just fabricating  
15 this; that I was just, you know, reading about this and just  
16 thinking I may have done it. But if it wasn't in the  
17 newspaper, then how would I know that someone told the  
18 cleaning lady to go get help?

19 Q. Well, that's what he asked you, wasn't it?

20 A. Exactly.

21 Q. And he said, "Well, no. About what was specifically  
22 said to that lady." And your answer was, "She went to get  
23 help? I mean." Isn't that right?

24 A. I -- I don't know. You can replay it if you want.

25 MR. ROGERS: Can you play the cleaning lady part,



1 Mr. Weis? "Cleaning lady."

2 (Excerpt played.)

3 MR. CRANE: Wait. Can we keep going?

4 MR. WEIS: Sure. Can you tell me where that begins  
5 and ends? And then I can show it.

6 MR. CRANE: Well, I guess I can do it when I'm --  
7 forget it. You do what you want. I can run that by later.

8 MR. ROGERS: Go ahead and play the next part.

9 MR. WEIS: Tell me where it begins and ends, because  
10 I don't have that sheet.

11 MR. ROGERS: It's on page 7 --

12 MR. WEIS: No. I need the time stamp, which is on  
13 your sheet.

14 MR. ROGERS: Oh. Okay.

15 Start at 906.

16 (Excerpt played.)

17 MR. ROGERS: Stop there. Stop there.

18 Q. All right. So once again, you're trying to explain  
19 to Mr. Nichols that, "Look, I'm just here trying to come up  
20 with something that I can -- think I remember based on what I  
21 read." Correct? Isn't that what you're telling him?

22 MR. CRANE: I'm going to object, Judge. That's not  
23 what he said. He said, "I mean, you understand, like, I  
24 wouldn't be here if I didn't feel guilty about it." That was  
25 his response. I mean --

1 Q. The whole response, and we can play it again a  
2 zillion times, but your whole response was: "I mean, you  
3 understand, like, I wouldn't be here if I didn't feel guilty  
4 about it. But it's just I don't -- I can't recollect."

5 A. Yeah.

6 Q. "I mean, it's just a trip for me to have to sit here  
7 and try to look at something that happened that I read about  
8 and try to base what I remember off of that, you know? It's  
9 a mind fuck, you know."

10 A. That's what I said, yeah. I said -- I explained to  
11 him that I was having trouble with my memories, and that was  
12 the reason I looked in the newspaper, and I had to make some  
13 presumptions off of what I read in the newspaper, to help  
14 deal with the memories that I had and to help piece things  
15 together that I couldn't remember. And I've explained that  
16 over and over.

17 Q. And so are you telling us now that your memories are  
18 also based on things you have read?

19 A. No, they're not.

20 Q. Okay. But at that time, what you thought were your  
21 memories were presumptions --

22 A. No, I wasn't. I was making presumptions. But I  
23 never said they were my memories. I asked him questions. I  
24 said, "Well, could this have happened?" And -- well -- I  
25 never -- I never used a presumption or I never used something

1 I read in the newspaper and turned it into a memory.

2 Q. Well, you told him that you had read in the  
3 newspaper about the cleaning lady, and that you had told  
4 Short that you remembered the cleaning lady. Right?

5 A. I told them I told the cleaning lady to go get help.  
6 I didn't read that a cleaning lady was told to go get help in  
7 the newspaper. So yeah, I read something about a cleaning  
8 lady or janitor going to get help. I'll admit to that. But  
9 I never read anything about one of the suspects telling the  
10 cleaning lady or janitor to go get help.

11 Q. Let me ask you this. You were doing your best at  
12 that time to express to Detective Nichols your uncertainty as  
13 to the accuracy of what you thought you might remember; is  
14 that a fair statement?

15 A. No.

16 Q. Okay. That's not a fair statement.

17 A. No.

18 Q. You were expressing to Detective Nichols your  
19 uncertainty as to the accuracy of what you had been talking  
20 about. Is that a fair statement?

21 A. I suppose so, yes.

22 Q. All right. You were, in fact, uncertain at that  
23 time, when you were talking to Detective Nichols on the  
24 videotape.

25 A. On a certain level I was uncertain. On a certain

1 level I knew that I had done it.

2 Q. All right. On the conscious level with which you  
3 were talking to Detective Nichols, your conscious mind, you  
4 were uncertain as to whether or not you had been involved in  
5 the death of Kent Heitholt; isn't that true?

6 A. Yeah. I'd say so. I was -- I was hoping that I  
7 hadn't.

8 Q. And when you expressed that uncertainty to Detective  
9 Nichols, you remember what he did.

10 A. I think he got rather irate actually. I can't -- I  
11 can't recall accurately.

12 Q. Do you remember seeing it on the video yesterday?

13 A. Yeah. Yeah, I think so.

14 Q. He moved his chair right up next to you.

15 A. Yeah.

16 Q. You're backed into the corner.

17 A. Uh-huh.

18 Q. He gets in your face. He starts pointing his hands  
19 at you.

20 A. Yeah.

21 Q. Starts yelling at you.

22 A. Uh-huh.

23 Q. Correct?

24 A. Yeah. And I didn't say anything that I hadn't said  
25 before.

1 Q. You didn't say anything. He told you, "Shut up and  
2 listen to me. I'll do the talking."

3 A. I'm saying after that. I didn't say anything I  
4 hadn't said before. It's not like he coerced me. It's not  
5 like he scared me into saying, "Oh, well, we did this." I  
6 said everything I said to him before. I said it to other  
7 people.

8 Q. What he told you was: That you, if you continued to  
9 express uncertainty, would be the one hanging out. Right?

10 A. Yes, he did.

11 Q. And that the only way that you would not be the one  
12 hanging out is if you quit expressing uncertainty and  
13 addressed more certainty that Ryan had done it. Isn't that  
14 true?

15 A. He said something to that effect. It was more just  
16 that I needed to -- I needed to stop saying that "I believe  
17 so" and that "Well, to the best of my knowledge" and things  
18 like that. I needed to be more concise in my wording, was  
19 what some of it was. But also, yeah, I needed to -- I needed  
20 to stop -- stop -- stop hoping and stop dreaming and stop  
21 wishing that I hadn't done this and I needed to man up to  
22 what I did and I needed to take responsibility for what I did  
23 and I needed to acknowledge that. And that I think was part  
24 of the point he was trying to get across also.

25 Q. But he didn't talk anything about you accepting

1 responsibility. He talked about blaming Ryan, didn't he?

2 A. I think he said something about both of us.

3 Q. What he said was, beginning on line 16, page 7,  
4 "Well" -- excuse me. Line 16. "And I don't want to hear,  
5 'Oh, all of a sudden I just think I maybe fabricated all of  
6 this.'" Do you remember that on the videotape?

7 A. Yeah.

8 Q. When he makes his voice sound a little wimpy and  
9 whiny?

10 A. Uh-huh.

11 Q. Correct?

12 A. Yeah.

13 Q. As opposed to the command voice he's using in the  
14 rest of that particular segment --

15 A. Yeah.

16 Q. -- correct?

17 A. Yeah.

18 Q. And then your answer is: "Well" -- and you were  
19 trying to, again, to say, "Wait a minute. That's what I  
20 really think." Correct? But he doesn't let you say that.

21 A. I don't -- I don't know what I was going to say.

22 Q. Then he says, "No. What I want to hear is exactly  
23 what Ryan told you, because that's what's going to keep you  
24 in a position to where you are not going to be the sole  
25 individual out here responsible for what happened to Kent,"

1 didn't he?

2 A. Yeah, he said that.

3 Q. And you said, "Okay." Correct?

4 A. And I said, "Okay," yeah.

5 Q. And at that point, in your mind, you had no way out,  
6 did you?

7 A. No way out? What do you mean? I mean, I was taking  
8 responsibility for what I did. I can't make him take  
9 responsibility for what he did. I can only take  
10 responsibility for what I did. That's all I can do. And you  
11 know what? When I go home, when I go look at myself in the  
12 mirror, when I lay down in my bunk, I'm going to know that I  
13 did the right thing, no matter -- regardless of what happens  
14 to him after he leaves. What happens -- I could care less  
15 about what happens to him. I'm just doing this because I  
16 know it's the right thing to do.

17 Q. You done?

18 A. Yeah.

19 Q. What was my question?

20 A. I don't remember.

21 Q. Didn't answer it either, did you?

22 A. The answer was no, by the way.

23 Q. At the time that --

24 A. No, I didn't -- I didn't think that I was stuck. I  
25 didn't think that -- that -- that I was, you know, screwed.

1           Q.  You didn't think, Hey, you know, I said some stuff  
2  to some friends of mine, and the police got word of it, and  
3  they came and arrested me, and I tried to tell them as best I  
4  could what I remembered, what I didn't remember, how vague it  
5  was, and they didn't want to hear that, and now I'm in a  
6  situation where I'm either going to have to be real certain  
7  and real specific about --

8           A.  It wasn't --

9           Q.  -- Ryan's involvement, or else I'll be the only  
10 person hanging out.

11          A.  Like I said, I didn't think I was stuck.  You know.  
12 It is what it -- it was what it was.  My life wasn't over.  I  
13 still had time to -- time to consider what happened.  It's  
14 not -- it doesn't mean life stops just because I did  
15 something horrible.

16          Q.  Did you believe that, at that point in the  
17 interrogation with Detective Nichols, you could tell the  
18 police, "Look, I'm not sure we did this," and they would  
19 check into it and find out whatever they could and --

20          A.  Yeah.  That's --

21          Q.  -- act accordingly?

22          A.  That's -- I was asking them questions also, because  
23 I couldn't -- there were some things I couldn't remember.  
24 And yeah, I was in denial and I was hesitant about accepting  
25 what I had done.  So, yeah.  I -- that's why I willingly went



1 to the police station and I was talking to them.

2 Q. But you had tried during the interview with  
3 Detective Nichols to tell him exactly that. "I'm not sure  
4 about it." And the response was him getting up in your face  
5 and waiving his hand in your face and yelling at you and  
6 telling you, "I don't want to hear any of this 'Maybe I just  
7 fabricated it.'" Right?

8 A. Yeah, that was his response.

9 Q. And you knew that he was not going to listen to any  
10 uncertainty, didn't you?

11 A. I don't know.

12 Q. And you accepted --

13 A. I mean --

14 Q. -- his representation that he -- the only way for  
15 you to not be the only person hanging out was to blame things  
16 on Ryan, didn't you?

17 A. No, that's not true. I knew I could have stopped  
18 talking whenever I wanted to. I was just taking  
19 responsibility for what I did. I was trying to portray the  
20 truth as well as I could.

21 Q. So when he --

22 A. And I didn't say anything -- I didn't say anything  
23 different after he said that to me than I did before he said  
24 that to me. And if you saw in the video, he didn't scare me  
25 at all. Did you see me back up or flinch one time in that

1 video? I was listening to what he had to say, but he didn't  
2 scare me. I -- I could have told him, "You know what? Screw  
3 you. I'm not saying a damn thing to anyone." But I wanted  
4 to talk to him, because I knew it was the right thing to do.  
5 And if I --

6 Q. Here's my question.

7 A. I heard your question, and I just answered it.

8 Q. Here's my question.

9 MR. CRANE: No, you can't -- just answer the  
10 question.

11 THE WITNESS: All right.

12 Q. When he told you, "No. What I want to hear is  
13 exactly what Ryan told you, because that's what's going to  
14 keep you in a position to where you're not going to be the  
15 sole individual out here responsible for what happened to  
16 Kent," did you believe him or disbelieve him?

17 A. I don't know what I thought.

18 Q. You believed him, didn't you?

19 A. I don't know.

20 Q. You said, "Okay," didn't you?

21 A. I just wanted him to stop rambling, honestly. I  
22 wasn't going to tell him anything different from what I told  
23 him before. I said "Okay," but I don't know -- I mean, that  
24 doesn't necessarily mean that I thought he was right. It was  
25 just "okay," like you're talking to me now. "Okay." You

1 know. "End of conversation. Whatever gets you to be quiet."

2 Q. So your answers today are whatever gets me to be  
3 quiet?

4 A. No, that's not true.

5 Q. So far it's not working.

6 A. Well, it's -- to a certain extent. I mean, when you  
7 go on with, you know, snakey and devious ways and things like  
8 that, you know, I mean, I'm going to do my best to just tell  
9 you the truth. And then when you go off on some rant about  
10 something that's -- has nothing to do with the truth, you  
11 know, what else can I say but "okay"?

12 Q. Well, the truth is that you tried to tell Detective  
13 Nichols you weren't sure. That you might be fabricating it  
14 and you might make it up. Were making it up. And then is  
15 when he yelled at you and got in your face. And then is when  
16 you started responding like a recruit response to the drill  
17 sergeant: Yes, sir, yes, sir, yes, sir. Right? Isn't that  
18 what happened? Isn't that the truth?

19 A. Yeah, I believe so, yes.

20 Q. Is that snakey and devious, or is that on the TV?

21 A. No, that was on the TV.

22 Q. Now, your testimony yesterday was that you remember  
23 striking Kent Heitholt several times.

24 A. Uh-huh.

25 Q. That --

1                   THE COURT: Excuse me. You're going to have to say  
2 yes or no.

3                   A. Yes. Yes.

4                   Q. You remember striking him after several other blows,  
5 at a time that he goes to his knees; correct?

6                   A. Yes.

7                   Q. That you remember him moaning. Making a noise.

8                   A. Yes.

9                   Q. And that at that point you remember striking him one  
10 more time.

11                   A. Yes.

12                   Q. And that you remember then feeling sick, going to  
13 sit down, and you think you threw up. Is that correct?

14                   A. No. At the time I thought I had, but right now, no,  
15 I don't think that I threw up there.

16                   Q. Right now you don't think you threw up.

17                   A. That's correct.

18                   Q. All right. But the rest of it is what you told us  
19 yesterday.

20                   A. Yes.

21                   Q. But when you're talking to Detective Nichols on the  
22 videotape, you tell him you only remember striking Heitholt  
23 once, don't you?

24                   A. Yes.

25                   Q. And you tell him that that's the time when he made

1 the moan. Correct?

2 A. Yeah.

3 Q. And that that's the time -- the last time you  
4 remember hitting him.

5 A. Yes.

6 Q. And that that's actually the first blow you struck.

7 A. I thought it was the first blow I struck, because I  
8 didn't remember what happened before that.

9 Q. Okay. So what you're telling us now is: There's  
10 all kinds of things, all kinds of blows by you, struck at  
11 Mr. Heitholt, and you demonstrated on Mr. Crane how you did  
12 it.

13 A. Yes.

14 Q. And you remember all those now, and then you  
15 remember the next to the last time you hit him was when he  
16 went to his knees and made the groaning sound. Correct?

17 A. Yes.

18 MR. CRANE: Well, then, that mischaracterizes the  
19 testimony. I don't think the witness testified that he went  
20 to his knees and made the groan sound. Unless I'm mistaken.  
21 It was after one of the blows.

22 MR. ROGERS: Well --

23 A. He moaned and then went to his knees. After my  
24 second to the last blow.

25 Q. Right. He went -- he moaned and went to his knees

1 after your second to the last blow; correct?

2 A. Yes.

3 Q. That's what you told us yesterday.

4 A. Yes.

5 Q. That's what I've asked you, this is probably the  
6 third time this morning; right?

7 A. Yes.

8 Q. Okay. But when you were talking to Detective  
9 Nichols, you -- and when you were confronted and earlier when  
10 you were talking with Detective Short and were confronted  
11 with the notion that there was more than one blow struck, you  
12 asserted the position that you remembered striking the first  
13 blow, which is the blow when he moaned, and that after that  
14 you blacked out and didn't remember what happened. Is that  
15 true?

16 A. I'm not sure.

17 MR. ROGERS: Play the one marked "assumed."

18 (Excerpt played.)

19 MR. ROGERS: That's enough.

20 A. Yeah, I did say that.

21 Q. So that's what you told him --

22 A. Yes.

23 Q. -- was that you had hit him the one time, and then  
24 blacked out, and you were just assuming that you must have  
25 hit him more times.

1 A. Yeah, I told him that.

2 Q. Okay. And you were assuming that based upon what  
3 Short had told you about the number of blows.

4 A. Yes.

5 Q. Now, did you tell him that -- him, Mr. Nichols --  
6 that Ryan had held Mr. Heitholt while you were hitting him?

7 A. I don't remember if I said that or not.

8 Q. Okay.

9 A. I don't believe I ever said that.

10 Q. And as a matter of fact, you didn't tell us anything  
11 about that yesterday.

12 A. No.

13 Q. And as you claim to remember, or believe that you  
14 remember, or whatever the state of your mind is, you're not  
15 asserting any memory that Ryan Ferguson ever held Kent  
16 Heitholt while you hit him with the tire iron.

17 A. That's correct.

18 Q. Now -- back to the subject of vomit. Throwing up.

19 A. Uh-huh.

20 Q. You had told Detective Nichols, in your first  
21 interview with him, the one that was not recorded --

22 A. Detective Short?

23 Q. Detective Short. I'm sorry. Thank you. You had  
24 told him that you had thrown up there at the scene, in the  
25 parking lot of the Tribune building.

1           A. Yeah. I told him I thought that I had thrown up at  
2 the scene.

3           Q. And you told him that again at the -- in the  
4 videotaped interview with Detective Short.

5           A. I believe so, yes.

6           Q. And then Detective Nichols and you talked about it  
7 in that videotaped interview that we saw the end of  
8 yesterday. Correct?

9           A. I can't recall.

10          Q. Okay. Let me go back a step. When you told  
11 Detective Short about it during the videotape interview, you  
12 actually even asked him, "Was there vomit found there";  
13 right?

14          A. Yes.

15          Q. And he didn't tell you, did he?

16          A. I can't remember if he told me or not. I think the  
17 second time he said, "No, there wasn't." The first time --  
18 the first time I think he said something to the effect of,  
19 "Well, I'm holding my cards back," or something like that.

20          Q. Playing poker.

21          A. Yeah. Yeah.

22          Q. But when you were talking to Detective Nichols  
23 afterwards, you told him, page 18, beginning line 19,  
24 "Because I remember vomiting. Like, I'm pretty sure that I  
25 did. And I thought that that was when that happened. And



1 then I looked up." And he said, "But earlier you said you  
2 don't remember if you vomited -- you remember getting sick,  
3 but you don't remember if you vomited there or vomited  
4 somewhere else." And then your answer was, "I assumed I did  
5 there." Correct?

6 A. Yeah, I did say that, because I thought -- I  
7 remember feeling sick, and I thought that, yeah, that I  
8 had -- I had thrown up there.

9 Q. And you remember vomiting somewhere.

10 A. Yes. That's correct.

11 Q. And you remember vomiting somewhere that night.

12 A. Yes. Either during or after the robbery.

13 Q. And your belief was that you did it right there at  
14 the scene, before you look up and see Ryan, you say, standing  
15 over or crouching over Mr. Heitholt.

16 A. Yeah, I thought that I had, because I felt sick.

17 Q. Now, this all happened on March the 10th, 2004.

18 These videos we've talked about.

19 A. Uh-huh.

20 Q. Correct?

21 A. Yeah. Yeah.

22 Q. And after that, you did not talk with police or  
23 prosecutors for several months.

24 A. That's correct. Until October, I believe.

25 Q. And during those months, your attorney provided you

1 with copies of the police reports.

2 A. That's correct.

3 Q. Your attorney got copies of the videotapes.

4 A. Yes.

5 Q. Your attorney went over the videotapes with you.

6 A. I'm not sure if it was before or after October. I

7 can't remember when that was exactly.

8 Q. But he did.

9 A. Yeah.

10 Q. And you were eager to see the videotapes.

11 A. I was -- I don't know if I was eager to see the

12 videotapes.

13 Q. You also --

14 A. My attorney advised me that I should look at the

15 videotapes. And so I said, "Okay. I'm going to do what

16 you're telling me to do because you're the professional."

17 But I wasn't exactly eager to see the videotapes.

18 Q. And your attorney also went over with you the police

19 reports of the physical evidence that had been found.

20 A. I'm not sure if we did that or not.

21 Q. Your attorney went with -- over with you --

22 A. He -- I -- I believe he mailed some stuff to me,

23 regarding the DNA and whatnot, but I don't think that I

24 actually went over any of the paperwork regarding the

25 physical evidence that was found.

1 Q. Okay. You and I may be using the term differently.  
2 Your attorney went over with you the fact that, the night of  
3 the homicide, the police were able to follow a partial trail  
4 of blood which fluoresced with luminol. Correct? From the  
5 crime scene?

6 A. I know I read that in the police reports. I can't  
7 remember if I went over it with my attorney or not.

8 Q. You certainly read it in the police reports.

9 A. Yeah. Yes, I did.

10 Q. And you read in the police reports that that trail  
11 went east --

12 THE COURT: Are you able to see it from there?

13 THE WITNESS: No, I can't see that.

14 MR. ROGERS: Okay. I'll make it better.

15 Q. Can you see it now?

16 A. Yeah, I can see it. It's fine. Don't worry about  
17 it. I was going to say, I could get down if you need me to  
18 point something out.

19 Q. That's fine. I'll use the laser pointer, now that I  
20 figured out how to turn it on.

21 You read in the police reports that this luminol  
22 trail went east up the alley from the parking lot, south on  
23 Fourth Street, towards Broadway; correct?

24 A. Yeah. Yes.

25 Q. And you read that between March the 10th, when you

1 told the detectives about going the way that's marked in  
2 orange here; right?

3 A. Yeah. That wasn't the -- just for the record, I  
4 mean, that wasn't -- that wasn't the only way that I told  
5 them I might have gone.

6 Q. Okay. We saw the video when you're driving around  
7 and you say, "Well, it's possible," when Detective Short is  
8 taking you down this way; correct?

9 A. I don't know if I said that either. I know I said  
10 that it's -- that I thought we'd gone behind the Tribune  
11 building, but I -- I mean --

12 Q. So what you were telling him was possible is that  
13 you could have gone around this way and back this way.

14 A. I'm not -- I'm not sure. Like I said, I mean, I was  
15 having -- when we left the scene, it was all -- it was too  
16 fast. We were running. I was -- I was getting memories  
17 mixed up.

18 Q. My question --

19 A. I was doing my best to, yeah, on the video, to tell  
20 them what route we had taken when we left, yes.

21 Q. And what you had initially said was that you had  
22 gone this way.

23 A. That's correct, yes.

24 Q. And then when he asked you, "Is it possible you went  
25 around the building," what you thought he meant was, "Is it

1 possible you went this way."

2 A. I don't know what I thought. I mean -- what I  
3 thought he meant. I'm sorry.

4 Q. What did you say was -- what did you agree was  
5 possible? Anything?

6 A. That we went around the back of the building. I  
7 couldn't -- after that --

8 Q. Okay. You weren't talking about going this way  
9 (indicating).

10 A. No.

11 Q. Okay.

12 A. I don't -- I don't believe so, no.

13 Q. Let me ask you this. Does this -- do these marks  
14 here accurately reflect what you were trying to communicate to  
15 them on March the 10th was your route leaving the scene?

16 MR. CRANE: Wait a minute. What -- what marks?

17 MR. ROGERS: These orange marks on the piece of  
18 plastic over the aerial photo.

19 A. Yeah. That was a possibility, yeah.

20 Q. So, can we put here, so we won't confuse this  
21 diagram with others, "CE," for Chuck Erickson?

22 A. Well, what does that mean?

23 Q. Those are your initials, because these were the  
24 marks made during your testimony? Okay?

25 A. Well --

1 Q. We're going to get another piece of plastic and  
2 we're going to take this one away and draw on it. That's  
3 what we're going to do. Okay. And I want to put here "CE,"  
4 to show that that's what you told the police on 3-10-04.  
5 Okay?

6 A. All right.

7 Q. Will that -- you don't have a problem with that, do  
8 you?

9 A. No.

10 Q. All right.

11 Now, can you see that now?

12 A. Uh-huh.

13 Q. Okay.

14 THE COURT: Is that a yes?

15 THE WITNESS: Yes. I'm sorry.

16 Q. Now, you had read the police report about the  
17 luminol going east up the alley from the parking lot, south  
18 on Fourth Street towards Broadway; correct?

19 A. Yeah.

20 Q. And you also read the police reports about Officer  
21 Alber and the canine. The dog.

22 A. Yeah. Yes, I did.

23 Q. And that also indicated that the dog had taken a  
24 trail out east from the parking lot to Fourth Street --

25 MR. CRANE: Judge, wait a minute. Now you're

1     testifying -- the defense counsel is testifying about a  
2     report --

3             MR. ROGERS: I'm asking --

4             MR. CRANE: -- that the defendant may have read --  
5     sorry, Mr. Erickson may have read. Is that essentially what  
6     you're doing?

7             MR. ROGERS: I am asking a leading question, Kevin.  
8     I'm not testifying.

9             MR. CRANE: Well, the defense counsel, in his  
10    question, is assuming facts not in evidence by asking about  
11    the text of a police report. And I think that's improper,  
12    Judge.

13            MR. ROGERS: I can break it up into a couple little  
14    questions, if that will help.

15            THE COURT: You may rephrase your question.

16            MR. ROGERS: Thank you.

17            Q. You read a police report about the police dog,  
18    didn't you?

19            A. Yeah.

20            Q. And you read what the report said the dog had done  
21    that night, didn't you?

22            A. Yes.

23            Q. And you remember what you read in that report, don't  
24    you?

25            A. Yes, I do.

1 Q. And what the report that you read, that you remember  
2 reading, said was: That the dog --

3 MR. CRANE: Well, I'm going to object, Judge. Same  
4 objection. I mean, first of all, it's hearsay. If he wants  
5 to call the officer with the dog, this is America; he can do  
6 that. But to ask this witness what he read in somebody  
7 else's police report is improper. And further, for the  
8 defense counsel to ask a question about what he presumes is  
9 the text of the police reports is improper.

10 MR. ROGERS: Your Honor, I think I'm allowed to show  
11 the source of the change in this witness's testimony. And  
12 there will be evidence -- there has already been evidence of  
13 his testimony, which is inconsistent with what he told the  
14 police at the time of arrest. And there has certainly been  
15 opportunities for him to tailor his testimony to suit other  
16 evidence in the case. And I think we get to show that he  
17 knows about the other evidence he's tailoring his testimony  
18 to suit.

19 MR. CRANE: Oh, and I'm not saying he can't try to  
20 do all that.

21 MR. ROGERS: Okay.

22 MR. CRANE: I'm just saying he can't do it in this  
23 fashion.

24 MR. ROGERS: Why not? It's not hearsay. It's not  
25 being offered for the truth of the matter asserted. Whether



1 the report is accurate or inaccurate, his testimony has  
2 changed to try and match it.

3 THE WITNESS: Well, that's your opinion.

4 MR. CRANE: Well --

5 THE COURT: Excuse me, Mr. Erickson. Need to ask  
6 you to refrain from joining in the colloquy. If you would.

7 The objection's overruled. You may -- if you're not  
8 offering it for the truth of what it purports to be, you may  
9 ask it for the purpose of impeaching this witness's --

10 Q. The report that you read about the dog said that the  
11 dog had gone east in the alleyway to Fourth Street; correct?

12 A. I believe so, yes.

13 Q. And said that it had gone south on Fourth Street,  
14 across Broadway.

15 A. Yes.

16 Q. To the area of the Broadway Diner.

17 A. Past the Broadway Diner.

18 Q. Past the Broadway Diner.

19 A. Continuing down Fourth Street.

20 Q. Continuing down Fourth Street.

21 A. Up that street right there.

22 Q. This street right here, which would be --

23 A. And I'm not sure --

24 Q. -- Locust Street?

25 A. And up into the -- I believe it was one of the --

1 the dormitory areas.

2 Q. Okay. And that would be up to basically Fifth and  
3 Elm? Is that what that is?

4 A. Yeah. That's correct.

5 Q. And that the dog stopped at the dormitory area of  
6 Fifth and Elm.

7 A. That's correct.

8 Q. And you knew that by the time you went to the  
9 prosecutor's -- the police department to give your proffer on  
10 October 1st.

11 A. Yes. I had read that. That's correct.

12 Q. Okay. You had also read the autopsy report, had you  
13 not?

14 A. I believe so, yes.

15 Q. You had seen photographs, had you not?

16 A. Yes, I have.

17 Q. And you have seen photographs of the injuries to  
18 Mr. Heitholt.

19 A. Yes. Not in detail at that point, no. I don't  
20 believe so. Not in detail.

21 Q. Not before October 1st?

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

23 Q. You've seen them since then.

24 A. Yes.

25 Q. And when's the last time you saw any of those

1 photographs?

2 A. Well, there's one right next to me. I mean -- I --  
3 they're -- when I have to go to the prosecutor's office,  
4 they're just sitting out, so.

5 Q. You've been to the prosecutor's office several times  
6 in preparation for your testimony.

7 A. That's correct.

8 Q. And you've been there as recently as last week.

9 A. Yes.

10 Q. And you've been there several times within the last  
11 couple of months.

12 A. Yes.

13 Q. And you've gone over your proposed testimony with  
14 Mr. Crane.

15 A. Yes.

16 Q. And you've gone over it with Mr. White, who's an  
17 investigator in the prosecutor's office.

18 A. That's correct.

19 Q. And you've gone over it with Mr. Hawes, who's an  
20 investigator in the prosecutor's office.

21 A. Yes.

22 Q. And have you gone over it with Mr. Knight, the  
23 assistant prosecuting attorney?

24 A. Yes.

25 Q. And you've done that repeatedly since August of

1 2005.

2 A. Yes. Yes.

3 Q. And they have discussed with you photographs, maps,  
4 charts, things like that.

5 A. Yes, they have.

6 Q. And you and Mr. Crane had gone through, in his  
7 office, the demonstration that you conducted here yesterday.

8 A. Yes, I showed him what happened, that's correct.

9 Q. Yeah. The same way -- and he was playing the part  
10 of Mr. Heitholt or whatever. Right?

11 A. Yes.

12 Q. Same way.

13 A. Yes.

14 Q. So that wasn't a first-time deal either, was it?

15 A. No.

16 Q. Let's take you back to October 1st, when you went to  
17 the police station with your lawyer for your proffer session.  
18 Correct?

19 A. Okay.

20 Q. And let's talk specifically about the route that you  
21 told them you took leaving the Tribune parking lot.

22 A. Okay.

23 Q. Who, by the way, was present at that meeting?

24 A. Kevin Crane, my attorney, I believe John Short, and  
25 another detective. I can't remember his name.

1 Q. Okay. Maybe Detective Liebhart?

2 A. Yeah. Yeah. That's correct.

3 Q. Now, you told those people in your proffer  
4 session -- by the way, what was your understanding the  
5 proffer session was about?

6 A. It was just me -- because I -- there were some  
7 things I had remembered -- that I remembered that I hadn't  
8 remembered before and some things that I remembered more  
9 accurately. And it was -- it was just -- at some point I had  
10 to divulge this stuff to the prosecution. To the state. If  
11 I was going to be completely truthful.

12 Q. So your understanding of what you were there to do  
13 was to tell them, "Look, if you make a deal with me to tell  
14 the truth, this is what I'm saying the truth is"?

15 A. No. That's not correct at all.

16 Q. That's not what the proffer's about?

17 A. No.

18 Q. The proffer is not: This is what I will testify to  
19 if I make an agreement to tell the truth?

20 A. This is -- I told them that this is what happened.  
21 This is the truth. And this is what I -- yeah. Exactly.  
22 This is what I will testify to, if I do make a deal.

23 Q. All right. And that was the deal. And you signed a  
24 letter that basically said, "If I don't make a deal, you  
25 can't use it against me," didn't you?

1 A. Yes, I did.

2 Q. And they signed it too.

3 A. Yes, they did.

4 Q. And so this was what you were offering to say in  
5 return for the deal. Correct?

6 A. What I was offering to say?

7 Q. Uh-huh.

8 A. I mean --

9 Q. Do you know the word "proffer"?

10 A. Yeah.

11 Q. It means a -- an offer. Correct?

12 A. I suppose, yeah.

13 Q. Okay. Now what you told those people -- and by the  
14 way, you've had a chance to go over Detective Short's report  
15 of that conversation, haven't you?

16 A. I think.

17 Q. More than once.

18 A. I don't know.

19 Q. Okay. You told them that, when you began to run  
20 from the scene, you left the opposite direction from which  
21 way you -- from the way you came. Correct?

22 A. Yes. Yes.

23 Q. And so if you came up the alley from the west, you  
24 would leave up the alley to the east. Correct?

25 A. Yes.

1 Q. I'm marking a dark red here on the plastic overlay  
2 of Defendant's Exhibit D.

3 Then you told them that you ran towards Broadway --

4 A. Well, first I went left, and then Ryan grabbed me,  
5 and we went towards Broadway.

6 Q. That's what you told us yesterday.

7 A. I believe I said that in the proffer also.

8 Q. Okay.

9 A. I might be wrong about that. I might --

10 Q. You might be wrong.

11 A. -- have left that out.

12 Q. Would it refresh your recollection as to what you  
13 told them in the proffer --

14 A. Yeah.

15 Q. -- if I were to show you Mr. Short's report?

16 A. Yeah. That's fine. Well, I mean, I don't know if,  
17 I mean, if his report's accurate.

18 MR. CRANE: Judge, I'm going to make the same  
19 objection with respect to that recollection of memory as I  
20 did yesterday.

21 THE COURT: The objection is sustained.

22 MR. ROGERS: May we approach, Your Honor?

23 THE COURT: You may approach.

24 - - -

25 Counsel approached the bench and the following

1 proceedings were held:

2 MR. ROGERS: This is not being offered to show the  
3 truth of the matters asserted in the report, or during the  
4 proffer. It's being showed -- it's being shown to the  
5 witness to refresh his recollection as to what he said in the  
6 proffer. And he has said that he doesn't know, he might have  
7 said that, he doesn't know, and I was going to see whether or  
8 not if it refreshed his recollection. Either it does, in  
9 which case he can testify as to his present recollection of  
10 what he said in the proffer, or it does not, in which case  
11 I'm stuck and will leave it alone. But I think it's  
12 perfectly proper to refresh his recollection about what he  
13 said with the report about what he said.

14 MR. CRANE: He's using it as a transcript and he is  
15 using it for the -- for whether or not the matter was stated.  
16 That's the truth of the matter.

17 THE COURT: I'm sustaining the objection because,  
18 number one, he didn't write that report. Number two, it's  
19 not a transcript of what he said. Either of those two -- you  
20 could ask him to refresh his recollection by looking at  
21 either what he said that was transcribed or if he had some  
22 writing that he could refer to. I'm sustaining the objection  
23 as to that.

24 MR. CRANE: Some writing that he -- that he did.

25 THE COURT: That the witness did.



1 MR. CRANE: Okay.

2 THE COURT: The objection is sustained.

3 - - -

4 The following proceedings were held in open court:

5 Q. Let me ask another question, Mr. Erickson. This  
6 report -- this proffer session took place on October the 1st;  
7 is that correct?

8 A. I believe that's correct, yes.

9 Q. And you entered into your plea agreement on November  
10 the 4th; correct?

11 A. Yes.

12 Q. And we're talking about 2004. Last year.

13 A. Yes.

14 Q. And when you entered into your plea agreement, you  
15 were asserting that what you had said in the proffer was  
16 true; correct?

17 A. Yes.

18 Q. And you have had a chance to go over with your  
19 attorney what was in the report that you said in the proffer;  
20 correct?

21 A. I had a chance. I don't recall I ever did go over  
22 what was in the report with my attorney. I had a copy of the  
23 report.

24 Q. Okay.

25 A. But I don't think I ever went over it with my

1 attorney.

2 Q. But you have gone over the report.

3 A. I may have. I might have skimmed it. I mean, I  
4 skimmed everything, all the legal documents were sent to me.  
5 I thought it was probably the best thing to do.

6 Q. Best thing to do was to read it?

7 A. To make sure there weren't any problems.

8 Q. To make sure there weren't any problems?

9 A. Yes.

10 Q. And at the time that you entered into your plea  
11 agreement, you had an opportunity, if you wanted to, to  
12 correct any misstatements in the report; correct?

13 A. Yeah, if I noticed it.

14 Q. Okay.

15 A. And -- I mean, no one came to me and said, you know,  
16 "If there is a problem with this report, feel free to change  
17 it now."

18 Q. But you didn't spot any problems when you went over  
19 it.

20 A. I can't remember.

21 Q. If you had spotted a problem with the report, you  
22 would have done something about it, wouldn't you?

23 A. I don't know.

24 Q. You wouldn't have let it stand as the truth when you  
25 knew it wasn't accurate, would you?

1           A. No, I wouldn't do that.

2           Q. Okay. And so when you entered into your plea  
3 agreement to let it stand as the truth, you were adopting it,  
4 this report's accuracy, were you not, as to what you had said  
5 during the proffer?

6           A. Yes.

7           MR. ROGERS: Now, Your Honor, I'd like to be able to  
8 show the report to the witness to refresh his recollection.

9           THE COURT: What was the question that you asked him  
10 that he needed to reflect his recollection -- refresh his  
11 recollection upon?

12           MR. ROGERS: I have to refresh my recollection, Your  
13 Honor. And that question was: Whether he told them during  
14 the proffer about starting to go north on Fourth Street and  
15 then being jerked back by Mr. Ferguson like he told us  
16 yesterday.

17           THE COURT: And his answer was he didn't remember?

18           MR. ROGERS: And his answer was he didn't remember  
19 whether he said that in the proffer or not.

20           Is that accurate?

21           THE WITNESS: That's correct.

22           MR. ROGERS: Yes.

23           THE COURT: I will allow --

24           MR. CRANE: Judge, can I -- he -- that's all well  
25 and good. He can ask that question. And he can call

1 Detective Short and ask Detective Short what he recalled  
2 being said. But he can't use it like a deposition  
3 transcript. I'm not suggesting he can't impeach the witness,  
4 if he wishes to, but not with what somebody else wrote that  
5 hasn't testified yet in the case.

6 MR. ROGERS: I'm not attempting to impeach the  
7 witness, Your Honor. I'm just attempting to refresh his  
8 recollection.

9 THE COURT: Since he has adopted that report as  
10 being accurate and correct, I will allow you to refresh his  
11 memory with that report. Even though he did not write it  
12 himself.

13 MR. ROGERS: Thank you.

14 A. Yeah, I still -- I mean, I still can't remember if I  
15 mentioned it or not.

16 Q. Okay. You still can't remember whether you  
17 mentioned it or not.

18 A. During the proffer. I don't know if I -- if I  
19 noticed I hadn't said that or not. When it was in the  
20 report.

21 Q. Okay. So your testimony now is you don't know  
22 whether or not during the proffer you mentioned going  
23 north --

24 A. Yeah, I thought I had, but I'm not sure if I had.

25 Q. Okay. Fair enough. And even having read the

1 report, you still are not sure. Is that fair?

2 A. Yeah, that's correct, because I found many errors in  
3 a lot of the reports.

4 Q. So I'll put a question mark here. Okay.  
5 Eventually, however, your testimony -- or your statement at  
6 the proffer was that you went south on Broadway; correct?

7 A. That's correct.

8 Q. I got the question mark here because you don't  
9 remember what you said at the proffer about going north, and  
10 we're going south on Fourth Street towards Broadway.  
11 Correct?

12 A. That's correct.

13 Q. And you said you ran southbound past the Broadway  
14 Diner; is that correct?

15 A. Well, we went through the parking lot first.

16 Q. Through the parking lot of the diner.

17 A. Yeah. I can't remember if I went behind the diner  
18 or not. I know that I went through a parking lot.

19 Q. And is the diner over here on the --

20 A. East.

21 Q. -- east side of Fourth Street?

22 A. Yeah. That's the diner.

23 Q. I'm going to circle that and put a "BD" for Broadway  
24 Diner. Is that -- is that the building we're talking about?

25 A. Yeah.

1 Q. Okay. So you went across Broadway, and then across  
2 Fourth Street, and through the parking lot of the diner?

3 A. Yeah.

4 Q. And you don't know whether you went behind the  
5 diner, in this direction?

6 A. I can't remember if we went through -- I just  
7 remember going through the parking lot. I can't remember if  
8 I went behind the diner or not.

9 THE COURT: Mr. Crane, I think you may be blocking  
10 someone's view.

11 MR. CRANE: Judge, can I block their view just for a  
12 minute here? Because I am having trouble seeing this thing.  
13 Is that all right?

14 (Mr. Crane looking at diagram.)

15 MR. CRANE: Judge, I want to make a record that on  
16 Defendant's Exhibit D --

17 THE COURT: This isn't D. D was one of the --

18 MR. CRANE: What is this thing?

19 THE COURT: D was the DVD.

20 MR. ROGERS: I'm sorry. That's B.

21 MR. CRANE: Okay. Defendant's Exhibit B, there is  
22 no diner on this photograph that they've been showing this  
23 witness. That back when this photograph was taken -- and I  
24 admit this is from having the benefit of living here in  
25 Columbia -- the diner was up the street, around the corner.

1 And then they moved it later to the location that's  
2 accurately portrayed on the State's Exhibit 9, which was  
3 where it was in November -- on November 1, 2001.

4 Now the defense attorney, still continuing with this  
5 record, has placed on Defense Exhibit B, having asked the  
6 witness a question, a big old grease circle around what at  
7 this time was the old Katie Station.

8 MR. ROGERS: And I --

9 THE COURT: Is there an objection that you have,  
10 Mr. Crane?

11 MR. CRANE: I just was making a record that he's  
12 asking the question about a diner, and there isn't one on  
13 here.

14 MR. ROGERS: Okay. Well, I -- and I appreciate the  
15 correction.

16 MR. CRANE: So the objection is: That's improper.

17 MR. ROGERS: I would appreciate the corrections,  
18 Your Honor. And I would ask Mr. Crane to, from the basis of  
19 his knowledge of Columbia, which I'm not from here, if he  
20 would place a big old grease pencil where the Broadway Diner  
21 is. Now I'm erasing the big old grease mark that I put here.

22 MR. CRANE: Well, I'm not trying to be an  
23 obstructionist, but I don't think I'm going to do that.

24 MR. ROGERS: What I'm doing is offering to stipulate  
25 to your statement correcting this photograph, which I've

1 already stated is -- was taken sometime before the events at  
2 issue. So if you want to be accurate, let's be accurate.

3 MR. CRANE: Well, I'll tell you what I'll do. I'll  
4 make an agreement with you. I'll tell you that the diner is  
5 on State's Exhibit 9. I think that's 9, isn't it? Look on  
6 the back of that. Yeah. 9. And it's located down Fourth  
7 Street, right there.

8 MR. ROGERS: Right there.

9 MR. CRANE: Yeah.

10 MR. ROGERS: So that would be in what is the parking  
11 lot behind the Katie Station? If I put that big old grease  
12 pencil and write --

13 MR. CRANE: Yeah -- you can ask the witness.

14 A. Yeah, that's correct.

15 Q. Is that correct?

16 A. That's correct.

17 Q. Okay. You're not just agreeing to be agreeable now.

18 A. No.

19 Q. All right. So, are you're saying you went across  
20 the parking lot of the Broadway Diner like that.

21 A. Yeah. That's correct.

22 Q. And now can I put a "BD" here where the Broadway  
23 Diner really is?

24 A. That's right.

25 Q. Okay.



1 A. Yeah.

2 Q. And from the Broadway Diner -- we're now back to  
3 your proffer on October the 1st of last year. Did you tell  
4 them at that time that, after running south past the Broadway  
5 Diner, you began to run in a westerly direction across and  
6 through Flat Branch Creek?

7 A. Yes.

8 Q. So that would be this way?

9 A. I can't really tell.

10 THE COURT: You can step down and look at it, if you  
11 would.

12 Q. Actually, if you can reach it -- in what -- could  
13 you draw on that? Can you reach up that high?

14 A. No, I can't.

15 MR. CRANE: Your Honor, I need to make an objection.  
16 At the time the defense --

17 THE WITNESS: There's --

18 MR. CRANE: -- photograph was -- just -- don't talk;  
19 okay?

20 THE WITNESS: Sorry. Sorry.

21 MR. CRANE: At the time the defense photograph was  
22 taken, Flat Branch Park was not there. And there's --

23 MR. ROGERS: Right.

24 MR. CRANE: You knew that.

25 MR. ROGERS: Right.

1           MR. CRANE:  And there's several things in this area  
2   that he's taking the defendant to now around Flat Branch  
3   Creek, there were some old oil tanks, there was a gas thing  
4   there, and various things that were not present on November  
5   1, 2001.  Those are, however, accurately represented as the  
6   condition of that Flat Branch Park area in State's Exhibit 9,  
7   but not on Defense Exhibit B.

8           MR. ROGERS:  I agree with that, Your Honor.

9           Q.  And stuff that wasn't there when you remember being  
10  there, if you remember being there, ignore.  But in terms of  
11  the directions, the directions haven't changed.  Right?

12          A.  Right.

13          Q.  Okay.  So could you --

14          THE COURT:  Is there an objection you have,  
15  Mr. Crane?  I -- I'm not certain that I heard you enunciate  
16  it.  Are you --

17          MR. CRANE:  Well, I was making a record, that -- I  
18  mean, the -- I realize that some photographs, it's impossible  
19  to be exactly fair and accurate, particularly with aerials,  
20  with businesses that may change and parks.  Whole buildings,  
21  though, and parks, I would make an objection with respect to  
22  the fair and accurate depiction of this photograph.  I mean,  
23  with the understanding that all this has changed.  And I'm  
24  pointing to the Flat Branch Creek area.  I guess he can  
25  testify.  But we're putting lines on it.  The contour of the

1 creek's even been changed since then.

2 MR. ROGERS: With --

3 MR. CRANE: With the understanding it's not a fair  
4 and accurate representation.

5 MR. ROGERS: With regard to the structures present  
6 and the shape of the park, sure.

7 THE COURT: And what are you going to have him draw?

8 MR. ROGERS: The route that he told them during his  
9 October 1st proffer he took.

10 MR. CRANE: And as long as we're in agreement that  
11 that photograph is not a fair and accurate representation of  
12 the area --

13 MR. ROGERS: In terms of the structure, sure.

14 MR. CRANE: -- I won't object. It's not.

15 THE COURT: Are you stipulating that it is not fair  
16 and accurate in all respects?

17 MR. ROGERS: In all respects. Certainly in terms --  
18 it's certainly a fair and accurate depiction of when it was  
19 taken, but it's not a fair and accurate depiction -- things  
20 changed between when this photograph was taken and 2001.

21 THE COURT: And specifically the area of Flat  
22 Branch, the creek as well as the park there as well as the  
23 diner.

24 MR. ROGERS: Right.

25 THE COURT: That those -- those are not portrayed

1 accurately on Defendant's Exhibit B.

2 MR. ROGERS: Right.

3 THE COURT: With that understanding, if he can mark  
4 it, or if you want to --

5 THE WITNESS: Yeah. You're going to have to hold  
6 it, because --

7 THE COURT: Or you may remove it from the easel and  
8 put it at a point where he's able to mark it.

9 A. This isn't right.

10 Q. Right. I know that.

11 A. Okay.

12 Q. Just show us -- show the route that you took.

13 A. All right. I'm going to do my best.

14 (Witness drawing on exhibit.)

15 A. All right. You want me to stop at the creek?

16 Q. Go ahead and cross the creek, if you did.

17 A. Well, here's the creek. I'll circle the creek if  
18 you want me to.

19 Q. No.

20 A. Okay. Here's the creek. And we came up here.

21 THE COURT: I don't know if the jurors can either  
22 see or hear what you're --

23 Q. I'll hold it back up when he's done.

24 A. Behind the gas station. Went to the right.

25 Q. Okay. You can resume the stand for a minute.

1 A. All right.

2 Q. And we'll clean up the record a little bit.

3 Okay. So you have drawn this line, that I'm going  
4 to now draw more firmly, going across where these buildings  
5 used to be, but they're not at the time we're talking about;  
6 right?

7 A. That's correct.

8 Q. And across Flat Branch Creek, and up behind the gas  
9 station. And by "the gas station," you mean the Phillips 66  
10 station.

11 A. Yes.

12 Q. And around the Phillips 66 station to Providence  
13 Road. Correct?

14 A. Yes. The intersection of Providence and Cherry. I  
15 think that's Cherry.

16 Q. Locust?

17 A. Or is that Locust? Yeah, Locust then. Okay.

18 Q. Okay. And the intersection of Providence and Locust  
19 is where you saw -- that you told them during your proffer  
20 session that you saw Dallas Mallory sitting southbound on  
21 Providence at the stoplight.

22 A. Well, he was pulling up at the time, when we got to  
23 Providence, and then he stopped.

24 Q. For the light.

25 A. So he was pulling up, yeah.

1 Q. Did you tell them in your proffer session on October  
2 1st that you saw him sitting at the stoplight?

3 A. I believe that -- I'm not sure. That's when I  
4 approached the car. I'm not -- I'm not sure.

5 Q. And so the car -- do you know if it was in the  
6 middle lane or the right-hand lane of the two southbound  
7 lanes?

8 A. I believe, if you're heading south, it was in the  
9 left-hand lane, like the passing lane.

10 Q. So that would be where I'm drawing a rectangle and  
11 putting an arrow to show the direction the car was  
12 pointing --

13 A. Okay.

14 Q. -- is that correct?

15 A. Yeah.

16 Q. And is it your -- is what you told them at the  
17 proffer session, that you then went up and talked to  
18 Mr. Mallory?

19 A. Yes. That's correct.

20 Q. Where I've drawn the line.

21 A. Yeah.

22 Q. And then did you tell them at the proffer session  
23 that you went through the Osco parking lot?

24 A. That's correct.

25 Q. Now back in 2001, was Osco open?

1 A. Yes.

2 Q. And is Osco shown on this picture?

3 A. I believe -- I don't know if it was Osco then, but I  
4 think it's the same building.

5 Q. Okay. And so is this the parking lot we're talking  
6 about?

7 A. Yeah. That's the parking lot.

8 Q. What direction did you go in the parking lot?

9 A. You want -- should I draw it?

10 THE COURT: You may step down.

11 Q. Let me ask you, did you -- I'll see if I can do it  
12 verbally.

13 A. I believe we went west.

14 Q. Did you go straight west or did you go diagonally?

15 A. We went diagonally. I mean --

16 Q. From southeast to northwest?

17 A. Yeah. That's correct.

18 Q. An exact diagonal or more or less?

19 A. More or less.

20 Q. So this general direction?

21 A. Yeah. But we -- we weren't at the drive. We went  
22 up in the grass, and then we cut through the parking lot.

23 Q. Okay. You went west on the drive and then cut  
24 through?

25 A. Well, it would be better if you just let me draw it.

1 I mean --

2 Q. I'll bring it to you.

3 A. I don't know -- well --

4 MR. ROGERS: I apologize, Your Honor, for blocking  
5 your view.

6 THE COURT: That's fine.

7 A. I just want to be, you know --

8 Q. Okay. Yes. I want you to be as accurate as you  
9 can. And I can lean on it and make it --

10 A. We came across here. We ran up -- there's a little  
11 hill right there. We ran up there. We cut across down here  
12 to the parking lot.

13 Just tell me when you want me to stop.

14 Q. Keep going.

15 (Witness drawing on the exhibit.)

16 Q. All right. Now -- so you came from behind the car,  
17 crossing a little hilly area between --

18 A. Well, the car took off. We didn't come from behind  
19 the car. The car took off.

20 Q. The car took off.

21 A. Yeah.

22 Q. And you crossed the parking lot at a diagonal and  
23 into the other parking lot.

24 A. That's correct.

25 Q. Which you also crossed at a more or less diagonal;



1 correct? To Broadway. Is that accurate?

2 A. Yes.

3 MR. ROGERS: Your Honor, would this be a good time  
4 for a recess?

5 THE COURT: I don't know where you are in your  
6 examination. Is this a good time to break your examination?

7 MR. ROGERS: It is for me.

8 THE COURT: All right.

9 Ladies and gentlemen, we will take our mid-morning  
10 recess.

11 The Court again reminds you of what you were told at  
12 the first recess of the Court. Until you retire to consider  
13 your verdict, you must not discuss this case among yourselves  
14 or with others, or permit anyone to discuss it in your  
15 hearing. You should not form or express any opinion about  
16 the case until it is finally given to you to decide. Do not  
17 read, view, or listen to any newspaper, radio, or television  
18 report of the trial.

19 And while the jury is out, would you have them make,  
20 if they have not already made their selection for lunch, and  
21 find out what time lunch would be delivered, so we'll know  
22 about recessing for the noon hour.

23 You may be excused, ladies and gentlemen.

24 - - -

25 The following proceedings were held out of the presence

1 of the jury:

2 THE COURT: Before you all take your break, I want  
3 to talk to you just a minute.

4 One of our jurors is using an assisted hearing  
5 device. You've probably seen that. It's an older gentleman,  
6 sitting in the back. And yesterday for a time he was having  
7 some trouble with it. We got some new batteries for it. And  
8 as far as I know, it's working all right. However, I've had  
9 our marshal go back just to check, because it would concern  
10 me if he's not picking up everything.

11 DEPUTY COURT MARSHAL LANE: It is working, Judge.

12 THE COURT: It is working.

13 MR. CRANE: You know, another thing might be good if  
14 he would sit on the front row.

15 THE COURT: Well, I can't imagine why he wouldn't  
16 want do that. He has been suggested to do that. He's a shy  
17 fellow, I guess. I don't know. But I wanted --

18 (Audience becoming noisy.)

19 DEPUTY COURT MARSHAL LANE: Folks, court is still in  
20 session.

21 THE COURT: With that understanding -- I just wanted  
22 you to be aware of it.

23 MR. ROGERS: Have I been talking louder since you --

24 THE COURT: Yeah, you have. And I can hear that  
25 you're closer to that mic. And you can hear it from that

1 mic. I can hear you better. And we haven't had any  
2 complaints.

3 We'll be in recess then.

4 (Recess taken.)

5 - - -

6 The following proceedings were held out of the presence  
7 of the jury:

8 THE COURT: State ready to proceed?

9 MR. CRANE: Ready, Judge.

10 THE COURT: And the defendant?

11 MR. ROGERS: Yes, Your Honor.

12 THE COURT: All right. And Mr. Ferguson is here.

13 All right.

14 You may return the jury to the courtroom, please.

15 - - -

16 The following proceedings were held in the presence of  
17 the jury:

18 - - -

19 CHARLES TIMOTHY ERICKSON,

20 resumed the stand and testified further:

21 THE COURT: You may inquire.

22 - - -

23 RESUMED CROSS-EXAMINATION

24 BY MR. ROGERS:

25 Q. Mr. Erickson, during the recess I marked on the

1 plastic overlay on Defendant's Exhibit B the initials "CE"  
2 for you and the date "10-1-04," because the markings on that  
3 indicate what you told the police and prosecutors during your  
4 proffer on October 1st, 2004; is that correct?

5 A. Yes.

6 Q. Now, when you say you encountered Dallas Mallory  
7 stopped at the light on Providence and Locust, were you  
8 carrying Mr. Heitholt's belt?

9 A. I had it in my pocket.

10 Q. Had it in your pocket.

11 A. Yes.

12 Q. Okay. And once again, you recall giving the proffer  
13 statement to Detective Short and others on October 1st;  
14 correct?

15 A. Yes.

16 Q. Isn't it true that you told Detective Short that you  
17 had the belt in your hand when you talked to Dallas Mallory?

18 A. Yeah, I believe I may have said that, yes.

19 Q. But now you're saying that's not true.

20 A. I'm fairly sure it was in my pocket.

21 Q. And it can't be both in your pocket -- you didn't  
22 have your hand in your pocket, did you?

23 A. I don't believe so.

24 Q. What you were trying to tell Short was you had it in  
25 your hand, but what you're telling us is you had it in your

1 pocket.

2 A. Yes.

3 Q. Before your proffer session on October 1st, 2004,  
4 but after your arrest on March 10th, 2004, in between those  
5 times, had you ever told any law enforcement person,  
6 policeman, prosecutor, deputy sheriff, FBI agent, any law  
7 enforcement person that you had gone south on Fourth Street,  
8 across the parking lot of the Broadway Diner, through Flat  
9 Branch Park, and across the creek, coming out on Providence  
10 by the Phillips gas station?

11 A. No.

12 Q. That was the first time you said that to any law  
13 enforcement authority.

14 A. That's correct.

15 Q. Between those dates, your arrest, March 10th, 2004,  
16 your proffer, October 1st, 2004, had you been taken to the  
17 area of downtown Columbia to drive through or walk through or  
18 be carried through the places that you've talked about?

19 A. No.

20 Q. You told us you had read police reports.

21 A. Yes.

22 Q. You told us you had seen the videotapes.

23 A. Yes.

24 Q. That would include the videotape of Mr. Nichols  
25 driving through that area.

1 A. That's correct.

2 Q. Had you had any other contact with any information  
3 about the geography of that area between your arrest and  
4 between the proffer?

5 A. No.

6 Q. So you never sat down with your attorney and went  
7 through a series of still pictures or anything like that.

8 A. No.

9 Q. And certainly not with any law enforcement agent,  
10 because you didn't talk to them.

11 A. That's correct.

12 Q. In between your arrest and your proffer, you were  
13 held in the Boone County Jail; is that correct?

14 A. Yes.

15 Q. And during that time, you had frequent conversations  
16 with your family members.

17 A. Yes.

18 Q. And your familiar members include a younger sister  
19 and two parents.

20 A. That's correct.

21 Q. And some of those conversations were in person, when  
22 they would come to the jail to visit you at the designated  
23 time.

24 A. Yes.

25 Q. And some of those conversations were on the

1 telephone.

2 A. That's correct.

3 Q. And especially early on, after your arrest, you'd  
4 had very frequent telephone conversations with your parents,  
5 didn't you?

6 A. That's correct.

7 Q. And even though you had been told not to discuss the  
8 case on the telephone, you did anyway, didn't you?

9 A. Yes, I did.

10 Q. And you discussed with your parents many things  
11 concerning the case; correct?

12 A. Yes, I did.

13 Q. And you also had conversations concerning your case  
14 with people at the jail. Staff members.

15 A. Yes.

16 Q. And in particular, shortly after your arrest, you  
17 had a conversation with the nurse in the jail, didn't you?

18 A. That's correct.

19 Q. And the nurse asked you whether or not you committed  
20 the crime that you were there for; correct?

21 A. Yes.

22 Q. And you told them that you weren't sure really,  
23 didn't you?

24 A. That's what I told them, yes.

25 Q. And that was not a lie when you told that to the

1 nurses in the jail, was it?

2 A. No.

3 Q. At that time, even after your arrest, you were not  
4 sure that you had committed this crime, were you?

5 A. Yeah, consciously I was not sure.

6 Q. Okay. You were not sure.

7 A. Yes.

8 Q. And that's what you told the nurse.

9 A. That's correct. I was not a hundred percent  
10 certain.

11 Q. Okay. And the rest of what you told the nurse was  
12 that the police had told you that things that you had told  
13 the police correlated with what actually happened. Right?

14 A. That's correct. Yes.

15 Q. And that, after that, it was over.

16 A. The conversation with the nurse was over after that.

17 Q. After that, your chance of not being convicted was  
18 over.

19 A. I don't think I meant that.

20 MR. ROGERS: Would you play "nurse 3," please?

21 I will tell you, Mr. -- oh. I better offer it.

22 Excuse me.

23 Your Honor, at this time I would offer Defendant's  
24 Exhibit E, which I will represent is an audio CD that we  
25 received from the state, containing recorded telephone calls



1 from the jail.

2 MR. CRANE: Okay. Date?

3 MR. ROGERS: This particular call is on track 2,  
4 which is April 8th, 2004, beginning at 1810 hours, which is  
5 6:10 p.m.

6 MR. CRANE: Is this the one you were asking  
7 questions about?

8 MR. ROGERS: Yes.

9 MR. CRANE: Okay.

10 MR. ROGERS: It contains the excerpt I want to play.

11 MR. CRANE: It doesn't have the whole track on  
12 there?

13 MR. ROGERS: This is the whole track. The excerpt  
14 has been excerpted from it.

15 MR. CRANE: Okay. I don't know what the excerpt is.

16 MR. ROGERS: It's my --

17 MR. CRANE: I guess if --

18 THE COURT: Do you want an opportunity to listen to  
19 it before it's played to the jury?

20 MR. CRANE: Well, I can maybe -- if it's -- if it's  
21 an accurate portion of it, I guess -- you know, I'm not  
22 concerned about the jury hearing it. I guess I'm trying to  
23 figure out, if it's not in -- the entire conversation or the  
24 context isn't all in there, then I guess I can go back to the  
25 big tape and find it and play that for the jury?

1 MR. ROGERS: Right.

2 MR. CRANE: I guess there's no chance you'd do that?

3 MR. ROGERS: I don't want to play the whole thing.

4 It would take forever.

5 MR. CRANE: No, it wouldn't. How long's that track?

6 MR. ROGERS: Well, this part that I intend to play

7 ends at 17 minutes and 11 seconds into it. And the part that

8 I intend to play takes less than 30 seconds.

9 MR. CRANE: Well, see, that's what I thought.

10 There's -- I believe I know the conversation that they're

11 wanting to put in now 30 seconds of.

12 MR. ROGERS: Right.

13 MR. CRANE: I -- you know, I suppose, Judge, I'll

14 have to go back and find it on our tapes and run the full

15 context on redirect.

16 THE COURT: Are you saying that 30 seconds would be

17 out of context and not --

18 MR. CRANE: Yeah.

19 THE COURT: -- the whole conversation?

20 MR. CRANE: If it's the same conversation I know

21 about, I know that 30 seconds is not going to get the full

22 conversation that they're talking about in.

23 THE COURT: How long is the full conversation,

24 Mr. Rogers?

25 MR. CRANE: Oh, I'm going to say three minutes

1 maybe.

2 MR. ROGERS: No. Full conversation is --

3 MR. CRANE: No. No. The full conversation on the  
4 thing about the nurse. This is where the mother -- or the  
5 witness's mother and he are talking about not talking to  
6 people at the jail? At the beginning of -- that's not what  
7 you're going to play. You're going to --

8 MR. ROGERS: That's not what I'm going to play.

9 MR. CRANE: You're going to play the end of it,  
10 without the front, is what you want to do. And I guess my  
11 only recourse, if I don't object to the excerpt, is to go  
12 back and play it. I mean, I assume you wouldn't object to me  
13 playing --

14 MR. ROGERS: For completeness, if you think it's  
15 necessary for understanding. I think this is, in and of  
16 itself, complete to answer the question that I --

17 MR. CRANE: I don't doubt that. I don't doubt  
18 that's what defense counsel thinks.

19 THE COURT: Do you have an objection or not,  
20 Mr. Crane?

21 MR. CRANE: No. As long as I can get into the other  
22 aspects of this section of the conversation --

23 MR. ROGERS: I'm offering --

24 MR. CRANE: -- I have no objection.

25 MR. ROGERS: I'm offering the complete CD, which

1 contains three different telephone conversations, including  
2 everything that he just talked about.

3 THE COURT: You do not object to Defendant's Exhibit  
4 E.

5 MR. CRANE: Is that the excerpt?

6 MR. ROGERS: No. That's the big one.

7 THE COURT: That's the whole CD.

8 (Discussion off the record between counsel.)

9 MR. ROGERS: Let me put it this way. That's the  
10 only excerpt from this particular CD that I intend to play  
11 right now. And --

12 MR. CRANE: Well --

13 MR. ROGERS: -- if you don't want to play --

14 MR. CRANE: -- Judge -- well, I guess -- here's the  
15 way I want to propose it. The issue here as to -- we gave  
16 these conversations to the defense. There are numerous  
17 things said on these tapes. The excerpt and its -- and its  
18 contextual aspects I'm not going to object to. The entire  
19 conversations on these tapes, there may be privilege with  
20 respect to his defense counsel. There may be things that are  
21 otherwise objectionable, that I can't sit here and index on  
22 what they're showing me. So maybe the issue is: The matter  
23 of it going back later in its full form may be an issue that  
24 we could take up at a later time.

25 MR. ROGERS: That's fine, Your Honor. And we would

1 be happy to offer it subject to any objection they care to  
2 make to any particular excerpt.

3 MR. CRANE: I mean, in other words, not only is he  
4 putting on, in this exhibit, one track, and the excerpt from  
5 it, for the jury to hear, there's two other tracks of, let's  
6 say, 20-minute conversations.

7 MR. ROGERS: Right. And these are the forms we got  
8 them in.

9 THE COURT: And are you saying those might be  
10 objectionable?

11 MR. CRANE: Potentially, yeah. I mean, we'll have  
12 to check that out again. We -- there's a lot of time on the  
13 phone there.

14 THE COURT: As to the particular track that is  
15 offered now to be played for this jury, do you have an  
16 objection to that track?

17 MR. CRANE: The excerpt. No. I think I know the  
18 one he's talking about, and I won't object to that.

19 THE COURT: All right. Well, I will admit that, for  
20 that sole purpose. And if you hear that it's a different  
21 track than you think it is, you'll need to speak up.

22 MR. ROGERS: Okay.

23 Mr. Weis, would you please play the excerpt from  
24 Exhibit E which has been marked "nurse 3."

25 THE COURT: And as to this, it's a very brief

1 excerpt; is that correct?

2 MR. ROGERS: That's correct.

3 THE COURT: I'll have my reporter take it down.  
4 Simply -- I mean, if it were a 20-minute excerpt, it would be  
5 something else, but if it's 30 seconds, and she can hear it,  
6 she will take it down. Now, if it's not clear, I can't  
7 promise you that you'll get a good record of it, with the  
8 court reporter.

9 MR. ROGERS: Okay.

10 THE COURT: She will do her best.

11 MR. ROGERS: "Nurse 3."

12 (Excerpt played.)

13 (The excerpt was unintelligible, and an accurate  
14 record could not be made.)

15 Q. Now, my question is: When you said to your  
16 mother -- that was your mother on the phone?

17 A. That's correct.

18 Q. And that was you.

19 A. That was me.

20 Q. When you said to your mother, "Basically it was over  
21 after that," you meant the potential case of State of  
22 Missouri versus Charles Erickson for the murder of Kent  
23 Heitholt; right?

24 A. No.

25 Q. You meant your choices about what to do about your

1 feelings or intimations or beliefs that you may have been  
2 involved with; right?

3 A. No.

4 Q. So you still believe that when you told your mother,  
5 "It was all over after" -- or when you told your mother that  
6 you told the nurse it was over after that, you weren't  
7 saying --

8 A. I said the conversation was over. After that -- I  
9 said, after that, it was over. Meaning, after I said that,  
10 the conversation was over. Hence, I didn't say anything else  
11 regarding the conversation with the nurse.

12 Q. So you were saying that basically your conversation  
13 with -- you were trying to tell your mother basically the  
14 conversation with the nurse was over?

15 A. That's correct.

16 Q. And so what you said was: "I just told them  
17 basically that some other things that I had to say the cops  
18 correlated with what had actually happened, and that I told  
19 one of my friends about it, and then basically, I mean, after  
20 that it was over." You're talking about: That's the end of  
21 the conversation.

22 A. That's the end of the conversation.

23 Q. Not after telling the cops things that they said  
24 correlated --

25 A. That's the end of the conversation with the nurse.

1 Q. All right. Now, many of these conversations, while  
2 you were in jail, talking to your parents on the phone,  
3 happened before you had received the police reports; correct?

4 A. Yes.

5 Q. Before your lawyer had received the police reports.  
6 Correct?

7 A. Yes.

8 Q. Before your lawyer had a chance to view the  
9 videotapes.

10 A. That's correct.

11 Q. And before you had had a chance to view the  
12 videotapes.

13 A. Yes.

14 Q. Yet you and your parents had talked at some length,  
15 both in person and on the phone, about you reaching some kind  
16 of plea agreement to testify against Mr. Ferguson; isn't that  
17 true?

18 A. Yes.

19 Q. And you were, at some points, reluctant to do that,  
20 weren't you?

21 A. Yes, I was.

22 Q. And your parents were at some points attempting to  
23 persuade you to testify against Mr. Ferguson or to reach a  
24 plea agreement.

25 A. Yes. That's correct.



1 Q. And your father went so far as to tell you that the  
2 more details you could provide the prosecutor, the better  
3 your negotiating position would be; isn't that true?

4 A. I'm not sure if he said that or not. I believe when  
5 he said that -- you're taking it out of context. When he  
6 said that, he was telling me not to talk about the case with  
7 other people, so that less -- the less other people that had  
8 to come forward with details, and the more that I said  
9 myself -- do you understand what I'm saying? The more that I  
10 said myself and didn't come from other people, probably the  
11 better deal I would get.

12 Q. All right. So he did tell you that the more details  
13 you personally, Chuck Erickson, could provide, the better  
14 deal you're going to get.

15 A. Provide myself, yes, that's correct.

16 Q. Obviously you would have no control over what  
17 details anybody else could provide, unless you somehow gave  
18 them to them.

19 A. That's correct.

20 Q. All right.

21 A. And just to clarify, he was telling me that so I  
22 didn't talk about my case with other people. He wasn't  
23 telling me that so I'd, you know, make up details.

24 Q. But the message was: The more details you give, the  
25 better the deal.

1 A. Myself. That didn't come through an intermediary.

2 Q. Right.

3 A. That was his point. So I wouldn't talk about the  
4 case. But it wasn't to manufacture -- he didn't say that so  
5 I'd manufacture details and get a better deal, if that's what  
6 you're getting at, which is I think what you're getting at.

7 Q. Well, this was a conversation that happened in  
8 April -- at least once in April of 2004. Correct?

9 A. I don't know. I don't know.

10 Q. It happened between the time that you were arrested  
11 and told the police the things we've seen on the videotape;  
12 correct?

13 A. I believe so. I'm not certain.

14 Q. And the time that you went to give your proffer on  
15 October 1st; isn't that true?

16 A. I'm not sure.

17 Q. Sometime in between those times?

18 A. Possibly.

19 Q. You would not deny that at least one of those  
20 conversations -- and there may have been more conversations  
21 about that. I'm not saying that's the only one. But you  
22 would not deny that one of those conversations occurred on  
23 April 14th, 2004, would you?

24 A. I'm not -- no, I won't deny that.

25 Q. Okay. Before that, on March the 13th of 2004, do

1 you recall having a conversation with your mother about the  
2 case?

3 A. Yeah. I had a lot of conversations about the case  
4 with my parents.

5 Q. And particularly, on March the 13th, 2004, do you  
6 recall telling your mother, "I just want to see everything.  
7 I just want everything laid out in front of me, because I  
8 can't even fully make it make sense until I see that."

9 A. Yeah, I believe I said that.

10 Q. Okay. And you were talking about not being certain  
11 about what happened and wanting to see police reports and  
12 photographs and things so that you could put together in your  
13 own mind a story that made sense to you. Isn't that true?

14 A. Not a story that made sense to me. The truth. It's  
15 not like I was just going to look at these things and say,  
16 "Oh, well, this might have happened." I'm not sitting here  
17 lying about that now. I'm telling the truth. Whether you  
18 believe that or not, I don't really care. But no, that's not  
19 why I wanted to do that. I wanted to do that so that I could  
20 accurately portray the truth.

21 Q. Did you hear my question?

22 A. Yeah. And I thought I answered it.

23 Q. Were the words "make sense" or "make it make sense"  
24 my words?

25 MR. CRANE: I think you read it was "fully" -- I

1 think the question you asked was "fully make sense." Just to  
2 be accurate, Judge.

3 Q. My question I'm asking now is: Were the words "make  
4 it make sense" your words, on the phone, talking to your  
5 mother, March 13th, 2004?

6 A. I don't know. If that's -- if that's what they  
7 were, they very well may have been. I'm not -- I'm not sure.

8 MR. ROGERS: Your Honor, I would offer Defendant's  
9 Exhibit F, which is a video -- excuse me, audio CD, with  
10 three separate phone calls, including this one, which I  
11 believe is track 3.

12 MR. CRANE: Okay.

13 MR. ROGERS: Subject to the other record we made on  
14 the other one, about completeness and reserving objections to  
15 other portions of it that may not be admissible.

16 MR. CRANE: Okay. So in other words, at this time  
17 all you want to play is the excerpt off of that.

18 MR. ROGERS: Right.

19 MR. CRANE: F. Okay. Without going through all  
20 that I said about E, I don't have any objection to the  
21 excerpt being played.

22 THE COURT: Okay. You may play track 3 of  
23 Defendant's Exhibit F, if that is the conversation that you  
24 referred to.

25 MR. ROGERS: It's the conversation I referred to.

1 Do you have that queued up on the machine?  
2 (Excerpt playing.)  
3 THE COURT: Are you having trouble hearing?  
4 (Tape stopped.)  
5 THE COURT: Is --  
6 MR. WEIS: That's just --  
7 MR. ROGERS: Yeah. I don't think we can do any  
8 better. I think that's the recording.  
9 MR. CRANE: Real quick, that was on March 13, '04.  
10 MR. ROGERS: That's right.  
11 MR. CRANE: And that's CD number 3, track --  
12 MR. ROGERS: 3.  
13 MR. CRANE: CD 3, track 3?  
14 MR. ROGERS: Right.  
15 Just do it again, please.  
16 (Excerpt played.)  
17 MR. ROGERS: Okay.  
18 MR. CRANE: Did he say "fully make a decision"?  
19 MR. ROGERS: The way I heard it was: "Fully  
20 make" -- I don't know. What did you say? Did you hear what  
21 you said?  
22 A. No.  
23 MR. ROGERS: You want to hear it again?  
24 A. It's hard to hear.  
25 Q. It is hard to hear.

1 A. It's not in the transcript? I mean --

2 MR. ROGERS: Mr. Crane's not hearing what I read in  
3 the transcript, and I'm not sure that I am either.

4 A. You want to replay it?

5 MR. ROGERS: Not an official transcript.

6 A. I mean, we can replay it if you want to. I don't  
7 know. I can't -- I couldn't make out what I said.

8 MR. ROGERS: Play it again.

9 (Excerpt played.)

10 MR. CRANE: "Determination."

11 MR. ROGERS: Okay. You can stop now.

12 (Tape stopped.)

13 Q. Is that what you hear, "Because I can't even fully  
14 make a determination"?

15 A. I believe that's what I heard, yeah.

16 Q. Okay. And you're talking about --

17 MR. CRANE: Just -- are you going to change your  
18 transcript there? Because you asked him --

19 MR. ROGERS: The transcript's not in evidence. It's  
20 just notes.

21 MR. CRANE: Okay.

22 MR. ROGERS: I'm not claiming it's a transcript.

23 THE COURT: Oh. Would you then approach the bench?  
24 Both counsel?

25 - - -

1 Counsel approached the bench and the following  
2 proceedings were held:

3 THE COURT: There is a camera -- it's off. I turned  
4 it off.

5 There is a camera behind you in that box. When I  
6 was out at recess, I was advised by someone in the local  
7 media that -- who was looking at the feed that someone was  
8 taking pictures of that particular -- of what was on the  
9 podium. And the person who was taking the pictures said,  
10 "Oh, I'm only taking pictures of transcripts. Legal  
11 transcripts." I assume that you -- I didn't know that you  
12 had other notes there. I wanted to caution you that there's  
13 a camera there, and you might -- I strongly told them that  
14 they were not to take pictures of counsel's notes. It's one  
15 thing if they take a transcript like this and --

16 MR. CRANE: I thought you were going to say they  
17 took a picture of his photo.

18 THE COURT: No. That camera that's sitting in that  
19 box can photograph what you have on the podium. And if  
20 you're asking questions from something that are just your  
21 notes, that you maybe have typed up, that is accessible with  
22 that camera. I've told them not to take any pictures of it.  
23 And someone locally reported to me that they had seen things  
24 that look like transcripts come across the line. But I  
25 wanted to you be aware. And I mean, I've -- I don't know

1 what's going on with that.

2 MR. ROGERS: Your Honor --

3 THE COURT: We have a prompter over there, that our  
4 bailiff is supposed to be taking a look at, to make sure that  
5 your private personal notes, whether it's yours or the  
6 prosecutors, would not be photographed and we have an  
7 understanding locally that that's not done. And that's  
8 what -- that's what the -- in fact, I don't think they ever  
9 photograph the podium, that you might have information on.

10 MR. ROGERS: I didn't realize there was a camera in  
11 that box. I had no idea that's what it was.

12 THE COURT: Well, you need to smile.

13 MR. ROGERS: Usually got the side of my head, so  
14 it's happy enough, I guess.

15 THE COURT: I wanted you to be aware. And I don't  
16 see anyone monitoring that now. And I will, during the noon  
17 recess, have a discussion with someone.

18 MR. ROGERS: Is there some way we can just turn that  
19 camera off? I don't see a legitimate purpose for the press  
20 to be able to photograph anything on the podium. Now, this  
21 particular document here was not on the podium during the  
22 recess, but I have had handwritten notes, I have had other  
23 police reports, I have had other things that are not  
24 transcripts, and I have had transcripts which are not in  
25 evidence --



1 THE COURT: Well --

2 MR. ROGERS: -- none of which should be photographed  
3 by those people.

4 MR. CRANE: I don't think anyone was photographed.  
5 We'll take the appropriate precautions. They couldn't --

6 THE COURT: I wanted you from now on to be careful.

7 MR. CRANE: Very good.

8 THE COURT: And I will look into that during the  
9 noon hour.

10 MR. CRANE: Very well.

11 MR. ROGERS: Thank you.

12 - - -

13 The following proceedings were held in open court:

14 Q. So that was March the 13th, and you were telling  
15 your mother you wanted to see everything laid out in front of  
16 you before you could make a determination.

17 A. Yeah, I said that. That's correct.

18 Q. Okay. And the determination you're talking about is  
19 whether what you thought were memories were accurate or  
20 inaccurate?

21 A. I -- I'm not sure what I meant. Just in general  
22 terms how I was going to proceed from there. I don't know.

23 Q. That was still at a time when you, in your conscious  
24 mind, were not certain that you were involved in the crime;  
25 correct?

1 A. Yeah, that's correct.

2 Q. And it was actually quite a while before you told  
3 the nurses you were not certain. Correct?

4 A. That was a month.

5 Q. Right.

6 A. Yeah.

7 Q. Now later, on April 24th, 2004, you had a telephone  
8 conversation with your father about whether you should be  
9 cooperating with the prosecution in this case; is that  
10 correct?

11 A. I -- I'm not sure.

12 Q. You're not denying that.

13 A. No, I'm not denying that.

14 Q. Okay. Do you recall a conversation where your  
15 father told you that if you did not cooperate, you would be  
16 looking at a substantially greater period of time to serve?

17 A. Yes. Yeah.

18 Q. Okay. And that was a fairly extensive conversation,  
19 wasn't it?

20 A. I'm not sure.

21 Q. And that conversation, however, at least one of  
22 those conversations, and there's probably been more than one,  
23 but one of those conversations occurred before you had even  
24 gotten the police reports or the discovery or had it all laid  
25 out in front of you like you were talking to your mother

1 about; right?

2 A. I believe so. I can't be certain. I don't deny it.

3 Q. And even then your father was urging you to work  
4 through your attorney to reach the best plea bargain you  
5 could, wasn't he?

6 A. I believe so, yes.

7 Q. And he had also called in his brothers to help you  
8 in that regard, wasn't he -- hadn't he?

9 A. No, he hadn't.

10 Q. You hadn't talked with --

11 A. He may have talked to them. He didn't call anyone  
12 in to talk to me. The most I got was a letter from my -- one  
13 of my uncles. And all that really consisted of was: Don't  
14 talk about your case with people that you're locked up with.  
15 But he didn't call anyone in. No one came down here. I  
16 mean, no one came -- I didn't talk to my uncles about it.

17 Q. Did your father talk to your uncles about it and  
18 tell you what they thought?

19 A. I --

20 MR. CRANE: Well, wait a minute now. He's asking if  
21 his dad talked to his uncles about it? That's hearsay.

22 THE COURT: Sustained.

23 Q. Let me tell you -- ask you this. You and your  
24 father were having an ongoing conversation about whether or  
25 not you should look for a plea agreement and testify against

1 Mr. Ferguson, weren't you?

2 A. Yes.

3 Q. And part of that conversation included statements  
4 about a guy named Ed; is that correct?

5 A. It's -- I don't deny it.

6 Q. Okay. And who's Ed?

7 A. Ed Guinn.

8 Q. Who's that?

9 A. He was the lawyer that was appointed to me when I  
10 first got arrested.

11 Q. Okay. So that's a different person. Not one of  
12 your uncles.

13 A. Not -- I'm sorry?

14 Q. Ed is not one of your uncles.

15 A. No. No.

16 Q. But you have an uncle who is, in fact, a lawyer who  
17 practices criminal defense in Illinois; is that correct?

18 A. That's correct, yes.

19 Q. And to your knowledge, he had conversations with  
20 your lawyer, Mr. Kempton; is that correct?

21 A. I don't know. I think he might have. I'm not sure.

22 Q. As a matter of fact, at one point, when you were  
23 expressing reluctance to enter into plea agreements, your  
24 father even told you, "Look, if you're not going to  
25 cooperate, Mr. Kempton is not going to be your lawyer any

1 more," didn't he?

2 A. Yeah. He said there was no point, because all I  
3 would be doing would be pleading guilty at that point. I  
4 don't need a paid attorney to plead guilty.

5 Q. And so basically he was saying, "If you don't follow  
6 the plan of cooperating and testifying against Ryan Ferguson,  
7 you're not going to have Mark Kempton; you're going to end up  
8 with a public defender." Correct?

9 A. Yeah. That was true, yes. Because I would be  
10 pleading guilty, I wouldn't need a paid attorney for  
11 anything.

12 Q. He didn't say, "If you don't -- if you plead  
13 guilty." What he said was: "If you decide you're not going  
14 to cooperate."

15 A. That was my only other -- that was the only other  
16 thing I was going to do, was just to plead guilty and not  
17 testify against him. He didn't state that, no.

18 Q. He didn't. And he told you that if you did not  
19 cooperate, the time that you would spend in prison would  
20 probably be at least 50 percent longer, didn't he?

21 A. Yeah, I think he said that, that's correct.

22 Q. And this is a conversation which takes place before  
23 you've even had a chance to talk to Mr. Kempton about what's  
24 in the police reports, about what you tell the police the day  
25 you're arrested, about the uncertainties that you expressed

1 to the police on the videotapes that we saw yesterday;  
2 correct?

3 A. I don't know. I don't know.

4 Q. Well, you would not quarrel with me if I represent  
5 to you that this conversation --

6 A. You said April 24th?

7 Q. April 24th, 2004, at 9:12 p.m.?

8 A. I don't know if I had had my attorney talk to him or  
9 not yet. That's the honest --

10 Q. And you don't know if your attorney had gotten the  
11 videotapes yet.

12 A. I don't know.

13 Q. But as a matter of fact, on two days -- excuse me,  
14 the next day, April the 25th, you talked again with your  
15 father.

16 A. Okay.

17 Q. Who told you that in the meantime he had talked to  
18 Mr. Kempton, who had gotten the police reports and  
19 videotapes.

20 A. Okay.

21 Q. So if Mr. Kempton didn't get them -- didn't tell  
22 your father he had them the next day, you certainly hadn't  
23 had a chance to talk about them with Kempton, had you?

24 A. I suppose no, that I hadn't.

25 Q. So the decision to cooperate in your father's mind

1 had been made pretty well before --

2 MR. CRANE: I'm going to object to when his father's  
3 mind had various thoughts.

4 MR. ROGERS: I'll rephrase it.

5 Q. Before you'd had a chance to look at the  
6 information, before you had a chance to review the  
7 videotapes, your father was urging you to plead guilty and to  
8 testify against Mr. Ferguson. Is that a fair statement?

9 A. I don't know if I would use the word "urging."  
10 I'm -- I'm not sure. He didn't really know exactly what was  
11 going on at all. I mean completely. But if I was guilty of  
12 it and what I said was true, then he -- he thought that yes,  
13 I should plead guilty and that I should testify against Ryan  
14 Ferguson.

15 Q. And that's what he was saying during that  
16 conversation on April the 24th.

17 A. That's correct.

18 Q. And he was saying: "You're going to get less time.  
19 Do it that way." Right?

20 A. Yes, that's correct, yes.

21 Q. Okay. Now let's talk a little bit about your plea  
22 agreement here. You've told us I believe on direct  
23 examination that you have agreed to a sentence of 15 years  
24 for the offense of murder in the second degree; is that  
25 correct?

1 A. That's correct.

2 Q. And murder in the second degree is a class A felony,  
3 punishable by a range -- a term of years between 10 and 30,  
4 is that correct, or life imprisonment.

5 A. I don't know. I'm not sure. I know it -- I thought  
6 it was 10 to 25, but I could be wrong.

7 Q. Okay. And you've also said that you anticipate the  
8 concurrent term of 15 years for robbery in the first degree.

9 A. That's correct.

10 Q. And do you know that the range of punishment for  
11 robbery in the first degree, it's another class A felony,  
12 not -- a term of years between 10 and 30 or life  
13 imprisonment.

14 A. Okay.

15 Q. Okay? And you also anticipate a consecutive term of  
16 10 years for armed criminal action; correct?

17 A. That's correct.

18 Q. And armed criminal action is an unclassified felony  
19 that has a range of punishment for the first offense of not  
20 less than three years; correct?

21 A. Yeah.

22 Q. And it's your understanding that, if you are  
23 sentenced in accordance with that agreement, you will have to  
24 serve, on the 15-year -- two 15-year concurrent sentences,  
25 about 12 and a half years?



1           A. 12 years and nine months.

2           Q. 12 years and nine months. And that's because second  
3 degree murder is one of the offenses for which someone must  
4 serve 85 percent of their term before they're eligible for  
5 parole.

6           A. Yes.

7           Q. It's also your understanding that, even though the  
8 consecutive term of 10 years for the armed criminal action,  
9 even though that's a consecutive sentence, and even though  
10 under the law armed criminal action is punishable by a  
11 minimum of three years without parole eligibility -- right?

12          A. Yes.

13          Q. -- that it's your understanding that in your  
14 circumstances the parole board would have the discretion to  
15 credit that three years for the 12 years and nine months you  
16 have to serve on the murder sentence; correct?

17          A. That's correct.

18          Q. So you are hoping that, as a result of your plea  
19 agreement in this case, you will be released 12 years and  
20 nine months after your arrest on March 10th.

21                 MR. CRANE: Objection, Judge. The plea agreement,  
22 nor anything that the state or this Court would do with  
23 respect to the defendant in terms of his parole --

24                 THE COURT: You mean the witness.

25                 MR. CRANE: The witness. When he -- I mean, he's

1 still a defendant.

2 THE COURT: I understand that.

3 MR. CRANE: Would -- the parole board is not  
4 contemplating an agreement. That misstates the agreement.  
5 And it's also asking for a legal conclusion from this  
6 witness, because the parole -- the board of probation and  
7 parole doesn't have anything to do with agreements on  
8 sentencing.

9 MR. ROGERS: I think I'm entitled to inquire about  
10 the witness's hope and expectations as a result of the plea  
11 agreement, Your Honor.

12 THE COURT: Well, you may do that, but you may not  
13 ask it in the context of that's what's going to happen as a  
14 result of the plea agreement, because I don't believe  
15 probation and parole is a party to that agreement.

16 MR. ROGERS: The parole board is not, Your Honor,  
17 but I think -- my question was: That his hope is: That, as  
18 a result of the sentence contemplated by the agreement, he  
19 would be released 12 years and nine months --

20 A. As soon as possible, that's my hope, yes.

21 Q. And --

22 A. Is that my expectation? I don't know what to  
23 expect.

24 Q. You don't know what to expect.

25 A. No.

1 Q. But that's your hope.

2 A. That's my hope.

3 Q. And you've been advised by your lawyer, prior to  
4 your guilty plea and prior to your signing the plea  
5 agreement, that that's the best you can hope for.

6 A. That's what he told me, yes.

7 Q. 12 years and nine months from the date of your  
8 arrest, March 10th.

9 A. That's correct.

10 Q. Now, you indicated I believe on direct examination  
11 that you are currently on some sort of psychotropic  
12 medication; is that correct?

13 A. Yes.

14 Q. And what are you currently taking?

15 A. Prozac.

16 Q. And is that for your obsessive-compulsive symptoms?

17 A. Yes.

18 Q. And how long have you been taking that?

19 A. Since May.

20 Q. Since May of --

21 A. Of this year.

22 Q. -- this year? And before that you were taking  
23 another psychotropic drug called Lexapro?

24 A. That's correct.

25 Q. How much Prozac are you taking?

1           A. 60 milligrams.

2           Q. 60 milligrams a day?

3           A. Yes.

4           Q. And how much Lexapro were you taking?

5           A. I don't know. It was the smallest dose available.

6           Q. In that connection, have you been seeing a

7   psychiatrist at the jail?

8           A. I've had to see a psych nurse in order to keep my

9   medication. I've got to see her every five weeks, something

10   like that. I talk to her briefly.

11          Q. And the last time you saw that psych nurse was

12   October 12th?

13          A. Of this month?

14          Q. Yes.

15          A. Yeah, I believe that's right.

16          Q. Last week.

17          A. Yeah. Yeah, I believe that's right.

18          Q. And last week is the first time you had ever told

19   that psych nurse anything about wanting help dealing with the

20   memory problems. Correct?

21          A. I don't believe I asked her for help to deal with my

22   memory problem.

23          Q. Did you tell the psych nurse that you were still

24   working on how you could not remember situations and then

25   have things trigger recollection?

1 A. Not in those words, no.

2 Q. Have you had a chance to look at your progress  
3 notes?

4 A. No.

5 Q. Would you like a chance to look at your progress  
6 notes?

7 A. Okay.

8 Q. I'm showing you October 12th, 2005.

9 (Witness reading document.)

10 A. I -- what I was talking to her about was how I was  
11 going to explain that to people. Because it's not something  
12 that's easy to explain. It's not an every day occurrence.

13 Q. Okay.

14 A. It wasn't a -- it wasn't about --

15 (Discussion off the record between counsel.)

16 Q. So you were asking the psychiatric nurse, who you  
17 see every five weeks to monitor --

18 A. Well, this was a new person. I'd seen one lady,  
19 named Pascha. And I saw her every time. And then this -- I  
20 don't remember her last name. Her first name was Sara. That  
21 was the first time I had ever seen her and the first time I  
22 ever met with her.

23 Q. But you're asking her for advice about how to  
24 explain to people, this jury and this Court, your changes in  
25 memory; correct?

1           A. Well, I was -- I was -- I don't know if I was doing  
2 that. I was trying to see how normal it was. You know. I  
3 was asking her questions about repressed memory and questions  
4 about post-traumatic stress disorder and things like that.  
5 And I asked her how normal it was. I don't -- I don't  
6 believe that I ever asked her to help me explain. You know,  
7 I was having -- I was having some problems articulating what  
8 was going on in my mind and how my memories have progressed  
9 over time. And -- and, you know, I was trying to come to a  
10 conclusion that -- about why that took place and what was --  
11 you know, what has happened here, you know. I mean, I was --  
12 I wanted an answer, just like everyone else.

13           Q. So is it fair to say that some of the things that  
14 you have told us yesterday and today about how you believe  
15 your memory works have been aided by this consultation about  
16 how to express things?

17           A. No.

18           Q. Okay. Is it fair to say that you saw the other  
19 psychiatric nurse, Pascha, last on November -- excuse me,  
20 September 18th of this year?

21           A. That might be correct. I'm not sure of the date.

22           Q. And is it fair to say that at that time your memory  
23 was intact?

24           A. I don't -- I don't know if I said that or not.

25                   (Mr. Rogers showing a document to the witness.)

1           A. That's what she -- yeah, that's what she put down.

2 I mean, these are two different people also.

3           Q. Right.

4           A. Yeah.

5           Q. And on July --

6           A. It wasn't I was having memory problems. I was  
7 trying to explain the prior problems I'd had with my memory.

8           Q. But at each time before that, when you would see the  
9 psychiatric nurse, your memory was always reported as intact,  
10 wasn't it?

11          A. I don't know how she recorded it. That was the  
12 first time I had even seen a box with "memory" next to it. I  
13 didn't -- I mean, I didn't -- I know -- I knew that she  
14 checked things off at the end real quick and then I had to  
15 sign it. Things about -- all sorts of stuff.

16          Q. Right.

17          A. But I mean, I don't even think that -- I mean, I had  
18 mentioned to her before, Pascha, that I had memory problems,  
19 and that there were some things I couldn't remember for a  
20 long time, and some things I still can't remember. And --  
21 but I never believed -- she -- we never really got talking to  
22 my case -- about my case a whole lot.

23          Q. Well, in terms of your psychiatric condition and  
24 your memory, isn't it fair to say that on July 21st, 2004,  
25 your memory was intact?

1           A. That's what she says. I don't know if my memory was  
2 intact or not. That's what she put down there. That's her  
3 opinion. And I don't believe she ever asked me about my  
4 memory.

5           Q. How about on September 10th, 2004?

6           A. Is that what it says there? "Intact"?

7           Q. Uh-huh.

8           A. Well, that's what she put there. I don't know if  
9 that's true or not.

10          Q. And is that your signature at the bottom?

11          A. That's my signature.

12          Q. Okay.

13          A. Did I read that before I signed it? No, I didn't  
14 read it. I just signed it because I had been signing it the  
15 entire time.

16          Q. And on October 29, 2004, "intact"?

17          A. That's what it says, yes.

18          Q. Your signature?

19          A. Yeah.

20          Q. And on December 31st, 2004, "intact."

21          A. That's what it says, yeah.

22          Q. Your signature?

23          A. Yeah, that's -- let me see that.

24                    That's not my signature.

25                    (Mr. Rogers showing a document to the witness.)



1           A. That -- those aren't my signatures.  
2           Let me see that, man.  
3           Let me see this.  
4           (Witness looking at documents.)  
5           A. These are the same copies of the same page. That's  
6 not my signature either. Let me see. Yeah. These aren't --  
7           Q. Those are not your signature.  
8           A. That's correct.  
9           Q. None of them are.  
10          A. Oh, no. Actually this one right here is my  
11 signature.  
12          Q. Okay. But that's not one I've shown you before.  
13 That's a different form.  
14          A. That's correct.  
15          Q. Okay. So when you told us that was your signature  
16 before on any of those pages, that was not.  
17          A. I thought it was, yeah.  
18          Q. But it's not.  
19          A. No, it's not.  
20          Q. Okay. But you're not disputing that --  
21          A. I don't know what she marked.  
22          Q. -- the box "intact" is checked there on your  
23 records.  
24          A. I don't know if that's mine, because I didn't -- my  
25 name's up there, but I didn't sign that.

1 Q. Okay. On March 21st, 2005, your name's up there  
2 again. Correct?

3 A. Yeah.

4 Q. "Intact"?

5 A. That's what it says. And I didn't sign that either.

6 Q. Didn't sign this.

7 The next day, March 22nd, 2005, "memory intact"?

8 A. That's what it says. Let me see that one.

9 No --

10 Q. Not your signature?

11 A. No, that's not mine either.

12 Q. But your name's on the top.

13 A. My name is on top, yeah. That's right.

14 Q. May 12th, 2005, "memory intact"?

15 A. That's -- yeah. I didn't write that, though. She  
16 put that there.

17 Q. June 14th, 2005, "memory intact."

18 A. That's what's marked on that page, yeah.

19 Q. June 28, 2005, "memory intact."

20 A. That's what it says.

21 Q. July 29, 2005, "memory intact."

22 A. Yep. It's marked right there.

23 Q. And we've already talked --

24 MR. CRANE: Judge, I -- you know, we're willing to  
25 agree that everywhere -- I mean -- and I don't know, maybe

1 there's one I missed, that his memory's intact. We're  
2 willing to agree his memory's intact now. We're willing to  
3 agree his memory is intact then. I don't know whether he  
4 signed the things, but --

5 A. No, I didn't sign any of those.

6 MR. ROGERS: Is there an objection pending?

7 MR. CRANE: No. I'm just trying to move things  
8 along. If you're trying to establish that his memory's  
9 intact on those pieces of paper, I'm all for you.

10 MR. ROGERS: I don't think it's your turn to make  
11 speeches.

12 MR. CRANE: I'm not making a -- I'm just stipulating  
13 that the jail records indicate his memory was intact, unless  
14 there's one I missed.

15 MR. ROGERS: Would you stipulate that the jail  
16 records indicate he made no complaints about his memory until  
17 the week before he was supposed to testify here on behalf of  
18 the state? In which case he --

19 MR. CRANE: Actually there some notes where he talks  
20 about not wanting --

21 MR. ROGERS: Excuse me.

22 MR. CRANE: Oh, you don't want me to answer that  
23 question?

24 MR. ROGERS: If you're not willing to make that  
25 stipulation, then let's -- allow me to proceed with my

1 cross-examination of your witness.

2 MR. CRANE: Okay.

3 A. I didn't state --

4 Q. Excuse me. There's not a question pending.

5 Isn't it true, Mr. Erickson, that you did not  
6 complain to the psychiatric nurse that you've seen  
7 periodically over the last year and a half about any problems  
8 with your memory until last week, when you sought advice  
9 about how to explain your position about having not  
10 remembered things at one point and claiming to remember them  
11 now? Isn't that true?

12 A. No. I wasn't discussing problems with my memory  
13 now. I was discussing problems with my memory in the past.  
14 And I was discussing how I was going to go about explaining  
15 that. And I was just -- I asked her if she ever seen  
16 anything, any other instances in which that occurred. I  
17 didn't tell her that I had problems remembering what happened  
18 now. I didn't say that I didn't remember hitting  
19 Mr. Heitholt in the head with a tire tool and him strangling  
20 him with a belt, if that's what you're getting at, which is I  
21 think what you're getting at.

22 Q. Are you done?

23 A. That's -- yeah, that's all I had to say.

24 Q. My question is: Isn't it true --

25 A. No, it's not true.

1 Q. -- that last week is the first time you told anybody  
2 there about anything having to do with your memory?

3 A. No, that's not true.

4 Q. Okay. Isn't it true that the records as far back as  
5 July of 2004 reflect that you reported no problems with your  
6 memory and your memory was intact? Consistently until last  
7 week, when it has the notation that you previously explained  
8 to us.

9 A. No. No. I've mentioned things about my memory  
10 plenty of times. If she didn't mark it down, she didn't mark  
11 it down. We really didn't get into that much detail about my  
12 case. And plus, I was seeing one person the entire time, and  
13 then I -- the last person I saw was a completely different  
14 person, who I had never met with before.

15 Q. My question is: Isn't it true --

16 A. No.

17 Q. -- that the records that we have --

18 A. Yeah, the records, that's correct.

19 Q. -- reflect --

20 A. Yeah.

21 Q. -- that you never had any problems with your memory  
22 until you had that one notation from last week?

23 A. Yeah, I'll agree with that, but I -- I don't think  
24 that that notation necessarily stated that I had a problem  
25 with my memory.

1 Q. But -- and you've previously explained that  
2 notation.

3 A. Yes, I did.

4 Q. Okay. And you agree that you initially explained  
5 that notation as saying you wanted advice about how to  
6 communicate to people your beliefs that you had done  
7 something, forgotten it, and then somehow recovered those  
8 memories.

9 MR. CRANE: Objection. That misstates -- there is  
10 absolutely no foundation for that question. The question's  
11 been asked and answered in various forms, but the basis for  
12 that question, if you're referring to October 12, '05, is not  
13 here.

14 THE COURT: You want to approach the bench? And  
15 bring the record with you, please.

16 - - -

17 Counsel approached the bench and the following  
18 proceedings were held:

19 THE COURT: Let me look at the record.

20 MR. CRANE: If that's what he's referring to.

21 MR. ROGERS: I'm referring --

22 THE COURT: Let me just look at the record.

23 MR. ROGERS: Okay.

24 (Court looking at document.)

25 MR. CRANE: I highlighted that at one point because

1 I thought that's what he was referring to.

2 THE COURT: Okay. Your objection is?

3 MR. CRANE: The question that just got asked has no  
4 basis in that document. If he is asking, "Isn't it true  
5 that, when you talked to the nurses on" --

6 MR. ROGERS: That's not the question.

7 MR. CRANE: -- whatever that -- okay. What was the  
8 question?

9 MR. ROGERS: The question that I asked him was  
10 whether he had explained that notation earlier today by  
11 claiming that that's what he was doing; asking for advice on  
12 how to explain to people his --

13 MR. CRANE: Well, that doesn't make -- I don't know.  
14 I think that is a question that's virtually impossible for  
15 him to answer. You're asking him if what he said earlier  
16 today about this document -- I mean, I'll object to the form  
17 of the question. I don't know how the witness can answer  
18 that. Can it be reformed? I mean, that's just -- that is --  
19 well, that's my objection.

20 THE COURT: The objection is sustained. Please  
21 rephrase your question.

22 MR. ROGERS: Okay.

23 - - -

24 The following proceedings were held in open court:

25 Q. Remember the note from last week, on the psychiatric

1 -- jail psychiatric records that I showed you when we first  
2 started talking about this subject?

3 A. Let me see it again. If you don't mind. Just  
4 because I don't want any more confusion.

5 Q. Okay. This is, just to show you what we're talking  
6 about, October 12, 2005. Your name up there. No signature  
7 at the bottom, except the nurse's.

8 (Witness reading document.)

9 A. Yeah, that says that here.

10 Q. Okay.

11 A. Yeah, that's what that says.

12 Q. Remember when I showed you that note, it seems like  
13 forever ago, but probably about 20 minutes ago? For the  
14 first time?

15 A. Yeah.

16 Q. And isn't it true that you told us then that what  
17 you told the nurse was that you were looking for a way to  
18 explain to people what you claimed had happened with regard  
19 to forgetting and then remembering --

20 A. Yeah. I was having problems articulating what was  
21 going on in my mind. Yeah. That's true.

22 Q. And so you were asking that nurse --

23 A. No. I --

24 Q. -- for help in articulating.

25 A. I didn't ask her help for anything. I told her -- I



1 explained to her my memory problems. And I explained to her  
2 what was going on in my mind. And then she -- she said, yes,  
3 you know, that's --

4 Q. I'm not asking you what she said.

5 A. Well, no, I didn't ask her for advice about how to  
6 explain it, no.

7 Q. Okay. And so if you told us that earlier, that  
8 would have been a mistake.

9 A. If I told you that earlier.

10 Q. Now, earlier we talked about your conversation with  
11 Mr. Nichols about the cleaning lady; right?

12 A. Yeah.

13 Q. And where Nichols told you that you were making  
14 accurate presumptions that you would only know if you were  
15 there? Do you remember that?

16 A. Yeah.

17 Q. And you told him, "Like what? The cleaning lady?"  
18 He said, "That's one." And you told him, "That was in the  
19 newspaper." Correct?

20 A. I told him that -- well, I -- yeah, I said that, but  
21 what I meant by that is that I read the newspaper that the  
22 cleaning lady or janitor got help.

23 Q. Okay. And he goes on to say, "Well, no. About what  
24 was specifically said to that lady." And you said, "She went  
25 to get help. I mean." Right? Do you remember that from the

1 videotape?

2 A. Could you re -- could you rephrase that or reask  
3 that -- ask that question again? Because I'm confused. I'm  
4 not sure.

5 Q. Let me read to you the entire -- or just part of the  
6 exchange. Let me put it that way.

7 A. Okay.

8 Q. And you know what we're talking about on the  
9 videotape?

10 A. Yeah, I know what you're talking about.

11 Q. "Well, you're making accurate presumptions that,  
12 like I said, you would only know if you were there." "Like  
13 what? The lady, the cleaning lady?" "That's one." "That  
14 was in the newspaper." "Well, no. About what was  
15 specifically said to that lady." "She went to get help. I  
16 mean." Right? Is that what we're talking about? Do you  
17 remember that, on the videotape?

18 A. Yeah. Did I say that? I -- if that's what was on  
19 the videotape, then that's what I said, that's correct.

20 Q. Okay. Now, what you're now telling us is that the  
21 cleaning lady had been mentioned in the newspaper. That you  
22 remembered that from reading the newspaper in November of  
23 2003. Is that correct?

24 A. I don't remember when I read that.

25 Q. So you don't remember reading in the Columbia

1 Tribune --

2 A. No, I remember reading it at some point; I just  
3 don't know when I read it.

4 Q. Okay. And "The cleaning lady witnessed two white  
5 college-age men duck behind Heitholt's car"?

6 A. Yes.

7 Q. You remember reading that.

8 A. Yeah. I think.

9 Q. Okay.

10 A. I think.

11 Q. Now let's put this back into context. You have  
12 already talked to Short, in the statement that was not  
13 recorded; correct?

14 A. Uh-huh.

15 Q. You've talked to Short in the videotaped statement;  
16 right?

17 A. Uh-huh.

18 THE COURT: Is that yes or no?

19 THE WITNESS: Yes. I'm sorry.

20 Q. You have talked to Nichols and the other two  
21 detectives during the drive-around. Right?

22 A. Yes.

23 Q. And now you're talking to Nichols on videotape.  
24 Correct?

25 A. Yes.

1 Q. Isn't it true that when you were talking to Short,  
2 in the nonvideotaped part, that you told Short, after you saw  
3 the cleaning lady, you sat down beside the vehicle and became  
4 physically ill.

5 A. I'm not sure if I said that then or not.

6 Q. Okay. But isn't it true that Short, later in that  
7 conversation, introduced the topic of saying something to the  
8 cleaning lady?

9 A. No. I said that in a prior conversation.

10 Q. We're talking about your first conversation with  
11 Short.

12 A. My first conversation with Short, I told him that I  
13 told the cleaning lady, "Go get help." He didn't introduce  
14 that to me whatsoever.

15 Q. Okay. So if Short says that he asked you if you had  
16 said something to the cleaning lady before or after Ferguson  
17 had strangled the victim, and you said that you did not know,  
18 you thought you may have said something to the lady at that  
19 time, but was not sure, is that inaccurate?

20 A. Did I say that?

21 Q. Did you say to Short --

22 A. I believe --

23 MR. CRANE: Judge, if I may object. At what point  
24 is -- is this the very first interview with Short?

25 MR. ROGERS: Yes.

1 MR. CRANE: Okay.

2 MR. ROGERS: Very first interview. The one we don't  
3 have the videotape of.

4 MR. CRANE: Okay. And also the one that you're  
5 using that again as a kind of a transcript?

6 MR. ROGERS: No. I'm going to ask him whether or  
7 not he said what it says he says. And then if he denies it,  
8 we'll have to call Mr. Short to prove it up.

9 MR. CRANE: Okay. Okay.

10 MR. ROGERS: Or you'll call Mr. Short and we'll  
11 prove it up on cross.

12 MR. CRANE: Okay.

13 MR. ROGERS: Something.

14 Q. Okay. Do you recall saying in response to  
15 Mr. Short's question of you during that interview, about  
16 whether you had said something to the cleaning lady, that you  
17 did not know, you thought you said something to her, but were  
18 not sure.

19 A. I don't know if I said that or not. I may have said  
20 that.

21 Q. You may have said that. And do you recall Short  
22 telling you that the cleaning lady told the police that  
23 someone asked for help?

24 A. That wasn't until after I told Short that I had told  
25 the cleaning lady to go get help. I said that before anyone

1 said anything to me about a cleaning lady going and getting  
2 help and anyone saying anything about anyone telling a  
3 cleaning lady to go get help.

4 Q. So you're saying that if Short were to say that he  
5 told that to you before you had said that you were sure you  
6 had said anything to the cleaning lady, that would be  
7 inaccurate.

8 A. That would be inaccurate.

9 Q. So you're denying that Short told you --

10 A. He may have said something before that, but I said  
11 something before he said something to me. Do you follow me?

12 Q. And so if Officer Short were to testify that after  
13 he told you the cleaning lady told the police that someone  
14 asked for help, you said that was you, that would be  
15 inaccurate too.

16 A. No. No. That wouldn't be inaccurate.

17 Q. Okay. So -- we're talking about the one that's not  
18 on the videotape.

19 A. Yeah. But I'm saying that wasn't the first time  
20 that was said, which is what you're trying to portray.

21 Q. Okay. And so -- the question is: Before Detective  
22 Short told you anything that the cleaning lady had told the  
23 police, are you saying that you told Short for sure,  
24 definitely, "I told the cleaning lady, 'Go get help.'"

25 A. Yes.

1 Q. For sure.

2 A. For sure. Definitely.

3 Q. And that -- if you said that you did not know, you  
4 thought you may have said something to the cleaning lady at  
5 the time, but were not sure, that would be inaccurate, as to  
6 what he told you.

7 A. I may have said that afterwards. I'm not sure --  
8 I'm not denying it. I don't know if I said that or not.

9 Q. Did you tell us yesterday that, when you were  
10 talking to your friends about this before your arrest, that  
11 you were seeking their advice about things?

12 A. Yes.

13 Q. And one of the things that you were considering  
14 doing was submitting your DNA to the police so that they  
15 could test it against whatever DNA standards they had?

16 A. Yes.

17 Q. So that they could confirm or disconfirm your  
18 feelings that you might have been involved? Is that fair?

19 A. They could have confirmed it. I don't think they  
20 would -- whether or not the tests came back positive or  
21 negative -- if they would have come back negative -- let me  
22 put it this way: If they would have come back negative, it  
23 wouldn't have disconfirmed my memory. It wouldn't, you know,  
24 rid me of the memories that I had of that night.

25 Q. But this was a time if you didn't know if these were

1 memories or dreams.

2 A. No. I think I knew that they were memories. I was  
3 hoping they were dreams.

4 Q. Well, you were telling your friends you didn't know  
5 if they were memories or dreams.

6 A. I thought that they were -- I told them I thought  
7 that they were memories. And that I was hoping they were  
8 dreams, but I wasn't sure what to do.

9 Q. Well, let me clarify that a little bit. Isn't it  
10 true that the only time that you talked to your friends about  
11 these memories or dreams was when you yourself had been  
12 drinking.

13 A. Yes.

14 Q. And, in fact, you had been drinking and taking  
15 cocaine at the New Year's Eve party where you confronted  
16 Mr. Erickson.

17 A. Ferguson.

18 Q. Ferguson. I'm sorry.

19 A. Yeah.

20 Q. Thank you. And when you talked with Mr. Gilpin, you  
21 were drinking.

22 A. Yes.

23 Q. In fact, you were so intoxicated at that point that  
24 you had Mr. Gilpin drive your car.

25 A. Yeah, I had him driving my car. I didn't want to



1 drive.

2 Q. Because you were too drunk to drive.

3 A. I thought I -- I don't know if I could have driven  
4 or not. I wasn't going to chance it.

5 Q. And you had Mr. Gilpin drive you, even though he had  
6 been drinking as well.

7 A. That's correct.

8 Q. Okay. And when you talked to Art Figueroa, you had  
9 been drinking.

10 A. Yes.

11 Q. And you told Art Figueroa that you were not  
12 consciously certain that those were accurate memories and  
13 that they could be something you dreamed about. Or something  
14 that you dreamed up. Didn't you?

15 A. I don't know if I said it was something I dreamed  
16 up. I think I may have said that I wasn't sure whether they  
17 were a dream or memories.

18 Q. Okay. And do you recall giving a deposition in this  
19 case back in June, June 30th, the last day of June of this  
20 year?

21 A. Yeah. That's correct.

22 Q. And that was --

23 A. I think it was June 30th.

24 Q. -- here in this courthouse, downstairs in  
25 Mr. Crane's office.

1 A. Yeah.

2 Q. And I was there.

3 A. Yes.

4 Q. Mr. Crane was there.

5 A. Yes.

6 Q. Mr. Weis was there.

7 A. Mr. -- Mr. who?

8 Q. Mr. Weis. The other bald guy.

9 A. Oh. Okay. Yeah. And --

10 Q. Mr. Knight.

11 A. Huh?

12 Q. Mr. Knight there for part of it?

13 A. No. I can't remember -- Elizabeth --

14 Q. The assistant prosecuting attorney?

15 MR. CRANE: No. I think he's talking about part of

16 your defense team.

17 Q. Miss Benson.

18 A. Kathryn Benson, yes.

19 Q. She was there for part of it.

20 A. Yeah.

21 Q. And speaking of your conversation with Mr. Figueroa,

22 do you recall the following -- let me first ask you: In a

23 deposition, you're sworn under oath to tell the truth, aren't

24 you?

25 A. Yeah, that's correct.

1 Q. And I, when I started asking you questions, made  
2 sure that you would let me know if you didn't understand the  
3 question? Correct?

4 A. That's correct.

5 Q. And do you recall the following questions being  
6 asked and the following answers being given concerning your  
7 conversation --

8 MR. CRANE: Where did you say you were?

9 MR. ROGERS: Page 136, beginning at line 23.

10 MR. CRANE: Thank you.

11 THE COURT: If you'll wait a minute, I'll let the  
12 witness take a look at the deposition. 136, line --

13 MR. ROGERS: Beginning at line 23.

14 (The Court handing a copy of the deposition to the  
15 witness.)

16 Q. Ready?

17 A. Yeah. Go ahead.

18 Q. "QUESTION: Okay. And did you tell him that you  
19 were not consciously certain that these were accurate  
20 memories? And that they could be something you dreamed about  
21 or something that you dreamed up?" And your answer was  
22 "Yes."

23 A. Okay.

24 Q. Is that correct?

25 A. Yeah, that's right.

1 Q. And then I went on to ask you: "Okay. And that was  
2 after your conversation with Nick." Referring to Nick  
3 Gilpin. Correct?

4 A. Yeah, that's correct.

5 Q. And your answer was: "Yes." And question: "Was  
6 that an accurate description of your conscious mind at that  
7 time?" Again you answered: "Yes." Is that correct?

8 A. That's correct.

9 Q. Okay. Thank you.

10 THE COURT: You can be seated.

11 Q. You may need that in a minute.

12 Now, back in June of this year, what type of  
13 footwear did you believe that you had worn to By George's on  
14 Halloween night, 2001?

15 A. I couldn't -- I -- I'm not sure. I believe I said  
16 boots or tennis shoes.

17 Q. Okay. And when we say "boots," what did you mean by  
18 boots?

19 A. Timberland boots or American Eagle boots.

20 Q. And what kind of boots are American Eagle boots?

21 A. There's a brand of clothes, it's American Eagle, and  
22 they're -- they're boots. They're cut off at the ankle.  
23 They're just --

24 Q. Are they western boots, with pointy toes?

25 A. No. They're just, you know, like the boots that

1 preppy kids wear.

2 Q. All right. And the soles of those boots are made  
3 out of what?

4 A. I believe rubber.

5 Q. And do they have a tread or do they have an  
6 insignia? What do they have on the bottom of the sole?

7 A. I believe they had an -- they had an "AE" on the  
8 sole. An "A" and an "E" for American Eagle.

9 Q. Okay.

10 A. Yes.

11 Q. And you also had -- you also mentioned Timberland  
12 boots?

13 A. Yeah.

14 Q. What kind of boots are those?

15 A. They're kind of -- they've got -- they're like snow  
16 boots, kind of. I mean -- you know, like you see the guys  
17 with the baggy pants and the big Timberland boots in  
18 magazines and -- the boots that go up to, like, above the  
19 ankle, to about -- to about the calf.

20 Q. Okay.

21 A. They're tan. I can't remember the tread patterns on  
22 those, though.

23 Q. And then you said you might have worn tennis shoes?

24 A. Yeah. It's possible.

25 Q. And do you recall what brands of tennis shoes you

1 owned in October of 2001?

2 A. I believe I had --

3 MR. CRANE: You know what, Judge? This got asked  
4 and answered. I realize it was a long time ago, it was  
5 yesterday, but he asked him what kind of shoes he had back in  
6 2001 yesterday.

7 Remember, this is when you asked him what size shoe  
8 and all that?

9 MR. ROGERS: I remember asking him that, but I...

10 Q. Let me ask you this. The only kinds of tennis shoes  
11 that you owned in October of 2001 were Nike, K-Swiss, and New  
12 Balance; is that correct?

13 A. Yes.

14 Q. Okay. Now, did you tell us yesterday that you  
15 didn't see anybody you knew at By George's?

16 A. No, I didn't say that.

17 Q. Did you see anybody you knew at By George's?

18 A. Yes, I did.

19 Q. Okay. Who did you see that you knew?

20 A. I saw Melissa Griggs. I saw Daniel Igleheart. I  
21 saw Julie Dunn. I saw Kristen Blankenship. I saw Matt Gay.  
22 And I saw Mills Menser.

23 Q. You saw who?

24 A. Mills Menser.

25 Q. Okay. Now, who is Danny Igleheart?

1           A. He's my friend David Igleheart's brother. And  
2 he's -- he's deceased.

3           Q. Did you talk to him?

4           A. Yes, I did. I asked him for a ride home.

5           Q. And did he give you a ride home?

6           A. No, he didn't.

7           Q. Why not?

8           A. Because he was there with friends.

9           Q. Pardon?

10          A. He was there with friends, enjoying himself.

11          Q. He didn't want to leave?

12          A. Yeah. I wanted to go home.

13          Q. Do you remember giving your deposition, again on  
14 June 30th?

15          A. Yeah, I remember doing that.

16          Q. Did you at any time during that deposition mention  
17 seeing David Igleheart?

18          A. Daniel Igleheart?

19          Q. Daniel. I'm sorry.

20          A. I don't know if I did or not.

21          Q. Okay. When -- you say Mr. Igleheart's deceased?

22          A. That's correct.

23          Q. When did you learn that?

24          A. He died about two years ago.

25          Q. Okay. Before your arrest.

1           A. Yes. Actually, it's probably about three years ago  
2 now.

3           Q. Did you tell us yesterday that you and Mr. Ferguson  
4 would separately leave By George's to go smoke cigarettes?

5           A. I believe I stepped out one time to smoke a  
6 cigarette. I don't know whether Ferguson did or not.

7           Q. Okay. So cigarette smoking was not allowed in the  
8 bar.

9           A. I don't remember if it is -- if it was or not. I  
10 just remember I wanted to step outside, because it was loud  
11 and noisy and there were a lot of people in the bar. It was  
12 nice to get some fresh air. Well, despite the cigarette I  
13 guess.

14          Q. So you are now saying -- yesterday you told us that  
15 you and he both went outside to smoke cigarettes. Now you're  
16 saying that you think you may have gone outside once to get  
17 away from the noise. Is that fair?

18          A. That's correct. I don't know if he did or not. And  
19 I don't know if I said that he did or not.

20          Q. Now, is it your testimony today that after you got  
21 to the alley behind the Tribune building --

22                 MR. CRANE: Could you make a record of what he's  
23 looking at there, please?

24          Q. Showing -- indicating the building on State's  
25 Exhibit 9. -- that you saw Mr. Heitholt already out in the



1 parking lot?

2 A. No. I believe we saw him in the alley, and he --  
3 when we -- when we were across Providence, and we saw him  
4 walking out of the building.

5 Q. Okay. And that you then crossed Providence and went  
6 up that alley yourself after he went into the parking lot?

7 A. Well, Ryan was with me. Yes, that's -- yes.

8 Q. Okay. And that, after that, you saw another man  
9 come out of the building.

10 A. I don't know if we saw him or we heard him.

11 Q. Did another man come out of the building after you  
12 had already seen Heitholt --

13 A. Yeah. Yes.

14 Q. -- cross the alley?

15 A. Yeah.

16 Q. And that's for sure.

17 A. That's for sure.

18 Q. And where did that man go?

19 A. I believe he went to his car. I'm not sure exactly  
20 where he went, but I believe he went to his car.

21 Q. Was his car in the same parking lot as Heitholt's  
22 car?

23 A. Yeah. That's correct.

24 Q. And did you see him go to his car?

25 A. No.

1 Q. Did you see him cross the alley?

2 A. Yes.

3 Q. Did you see him walk out of your sight?

4 A. Yes.

5 Q. Would you describe that person.

6 A. He was -- he was white and he was just regular, you

7 know, middle-aged. Just -- I think he just had regular dark

8 hair, but I can't -- I can't be certain. Honestly, I don't

9 really remember that well.

10 Q. Was he large? small? middle-sized?

11 A. I believe he was middle-sized.

12 Q. And was he thin? fat? stocky? muscular?

13 A. I believe he was just regular. He was just medium

14 build.

15 Q. Okay. And you saw him -- did you then see a car

16 leave the parking lot?

17 A. Yes, I did.

18 Q. And what kind of car was that?

19 A. It was a red car.

20 Q. A red car?

21 A. Yeah.

22 Q. You're sure about that.

23 A. I believe so, yes.

24 Q. Now, you told us yesterday that, when you were

25 leaving By George's, Ryan made some phone calls on the way to

1 the car? Is that correct?

2 A. That's correct.

3 Q. And --

4 A. And while we were sitting in the car.

5 Q. And later sitting in the car.

6 A. Yes.

7 Q. And this was not a whole long time, was it?

8 A. It was probably somewhere in the neighborhood of 10,  
9 15 minutes.

10 Q. Okay.

11 A. We were kind of hesitant to leave the bar. He  
12 didn't want to go home. But we couldn't buy any more drinks.  
13 So there wasn't really any point in staying at the bar. He  
14 was trying to find something to do. So we kind of loitered  
15 around the parking lot and started walking to the car.

16 Q. And he's on the phone at this time.

17 A. Yeah.

18 Q. Did you tell us yesterday that, already inside the  
19 bar, he had decided to rob somebody?

20 A. I never said that.

21 Q. You never said that yesterday.

22 A. I never said that.

23 Q. Okay. Did you ever tell the police that?

24 A. No, I don't believe I did.

25 Q. And did you tell us yesterday that when you and Ryan

1 were leaving the car, that he -- that you thought you were  
2 going to do something like a pickpocket?

3 A. That's correct. That was what I had imagined. I --

4 Q. That's what you had imagined. That's what you  
5 thought.

6 A. That's correct.

7 Q. And you told us that Ryan got out this tire tool,  
8 that you drew for Mr. Nichols, just in case something  
9 happened.

10 A. Yes.

11 Q. And gave it to you.

12 A. Yes.

13 Q. Now, when you got, you say, behind the Tribune  
14 building, Ryan never told you to hit Mr. Heitholt, did he?

15 A. Yes, he did.

16 Q. He told you to hit Mr. Heitholt?

17 A. He said, "We need to get this over with. Hit him.  
18 We need to get this over with."

19 Q. Excuse me. Did you hear the question?

20 A. Yeah. And I answered yes.

21 Q. Did he tell you to hit Mr. Heitholt?

22 A. Yes.

23 Q. Okay. That's your answer.

24 A. That's my answer.

25 Q. Isn't it true that you don't even claim that the

1 words "hit him" came out of Ryan Ferguson's mouth?

2 A. No.

3 Q. That's not true. You do claim the words "hit him"  
4 came out of Ryan's mouth.

5 A. That's correct.

6 Q. And so you're not saying he said, "Get this over  
7 with," and you thought he meant hit him?

8 A. No. He said, "Just hit him. We need to get this  
9 over with."

10 Q. He said, "Just hit him."

11 A. Yeah. Something to that...

12 Q. Do you recall, once again during your deposition,  
13 starting, Your Honor, on page 198 at line 1.

14 THE COURT: Can you --

15 (Court turning to page 198 for the witness.)

16 Q. Do you recall the following questions being asked  
17 and you giving the following answers:

18 "QUESTION: And Mr. Ferguson had never said  
19 explicitly, 'Go hit him.'"

20 Your answer: "Yes, he did. He said, 'Go' -- well,  
21 no. He said, 'We need -- we need to get this over with.'  
22 And I was assuming that's what Mr. Ferguson meant by saying  
23 that.

24 "QUESTION: You were assuming that's what  
25 Mr. Ferguson meant?

1 "ANSWER: Yes."

2 Do you recall giving those answers to those  
3 questions under oath at the deposition?

4 A. Yeah, that's correct.

5 Q. Okay. So, as you sit here today, what do you claim  
6 to remember Mr. Ferguson saying?

7 A. He told me to hit him. He said, "We just -- just go  
8 hit him. We need to get this over with."

9 Q. You claim to remember today that Mr. Ferguson said,  
10 "Just go hit him."

11 A. That's correct.

12 Q. Even though you testified under oath back at the end  
13 of June of this year that he didn't say that.

14 A. That's correct.

15 Q. Now, did you tell us yesterday, about the time you  
16 were doing the reenactment with Mr. Crane, that you came  
17 around Ryan's right side, after having sat on the curb or the  
18 parking lot block or whatever it was, and that Ryan had his  
19 knee in the middle of Mr. Heitholt's back?

20 A. I can't remember if it was his knee. I want to say  
21 it was his foot, though.

22 Q. Did you tell us yesterday it was the knee?

23 A. I believe I said it was the foot.

24 Q. So you deny telling us yesterday it was the knee.

25 A. I can't remember what I said, but I believe I said

1 his foot.

2 Q. Now referring again to Dallas Mallory, is it your  
3 testimony today that when you saw Mr. Mallory, he was stopped  
4 at the stoplight at the corner of Locust and Providence?

5 A. Let me take a look at that.

6 Q. By the Phillips station.

7 MR. CRANE: Are you talking about the intersection  
8 or a red light or what are you -- what's your -- how are you  
9 framing that question?

10 MR. ROGERS: The question is: Stopped at the  
11 stoplight.

12 MR. CRANE: Stopped at a --

13 A. I don't know what color the light was. It was an  
14 intersection. And he -- no. When he was -- he was pulling  
15 up to the intersection when I first saw him. He was stopped  
16 when I said something to him.

17 Q. And there is a traffic control signal there.

18 A. Sorry?

19 Q. There is a traffic control signal there.

20 A. Yes.

21 Q. Okay. Now, do you recall your deposition, once  
22 again, starting at page 227?

23 Your Honor -- let me do that for you.

24 Beginning at line 19, page 227. Following question:

25 "Okay. Let me go back a minute. You say he stopped

1 at the stoplight southbound on Providence.

2 "ANSWER: Yeah.

3 "QUESTION: So the light is then red; is that

4 correct?

5 "ANSWER: Yes.

6 "QUESTION: Okay.

7 "ANSWER: Sorry. Sorry.

8 "QUESTION: That's all right."

9 A little yelling there.

10 "We can get you more coffee."

11 Can you turn the page?

12 A. Yeah.

13 Q. "ANSWER: I think I'm all right. Thank you.

14 "QUESTION: Already had enough of that. So the

15 light's red?

16 "ANSWER: Yeah.

17 "QUESTION: And that means there's a green light for

18 you and Ryan to be crossing Providence; is that accurate?

19 "ANSWER: Yes."

20 A. Yeah. Okay.

21 Q. Do you recall giving those answers to those

22 questions under oath at your deposition?

23 A. Yes. Yes, I do.

24 Q. Okay. So we're talking a red stoplight.

25 A. He was stopped. I assumed it was a stoplight. I



1 don't remember seeing a red stoplight.

2 Q. You testified under oath that not only did you see a  
3 red stoplight, but you also saw the green stoplight for you  
4 and Ryan to walk across, didn't you?

5 A. I don't know about all of that.

6 Q. All right. Let's read it again.

7 A. Let's see.

8 Q. Starting on page 227, line 22.

9 A. You said that that means there's a green light. I  
10 was making an assumption.

11 Q. Okay. But you said "Yes."

12 A. Yeah, I said yeah.

13 Q. And at the very beginning of the deposition, on page  
14 7 --

15 A. I got it.

16 All right.

17 Q. Page 7, line 1, I -- I asked you: "Now, if I ask  
18 you a question or Mr. Crane asks you a question, and you're  
19 not sure of the answer, would you tell us that you're not  
20 sure before we -- before giving a guess or an estimate?" And  
21 you answered, "Yes." And then I asked: "So are we agreed  
22 then that unless you say otherwise, you have understood the  
23 question and you're certain of the answers?" And your answer  
24 to that was "Yes"; is that correct?

25 A. Yeah. Let me just make this clear. This was page

1 7; right?

2 Q. Right.

3 A. And the other one was 227.

4 Q. Right.

5 A. And that deposition was seven hours long?

6 Q. I don't know how long.

7 A. Somewhere in that neighborhood.

8 Q. It was long.

9 A. I just wanted to clarify that.

10 Q. Okay. But --

11 THE COURT: Mr. Rogers, at this time, I don't know  
12 if you're at a stopping point, but our jurors' lunch is here.

13 And I'll let you, if you're -- have a few questions in this  
14 line that you want to finish, I'll let you finish it, but --

15 MR. ROGERS: I just want to finish this one  
16 stoplight topic and --

17 THE COURT: All right. You can finish that topic,  
18 and then we'll break for lunch.

19 Q. So that was a -- that was at the very outset,  
20 setting the ground rules for the deposition, wasn't it?

21 A. Yeah, that's right.

22 Q. And you agreed to it.

23 A. Yes.

24 Q. And you agreed that if at any time during the  
25 deposition you were asked a question that you would -- were

1 not sure of your answer, you'd tell us, and we'd go from  
2 there; right?

3 A. That's correct.

4 Q. And when you answered the stoplight questions, you  
5 didn't say, "Well, this is just an assumption I'm making,"  
6 did you?

7 A. No, I didn't say that.

8 Q. Okay. So it was fair for us to assume that you were  
9 certain of your answers under oath to those --

10 MR. CRANE: Well, I'm going to object to what's fair  
11 for him to assume.

12 THE COURT: Sustained. As to the form of the  
13 question.

14 Q. Well, you had told us on page 7 that -- let me put  
15 it this way. When you answered the stoplight questions, that  
16 was subject to our agreement that you had understood the  
17 question and were certain of the answer; isn't that correct?

18 A. Yes.

19 Q. Okay.

20 MR. ROGERS: That's a good time for lunch, Your  
21 Honor.

22 THE COURT: All right.

23 Ladies and gentlemen, the Court again reminds you of  
24 what you were told at the first recess of the Court. Until  
25 you retire to consider your verdict, you must not discuss

1 this case among yourselves or with others, or permit anyone  
2 to discuss it in your hearing. You should not form or  
3 express any opinion about the case until it is finally given  
4 to you to decide. Do not read, view, or listen to any  
5 newspaper, radio, or television report of the trial.

6 Take a break of about an hour. Come back at 1:15  
7 then.

8 - - -

9 The following proceedings were held out of the presence  
10 of the jury:

11 THE COURT: It's come to my attention that the CBS  
12 videographer may be taking pictures of at least typewritten  
13 notes at counsel table.

14 DEPUTY COURT MARSHAL LANE: Yes.

15 THE COURT: We have a monitor over there.

16 DEPUTY COURT MARSHAL LANE: It's still down there.

17 THE COURT: It is there? I'd like someone to look  
18 at it. And I don't see any reason to have this big screen up  
19 all the time.

20 DEPUTY COURT MARSHAL BAER: Yes, Judge.

21 THE COURT: So you can have them remove it. And at  
22 such time that they may need to show something, they can put  
23 it up.

24 DEPUTY COURT MARSHAL LANE: I have been monitoring  
25 the monitor, and I have seen --

1 (Audience becoming noisy.)

2 DEPUTY COURT MARSHAL LANE: Court is in session.

3 THE COURT: If you want to talk, you may step  
4 outside.

5 DEPUTY COURT MARSHAL LANE: I've seen typewritten,  
6 but I haven't noticed on the desk. I noticed it when they're  
7 standing there holding it up. But I was only told about them  
8 not filming the jurors. But I will make sure that doesn't  
9 happen again.

10 THE COURT: Okay. And you have been looking at the  
11 monitor?

12 DEPUTY COURT MARSHAL LANE: Yes, I have. That's  
13 what I have been doing there, sitting down.

14 THE COURT: Okay. All right. Well, with that  
15 understanding -- yes?

16 DEPUTY COURT MARSHAL BAER: Judge, they would like  
17 to go out and smoke in about 30 minutes.

18 THE COURT: As long as they're in a private place, I  
19 don't care if they smoke. Okay.

20 Let me just suggest that I had someone looking at a  
21 monitor of our proceedings. And evidently it's been  
22 photographed when you've held something up. And not when  
23 it's been flat down on the table. And so we will make sure  
24 that that doesn't happen.

25 MR. ROGERS: Thank you.

1           DEPUTY COURT MARSHAL LANE:  Do I need to let them  
2 know they're not to film any --

3           THE COURT:  Well, what I don't want them to film is  
4 -- if someone picks up a deposition, that's fine for them to  
5 film.  If someone has typewritten notes of what the questions  
6 are that they're going to ask or references to pages or  
7 anything that's of a lawyer's proprietary things, whether  
8 it's in handwriting or in typewritten, they are not to  
9 photograph that.  If it's a deposition that you're reading  
10 from, page 200, line 1, through line 25, that's fine.  But if  
11 it's something that is other than that, I do not want that  
12 photographed.

13           DEPUTY COURT MARSHAL LANE:  Yes, Judge.

14           THE COURT:  And you may tell them you're looking at  
15 it, and if you see that it's on the monitor, their  
16 photographing will cease.

17           DEPUTY COURT MARSHAL LANE:  I will.

18           THE COURT:  We'll be in recess.

19           (Recess taken.)

20   - - -

21           The following proceedings were held out of the presence  
22 of the jury:

23           THE COURT:  State ready to proceed?

24           MR. CRANE:  Ready, Judge.

25           THE COURT:  Defendant ready to proceed?

1 MR. ROGERS: Yes, Your Honor.

2 THE COURT: And the jury is ready to come back.

3 DEPUTY COURT MARSHAL: (Nodding head up and down.)

4 THE COURT: Bring them back, please.

5 - - -

6 The following proceedings were held in the presence of  
7 the jury:

8 THE COURT: Counsel for defendant may inquire.

9 MR. ROGERS: Thank you.

10 - - -

11 CHARLES TIMOTHY ERICKSON,

12 resumed the stand and testified further:

13 RESUMED CROSS-EXAMINATION

14 BY MR. ROGERS:

15 Q. Mr. Erickson, you had told us, I believe, about a  
16 big puffy Nautica coat that you say you were wearing that  
17 night?

18 A. Yeah.

19 Q. And is it your testimony today that, to the best of  
20 your memory, it was a chilly night that night?

21 A. That's correct. Yes.

22 Q. And when you say "a big puffy coat," is that one of  
23 these insulated jackets? Not a down jacket, but filled with  
24 some synthetic fiber?

25 A. I think it had down in it actually.

1 Q. Could have been actually down.

2 A. Yes.

3 Q. And nylon on the outside?

4 A. I don't know what it was.

5 Q. Okay. What did you tell us yesterday became of that  
6 coat?

7 A. I believe I left it at a man named Brian Walters'  
8 house.

9 Q. And do you have a memory of taking that coat from  
10 Mr. Ferguson's car into your house in the early morning of  
11 November 1st, 2001?

12 A. Not really, no.

13 Q. Okay. Do you recall seeing and wearing that coat  
14 after November 1st, 2001?

15 A. Yes, I do.

16 Q. Okay. You're sure about that.

17 A. Yes.

18 Q. Okay. And once again, you recall giving your  
19 deposition on June 30th of this year.

20 A. Yeah.

21 Q. You were under oath, in this building.

22 A. Uh-huh. Yes.

23 Q. And do you recall the following questions being  
24 asked and the following answers being given at that  
25 deposition, beginning on page 246.



1 A. I can look.

2 THE COURT: He seems to think he can open the  
3 deposition.

4 MR. ROGERS: He seems to be capable of doing so,  
5 Your Honor.

6 THE COURT: Yes.

7 A. 246.

8 Q. 246?

9 A. Yeah.

10 Q. Beginning at line 12.

11 "QUESTION: Okay. Now that you've had plenty of  
12 time to think about that particular coat --

13 "ANSWER: Uh-huh.

14 "QUESTION: -- do you know where it is today?

15 "ANSWER: No.

16 "QUESTION: What happened to it?

17 "ANSWER: I'm fairly certain I left it in Ryan's car  
18 the night that this happened, but I didn't -- I didn't take  
19 it home with me after that."

20 Were those your answers to those questions under  
21 oath June 30 of this year?

22 A. Yeah.

23 Q. Okay.

24 A. I was fairly certain that I left it in Ryan's car  
25 and that I didn't take it home with me after that.

1 Q. Okay. Now --

2 THE COURT: May he sit down now? Are you still on  
3 the deposition?

4 MR. ROGERS: I'm going to go to another topic, so  
5 yeah, please sit down.

6 Q. I want to call your attention now to later in the  
7 morning of November 1st, 2001, when you woke up, hung over,  
8 to go to school --

9 A. Uh-huh.

10 Q. -- okay?

11 A. All right.

12 Q. Do you recall finding any bloody clothes in your  
13 house at that time?

14 A. No.

15 Q. Do you recall seeing any blue jeans that you might  
16 have been wearing that had blood stains on them?

17 A. I don't remember.

18 Q. Do you recall seeing a sweatshirt with blood stains  
19 on it?

20 A. No.

21 Q. Do you recall seeing any boots with blood stains on  
22 them?

23 A. No.

24 Q. Do you recall seeing any tennis shoes with blood  
25 stains on them?

1 A. No.

2 Q. Do you recall seeing any blue jeans with mud or  
3 water on the bottom of them from wading through a creek?

4 A. I don't remember.

5 Q. You don't remember whether or not you saw those  
6 things or you don't --

7 A. I don't remember if my -- if I woke up and my pants  
8 were wet in the morning. I don't remember. I didn't put the  
9 same pants on when I went to school.

10 Q. As a matter of fact, do you know what you did with  
11 your clothing when you got to your home early on the morning  
12 of November 1st?

13 A. No.

14 Q. Did you wear it in your house?

15 A. Yeah. I believe so. Yes.

16 Q. Okay. You sure about that.

17 A. Yeah.

18 Q. Okay. Do you recall, once again, giving your  
19 deposition on June 30th?

20 A. Yeah.

21 Q. And do you recall giving the following answers to  
22 the following questions beginning at page 250. Question  
23 beginning at line 7. Are you there?

24 A. Yeah, I'm here.

25 Q. Okay.

1                   "QUESTION: Okay. And you don't remember deciding  
2 that you needed -- that you need to get rid of clothing  
3 that's got blood on it, do you?

4                   "ANSWER: "No. I may have left the clothes in the  
5 car with Ryan. I can't remember.

6                   "QUESTION: Your pants?

7                   "ANSWER: I might have.

8                   "QUESTION: You might have left your pants in Ryan's  
9 car?

10                  "ANSWER: I might have. I -- I don't -- I don't  
11 remember.

12                  "QUESTION: Okay. I don't even want to know what  
13 you're doing taking your pants off in Ryan's car, but I'm not  
14 going to ask you.

15                  "ANSWER: It's possible I went to my house in my  
16 boxers. I mean, I can't be certain."

17                  Do you recall giving those answers to those  
18 questions under oath at your deposition?

19                  A. Yeah.

20                  Q. But now you can remember that you did, in fact, wear  
21 your clothing into your house.

22                  A. I told you I couldn't remember that.

23                  Q. You told us today that you did remember.

24                  A. No. I believe I said I couldn't remember.

25                  Q. So you're telling us that -- just a minute ago you

1 told us, before I read this part from the deposition, you're  
2 telling us that -- you told us you couldn't remember whether  
3 you wore your clothes into your house or not.

4 A. I thought I said I couldn't remember.

5 Q. Okay.

6 A. I believe I said I might have, but, I mean, I  
7 couldn't remember -- I couldn't remember whether I wore the  
8 clothes in my house or whether I took them off or whether I  
9 left them on the floor or whatever. I couldn't remember.  
10 And I made that clear in the deposition. And I thought I  
11 made it clear earlier, but I'm sorry if I didn't.

12 Q. Let me ask you this, sir. On November the 1st,  
13 2001, when you got up and went to school hung over, did you  
14 hear any news broadcasts about the death of Mr. Heitholt?

15 A. I don't remember.

16 Q. Did you hear anything that evening about the death  
17 of Mr. Heitholt?

18 A. I believe so.

19 Q. Okay. When you saw that broadcast or read the paper  
20 or whatever it was, did you have any conscious belief that  
21 you had somehow been involved in that death on November the  
22 1st, 2001?

23 A. No.

24 Q. The next day, November the 2nd, 2001, is the day  
25 that Mr. Ferguson picked you up to take you to school.

1 A. That's correct.

2 Q. And that's the day that you had with you the paper  
3 from the evening before; correct?

4 A. I don't know which paper it was.

5 Q. Let me ask you this. Is the Columbia Daily Tribune  
6 an afternoon paper?

7 A. I don't know.

8 Q. You don't know whether it comes in the morning or in  
9 the afternoon?

10 A. I don't know.

11 Q. Okay. In any event, you had a copy of the paper  
12 that dealt with Mr. Heitholt's death. Correct?

13 A. That's correct.

14 Q. And you said to Mr. Ferguson, "This is messed up."  
15 Right?

16 A. I don't know if I used those words.

17 Q. Aren't those the words you used yesterday when  
18 Mr. Crane was talking to you?

19 A. I don't know if I used exactly those words.

20 Q. You said something to that effect. Is that a fair  
21 statement?

22 A. Yeah, but I said more than that.

23 Q. Okay. And at that time, when you said whatever you  
24 said on November the 2nd, 2001, did you have any conscious  
25 belief that you had been involved in the death of Kent

1 Heitholt?

2 A. No.

3 Q. And the rest of that month, November of 2001, as you  
4 went about your business, going to school, going to the  
5 educational counselor, testing program, things like that, did  
6 you, in fact, have any conscious belief that you had been  
7 involved in the death of Kent Heitholt in any way?

8 A. No.

9 Q. And throughout the rest of that year of 2001, did  
10 you have any conscious belief that you were in any way  
11 involved in the death of Kent Heitholt?

12 A. No.

13 Q. And throughout the next year, 2002 -- your senior  
14 year in high school?

15 A. That was part of my senior year, yeah.

16 Q. The beginning of your senior year.

17 A. Yeah.

18 Q. -- did you have any conscious belief that you were  
19 in any way involved in the death of Kent Heitholt?

20 A. No.

21 Q. And throughout the spring of 2003, when you  
22 graduated from high school, did you have any conscious belief  
23 that you were in any way involved in the death of Kent  
24 Heitholt?

25 A. No.

1 Q. Let me go back to By George's bar. It was obvious  
2 that you went there with Mr. Ferguson on Halloween night,  
3 didn't you?

4 A. Yes.

5 Q. And you've listed a bunch of people that you knew  
6 who were there.

7 A. Yes.

8 Q. And you stated that the only person that you  
9 remember talking to is somebody who is currently deceased.

10 A. No. I talked to Melissa Griggs.

11 Q. Talked to whom?

12 A. Melissa Griggs.

13 Q. And were these people there when you finally left By  
14 George's for the evening and did not return?

15 A. I don't -- I don't know.

16 Q. Were any of these people there?

17 A. I don't know.

18 Q. Were these among the crowd that you waited to leave  
19 at closing time with, so that you would not attract the  
20 attention of the police officer outside?

21 A. I don't know.

22 Q. And it's your statement that when the bar closed and  
23 everybody left at the same time because they had to, that  
24 there was, in fact, a police officer still outside; correct?

25 A. That's correct.



1 Q. And that police officer had been outside for some  
2 time; correct?

3 A. I don't know how long he had been outside. I didn't  
4 physically see him until I left the bar.

5 Q. All right. And he was there making sure nothing  
6 happened when people left the bar at closing time.

7 A. I don't know what he was doing.

8 Q. You remember, while you were at By George's, did a  
9 police officer come in and say, "Hey, you guys are supposed  
10 to be closed. Get out of here." Didn't he?

11 A. Not to my memory. I never saw anyone, no.

12 Q. Okay. When you left the bar at closing time, do you  
13 know whether anyone whom you knew, other than Ryan Ferguson,  
14 left with you?

15 A. No. Not to my memory, no. It was just --

16 Q. You don't know whether or not --

17 A. It was just Ryan and I.

18 Q. But you're leaving with a whole group of other  
19 people.

20 A. Yeah. The entire building is being -- everyone's  
21 leaving the building.

22 Q. And you don't know whether or not some of the people  
23 that you knew were there --

24 A. There were a lot of people leaving at once. I don't  
25 know. It was a pretty big club.

1 Q. Okay. Now, isn't it true that you and Ryan Ferguson  
2 left the bar when it closed and he dropped you off at your  
3 house?

4 A. No.

5 Q. Stopped for cigarettes, and then he dropped you off  
6 at your house?

7 A. No. Oh, wait. I'm sorry. Sorry.

8 Q. Well, let me do it more step by step. You told us  
9 earlier --

10 A. No. We went to his car, and we drove by the scene,  
11 and then we stopped for cigarettes, and then we went to my  
12 house.

13 Q. Okay. And you say you went to his car and you drove  
14 by the scene. And you're talking about driving south on  
15 Providence?

16 A. That's correct. First we took a right on Ash.

17 Q. And you were looking up the alley? Is that what  
18 you --

19 A. Huh?

20 Q. Do you recall looking up the alley from Providence?

21 A. Well, we were -- the entire Tribune building was to  
22 our left. So we had a view -- there was a lot going on.  
23 There was a lot of police cars there.

24 Q. Okay. And you looked at the police cars in the  
25 parking lot of the Tribune building.

1 A. Yes.

2 Q. Correct?

3 A. Yes.

4 Q. And you saw police cars.

5 A. Yes.

6 Q. And what else did you see there?

7 A. I believe I saw a white body bag.

8 Q. Okay. Now, once again, do you recall giving your  
9 deposition?

10 A. What page is that?

11 Q. I'm looking for it. The question is: Did you  
12 recall giving your deposition?

13 A. Yes, I recall giving it.

14 Q. And this is page 241.

15 A. All right.

16 Q. Beginning at line 18.

17 "QUESTION: Do you remember what you saw in the  
18 Tribune parking lot?

19 "ANSWER: There were a lot of police cars. A lot of  
20 people walking around. I think I remember seeing a news  
21 thing.

22 "QUESTION: Okay.

23 "ANSWER: I might be wrong about that, but -- and I  
24 thought I saw a, like, a wrecker doing something, but I could  
25 be wrong about that also.

1           "QUESTION: By a wrecker, you mean a tow truck?

2           "ANSWER: Yeah. I'm not sure, though.

3           "QUESTION: Anything else you remember seeing in the  
4 parking lot?

5           "ANSWER: No."

6           A. All right.

7           Q. You can sit back down. Are those the answers that  
8 you gave to those questions under oath on June 30 at your  
9 deposition in this building?

10          A. Yes.

11          Q. The truth of the matter, sir, is that By George's  
12 closed at 1:30 in the morning on November 1st; isn't that  
13 true?

14          A. That's not true.

15          Q. And the truth of the matter is, that after it  
16 closed, Ryan Ferguson took you home.

17          A. No. That's not true.

18          Q. And the truth of the matter is that he dropped you  
19 off in front of your house. Is that true?

20          A. After we committed a robbery and murdered Kent  
21 Heitholt. After we went back to the club. After we drove by  
22 the scene. After we stopped and got a pack of cigarettes.  
23 Then he took me home. That's correct.

24          Q. The truth of the matter is: He dropped you off in  
25 front of your house before 2:00 in the morning. Isn't that

1 true?

2 A. That's not true.

3 Q. And as a matter of fact, it was after you had been  
4 dropped off that he started this series of phone calls to  
5 Holly Admire.

6 MR. CRANE: Well, Judge, I'm going to object to  
7 that. He's asking him, without any foundation, for  
8 speculation about what Ryan Ferguson did after he dropped him  
9 off?

10 THE COURT: Sustained.

11 MR. ROGERS: Your Honor --

12 THE COURT: He can't possibly know what happened  
13 after --

14 MR. CRANE: Well, I mean, I guess he could be  
15 talking on the phone. But I mean, there's no evidence --

16 MR. ROGERS: Let me finish my question, and you'll  
17 see --

18 MR. CRANE: Uh-uh. No, Judge. I'm going to object  
19 to that question. That is assuming facts not in evidence.  
20 And at this point there's absolutely no foundation, and if  
21 there is one, I'm all ears, how that witness could answer  
22 this question. If they want to get in records, through  
23 somebody else, that's another matter. He's trying to  
24 bootstrap this question with this witness. That's improper.

25 MR. ROGERS: Let me do it a different way.

1 THE COURT: You may rephrase your question.

2 MR. ROGERS: Thank you.

3 Q. You told Mr. Crane yesterday about Ryan Ferguson  
4 making a bunch of phone calls, which you told us yesterday  
5 happened while walking from By George's to the car and then  
6 sitting in the car. Is that correct?

7 A. Yes.

8 Q. The truth of the matter is, sir, you have seen phone  
9 records about those phone calls which were --

10 MR. CRANE: Judge, I'm going to object to that.

11 Q. -- made at various times.

12 MR. CRANE: He's -- I don't know if he's seen the  
13 phone records. But, in any event, that's hearsay. If he's  
14 got another witness he wants to put down -- put on about  
15 phone records, so be it, but this witness isn't appropriate  
16 for that.

17 THE COURT: Do you care to respond?

18 Q. Haven't you seen phone records in the prosecutor's  
19 office, in preparation for your --

20 MR. CRANE: Same objection.

21 Q. -- testimony in this case?

22 A. Actually, the first time I saw them -- I looked at  
23 everything in discovery. I'm not going to lie. But I'm not  
24 a liar. And I'm not going to sit here and say that man did  
25 something he didn't do.

1 Q. So, have you seen the phone records?

2 A. Yeah, I have. That doesn't mean that I'm basing my  
3 memories off the phone records.

4 Q. And you saw the phone records -- you have copies of  
5 them. Yourself.

6 A. I don't have them -- I got rid of all my discovery  
7 months ago.

8 Q. You had them for a while.

9 A. Yeah, because --

10 Q. And you've also seen them --

11 A. They were sent to me. I have a right to any  
12 discovery in the case. They were sent to me after my  
13 preliminary trial was waived.

14 Q. And you've gone over them. Correct?

15 A. I've read them, yes, that's correct.

16 Q. And before you saw those phone records, you said  
17 nothing to anybody about Ryan Ferguson making telephone calls  
18 while walking from By George's to the car; isn't that true?

19 A. I don't -- I don't know. I don't know if that's  
20 true or not. I can't recall.

21 Q. Well, we saw your videotaped statements March 10th,  
22 didn't we?

23 A. Yeah.

24 Q. And there's nothing in there about him making cell  
25 phone calls while walking from By George's to the car, is

1 there?

2 A. I can't remember. I believe he said he was trying  
3 to get a hold of people or he may have been trying to find  
4 something else to do. I know I said that he was insistent on  
5 not going home and not taking me home. He wanted to find  
6 something else to do. I don't think I got into that much  
7 detail.

8 Q. The question is: You didn't make -- you didn't say  
9 anything about him making cell phone calls; correct?

10 A. I don't know. I don't know if I did or not.

11 Q. And you didn't say anything about him making cell  
12 phone calls in the unrecorded conversation with Mr. Short on  
13 March 10th, did you?

14 A. I don't know.

15 Q. And are you saying you have not gone over cell phone  
16 records with the prosecutor and his employees in preparation  
17 for your testimony all these times you've talked to --

18 A. No. I have looked at the cell phone records when I  
19 was in his office.

20 Q. Okay.

21 A. But I had seen them before that.

22 Q. All right.

23 A. But it had nothing to do with preparation of this.

24 Q. All right. And so you saw them and you paid  
25 attention to times and things.



1           A. I don't -- I don't -- I don't recall times.

2           Q. And what I'm now going to ask you is: Isn't it true  
3 that those phone calls, which are reflected in the records  
4 that you saw in preparation for your testimony here in court,  
5 were in fact made --

6           MR. CRANE: Same objection. And also misstates the  
7 witness's testimony. He didn't say anything about  
8 preparation --

9           THE WITNESS: Yeah.

10          MR. CRANE: -- for court.

11          Wait a minute.

12          THE WITNESS: Sorry.

13          MR. CRANE: And -- number one, it's hearsay. And  
14 number two, he doesn't have any factual basis for the  
15 location the calls were made. If they've got a witness they  
16 want to have testify about that, that does have such  
17 information, fine. Not this one.

18          THE COURT: The objection is sustained, that it's  
19 hearsay.

20          Q. Let me ask it this way. Is it fair to say,  
21 Mr. Erickson, that you are denying -- or you are asserting  
22 that those phone calls were made in your presence?

23          A. Yes.

24          Q. Okay.

25          A. Some of them were. Some of them may not have been.

1 I'm not sure.

2 Q. And are you therefore denying that they were made  
3 after you were gone?

4 A. That's correct.

5 Q. All right. When you say Ryan Ferguson told you he  
6 didn't want to go home, he told you that he was trying to get  
7 together with Holly Admire, didn't he?

8 A. I don't re -- I don't remember if he said that or  
9 not.

10 MR. ROGERS: I don't have any further questions for  
11 this witness.

12 THE COURT: Mr. Crane, you may redirect.

13 MR. CRANE: Okay.

14 - - -

15 REDIRECT EXAMINATION

16 BY MR. CRANE:

17 Q. On that last question there -- we'll work backwards.  
18 I know you're wore out. I'll try not to keep you up there  
19 too long.

20 I believe you indicated yesterday -- boy, that seems  
21 like a long time ago, yesterday -- that you recall when you  
22 were -- had come out of your house, after you snuck out,  
23 changed clothes and snuck out, you got to the vehicle, and at  
24 that time was Mr. Ferguson on the phone?

25 A. Yes, he was.

1 Q. Okay. Now this is before you went to George's.

2 A. That's correct.

3 Q. And you indicated he was talking to whom, as far as  
4 you could tell at that time?

5 A. He told me he was talking to Holly Admire on the  
6 phone.

7 Q. Okay. That was prior to the time you went to  
8 George's.

9 A. That's correct.

10 Q. I want to ask you, sir, you've been asked some  
11 questions about what you told Nick Gilpin and Art --  
12 pronounce that last name for me.

13 A. Figueroa.

14 Q. Figueroa.

15 MR. CRANE: Judge, may I have permission to ask the  
16 witness what he told Nick Gilpin? This would be a -- some  
17 questions that I had started to ask yesterday.

18 THE COURT: I don't know what you're going to ask.  
19 Ask your question, and the witness can answer.

20 Q. Do you recall yesterday testifying that you, in late  
21 February, early March of 2004 --

22 A. Yeah.

23 Q. -- after your -- the New Year's Eve incident with  
24 Mr. Ferguson, talked to Nick Gilpin? Somebody by the name of  
25 Nick Gilpin?

1 A. That's correct.

2 Q. Okay. And just to refresh our memory a little bit,  
3 you testified that was a good buddy of yours.

4 A. Yes.

5 Q. And you were at another buddy's residence.

6 A. That's correct.

7 Q. I believe you testified that you asked Mr. Gilpin to  
8 step outside, or wanted to speak to him in private.

9 A. Well, we were pulling up to the house, and I brought  
10 it up as we pulled up to the house, but then --

11 Q. Well, were you and Mr. Gilpin --

12 A. Alone.

13 Q. Just the two of you?

14 A. Yeah. Yes.

15 Q. Okay. Sir, do you recall what you told Mr. Gilpin  
16 regarding the incident that's the subject of this trial?

17 A. Yeah. At -- at John Alder's house, I told Nick  
18 Gilpin that I thought that me and -- Ryan Ferguson and I were  
19 responsible for the murder of Kent Heitholt. I explained to  
20 him that we'd been at By George's that night and Ryan wanted  
21 to --

22 Q. Now I can't hardly hear you.

23 A. I said that we'd been at By George's that night, and  
24 Ryan wanted to --

25 MR. ROGERS: I'm going to object to this, Your

1 Honor. This is not inconsistent with anything that he was  
2 questioned about on cross-examination.

3 THE COURT: The objection's overruled.

4 Q. Start over. And make sure we can all hear you.

5 A. I -- I pulled up to John Alder's house with Nick  
6 Gilpin. And when we pulled up to his house, I told him there  
7 was something I wanted to talk to him about. And I told him  
8 that I thought that Ryan Ferguson and I were responsible for  
9 the murder of Kent Heitholt. And I explained to him some of  
10 the background about that night. I explained to him that we  
11 were at By George's and that Ryan wanted to rob someone. And  
12 I explained to him that I was having memory problems. And  
13 that I was -- he was -- I was having problems trying to  
14 figure out if what I remembered was an actual memory or these  
15 things in my mind were memories or dreams.

16 Q. What did you tell Mr. Gilpin that you did?

17 A. Well --

18 Q. You've already testified you were both at George's?

19 A. Yeah.

20 Q. What did you tell him?

21 A. Well, later at Nick's house -- I didn't get very  
22 descriptive when we were at John's, but at Nick's house I  
23 told him that I hit Kent Heitholt in the head with a tire  
24 tool. That I saw Ryan Ferguson on the ground strangling him.  
25 That I thought that I got sick. And that I told a cleaning

1 lady to go get help.

2 Q. As we've heard on the video with Detective Short,  
3 the first video that was played, you knew, when Detective  
4 Short was talking to you, he told you, "Nick Gilpin's been in  
5 here, and he's told us what you'd said?"

6 A. Yes, that's correct.

7 Q. Okay. And that's the same guy.

8 A. That's the same guy.

9 Q. And what do you recall about the cleaning lady; what  
10 you told Mr. Gilpin about the cleaning lady?

11 A. That I told her to go get help.

12 Q. Now, Art --

13 MR. ROGERS: Your Honor, I'm going to object to that  
14 as an improper rehabilitation. I didn't ask him anything  
15 about telling Mr. Gilpin anything about the cleaning lady.

16 MR. CRANE: Oh, I'm not rehabilitating on that. I'm  
17 talking about all this he brought up about not saying,  
18 "Cleaning lady, go get help."

19 THE COURT: Your objection is overruled.

20 Q. Okay. Mr. Erickson, after you talked to Nick Gilpin  
21 and told him about being at George's on Halloween of 2001,  
22 and you and Mr. Ferguson decided to go rob somebody, and you  
23 striking the victim and Mr. Ferguson strangling him, and the  
24 cleaning lady and telling her to go get help, Art -- can I  
25 just call him Art?

1 A. That's fine. Yeah. That's fine.

2 Q. Art is another buddy of yours?

3 A. That's correct.

4 Q. How did you know Art?

5 A. I worked with him. I worked with his brother. I've

6 known him for a few years. He lived across Chapel Hill from

7 me.

8 Q. Okay. Were you employed with Art for a while?

9 A. That's correct.

10 Q. Where?

11 A. At Wendy's restaurant.

12 Q. Wendy's here in Columbia?

13 A. That's correct.

14 Q. And I believe for a short period of time

15 Mr. Ferguson worked there?

16 A. That's correct.

17 Q. How did he get that job?

18 A. I believe that he got it because I knew -- I knew

19 Art's brother Nick, but I can't --

20 Q. Okay. Somehow -- Art and his family run that

21 Wendy's or something?

22 A. Yeah. Well, his dad runs a bunch of them.

23 Q. And you developed a friendship with Art through that

24 and --

25 A. Yeah --

1 Q. Okay.

2 A. Yeah. That's correct.

3 Q. Now, at some point after your conversation with Nick  
4 Gilpin, do you recall a conversation with Art Figueroa?

5 A. Yes.

6 Q. And do you remember where that conversation was?

7 A. Yeah. It took place in his car.

8 Q. Okay. Do you remember where you were at -- where  
9 you were located?

10 A. I was at Nick Gilpin's house before that.

11 Q. Okay. Now -- but this is another night from the  
12 night you talked to Nick Gilpin?

13 A. This is a different night. This is about a week  
14 later.

15 Q. Okay. You just happened to have been over at Nick  
16 Gilpin's residence.

17 A. That's correct.

18 Q. And Art and you were leaving that residence in his  
19 car or --

20 A. Actually I drove there, but I lost my keys. He --  
21 we had a little get-together over there, and I couldn't find  
22 my keys.

23 Q. Okay.

24 A. So I had to have Art give me a ride.

25 Q. So Art's driving and you're in the vehicle.



1           A. That's correct.

2           Q. And what, if anything, did you confide in Art  
3 Figueroa about?

4           A. I told him that Ryan Ferguson and I had -- I thought  
5 we killed Kent Heitholt. That I had hit Kent Heitholt. Ryan  
6 Ferguson had strangled him. Told him that I told a cleaning  
7 lady to get help. Told him that I felt bad about it. I  
8 didn't know what to do. I was thinking about coming forth  
9 and giving my DNA and -- I don't know. I think I told him  
10 that Ryan threatened to kill me. I know I told that to Nick  
11 too. I forgot to put that in there.

12          Q. Okay. Well, now, one thing I think you indicated on  
13 your testimony is that, with respect to both Nick and Art,  
14 while you told them you had these memories of this murder and  
15 what you'd done, striking the victim, and Mr. Ferguson  
16 strangling, you did admittedly express some hesitation and  
17 doubt about that.

18          A. That's correct. Yes, I did.

19          Q. To both of these individuals.

20          A. Yes, I did.

21          Q. And that's what we talked about yesterday. You were  
22 still wrestling with this.

23                 MR. ROGERS: Objection to leading.

24                 THE COURT: Sustained. As to the form of the  
25 question.

1 Q. And then it was after -- am I correct it was after  
2 that, within a few days, that the police came and got you,  
3 and then that led to the statements that you made to them; is  
4 that correct?

5 A. That's correct.

6 Q. Okay. The coat -- Mr. Rogers asked you about the  
7 coat. He directed you to page 246 in the deposition. He  
8 asked you questions -- do you remember him asking you --

9 A. I'm fairly certain I left it in Ryan's car the night  
10 that this happened, but I didn't -- I didn't take it home  
11 with me that -- after that. And his next question was, "When  
12 did you" --

13 Q. Well, wait a minute. Wait a minute. I know you're  
14 sick of this, but let me -- he -- I believe Mr. Rogers asked  
15 you what happened to it, on line 17.

16 MR. ROGERS: What page are you on?

17 A. Yeah, that's correct.

18 MR. CRANE: 246.

19 MR. ROGERS: Thank you.

20 Q. And you answer -- you've already testified to this  
21 on cross. "I'm fairly certain I left it in Ryan's car the  
22 night after this happened, but I didn't -- I didn't take it  
23 home with me after that." And then what's the question and  
24 answer that follows that?

25 A. "When did you first come to that realization?"

1 Q. Speak up, please.

2 A. "When did you first come to that realization?"

3 Q. And your answer was?

4 A. "Just -- it was just a thought that, that since I  
5 couldn't find it, I remember I thought that I had left it in  
6 his car or I left it at a friend's house named Brian  
7 Walters."

8 Q. Okay. And the next question is at the top of page  
9 247.

10 A. "Did you remember asking Brian Walter, 'Hey, is my  
11 coat over there?'" My answer: "Yeah. And he said he  
12 couldn't find it."

13 Q. Okay. So you might have left it at Brian Walters'.  
14 You lost the coat.

15 A. That's correct.

16 MR. ROGERS: Leading, Your Honor.

17 THE COURT: Sustained as to the form of the  
18 question.

19 Q. Have a seat if you would.

20 I'm going to show you what's marked for  
21 identification State's Exhibits 87 and 87B.

22 MR. ROGERS: I would object, Your Honor, as beyond  
23 the scope of cross-examination.

24 THE COURT: I don't know what they are and --

25 MR. CRANE: Okay.

1 THE COURT: -- I don't know what the question is  
2 going to be.

3 MR. ROGERS: Let's approach.

4 - - -

5 Counsel approached the bench and the following  
6 proceedings were held:

7 MR. ROGERS: If we're just talking order of proof,  
8 and you're going to have some other witness to identify it,  
9 that's --

10 MR. CRANE: This is the defendant's vehicle.

11 THE COURT: And --

12 MR. CRANE: I was going to show him that.

13 THE COURT: And ask him what?

14 MR. CRANE: If he can identify it. This has got the  
15 trunk and the front of it. I mean, that wasn't on there,  
16 but --

17 MR. ROGERS: I haven't asked anything about the  
18 defendant's vehicle that this would be relevant to. It's  
19 beyond the scope. Like I say, if he's going to call some  
20 other witness --

21 MR. CRANE: You didn't ask him anything about prior  
22 to the time they went to the murder? You didn't ask him  
23 anything about leaving in a car? You didn't ask him anything  
24 about generally his memory being faulty? You didn't ask him  
25 anything about who drove from the bar to home? I mean, the

1 car --

2 MR. ROGERS: I didn't ask him anything these  
3 pictures have to do with. Like I said, if all we are talking  
4 about is order of proof and you intend to call a witness who  
5 can identify those photographs, then --

6 MR. CRANE: I've got one on the stand.

7 MR. ROGERS: But he hasn't -- he wasn't asked about  
8 them in direct and he wasn't asked about these photographs in  
9 cross.

10 MR. CRANE: He was asked all kinds of questions  
11 about the car on direct.

12 THE COURT: He was asked questions on both direct  
13 and cross about the vehicle and who was driving. And I'm  
14 going to overrule your objection if it's simply to physically  
15 identify what the car looked like. If he's able to.

16 - - -

17 The following proceedings were held in open court:

18 MR. CRANE: Approach the witness, Judge?

19 THE COURT: You may.

20 Q. I want to show you just these top two photographs,  
21 State's Exhibit 87A and 87B for identification. Do you  
22 recognize what's in 87A?

23 A. That's Ryan Ferguson's car.

24 Q. What about 87B?

25 A. That's Ryan Ferguson's trunk.

1 Q. Back of his car and then a shot of -- what is that?  
2 Passenger side?

3 A. That's correct.

4 MR. CRANE: Judge --

5 Q. Are these fair and accurate depictions of the  
6 vehicle as you remember it, I know there's some evidence  
7 sticker on there, but back in October, November 2001?

8 A. Yes.

9 MR. CRANE: Judge, I'd offer these two photographs.  
10 I've got copies of those made to put on the presenter to  
11 publish to the jury.

12 MR. ROGERS: Same objection, Your Honor. Beyond the  
13 scope of cross.

14 THE COURT: State's Exhibits 87A and 87B are  
15 admitted, the objection being overruled.

16 - - -

17 State's Exhibits 87A and 87B admitted into evidence.

18 - - -

19 Q. Show you what's marked as 87A. I know that isn't  
20 the greatest picture on that thing, but you saw what I was  
21 showing you there. What is that?

22 A. That's Ryan Ferguson's Mercedes.

23 Q. And showing you 87B, what does this photograph  
24 depict?

25 A. The trunk of Ryan Ferguson's Mercedes.

1 Q. And I know there's an evidence sticker on there.

2 A. Yeah.

3 Q. But is that the trunk, as far as you can tell,  
4 assuming it's on that other photograph, same car --

5 A. Yeah, that's correct.

6 Q. -- that you recall the defendant getting into at  
7 various times prior to and after the murder?

8 A. That's correct.

9 Q. When you took a look at -- take advantage while the  
10 lights are still kind of dim. This drawing that you did at  
11 the police department with Detective Nichols, of the tire  
12 tool?

13 A. Yeah.

14 Q. Did you testify on cross-examination that the hook,  
15 little part right here that juts out, was that the portion  
16 you took off before you left? I couldn't understand your  
17 testimony.

18 A. That was -- I knew that there was something that I  
19 took off. And I thought that it was possible that the --  
20 that it might have been something like that, but --

21 Q. Well, but the part --

22 A. That was like a handle or something. I'm not -- I'm  
23 not really sure.

24 Q. Well, I -- that's what -- I'm trying to understand  
25 your testimony. Was it, with respect to that with

1 Mr. Rogers, that this would be the tire tool when you  
2 originally had it, before you took the piece off?

3 A. Yeah. That's correct.

4 Q. Okay. And then you pushed the button, you  
5 indicated?

6 A. That's correct.

7 Q. And put the piece that came off back in the trunk?

8 A. That's correct.

9 Q. And it left you then with just a straight object?

10 A. Well, it -- it would have gone like that  
11 (indicating).

12 Q. Okay. It still had an angle in it?

13 A. Yeah, that's correct.

14 Q. But this would not -- there was a portion of that  
15 drawing, and I know it's just a line thing, that was not on  
16 it when you struck the victim?

17 A. That's correct.

18 Q. Okay. This thing here that the defense was showing  
19 you, Defendant's Exhibit D --

20 MR. ROGERS: B.

21 MR. CRANE: Oh, is it B? That looked like a D.  
22 Okay.

23 MR. ROGERS: It is B. I made the same mistake.

24 Q. He was talking to you about different areas that you  
25 were driven when you were with Detective Nichols. Do you



1 remember that video?

2 A. Yeah. Yes, I do.

3 Q. Now, just for clarification, there were some areas  
4 that you drove by that you testified you and Ryan did pass by  
5 or walk by --

6 A. Yes.

7 Q. -- that night.

8 A. Yes.

9 Q. And then there were some areas that defense counsel  
10 showed you that were on the video that you didn't go to.

11 A. Yeah, that's correct.

12 Q. I believe Mr. Rogers was talking to you about a path  
13 that the police dog took an officer. Do you remember him  
14 talking to you about that?

15 A. Yeah, down -- down Fourth Street.

16 Q. You indicated that you read some reports on that.

17 A. Yes.

18 Q. Now, the testimony that you were giving earlier is  
19 that you had read that officer's report. The police dog  
20 officer's --

21 A. That's correct.

22 Q. -- report. And Mr. Rogers indicated that you did  
23 recall that dog getting to the area of the diner.

24 A. That's correct. It was on the road, though, I  
25 believe.

1 Q. But then the report that the police officer that had  
2 the dog wrote has another path, going up away from Flat  
3 Branch Creek; right?

4 A. That's correct.

5 Q. And you read that report.

6 A. Yes, I did.

7 Q. Just like you told him.

8 A. That's correct.

9 Q. But you didn't adopt that report, did you?

10 A. No, I didn't.

11 Q. You went the other way.

12 A. That's correct.

13 Q. And that's what you told this jury.

14 A. That's correct.

15 Q. Was there any report that you read or any newspaper  
16 article that you read that had you going over Flat Branch, by  
17 the Phillips 66, and onto Providence down in that -- at that  
18 intersection?

19 A. No.

20 Q. What about any reports that you read that had you  
21 going across the Osco parking lot?

22 A. No.

23 MR. CRANE: Judge, what I'm going to -- and Mr. Weis  
24 has very kindly accommodated me on this. It is -- this is a  
25 expansion of the conversation -- I believe the excerpt was

1 marked -- okay. There's an excerpt that was put into  
2 evidence by the defense. He was talking to his mom about the  
3 jail nurse. And I wanted to ask that this -- this section  
4 that precedes that, and includes the section the defense  
5 played for the jury, be played at this time.

6 MR. ROGERS: No objection.

7 THE COURT: All right. You may play it.

8 And hopefully let us know if you're having trouble  
9 hearing.

10 (Excerpt played.)

11 Q. Talking to your mom.

12 A. Yeah.

13 Q. You're in the jail.

14 A. Yes.

15 Q. Now, your mom, in that conversation, starts talking  
16 to you about -- you said something about the jail nurse.

17 A. That's correct.

18 Q. And then she starts talking to you about "Don't talk  
19 about this case."

20 A. That's right.

21 Q. "It might hurt your case."

22 A. That's right.

23 Q. Right? You heard her say that?

24 A. Yes.

25 Q. And you said, "Don't -- okay. I won't. I won't."

1 You know, I'll do what I want, but I won't -- there's nothing  
2 I can, you know, do to incriminate myself."

3 A. Yeah.

4 Q. Kind of getting her from worrying about it.

5 A. That's correct.

6 Q. And it sounds like, like mothers do, she kind of  
7 drifted into shaving and "how's the food?" Right?

8 A. Yeah.

9 Q. And then she said, "Now back to this jail nurse."

10 A. Yeah.

11 Q. And you continued to assure her that it was, "Hey, I  
12 said nothing of any consequence."

13 A. That's correct.

14 Q. And after you described that conversation to her,  
15 you said, "And then it was over."

16 A. That's correct.

17 Q. What was over?

18 A. The conversation with the nurse was over.

19 Q. Is your -- strike that. The jail records that  
20 Mr. Rogers was talking to you about indicate that your memory  
21 is intact.

22 A. Yeah.

23 Q. Okay. Now, it's a matter of semantics here, but I  
24 might forget something, you know, and go, "Golly, you know, I  
25 forgot that." But that doesn't mean my memory's not

1 intact --

2 A. That's correct.

3 Q. -- just because I forgot something.

4 A. That's correct.

5 Q. Okay. This experience that you've had, this  
6 terrible thing you did, has been something that has caused  
7 you problems, to say the least.

8 A. Yeah.

9 MR. ROGERS: Objection. Leading.

10 THE COURT: Sustained -- well, the question has been  
11 asked and answered. The objection is untimely, but well  
12 taken.

13 MR. ROGERS: Your Honor, I made it as soon as the  
14 question was over. It was answered before it was over.

15 MR. CRANE: Okay. I won't do that -- ask that  
16 again.

17 THE COURT: And I'd ask the witness to answer the  
18 questions after they're finished, because even if there's not  
19 an objection, my court reporter can't write down the question  
20 and the answer at the same time.

21 You may ask your next question, Mr. Crane.

22 MR. CRANE: Okay.

23 Q. Do you have any disagreement with the records that  
24 indicate your memory's intact?

25 A. No.

1 Q. And Mr. Rogers talked to you a little bit about the  
2 OCD thing.

3 A. Yes.

4 Q. Were you ever diagnosed with any mental disease or  
5 defect that would affect your competency to testify?

6 A. No.

7 Q. The psychologist that was retained by your attorney,  
8 Mark Kempton, is Dr. Delaney Dean?

9 A. That's correct.

10 Q. You spoke with her?

11 A. Yes, I did.

12 Q. In -- with respect to that, anything she's generated  
13 that indicates that you're --

14 MR. ROGERS: Objection. Calls for hearsay. If  
15 we're going to have Dr. Dean's conclusions, I get to  
16 cross-examine.

17 THE COURT: Well, it sounds like it's asking for a  
18 hearsay answer.

19 MR. CRANE: Okay.

20 THE COURT: So if you will rephrase your question.  
21 I can't tell what the full question was going to be, though.

22 Q. Mr. Erickson, they're trying to suggest that you're  
23 nuts.

24 MR. ROGERS: I'll object to that.

25 Q. That you got OCD.

1                   MR. ROGERS: I object to his characterization of  
2 what I'm trying to suggest.

3                   THE COURT: Sustained.

4                   Q. You've been in front of this jury now for a day and  
5 a half or longer. Have you been oriented to time and place  
6 while you've been with us here today?

7                   A. Yes, I have.

8                   Q. Have you had any hallucinations?

9                   A. No, I haven't.

10                  Q. Have you been obsessed with anything --

11                  A. No, I haven't.

12                  Q. -- while you've been in here?

13                  A. No, I haven't.

14                  Q. On cross-examination, Mr. Rogers asked you some  
15 questions about what you remembered from John Short's report  
16 of the first interview with you back on March 10th, '04?

17                  A. That's correct.

18                  Q. And he asked you if you remembered a section wherein  
19 you were asked if you had said something to the cleaning  
20 lady. And the report reads: "Before or after Ferguson had  
21 strangled the victim." Do you remember him talking to you  
22 about that?

23                  A. Yes.

24                  Q. I think maybe that was this morning.

25                               What he did not read you and what I want to ask you

1 about is earlier in that report, I believe you testified to  
2 this, but you weren't asked about it on cross, do you recall  
3 stating that you thought it was at that point, after you saw  
4 the cleaning lady, "at that point he was," you, "were saying  
5 something to a cleaning lady who was at the back door of the  
6 business." Do you recall, when you were first talking to  
7 Mr. Short -- Detective Short, referencing saying something to  
8 a cleaning lady at the back door of the Tribune?

9 A. Yes.

10 Q. And that, in the report, comes before the second  
11 reference which Mr. Rogers read you, that Mr. Short --  
12 Detective Short wrote: "I then asked Erickson if he had said  
13 something to the cleaning lady before or after Ferguson had  
14 strangled the victim." So, when you were talking to the  
15 police, who brought up the  
16 saying-something-to-the-cleaning-lady fact?

17 A. I did.

18 Q. Not the police.

19 A. That's correct.

20 Q. The number of times that you struck the victim, I  
21 believe I asked you this on direct, are you -- can you  
22 testify today as to the exact number of times that you struck  
23 the victim with the weapon on the head?

24 A. No.

25 Q. Can you tell us whether or not Ryan Ferguson had the



1       weapon and struck the victim on the head?

2           A.   No.

3           Q.   You do not know the answer to that question?

4           A.   I don't know.

5           Q.   You can't say one way or the other?

6           A.   No, I can't.

7           Q.   After you finished -- after you had delivered your  
8       last blow to the victim, and he was down on the pavement,  
9       what do you recall doing with the weapon?

10          A.   I dropped it.

11          Q.   And then after that what did you do?

12          A.   I sat down on the retaining wall.

13          Q.   And then there was a period of time there where you  
14       were looking down or didn't see what he was doing?

15          A.   That's correct.

16          Q.   What price, what cost was there for remembering and  
17       articulating your memories of participating in this murder?

18                 MR. ROGERS:  Objection, Your Honor.  That's, A,  
19       vague; secondly, self-serving; and thirdly, bolstering.

20                 THE COURT:  I'm going to sustain that it appears to  
21       be vague.  If you would rephrase your question, please.

22          Q.   What price, not money, what cost was it for you, in  
23       your life, the more you articulated these memories to the  
24       police?

25          A.   My freedom.  My life.  My family.  Everything.

1 Doing anything with myself.

2 Q. Your freedom.

3 A. Yeah.

4 MR. CRANE: I think that's all I have, Judge.

5 THE COURT: Recross.

6 MR. ROGERS: Thank you, Your Honor.

7 - - -

8 RE-CROSS-EXAMINATION

9 BY MR. ROGERS:

10 Q. Let's talk about the drawing that you made for  
11 Detective Nichols?

12 A. Uh-huh.

13 MR. CRANE: You want me to turn that off?

14 MR. ROGERS: Turn that off, please.

15 Q. And you are shown in the videotape that we saw of  
16 you and Nichols in the interrogation room, making this  
17 drawing; correct?

18 A. That's right.

19 Q. And that's the drawing that you made.

20 A. That's right.

21 Q. And you have watched the videotape of you talking to  
22 Nichols as you made the drawing. Talking with Nichols. You  
23 talk, he talks; right?

24 A. That's right.

25 Q. And you didn't say anything like, "This curvy part

1 is the part I took off," did you?

2 A. No, I didn't.

3 Q. And you didn't say that when I was questioning you  
4 earlier today, did you?

5 A. No, I didn't.

6 Q. And what you told Nichols at the time, describing  
7 the implement that you were drawing for him, was, "I think it  
8 was -- it was skinny, so, I mean, I don't think it was a  
9 wrench to get the big lug nuts off a tire. I think it was  
10 something for, like, the jack." His question: "Like, a  
11 handle for the jack?" Your answer: "I think it had a handle  
12 on it, actually. Like, it was -- looked like a question mark  
13 with, like, a long -- like, the top's very small, and then it  
14 went into a question mark. So you twist it like this. I can  
15 draw -- I can draw --" And he says, "Like -- like a  
16 ratchet?" And you said, "Can I draw you a picture?" He  
17 says, "Sure." And then you draw this picture. And you say,  
18 "I think it basically just looked like that." And he asked  
19 you, "And it was a round piece of wrought iron or --" And  
20 you said, "Yeah." And he finishes his question: "-- or  
21 steel." You say, "Yes." And you say, "And you remember it  
22 as being round?" Excuse me. He says, "And you described it  
23 as being round." Your answer: "Yes." And then starts  
24 talking about how long. Is that correct?

25 A. Yes, I believe so.

1 Q. And that's what we saw on the videotape, probably  
2 more than once?

3 A. Yes.

4 Q. And so you're not saying this is the part that came  
5 off. You're saying this is a part that's used to turn a  
6 screw jack; right?

7 A. No. I'm saying -- I remember there was something on  
8 it. There was some kind of -- some kind of extremity on it.  
9 And I remember it came off.

10 Q. But in terms of what you were telling Nichols when  
11 you drew this picture, you're drawing a picture of a handle  
12 that would be used to turn the screws of a screw jack; right?

13 A. I don't know.

14 Q. So you can slip this through the two little holes on  
15 the screw and turn it around and around and around.

16 A. I don't know.

17 Q. And you can move it up and down, so you won't have  
18 to take it out and put it back in the next time you turn it  
19 around if you're down low against the pavement; right?

20 A. I don't know.

21 Q. That's what you were trying to describe to him when  
22 you drew it; isn't that true?

23 A. I don't know.

24 Q. Okay. And you drew that and described it to Nichols  
25 before you had a chance to see any of the autopsy pictures;

1 is that a fair statement?

2 A. Yeah, I believe that's correct.

3 Q. They didn't show you autopsy pictures there at the  
4 police station, did they?

5 A. No, I don't believe they did.

6 Q. Okay. Now when you talked to Nick Gilpin out in  
7 front of John Alder's house and again at Nick's house, you  
8 were drunk.

9 A. That's correct.

10 Q. And you told him, each time you talked to him, that  
11 you didn't know whether you had real memories or whether they  
12 were something that you had dreamed or dreamed up. Correct?

13 A. I don't believe I said that at every instance. No,  
14 I don't believe I said that every instance. I believe that I  
15 had mentioned that a couple of times, yes, throughout the  
16 conversation.

17 Q. Throughout the conversation --

18 A. Yeah, that's correct.

19 Q. -- that was the -- sort of the background is: "Hey,  
20 I don't know if this is real or not, but here's what I'm  
21 feeling." Right?

22 A. Yeah.

23 Q. And the same is true of your conversations with Art  
24 Figueroa. Correct?

25 A. Yes.

1 Q. You told Art Figueroa that you didn't know if this  
2 was real or something you dreamed up. Right?

3 A. I told him I -- there were things I didn't know  
4 whether they were memories or a dream.

5 Q. Memories or a dream.

6 A. Yeah.

7 Q. Okay. Now --

8 THE COURT: Can we turn the lights back on? Are you  
9 still using that screen?

10 MR. ROGERS: I'm going to use it, not still, but  
11 again, Your Honor.

12 THE COURT: Okay.

13 MR. ROGERS: If I might.

14 Q. Mr. Crane showed you pictures of Mr. Ferguson's car;  
15 is that right?

16 A. Yes, he did.

17 MR. CRANE: Right here.

18 Q. Is that the way Mr. Ferguson's car looked in October  
19 of 2001? Roughly.

20 A. Yes.

21 Q. So it wasn't a brand new kind of car.

22 A. No, it wasn't.

23 Q. It was an old car.

24 A. Yes.

25 Q. And you rode in it several times.

1           A. Yes.

2           Q. And it was the car that he was given by his father  
3 that his father used to drive; correct?

4           A. Yes.

5           Q. And it was a 1993 Mercedes, wasn't it?

6           A. I believe so.

7           Q. And he was given it to him -- given it to -- it was  
8 given to him on his 16th birthday, which would have been  
9 October 19th, 2000; is that correct?

10          A. I'm not sure.

11          Q. You're not sure when his birthday is?

12          A. No, I'm not -- well, yeah. I'm also not sure when  
13 the car was given to him.

14          Q. All right. Did you tell us earlier it was for his  
15 16th birthday?

16          A. I said I thought it might have been for his 16th  
17 birthday, but I wasn't sure.

18          Q. And at that time it was already seven years old.

19          A. Yeah.

20          Q. And had a lot of miles on it.

21          A. Yes, it did.

22          Q. Did you ever look at the speedometer -- odometer to  
23 see how many miles it had?

24          A. I remember it had upward of maybe 150,000 miles on  
25 it. It's not really --

1 Q. A couple hundred thousand perhaps?

2 A. I can't remember.

3 Q. Okay. Still not a bad car for a kid; right?

4 A. No.

5 Q. Better than yours, because you didn't have one.

6 A. Yeah. That's right.

7 Q. Now, was it your testimony on redirect examination  
8 by Mr. Crane, when he played that entire portion of the  
9 conversation with your mother, is it your testimony, even  
10 after having heard that, both when I played it I think at  
11 least twice, and now that he's played the whole extended  
12 thing with the food and stuff in it, is it your testimony  
13 that when you said "it was over," that you were not talking  
14 about life as you knew it as a free person in society; you  
15 were talking about the conversation with the nurse.

16 A. It's my testimony that I was talking about the  
17 conversation with the nurse.

18 Q. And you're certain of it.

19 A. That's my testimony.

20 Q. And you're certain of it.

21 A. I am a hundred percent certain of that.

22 Q. A hundred percent certain of that.

23 A. Yes, I am.

24 Q. All right. Now, let's talk about the report that  
25 Mr. Short wrote on the interview which was not recorded. And



1 now that Mr. Crane has been able to go into it in detail,  
2 I'll be able to do the same. And what I'm going to focus on  
3 is the issue of what the report says you said when -- to the  
4 cleaning lady when. Okay? So I want to make sure you can  
5 see what we're talking about.

6 First of all, you're talking with Short. And Short  
7 asks you if you had seen it or not, talking about your claim  
8 that you think Ryan strangled Mr. Heitholt.

9 MR. CRANE: I'm sorry. What are you talking about?

10 MR. ROGERS: I'm getting some foundation.

11 Q. Short is asking you if you had seen Ferguson  
12 strangle the victim. You then said you had seen Ferguson  
13 strangle him out of the corner of your eye?

14 A. That's what I said, yes.

15 Q. Okay. And then you said you thought at that point  
16 you were saying something to a cleaning lady who was at the  
17 back door of the business. Correct? Is that what --

18 A. Yes.

19 Q. That's when the subject of the cleaning lady is  
20 first mentioned; isn't that right?

21 A. Well, let me see it.

22 MR. CRANE: Well, Judge, I didn't show him the  
23 report.

24 MR. ROGERS: No, you read it.

25 MR. CRANE: Mine was redirect, based on questions

1 raised at cross. Now he's being provided the report to read,  
2 as to other subjects that may have been brought up on direct,  
3 cross, or may not have been.

4 MR. ROGERS: I'm only going to ask him about this  
5 particular thing. He wants to see the whole thing to make  
6 sure I'm putting it in the correct context.

7 A. Yeah, that's -- here you go. Thank you.

8 Q. Is that correct?

9 A. That's what it says in the report, yeah.

10 Q. Okay. And so there's nothing there, the first time  
11 that the report says you mentioned it, about what was said;  
12 correct?

13 A. No, there's nothing about that in the report.

14 Q. Okay. But down at the bottom of the same page he  
15 goes back to the subject and he says, "I then asked Erickson  
16 if he had said something to the cleaning lady before or after  
17 Ferguson had strangled the victim. Erickson stated that he  
18 did not know. He thought he said something to the cleaning  
19 lady" -- excuse me, "to the lady at that time, but was not  
20 sure." Correct?

21 A. That's what it -- that's what it says, yeah.

22 Q. And then he goes on to say, "I told Erickson that  
23 the cleaning lady told the police that someone asked for  
24 help. Erickson stated that was him."

25 A. That's what it says right there.

1 Q. Okay. And so according to the report that Mr. Crane  
2 asked you about on redirect examination, the first person who  
3 said what was said to the cleaning lady was not you, but was  
4 Officer Short.

5 A. Yeah, that's what it says.

6 Q. Now, you have told Mr. Crane on redirect examination  
7 about sitting on a retaining wall there at the parking lot;  
8 is that correct?

9 A. Well, I believe I was sitting in between the parking  
10 lot and the retaining wall. The retaining wall would have  
11 been behind me.

12 Q. Now you're saying you're sitting --

13 A. Well, it was like on the edge of the retaining wall.  
14 The retaining wall, it went out at an angle. So it would  
15 have been hard to sit on the retaining wall itself. I was  
16 sitting maybe against it, with my head like that, but I was  
17 sitting down.

18 Q. Now, my question was what you told Mr. Crane on  
19 redirect examination.

20 A. Against the retaining wall.

21 Q. You said "against the retaining wall." You didn't  
22 say "on the retaining."

23 A. That's correct.

24 Q. And now you explained that that's because you  
25 couldn't sit on the retaining wall due to the angle of it.

1 A. That's correct.

2 Q. Isn't it true that you had told the police officers  
3 in your videotaped statements that you were sitting on a  
4 curb?

5 A. I believe I said a curb or a parking block.

6 Q. And you also said a parking block.

7 A. Yeah, I believe that's right.

8 Q. And now you're saying against the retaining wall.

9 A. That's correct.

10 MR. ROGERS: That's all the questions I have.

11 THE COURT: Redirect?

12 - - -

13 FURTHER REDIRECT EXAMINATION

14 BY MR. CRANE:

15 Q. Hey, before you talked to Detective Short, you  
16 talked to Nick Gilpin and Art Figueroa. Is that correct?

17 A. That's correct.

18 Q. What did you tell Art Figueroa -- strike that, Nick  
19 Gilpin about a cleaning lady?

20 A. I told him that I told a cleaning lady to go get  
21 help.

22 Q. And thereafter you talked to Art. You've already  
23 testified to this earlier. Is that correct?

24 A. That's correct.

25 Q. And what did you tell Art Figueroa, if anything,

1 about a cleaning lady the night you beat the victim and  
2 Ferguson strangled him?

3 A. I told him the cleaning lady -- I told him that I  
4 told the cleaning lady to go get help.

5 Q. And then you talked to Short.

6 A. That's correct.

7 Q. At the police department. And you were the first  
8 one to bring up something being said to the cleaning lady.

9 A. That's correct.

10 MR. CRANE: That's all the questions I have.

11 THE COURT: Recross.

12 - - -

13 FURTHER RECROSS-EXAMINATION

14 BY MR. ROGERS:

15 Q. And at the time you brought this up to Short at the  
16 police department, after you supposedly said whatever you  
17 supposedly said to Gilpin, and after you supposedly said  
18 whatever you supposedly said to Figueroa, you didn't say to  
19 Detective Short, "I told the cleaning lady to get help" until  
20 after he told you that's what the cleaning lady had told the  
21 police. Isn't that true?

22 A. No, I can't remember. I really was certain that I  
23 had told him that I told the cleaning lady to go get help  
24 before he said anything regarding the cleaning lady. But  
25 that's to the best of my -- to the best of my memory, he

1 didn't say anything before I said anything about -- regarding  
2 the cleaning lady or telling her to go get help.

3 Q. But you will agree that according to the report, he  
4 is the one who introduced the subject of what was said to the  
5 cleaning lady, "Go get help."

6 A. That's what it says in the report, yeah, that's  
7 correct.

8 Q. All right.

9 MR. ROGERS: Thank you.

10 THE COURT: Redirect?

11 MR. CRANE: No.

12 THE COURT: May the witness be finally excused?

13 MR. ROGERS: From the defense, Your Honor.

14 MR. CRANE: Well, I think we know where we can find  
15 him.

16 THE COURT: Well, may I excuse him for this  
17 afternoon?

18 MR. CRANE: Yes, ma'am.

19 THE COURT: The defendant may step down. And he is  
20 excused for the afternoon.

21 Mr. Erickson, I would ask you not to discuss your  
22 testimony with any other witness who might be called in this  
23 case. You are free to be returned to the custody of the  
24 sheriff at this time.

25 MR. ROGERS: May we approach, Your Honor?

1 THE COURT: Yes.

2 - - -

3 Counsel approached the bench and the following  
4 proceedings were held:

5 MR. ROGERS: Would this be a convenient time to  
6 recess? Mr. Ferguson needs one. I know this is a little  
7 earlier unusual.

8 THE COURT: Yeah, it is. I take it you don't have a  
9 brief witness as your next witness.

10 MR. CRANE: I don't know that there is such a thing  
11 any more, but if he needs to go to the bathroom, Judge, I  
12 think that's probably --

13 THE COURT: Why don't we take a break.

14 MR. ROGERS: Thanks.

15 - - -

16 The following proceedings were held in open court:

17 THE COURT: Ladies and gentlemen, just to take a  
18 short break before another witness that might be more  
19 lengthy.

20 The Court again reminds you of what you were told at  
21 the first recess of Court. Until you retire to consider your  
22 verdict, you must not discuss this case among yourselves or  
23 with others, or permit anyone to discuss it in your hearing.  
24 You should not form or express any opinion about the case  
25 until it is finally given to you to decide. Do not read,

1 view, or listen to any newspaper, radio, or television report  
2 of the trial.

3 Take about a 15-minute break and then come back,  
4 please.

5 DEPUTY COURT MARSHAL WERNER: Yes, ma'am.

6 THE COURT: Be in recess.

7 (Recess taken.)

8 - - -

9 The following proceedings were held out of the presence  
10 of the jury:

11 THE COURT: I need to reiterate, we're not to have  
12 any cell phones on in the courtroom. If you have a telephone  
13 call that comes through, either through vibrating mode or  
14 ringing mode, your phone will be checked until the end of  
15 court today. There are no cameras in this courtroom, other  
16 than those that have been authorized under Supreme Court  
17 rule. If you have a camera in any form, whether that's a  
18 film camera, a digital camera, or one in a cell phone, and  
19 you take it out and take pictures, it will be checked until  
20 the end of this trial. Just so we understand that.

21 You may return the jury to the courtroom. Assuming  
22 the state's ready and the defense?

23 MR. CRANE: Ready, Judge.

24 MR. ROGERS: Ready, Your Honor.

25 THE COURT: All right.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

- - -

The following proceedings were held in the presence of  
the jury:

THE COURT: State may call its next witness.

MR. CRANE: State calls Bill Hawes.

THE COURT: Raise your right hand.

- - -

WILLIAM HAWES,

being first duly sworn by the Court, testified as follows:

THE COURT: Would you take the witness stand.

- - -

DIRECT EXAMINATION

BY MR. CRANE:

Q. Give us your name, please, sir.

A. William Hawes.

Q. Okay. And what's your occupation?

A. I am an investigator for the Boone County  
prosecutor's office.

Q. How long have you been with the prosecutor's office?

A. Twelve years.

Q. And what did you do before that?

A. I was a Columbia police officer for 20.

Q. What was your position when you left the Columbia  
Police Department?

A. I was a sergeant in charge of the crimes against

1 victims unit.

2 Q. How old are you?

3 A. Fifty-eight.

4 Q. Do you have any problems walking?

5 A. Well, yeah, I do have some, but I can do it.

6 Q. Okay. The reason why I'm asking you that, I'm  
7 directing your attention to the morning of August 2nd, 2005.  
8 What did I ask you to do?

9 A. I walked the route that Charles Erickson described  
10 on the -- that related to the events of November 1st, 2001.

11 Q. What was the weather like that morning?

12 A. It was fairly warm. 85 degrees.

13 Q. Okay. What did you carry as you walked to these  
14 various locations?

15 A. I took notes. Wrote down times.

16 Q. And what did you use to time how long it took to get  
17 from one point to the next?

18 A. I have a stopwatch on my wrist watch.

19 Q. Okay. Can you describe for the jurors the speed or  
20 pace at which you walked these routes.

21 A. Just a normal pace. I didn't hurry. I wasn't slow.  
22 Just normal pace.

23 Q. All right. Let me direct your attention to what's  
24 marked as State's Exhibit 9.

25 MR. CRANE: And Judge, I'd ask the witness be able

1 to step down.

2 THE COURT: He may.

3 Q. Okay. Now you got to move it up a little bit.

4 MR. CRANE: Can everybody see that okay?

5 Q. Okay. If you would, tell us where you started.

6 A. I started at the front door of By George's, which is

7 located near Number 1 on the photo.

8 Q. And from that location, where did you walk?

9 A. I walked down the street, to First and Ash, which

10 would be this intersection right here.

11 Q. Okay. And how long did it take you to walk from By

12 George bar to First and Ash Street?

13 A. 3 minutes.

14 Q. The -- from the corner of -- well, I'm looking at

15 your report --

16 A. Oh, I'm sorry.

17 Q. -- that we did -- you sent this on -- let's see.

18 You dated it August 7. August 2nd. Talked about your

19 walking times.

20 A. It was 2 minutes and 20 seconds.

21 Q. Okay. You sure about that?

22 A. Yes.

23 Q. You want to look at your report?

24 A. No. I've got it here.

25 Q. Okay.

1 (Witness referring to report.)

2 A. Let's go ahead.

3 Q. Okay. Let me ask you that again. From George's to  
4 First and Ash Streets, how long did it take you to walk to  
5 that destination?

6 A. 2 minutes and 20 seconds.

7 Q. From the corner then of First Street and Ash, how  
8 long -- where did you go?

9 A. I walked down Ash Street, to Providence, and over  
10 towards the alley right here, which is -- oh, it's just --  
11 Providence and Ash is where I stopped.

12 Q. Okay. So from First and Ash to Providence and Ash,  
13 how long did that take you?

14 A. That took a minute and 50 seconds.

15 Q. Okay. And let me just show you State's Exhibit 10  
16 here. 10B is By George's?

17 A. Yes, it is.

18 Q. Okay. And if we look at 10C, you walked this  
19 direction?

20 A. Right. That's First Street.

21 Q. Okay. And down to the corner in 10D?

22 A. That's correct.

23 Q. Okay. And then in 10E we see -- what's depicted in  
24 that photograph? That's part of what street?

25 A. Ash.

1 Q. Going down to?

2 A. The Tribune.

3 Q. Okay. And what's the road in between?

4 A. Providence crosses.

5 Q. Okay. So from First and Ash to Providence and Ash

6 was how long?

7 A. 1 minute and 50 seconds.

8 Q. Okay. Now, where did you go from there?

9 A. I went south on Providence, to the alley, across the

10 street, and used the alley to go up to the Tribune building.

11 Q. Okay. Where did you stop?

12 A. At the park -- well, at the Dumpster area.

13 Q. Which isn't there any more.

14 A. It's not here. It's --

15 Q. Okay. Is it correct you stopped at the edge of the

16 parking lot?

17 A. Right.

18 Q. Where the Dumpster enclosure used to be?

19 A. It would be this location here.

20 Q. Okay. And for the record, on State's Exhibit 9, the

21 Dumpster enclosure has been removed in that photograph.

22 A. That's correct.

23 Q. By the time this was taken.

24 A. Yes.

25 Q. Okay. And so from that location on Providence up

1 the alley to the Dumpster enclosure, how long did that take  
2 you?

3 A. 1 minute and 30 seconds.

4 Q. Now, where did you go from the parking lot after  
5 that?

6 A. I -- from the parking lot of the Tribune, I went up  
7 the alley and south on Fourth Street to the area of the  
8 diner.

9 Q. Okay. You want to point out the diner? And you  
10 might be blocking --

11 JUROR: You're all right.

12 Q. Right there.

13 A. (Indicating.)

14 Q. Okay. So from the parking lot to the -- that's down  
15 Fourth Street, over Walnut, over Broadway, and to the diner.

16 A. That's correct.

17 Q. And how long did that take you?

18 A. 3 minutes.

19 Q. From the diner, where did you go?

20 A. From the diner, I crossed Fourth Street, into Flat  
21 Branch Park, and crossed the creek, up the bank, to the north  
22 entrance of the service station that's here at the corner of  
23 Locust and Providence.

24 Q. Okay. And how long did that process take you?

25 A. 2 minutes and 52 seconds.

1 Q. And then from the filling station at the  
2 intersection there of Providence and Locust?

3 A. Yes.

4 Q. Where did you go?

5 A. I crossed Providence, went diagonally across the  
6 Osco/Office Depot parking lot, across Broadway, and I  
7 returned to By George's.

8 Q. And how long did that walk --

9 A. 5 minutes and 29 seconds.

10 Q. Okay. Mr. Hawes, what's the total time it took you  
11 to walk that route; basically George's, around the Tribune  
12 building, down Fourth Street, diner, Flat Branch, Osco, and  
13 back to George's?

14 A. 17 minutes and 1 second.

15 Q. And what is the total time it took you to walk from  
16 First Street and Ash Street to the Tribune parking lot? The  
17 total time it took you to get there.

18 A. 3 minutes and 20 seconds.

19 Q. Based on the route you took.

20 A. Yes.

21 Q. Okay. 3 minutes and 20 seconds from First and Ash  
22 to the Tribune parking lot.

23 A. That's correct.

24 Q. What did you do regarding this case on September  
25 25th of this year?

1           A. I drove from the intersection of First and Ash out  
2 to Charles Erickson's residence and then over to Ryan  
3 Ferguson's residence.

4           Q. What time did you -- what time of day were you  
5 driving?

6           A. It was about 2:00 in the afternoon.

7           Q. You drove it two times; right?

8           A. Yes.

9           Q. The first time it was 2 in the afternoon?

10          A. Yes.

11          Q. Okay. How long did it take you to get to Erickson's  
12 residence? Well, let me ask you, how did you get there?

13          A. I went from -- here's First and Ash right here. And  
14 I went, from that intersection, east, to Providence, south on  
15 Providence, to Broadway, went west on Broadway up to  
16 Fairview, south on Fairview, west on Chapel Hill, and -- to  
17 the Erickson residence, which is at 3706 Chinkapin.

18          Q. Okay. And now let me ask you: How long did it take  
19 you to get there?

20          A. 6 -- well -- to Chinkapin?

21          Q. Yes. The Erickson residence.

22          A. I've got the total down to the Ferguson residence.

23          Q. Okay. All right.

24          A. I have the total down --

25          Q. We can do it that way. When you got to -- my fault.



1 When you got to the Erickson residence, what did you do?

2 A. I stopped there and paused --

3 Q. And then what did you do?

4 A. -- in front of the residence, and turned around and

5 drove to Ryan Ferguson's residence.

6 Q. Okay. How long did you pause? Three, four hours

7 or --

8 A. Less than 30 seconds. As if I were dropping

9 somebody off.

10 Q. And then you went to Ferguson's.

11 A. That's correct.

12 Q. Okay. And how did you get over there?

13 A. Got back on Chapel Hill, drove over here to

14 Martinshire, and it turns into Lloyd Drive. And 2513 Lloyd

15 Drive is the Ferguson residence.

16 Q. Okay. And how long -- now let me ask you, how long

17 did that take you?

18 A. 16 minutes and 15 seconds.

19 Q. And what was your total mileage by the time you got

20 to the Ferguson residence?

21 A. Six and a half miles.

22 Q. Okay. And then on October 6, 2005?

23 A. Yes.

24 Q. What did you do?

25 A. I drove the route again.

1 Q. Okay. At what time?

2 A. 1:45 a.m.

3 Q. A.m.

4 A. That's correct.

5 Q. Okay. And did you take that same route?

6 A. I did.

7 Q. Okay. And at that time, on the 6th of October, at  
8 2 a.m., how long did it take you to get from First and Ash to  
9 Mr. Ferguson's residence?

10 A. 14 minutes and 30 seconds.

11 Q. A little bit less.

12 A. A little bit less.

13 Q. Okay.

14 MR. CRANE: I don't think I have any other questions  
15 of this witness.

16 THE COURT: You may resume the stand.

17 Cross-examination?

18 MS. BENSON: Thank you, Your Honor.

19 - - -

20 CROSS-EXAMINATION

21 BY MS. BENSON:

22 Q. I'd like to first talk to you about your walking  
23 around downtown, Mr. Hawes. Rather than starting at By  
24 George, I want us to start at the point that you're at the  
25 Tribune. Okay? And for the sake of this discussion, we need

1 to discuss the approximate time of the murder. Now it's my  
2 understanding that Mr. Heitholt logged out at 2:08 from the  
3 computer system; is that correct?

4 A. I think that's right.

5 Q. Okay. And in addition, after logging out, he paused  
6 and talked with someone in the parking lot; is that correct?

7 A. That is -- that's from police reports, yes.

8 Q. Okay. So it would have to be sometime after that  
9 that the murder occurred, obviously.

10 A. That's correct.

11 Q. Okay. So, we have that at least 2:10, at the  
12 earliest, probably more in the neighborhood of 2:15, is that  
13 correct, that it could have occurred?

14 MR. CRANE: Judge, I'm going to object insofar as  
15 this witness. He doesn't have any personal knowledge -- he  
16 does have knowledge of the logoff time, but he doesn't have  
17 any personal knowledge about when the crime occurred.

18 MS. BENSON: I could rephrase it somewhat.

19 Q. Would it be reasonable to assume that it occurred  
20 sometime after he logged off and talked with someone in the  
21 parking lot and before the 911 call was made at 2:26?

22 A. Yes.

23 Q. Okay. So let us assume for the sake of our  
24 discussion here that it occurred at probably the earliest  
25 time frame on that, which would be 2:10 in the morning.

1 Okay?

2 A. Okay.

3 Q. Just an assumption for our discussion.

4 A. Okay.

5 Q. It's my understanding it took you 3 minutes to go  
6 from the Tribune to the diner area; is that correct?

7 A. That's correct.

8 Q. And then from the diner, through the creek, and up  
9 to the gas station, the Phillips 66 there, it was 2 minutes  
10 and 52 seconds?

11 A. That's correct.

12 Q. And finally, from the gas station, through the Osco  
13 parking lot, the Office Depot parking lot, and to By George,  
14 that was 5 minutes and 29 seconds; is that correct?

15 A. That's correct.

16 Q. So the total distance -- or total minutes involved  
17 in that would have been 11 minutes and 21 seconds?

18 A. I'll agree with you.

19 Q. Trust my word on that? Trust my math?

20 A. I'll agree with your math.

21 Q. Okay. So, for the sake of our discussion, if the  
22 murder occurred at 2:10, assume for the sake of argument that  
23 the act itself would have taken several minutes. Let's take  
24 our leave time from the Tribune parking lot at 2:15, for the  
25 sake of our discussion. Okay?

1 A. Okay.

2 Q. And I understand you don't know if that's the time  
3 or not, but let's assume that whoever did this left at 2:15  
4 in the morning from the Tribune parking lot. Okay?

5 A. Okay.

6 Q. And I'm sorry, I said 2:10 earlier, but let's just  
7 say -- let's say 2:15. With an 11 minute and 21 second  
8 travel time, the earliest one could get back to By George  
9 would be 2:26 in the morning; is that correct?

10 A. Well, I walked a normal pace. I'm confident that it  
11 could have been shortened if you were in a hurry.

12 Q. If -- and we don't know that. We don't know if the  
13 people were walking; we don't know if they were running.  
14 They were described as walking briskly; is that correct? Or  
15 are you familiar with that?

16 A. I mean, I -- in a hurry.

17 Q. Okay. Well, you walked.

18 A. I wasn't in a hurry.

19 Q. Okay. You also didn't add in the time it would take  
20 to stop in the creek and wash someone's hands; correct?

21 A. No, I didn't. I didn't do that.

22 Q. You didn't add in time to have trouble getting up  
23 the embankment.

24 A. I was able to get up the embankment all right.

25 Q. But you didn't add extra time if someone had

1 trouble.

2 A. No. I was able to climb the embankment.

3 Q. Okay. And you didn't add in extra time for stopping  
4 in the intersection to talk to someone.

5 A. No. You're talking about Locust and Providence?

6 Q. Right.

7 A. Near that intersection?

8 Q. Near that --

9 A. Right. I didn't -- no.

10 Q. Okay. And you didn't add in extra time to go to the  
11 car, parked two blocks down, and discard items and then head  
12 back, two blocks up, to the bar.

13 A. No. I went -- stopped at the front door of By  
14 George's again.

15 Q. All right. So even without adding all those extra  
16 things in, the earliest that one could have gotten back, at  
17 your pace, would be 2:26 in the morning. To By George.

18 A. Yes.

19 Q. Correct?

20 A. At my pace.

21 Q. And that is about one hour after the normal bar  
22 closing time in Columbia, is it not?

23 A. That's correct.

24 Q. Now, I'm going to ask you about something a little  
25 bit different, that was not brought up in direct. Through

1 your investigation, you have determined that a Tribune  
2 employee named Michael Boyd was out in the parking lot.

3 MR. CRANE: Well, Judge, I'm going to object. This  
4 calls for hearsay.

5 THE COURT: I don't know that it calls for hearsay.  
6 I need to first hear what the question is.

7 MR. CRANE: Okay.

8 MS. BENSON: I'll finish the question.

9 Q. Have you determined that Michael Boyd was the person  
10 who was in the parking lot at some point when Kent Heitholt  
11 was in the parking lot prior to his death?

12 A. Yes.

13 Q. And it's my understanding that Michael Boyd is  
14 African-American; is that correct?

15 A. Yes.

16 MS. BENSON: Thank you.

17 Oh, I have -- I'm sorry. I do have one more area,  
18 Your Honor.

19 Q. You were talking about the travel time driving that  
20 Mr. Erickson allegedly took from By George to Charles' house  
21 and then from Charles' house to Ryan's house; is that  
22 correct?

23 A. Yes.

24 Q. Okay. And you had testified both to an afternoon  
25 time and to an early morning time; is that correct?

1 A. That's correct.

2 Q. And the early morning time obviously was shorter, at  
3 about 14 minutes; is that correct?

4 A. That's correct.

5 Q. Okay. And in addition, with regard to your early  
6 morning drive, some of the lights in Columbia were flashing  
7 at that time, weren't they?

8 A. I went through one intersection that had a flashing  
9 light.

10 Q. So not all of the intersections, especially the  
11 major intersections, and the major thoroughfares would have  
12 red lights at that time, would they?

13 A. Well, the -- more the major thoroughfares and  
14 intersects, those lights never go flashing. Providence and  
15 Broadway is an example. I mean, it's a major intersection.  
16 That light is always cycling.

17 Q. You indicated that you were at Broadway and  
18 Clinkscapes. Correct?

19 A. Yes. Uh-huh.

20 Q. And that that light was flashing yellow.

21 A. Yes. That's correct.

22 Q. And Broadway is a major thoroughfare in Columbia.

23 A. It is. Right. But --

24 Q. So basically in Columbia, if you have a major  
25 thoroughfare intersecting with a more minor thoroughfare, the



1 light for a person driving on the major thoroughfare would be  
2 flashing yellow at that time.

3 A. Yeah. It --

4 Q. Okay.

5 A. -- really depends on the intersection. But it was  
6 at Clinkscales and Broadway, that's for sure.

7 Q. And talking about the intersection of Providence and  
8 Locust, Providence is a very major thoroughfare in Columbia,  
9 obviously.

10 A. That's correct.

11 Q. Locust is not.

12 A. Right. That's correct.

13 Q. That would be a situation where there might be a  
14 flashing yellow at 1:45 or 2 or 2:30 in the morning, rather  
15 than a red light or green light.

16 A. I didn't drive through there on the --

17 Q. I understand.

18 A. -- the night.

19 Q. But that would be the type of scenario that would  
20 occur.

21 A. Yes, that's true.

22 MS. BENSON: Nothing further.

23 THE COURT: Redirect?

24 - - -

25

REDIRECT EXAMINATION

1

2 BY MR. CRANE:

3 Q. You met Mike Boyd?

4 A. Yes, I did.

5 Q. Did he show you a vehicle while you met with him?

6 A. Yes, he did.

7 Q. In connection with this case.

8 A. Yes.

9 Q. And --

10 MS. BENSON: Judge, at this point I'd object. This  
11 is beyond the scope of cross-examination.

12 THE COURT: Overruled.

13 MR. CRANE: I'm sorry.

14 THE COURT: Overruled.

15 Q. Can you describe the vehicle that he showed you?

16 A. It was a red vehicle. I don't remember the make or  
17 year.

18 Q. And you photographed it --

19 A. I did.

20 Q. -- is that correct? And I forgot to bring it up  
21 here, didn't I? That photo.

22 A. Yes, you did.

23 MR. CRANE: Can I have this marked as State's  
24 Exhibit 99?

25 Q. Show you what's been marked for identification as

1 State's Exhibit 99. Do you recognize that photograph?

2 A. Yes, I do.

3 Q. Okay. What is that?

4 A. It's a photo of Mike Boyd's Plymouth. I think it's  
5 an Acclaim. Plymouth Acclaim.

6 Q. And why did he show you that car?

7 MS. BENSON: And Judge, at this point I will object,  
8 with regard to hearsay.

9 MR. CRANE: Well, let me ask another question,  
10 Judge. I don't want to concede that objection, but I would  
11 rephrase it.

12 THE COURT: You may.

13 Q. What did you ask Mr. Boyd reference his vehicle on  
14 the night of November 1, 2001 -- or the early morning hours  
15 of 2001, November 1?

16 A. I asked him what car he was driving.

17 Q. And what did Mr. Boyd show you?

18 MS. BENSON: And Judge, again I'd make a hearsay  
19 objection.

20 THE COURT: The objection is sustained.

21 Q. Well, why did you take a photograph of that  
22 particular car in State's Exhibit 99?

23 MS. BENSON: Judge, I think that's going to call for  
24 hearsay again.

25 MR. CRANE: This explains his conduct.



1 State's Exhibit 99 admitted into evidence.

2 - - -

3 Q. What color's that car?

4 A. Red.

5 MR. CRANE: I believe that's all the questions I  
6 have.

7 THE COURT: Recross?

8 MS. BENSON: Just briefly, Your Honor.

9 - - -

10 RE-CROSS-EXAMINATION

11 BY MS. BENSON:

12 Q. Did you show that picture to anyone? The picture of  
13 the car? Have you shown that to --

14 A. Well, I showed it to Kevin Crane and --

15 Q. Okay. And have you showed it to Chuck Erickson or  
16 been present when someone else showed it to Chuck Erickson?

17 A. I don't know that -- I don't know that Chuck's ever  
18 seen that picture.

19 Q. You're not sure?

20 A. I don't know that -- I didn't show it to him. I  
21 don't know that he has ever seen that.

22 Q. Have there been meetings with Chuck Erickson that  
23 you weren't present for?

24 A. I don't think so. I think I was there at all of  
25 them.

1 Q. You're not sure?

2 A. Well, I mean, you know, I -- I might have gone up  
3 to -- gotten up to, you know, get something out of the room.  
4 I mean, left the room for a short period of time.

5 Q. And have you discussed that picture with him?

6 A. I don't think I ever talked to Chuck about that.

7 Q. Did you ever describe Michael Boyd to Chuck?

8 A. No, I never did.

9 Q. And just for the jury's sake today, could you  
10 describe Mr. Boyd for the jury?

11 A. He's an African-American. He's probably about 30  
12 years old. Five ten, 180.

13 Q. Okay. Fairly large man? Not extremely,  
14 obviously --

15 A. Right.

16 Q. -- but a decent-sized man who was African-American.

17 A. That's correct.

18 Q. Okay.

19 MS. BENSON: Nothing further, Judge.

20 THE COURT: Redirect?

21 - - -

22 FURTHER REDIRECT EXAMINATION

23 BY MR. CRANE:

24 Q. Prior to making contact with Mr. Boyd and asking him  
25 what vehicle he was driving the early morning hours there at

1 the Tribune November 1, 2001, what information had you  
2 received before that from Charles Erickson?

3 MS. BENSON: Judge, again I'm going to object, on  
4 the basis of hearsay.

5 MR. CRANE: Well, let me ask it this way.

6 Q. Why did you ask Mr. Boyd what vehicle he was driving  
7 on the night of November 1, 2001?

8 MS. BENSON: Judge, I think that calls for hearsay  
9 again, and I'd make the same objection.

10 MR. CRANE: This explains the reason why this  
11 witness took this photograph.

12 THE COURT: It does call for hearsay. Yes?

13 MR. CRANE: This is to explain the conduct of this  
14 witness. Further, the defense has opened up the issue of  
15 what Chuck said and when he said it. With respect to showing  
16 him this photograph. Those are the questions that were asked  
17 on recross.

18 MS. BENSON: Judge, I didn't show him the  
19 photograph. And I certainly didn't ask him questions about  
20 what Chuck Erickson said. I asked him what he said to Chuck.  
21 Not what Chuck necessarily said to him. And Chuck was here  
22 earlier, and the state certainly could have inquired at that  
23 time.

24 THE COURT: I'm going to sustain the objection,  
25 Mr. Crane.





1 Q. You nervous?

2 A. (Nodding head up and down.)

3 Q. Okay. Everything -- these are nice people.

4 Nobody's going to be mean to you. Okay?

5 A. (Nodding head up and down.)

6 Q. Can you give us your name, please?

7 A. Shawna Ornt.

8 Q. Okay. Now, can you speak up so everybody can hear?

9 A. Shawna Ornt.

10 Q. Okay. Shawna, how old are you now?

11 A. I'm 23.

12 Q. 23.

13 A. (Nodding head up and down.)

14 Q. And so back in October of 2001, that would have

15 meant you were what? 19?

16 A. Yes.

17 Q. Okay. And were you living around here back then?

18 A. Yes. I was living in Hallsville.

19 Q. Hallsville, Missouri. That's north of here; is that

20 right?

21 A. Yes.

22 Q. Okay. And how were you employed?

23 A. I was employed with CS Cleaning and Maintenance. I

24 subcontracted for them.

25 Q. Okay. Now, as a -- you were with a cleaning

1 company?

2 A. Yes.

3 Q. And what was the place that you were assigned to  
4 work at during October of 2001, November 2001?

5 A. Columbia Daily Tribune.

6 Q. Okay. And that's just right down the street here;  
7 right?

8 A. Yes.

9 Q. Just a couple blocks down the street?

10 A. Yes.

11 Q. Okay. What were your regular hours there at the  
12 Tribune?

13 A. 10, 10:30 to usually 2, 2:30.

14 Q. Okay. Were there any other janitors that worked  
15 with you, or did you work by yourself?

16 A. Jerry Trump and Mike Boyd.

17 Q. So it was a crew of three of you?

18 A. Yeah.

19 Q. Okay. What -- was Jerry -- did Jerry have any  
20 additional duties? Was he -- the janitor. Did he have any  
21 supervisory type?

22 A. He sort of supervised over me when Deb and Lisa  
23 weren't there.

24 Q. Okay. Let me direct your attention to Halloween of  
25 2001. Do you remember when you got to the Tribune that day?

1 A. Yeah. Yes.

2 Q. I mean, you said you usually got there 10:30. Were  
3 you on time?

4 A. Yeah. It was about 10, 10:30, in between there.

5 Q. Okay. Did you know Kent Heitholt?

6 A. Yes.

7 Q. And let me show you State's Exhibit 1. Do you  
8 recognize the guy that's in those photographs?

9 A. Yes. Kent.

10 Q. Okay. This is Kent here and here?

11 A. Yes.

12 Q. Okay. And how -- tell us how you knew him. Was  
13 that anything outside of the Tribune building?

14 A. No. I just knew him from cleaning the building.

15 Q. Okay. You'd see him around. He'd be doing his job  
16 and you'd be doing yours.

17 A. Yes.

18 Q. Okay. Would you guys speak on occasion or --

19 A. Yes. We'd say "hi" and just -- "how are you doing."

20 Q. Okay.

21 MS. BENSON: Judge, if I can make an objection at  
22 this point. Not to be crass or anything, but I'd object to  
23 him placing a picture of the victim in a position right in  
24 front of the jury, with their viewing that. I think it's  
25 inflammatory.

1 MR. CRANE: A picture --

2 MS. BENSON: The picture he just placed right there.

3 MR. CRANE: Okay.

4 THE COURT: If you want to remove it, you may,

5 Mr. Crane. That is a picture of him walking down the street.

6 It is not --

7 MR. CRANE: Yeah. There's no --

8 THE COURT: -- another type of picture --

9 MS. BENSON: I understand that.

10 THE COURT: -- that might be more upsetting to

11 someone. But if you want him to remove it and he's

12 agreeable, that's fine with me.

13 MR. CRANE: Proceed, Your Honor?

14 THE COURT: You may.

15 Q. Ma'am, on that night, early morning hours of

16 November 1, 2001, did you see Mr. Heitholt?

17 A. Yes.

18 Q. Okay. And again, was that during your normal

19 rounds --

20 A. Yes.

21 Q. -- cleaning up?

22 A. Yes.

23 Q. All right. Nothing unusual that night?

24 A. No.

25 Q. Can you give us your best recollection as when you

1 last saw Mr. Heitholt, what he was doing, what time it was,  
2 if you remember?

3 A. It was around 2:00, because I was done cleaning the  
4 upstairs. And that's about the time I go downstairs to  
5 clean.

6 Q. Okay.

7 A. And --

8 Q. Tell us what you saw of Mr. Heitholt.

9 A. We both started heading out. And I told him --  
10 asked him if he was leaving. And so we just said bye. And I  
11 went on with my work.

12 Q. He went on out the door.

13 A. Yes.

14 Q. Now, I want to show you a diagram here we have  
15 marked State's Exhibit 12. Does this look -- you recognize  
16 what's drawn on here?

17 A. Yes.

18 Q. Okay. You've got kind of the back dock area of the  
19 Tribune. Can you show us where that is?

20 A. Right here.

21 Q. Okay. There's three big garage type doors back  
22 there?

23 A. Yes.

24 Q. Okay. And then there's two -- you want to call  
25 those swinging doors?

1 A. Yes.

2 Q. Okay. And they're to the right. At least they're  
3 to my right. Can you point those out for the jury?

4 A. One right there and there's one right there.

5 Q. Okay. And then can you show us the parking lot?

6 A. This thing right here.

7 Q. Okay. Now, ma'am, after Mr. Heitholt left, he -- do  
8 you remember if he went out any of those doors you just  
9 showed us?

10 A. He went out the one to the left. Away from the  
11 dock.

12 Q. Okay. So that would be the one -- the swinging door  
13 closest to Fourth Street over here?

14 A. Yes.

15 Q. Okay. He went out onto that parking lot -- across  
16 the alley?

17 A. Yes.

18 Q. And then into the parking lot? That's -- I mean,  
19 that was what was out there; right?

20 A. Yes.

21 Q. Okay. Now, after he left and went out onto the  
22 parking lot, did you ever see Mr. Heitholt alive again?

23 A. No.

24 Q. What happened after Kent left? What -- maybe make  
25 that simpler. What did you do after Kent left?

1           A. I finished my cleaning. I was getting ready to head  
2 downstairs, and then I asked Jerry Trump if I could have a  
3 cigarette, and he said, "Go ahead," and he was going to clean  
4 the bathroom. He didn't want to come out with me right then.

5           Q. He said he wanted to clean the --

6           A. Bathroom. Finish the bathroom first.

7           Q. Okay. And you wanted to go out and smoke a  
8 cigarette. You didn't want to borrow one.

9           A. No. I had one.

10          Q. Okay. And where would you normally smoke?

11          A. Right outside of the dock.

12          Q. Okay. And what did -- tell us what you did.

13          A. I just went out the door. And the door just  
14 automatically shuts on you and locks.

15          Q. Okay.

16                 MR. CRANE: May I have the witness step down?

17                 THE COURT: You may.

18                 You'll need to speak up, though, because this lady  
19 sitting in front of me is taking down what you're saying.  
20 And if your back is to her and you speak softly, she won't be  
21 able to hear. Okay? You may step down, but you'll have to  
22 raise your voice, please.

23          Q. Can you come on down?

24                 Okay. Look at this diagram. Can you show us which  
25 door you came out of when you went to smoke?

1 A. I came out the door right there.

2 Q. Okay. And you're pointing -- this guy's blocking.  
3 You're pointing to this door closest to the garage door?

4 A. Yes.

5 Q. Okay. And then how far out from that door on the  
6 lot did you get?

7 A. I came all the way out to about here. That's where  
8 the ashtray is.

9 Q. And were you out on the lot -- well, let me ask you,  
10 other than yourself at that point, were you expecting anybody  
11 else to be out there?

12 A. No.

13 Q. Okay. You didn't go out with anybody else. Jerry  
14 stayed inside. Right?

15 A. Yes.

16 Q. Okay. What happened when you got out on -- to that  
17 location you've just pointed out there on State's Exhibit 12?

18 A. I got out there. And when I walked down the stairs  
19 and looked up, I noticed a body duck down. And that's when I  
20 just got nervous and I went back up the stairs, because that  
21 door automatically locks, so I had to crawl over the railing  
22 onto the dock that was open and get in.

23 Q. Okay. Now, you indicated you saw something?

24 A. (Nodding head up and down.)

25 Q. Okay. Where did you see something?



1           A. Right about there.

2           Q. Okay. Now you're indicating a box there? Victim's  
3 car?

4           A. It would be the rear of the -- the rear driver's  
5 side of his car.

6           Q. Okay. And what did you see?

7           A. I seen someone in a shadow duck down.

8           Q. Okay. And so you were just aware there was somebody  
9 on the driver's side of the car? At that point.

10          A. Yes.

11          Q. Okay. And what did you -- tell us again, what did  
12 you do after you saw that?

13          A. Got scared and went back -- went back up the stairs.  
14 And I climbed up -- there's a railing right there. So I  
15 climbed over the railing to get off the dock.

16          Q. Okay.

17          A. And I went into the bathroom where Jerry was and  
18 told him there was something outside.

19          Q. Okay. You were scared at that point.

20          A. Yeah.

21          Q. Okay. And after you got Jerry, what happened?

22          A. We came -- he came just -- we both walked to the  
23 dock that was open, and we looked out, and he yelled, "Kent,  
24 do you need help?"

25          Q. Okay. Now wait a minute. Show us which door you

1 and Jerry looked out.

2 A. This one right here.

3 Q. Okay. Now you're pointing to the -- if Providence  
4 Road is down this way, you're pointing to the Providence side  
5 of that door.

6 A. Uh-huh.

7 Q. Okay? And is that -- that's -- you want to call  
8 that just "garage door number 1"?

9 A. Okay.

10 Q. Okay. And actually, let me show you what's marked  
11 as State's Exhibit 16 for identification. I don't think this  
12 is -- I don't think 16 is in.

13 THE COURT: 16 has not been admitted into evidence.

14 MR. CRANE: Okay.

15 Q. Is that -- is that a fair and accurate depiction of  
16 the doors -- and I mean, that down there may be different --  
17 the doors, as you recall them, on the night of this homicide?

18 A. Yes.

19 MR. CRANE: Judge, I'd offer State's Exhibit 16.

20 MS. BENSON: No objection.

21 THE COURT: State's Exhibit 16 is admitted.

22 - - -

23 State's Exhibit 16 admitted into evidence.

24 - - -

25 Q. Shawna, show us -- we can move this around a little

1 bit. Which door, first of all, did you come out of?

2 A. I came out this door right here.

3 Q. And you went?

4 A. Right about where the ash -- right where the ashtray

5 is.

6 Q. Okay. Past this wall right here?

7 A. It's right at the end of the wall. It's not past it

8 exactly.

9 Q. Okay. And then you saw somebody duck behind the

10 car.

11 A. Yes.

12 Q. And you went back through this door?

13 A. Yes. I had to climb up, because it's too high for

14 me to get up, so I had climb up it and go over the railing to

15 get to that door.

16 Q. Okay. And so then you got Jerry.

17 A. Yes.

18 Q. And then where were you and Jerry standing when you

19 looked back out?

20 A. Sort of -- like we just kind of walked back. Walked

21 and kind of stood right there.

22 Q. On this Providence end of that door.

23 A. Yes.

24 Q. Garage door number 1 we'll call it. Okay? And --

25 now what was -- what did Jerry start to do at that point?

1           A. He just kind of looked out. And then when he -- he  
2 just said, "Kent, do you need help?" I guess he thought Kent  
3 had a flat tire or something and needed help. And then  
4 that's when -- that's when that -- somebody stood up. And  
5 they stood up, and then one walked around the back side of  
6 the car and looked at me and said that "Somebody needs help."  
7 And then that's when we ran inside and just slammed the door  
8 shut.

9           Q. Okay. How many persons did you see out there on the  
10 other side of the car or to the rear of the vehicle?

11          A. I seen one at the rear of the vehicle.

12          Q. How many total people did you see out there?

13          A. Two.

14          Q. Okay. And one was towards the rear of the vehicle  
15 by the time you got back out -- or were back at the dock  
16 looking out?

17          A. Yes.

18          Q. And the other one was located where by that time?  
19 You see what I'm asking you. I'm asking you now the second  
20 time you looked out.

21          A. Yes.

22          Q. Okay.

23          A. The second time, I seen two of them stand up. And  
24 one was at the front driver's side -- or passenger side, and  
25 the other one was at the rear driver's side.

1 Q. Okay. And prior to that, you had only seen somebody  
2 at the driver's side.

3 A. Yes.

4 Q. Okay. Now, the -- one of the individuals yelled  
5 back.

6 A. Yes.

7 Q. And what do you recall that person saying?

8 A. He looked at me and he said, "Somebody's hurt. Get  
9 help." Along those lines.

10 Q. Okay. But that's still -- you said that still  
11 scared you?

12 A. Yeah.

13 Q. Okay. Can you tell us what you remember about these  
14 two individuals. Their description.

15 A. I remember they were young white males. The one  
16 that I really seen really good had like dirty blond hair. He  
17 was tall. He was skinny. He had a light gray shirt on. He  
18 had jeans, pants, whatever. As far as I can remember right  
19 now.

20 Q. Okay. What about the other one?

21 A. I didn't really see much of him. I seen that he was  
22 white and young.

23 Q. And you used the word "he." I mean, you could  
24 tell --

25 A. Yeah. It was a male.

1 Q. Okay.

2 A. He was a male.

3 Q. The lighting out there on the parking lot, can you  
4 tell us where some of the light sources -- well, let me --  
5 here. Let me show you what's in evidence as State's Exhibit  
6 13. Can you get over here and look at that? Okay.

7 Let's see. First of all, if you look over here in  
8 13C, what's this right here?

9 A. It's a light.

10 Q. Okay. And so to put that in perspective with the  
11 diagram, that light would be over the --

12 A. Right there.

13 Q. Okay. All right. And then there's a streetlight up  
14 here in 13D.

15 A. Yes.

16 Q. And then here's another photograph of the front --  
17 well, the front of the dock area?

18 A. Yes.

19 Q. With that same light we see in 13C?

20 A. (Nodding head up and down.)

21 Q. Is that correct?

22 A. Yes.

23 THE COURT: Excuse me. You need to answer verbally  
24 instead of just shaking your head, please.

25 Q. Underneath the -- there's kind of a roof area over

1 the garage where you could pull in there and be out of the  
2 rain?

3 A. Yes.

4 Q. Is there lighting up underneath there as well?

5 A. I don't know.

6 Q. Okay. What about 13E? Right by that van.

7 A. Yes. There's lights.

8 Q. Light pole there?

9 A. Yes.

10 Q. Okay. What did you do -- well, strike that. Let me  
11 ask you this. After you saw these two young white males at  
12 the victim's vehicle, and this is the second time you've seen  
13 them, and the guy yells at you, "Somebody's hurt, go get  
14 help," or words to that effect, what did you do?

15 A. I went and called 911.

16 Q. Okay. And what happened after that?

17 A. I tried talking to them, but Jerry had to take over  
18 because I was too hysterical.

19 Q. Jerry did?

20 A. Yeah.

21 Q. You were too uptight about the whole thing?

22 A. (Nodding head up and down.)

23 Q. Let me ask you this. Do you ever see, after that  
24 last time when Kent left the building to go out on the  
25 parking lot, what could you see of him when you looked out

1       there towards his vehicle?

2           A.   I couldn't see nothing.

3           Q.   You couldn't see him.

4           A.   (Shaking head from side to side.)

5           Q.   On either occasion.

6           A.   No.

7           Q.   Okay.  And I should ask you too, when you last saw

8       these two young white males, what were they doing?  Where

9       were they going?  What were they doing?

10          A.   They -- can I use this?

11          Q.   Yeah.  Uh-huh.

12          A.   They were -- they --

13          Q.   You're looking at -- just for the record, you're

14       looking there at State's Exhibit 12.

15          A.   They were -- they were running up this alley.  One

16       came from this way, and then the other one came from here,

17       and ran up the alleyway.

18          Q.   One went around the front of the car?

19          A.   Around front of the car and one went around the rear

20       of the car.

21          Q.   Okay.  And up what alley?

22          A.   Up this alley towards Fourth Street.

23          Q.   And then where?  Could you see?

24          A.   I couldn't see.  I was inside.

25          Q.   Okay.  So when you last had any visual of them,



1 they're down in this area?

2 A. Yes.

3 Q. Okay. I think you can go ahead and have a seat.

4 Thank you.

5 After you called 911, who -- well, let me ask you,  
6 after you called 911, do you remember anybody going out on  
7 the parking lot after that? I'm talking about in the  
8 building. I'm not talking about the police yet. I'm talking  
9 about out of the building.

10 A. I remember all of the -- the guys from where he  
11 worked in the sports editor place all went out there.

12 Q. Okay. And did they go out that -- those -- the dock  
13 area or they went out a swinging door or jumped off the dock,  
14 however they got out there?

15 A. I believe they went out the same way Kent went out.  
16 The first --

17 Q. Okay. And they ran out on the lot. Did you go out  
18 on the lot after you were calling 911?

19 A. No.

20 Q. Okay. Did -- you didn't go over and look at the --  
21 at -- see Kent?

22 A. No.

23 Q. Okay. Now, after -- you called 911. Gave the phone  
24 to Jerry?

25 A. (Nodding head up and down.)

1 Q. Eventually then who showed up? That wasn't from the  
2 Tribune. Who showed up?

3 A. The cops.

4 Q. Okay. And a number of police officers arrived.

5 A. Yes.

6 Q. And they talked to you.

7 A. Yes, they talked to me.

8 Q. Okay. On -- do you remember specifically talking to  
9 a detective down at the Columbia Police Department about a --  
10 your -- what you remembered about what these guys looked  
11 like?

12 A. Yes.

13 Q. Okay. And what did -- what -- well, let me just try  
14 it this way. Let me show you State's Exhibit 26 for  
15 identification and ask if you recognize that.

16 A. Yes.

17 Q. Okay. First of all, what is that?

18 A. It's a composite I did.

19 Q. A composite?

20 A. (Nodding head up and down.)

21 Q. You did this with a detective at the Columbia Police  
22 Department?

23 A. Yes.

24 Q. And this was not too long after the events that  
25 you've just described; correct?



1 A. Yes.

2 Q. Okay. Now, later, a lot later, actually in 2003,  
3 did you go back down to the police department?

4 A. Yes.

5 Q. Okay. And I should ask you too, had you had an  
6 opportunity to look through mug shots of people that the  
7 police showed you? Photographs of people?

8 A. Yes.

9 Q. Did you pick anybody out of those photographs as the  
10 people that you'd seen at Kent's car that night?

11 A. No.

12 Q. Okay. You looked at a lot of photographs. It  
13 wasn't them.

14 A. No.

15 Q. Okay. Let me show you what's marked as State's  
16 Exhibit 27 for identification. Do you recognize this?

17 A. Yes.

18 Q. Okay. What's this?

19 A. That is the composite I did in 2003.

20 Q. Okay. I believe that was March of 2003?

21 A. Yes.

22 Q. Okay. And again, for the record, that's the next  
23 day, November 2001; right?

24 A. Yes.

25 Q. Okay.

1 MR. CRANE: Your Honor, I --

2 Q. Now this is with a different detective?

3 A. Yes.

4 Q. Okay.

5 MR. CRANE: Your Honor, I'm going to offer State's  
6 Exhibit 27.

7 MS. BENSON: No objection.

8 THE COURT: No -- did you say no objection?

9 MS. BENSON: Correct.

10 THE COURT: State's Exhibit 27 is admitted.

11 - - -

12 State's Exhibit 27 admitted into evidence.

13 - - -

14 Q. Now, Shawna, how come you went and did another  
15 composite later?

16 A. Because it was an actual artist that drew it out,  
17 where I could explain it better. Or he could make it look  
18 more like the person I seen.

19 Q. Okay. And both of these are one of the two guys you  
20 saw?

21 A. Yes.

22 Q. Okay. You saw two different individuals that night?

23 A. Yes.

24 Q. And both young white males?

25 A. Yes.

1 Q. Which one -- you said one was at the back of the car  
2 and one was towards the front of the car? Now I'm talking  
3 about the second time you came out.

4 A. Yes.

5 Q. The first time you came out, they're both on the  
6 driver's side. But the second time you came out -- do you --  
7 can you tell us which of these two individuals the composite  
8 is of?

9 A. I can't say for sure. It was four years ago.

10 Q. Right. Well, is -- can you tell us whether it was  
11 the one that yelled back? Or was it the other one you saw?  
12 Or do you remember?

13 A. It was the one that looked at me and talked to me.

14 Q. Okay. Now, would that go for State's Exhibit 27?

15 A. Yes.

16 Q. And that was in 2003.

17 A. Yes.

18 Q. When you did that. And 2001 when you did those two.

19 A. Yes.

20 Q. You hadn't -- you'd never met Ryan Ferguson or Chuck  
21 Erickson.

22 A. No.

23 Q. After you did the first composite, how did you feel  
24 about it?

25 A. Not as satisfied as I wanted to be.

1 Q. After you did the second composite, how did you feel  
2 about that one?

3 A. Better than the first one.

4 Q. You thought that was more accurate as to what the  
5 individual looked like?

6 A. Yes.

7 Q. Okay.

8 MR. CRANE: I -- your witness. I don't have any  
9 other questions.

10 THE COURT: You may inquire.

11 MS. BENSON: Thank you, Your Honor.

12 - - -

13 CROSS-EXAMINATION

14 BY MS. BENSON:

15 Q. You indicated that you last saw Mr. Heitholt right  
16 around 2:00 in the morning; is that correct?

17 A. Yes.

18 Q. And that was when he was leaving the building?

19 A. Yes.

20 Q. All right. And did you see anyone else leave the  
21 building right around that time, just before?

22 A. No.

23 Q. You don't recall seeing anyone leave?

24 A. No.

25 Q. Okay. You indicated it was about 10 to 15 minutes

1 after he left that you took your smoke break; is that  
2 correct?

3 A. Yes.

4 Q. So that puts you back out onto the parking lot  
5 somewhere around 2:15 or so; is that correct?

6 A. Yes.

7 Q. And you're not entirely sure about the 2 a.m. It  
8 could have been a little later than that?

9 A. Yeah.

10 Q. Okay. Okay. Let me refer you to State's Exhibit  
11 12. The first time that you went out that night, you went  
12 out this door here, which is the first swinging door. Or I  
13 guess if you want to take it on a line from east to west, it  
14 would be the second swinging door; is that correct?

15 A. Yes.

16 Q. Okay. And did you come down the steps?

17 A. Yes.

18 Q. And you got to right about the end of this thing  
19 here?

20 A. Yes.

21 Q. Now at that time you only saw a shadow. Is that  
22 right?

23 A. I saw -- I actually saw someone duck down.

24 Q. Okay. You saw -- so they ducked down very quickly,  
25 and you didn't actually get to see them at that point.



1 A. Yes.

2 Q. If that was all you had seen, you would not be able  
3 to describe them at all.

4 A. No.

5 Q. Okay. Okay. So you went back in and you got Jerry,  
6 who had not come out at all yet; is that correct?

7 A. Yes.

8 Q. Okay. And when you came back with Jerry, you came  
9 to the first big garage door.

10 A. Yes.

11 Q. Is that right? And this is still up on the dock.  
12 Is that right?

13 A. Yes.

14 Q. When you came to that area with Jerry, both you and  
15 Jerry stayed up on this dock area.

16 A. Yes.

17 Q. Is that right? And it's from there that he yelled  
18 at these people?

19 A. Yes.

20 Q. Okay. So Jerry did not go down to the lot. He  
21 stayed up there with you.

22 A. Yes.

23 Q. All right. Now, when the person yelled back, that's  
24 when you and Jerry shut the door; is that right?

25 A. Yes.

1 Q. Okay. So Jerry didn't stay outside at that point.  
2 A. No.  
3 Q. He shut the door and stayed inside with you.  
4 A. Yes.  
5 Q. All right. And then you both went to the telephone.  
6 A. I know I went to the telephone. I'm not for sure --  
7 Q. Okay. Well, he took over the telephone call for  
8 you.  
9 A. Yes.  
10 Q. And that was fairly quickly, wasn't it?  
11 A. Yes.  
12 Q. A matter of seconds?  
13 A. A little bit, yeah.  
14 Q. Okay. Well, I'm not sure how many, but a matter of  
15 seconds rather than minutes.  
16 A. (Nodding head up and down.)  
17 Q. Is that correct?  
18 A. Yes.  
19 Q. Okay. So he was just behind you --  
20 A. Yes.  
21 Q. -- when you went to make the phone call. So you did  
22 not see Jerry Trump go back outside until perhaps all the  
23 other guys from the sports editor -- or the sports writing  
24 room went outside.  
25 A. Yes.

1 Q. Okay. Now with regard to the other people going  
2 outside, how is it that they knew that there was something  
3 wrong outside?

4 A. I guess -- I was on the phone. I --

5 Q. Okay. So you didn't go up and tell them.

6 A. No.

7 Q. Okay. Now, when you went out the door, and I'm  
8 talking about the swinging door this time, not the garage  
9 door, you were just coming out to take a smoke break; right?

10 A. Yes.

11 Q. So you didn't have a vacuum cleaner or anything like  
12 that --

13 A. No.

14 Q. -- in your hands? You didn't have anything with a  
15 cord nearby you in your hands?

16 A. No.

17 Q. Okay. Let's go now to your descriptions. Now  
18 you've indicated that you only got a look -- a good look at  
19 one of those individuals; is that correct?

20 A. Yes.

21 Q. And that was the person who spoke to you. He said,  
22 "Somebody needs help," or something to that effect.

23 A. Yes.

24 Q. Is that right?

25 A. Yes.

1 Q. Okay. And you've given a description of that person  
2 several times, have you not?

3 A. Yes.

4 Q. And in every description that you've given thus far,  
5 up 'til today, you've described the hair as blond; correct?

6 A. Yes.

7 Q. Now, today you said the hair was -- I believe you  
8 said dirty blond? Is that correct?

9 A. Those are the same thing to me.

10 Q. Okay. Would you say that dirty blond's different  
11 from straight blond?

12 A. I guess.

13 Q. Okay. How about: Is dirty blond different from  
14 extremely blond?

15 A. Yes.

16 Q. Okay. That's a different thing, isn't it?

17 A. Yes.

18 Q. All right. Do you remember talking with Officer  
19 Lloyd Simons of the Columbia Police Department on November  
20 2nd, 2001, the day after the murder?

21 A. Yes.

22 Q. Okay. And he asked you for a description once  
23 again.

24 A. Yes.

25 Q. This was actually probably the second or third time

1 you've given a description to officers; right?

2 A. Yes.

3 Q. And in this description, you first describe the  
4 person you saw as being blond; correct?

5 A. Yes.

6 Q. And then you indicate that, in fact, his hair was  
7 extremely blond, do you not?

8 A. I don't remember that.

9 Q. You don't recall that?

10 A. No.

11 MS. BENSON: Your Honor, I would offer to refresh  
12 her recollection with the report. I know what the Court's  
13 ruling has been thus far.

14 MR. CRANE: I'm going to object to that, Judge.  
15 She -- if they want to call the officer, that's fine.

16 MS. BENSON: We can do that. I'd still make the  
17 request.

18 THE COURT: Okay. What you're wanting to refresh  
19 her recollection with is not a statement that --

20 MS. BENSON: I understand.

21 THE COURT: -- she wrote out; is that correct? It's  
22 a police report.

23 MS. BENSON: It is a police report written by an  
24 officer.

25 THE COURT: That some other officer wrote, not the

1 witness who's on the stand.

2 MS. BENSON: Uh-huh.

3 THE COURT: The objection is sustained.

4 Q. If -- you sat down with Officer Simons, I'm assuming  
5 at the police department, is that correct --

6 A. Yes.

7 Q. -- when you had this interview?

8 A. Yes.

9 Q. Okay. And it's about two and a half pages of text,  
10 from what you told him; is that correct? Would you think  
11 that's --

12 A. Yes.

13 Q. -- fair?

14 A. Yeah.

15 Q. Okay. And he listened to what you had to say?

16 A. Yes.

17 Q. I'm assuming he took notes?

18 A. Yes.

19 Q. Okay. So he would have written down what you told  
20 him?

21 A. Yes.

22 Q. Okay. And if he wrote down that you said "extremely  
23 blond," would that be reasonable?

24 A. Yeah, but I don't remember saying it, so.

25 Q. Okay. All right. The other thing that you have

1 mentioned about the hair was a unique style previously; is  
2 that correct?

3 A. Yes.

4 Q. I notice that you didn't mention that today. Could  
5 you describe the hairstyle? What was unique about it?

6 A. It was -- it was kind of -- the bangs were pushed  
7 up. Just -- it's hard to explain. Not all the hair was  
8 spiked. Just the bangs were up.

9 Q. Okay. So the unusual feature of the hair was that  
10 the bangs were kind of -- were they pushed forward and spiked  
11 up?

12 A. Yes. They were just like --

13 Q. Kind of like curled up or something?

14 A. No. They were sticking up.

15 Q. Okay. Just the bangs.

16 A. Yeah.

17 Q. Okay. Now, you first gave a description right there  
18 on the scene; is that correct?

19 A. Yes.

20 Q. And that was Mitch Baxley from the Columbia Police  
21 Department; is that correct?

22 A. Yes.

23 Q. Okay. And at that time you described this unusual  
24 hairstyle?

25 A. Yes.

1 Q. Okay. And at that time you described the hair as  
2 blond --

3 A. Yes.

4 Q. -- is that correct? But you didn't say "dirty  
5 blond" or "medium blond"; you just said "blond" at that time;  
6 correct?

7 A. Yes.

8 Q. And then you had another interview with Ben White,  
9 also on November 1st.

10 A. Yes.

11 Q. Okay. This was the second one, but on November 1st  
12 of '01; correct?

13 A. Yes.

14 Q. Okay. And again at that time you described the hair  
15 being -- the bangs being spiked in front? Correct?

16 A. Yes.

17 Q. And you described the hair being blond --

18 A. Yes.

19 Q. -- correct? And you say nothing, once again, about  
20 being medium blond or dirty blond; just blond. Is that  
21 correct?

22 A. Yes.

23 Q. And then in this third interview with Lloyd Simons,  
24 you don't recall it, but you've described the hair as  
25 extremely blond. And you described it again as being hair --



1 the bangs sticking up in front. Is that correct?

2 A. Yes.

3 Q. Okay. And then finally you did a second composite  
4 sometime later; is that correct?

5 A. Yes.

6 Q. And that was also with a Columbia Police Department  
7 officer; is that correct?

8 A. Yes.

9 Q. I believe that was Mr. Nichols perhaps?

10 A. Yes.

11 Q. Okay. And that was February 24th of 2003.

12 A. Yes.

13 Q. All right. And in that, you once again described  
14 the hair as blond; is that correct?

15 A. Yes.

16 Q. Okay. And it's only after -- actually after being  
17 deposed in this case that you have added the description of  
18 dirty blond to this case, isn't it?

19 A. I didn't really add nothing. I just said it.

20 Q. Okay.

21 A. It was blond.

22 Q. Which you've admitted is different -- extremely  
23 different from extremely blond; correct?

24 A. Well, yeah.

25 Q. Okay. Now, today I believe you described the person

1 that you did see as skinny? Is that what you said?

2 A. Yes.

3 Q. Okay. And in the first four descriptions that you  
4 gave, you have described that person rather as muscular, but  
5 not stocky.

6 A. Yes.

7 Q. Is that accurate?

8 A. Yes.

9 Q. Okay. And you've described previously the person as  
10 being about six feet tall. Is that still accurate?

11 A. Yes.

12 Q. Okay. And I believe you described these individuals  
13 as being in their early 20s.

14 A. Yes.

15 Q. Is that correct?

16 A. Yes.

17 Q. Okay. That's what you observed that night.

18 A. Yes.

19 Q. Okay.

20 A. It happened fast.

21 Q. All right. Now when you gave your second composite  
22 description, you added some facial details that you had never  
23 added before; is that correct?

24 A. Yes.

25 Q. All right. And you indicated that the head was very

1 rectangular. Is that right?

2 A. Yes.

3 Q. And that's still accurate?

4 A. Yes.

5 Q. Okay. You indicated that the head was longer than  
6 an average head. Is that still true?

7 A. Yes.

8 Q. Is that still what you recollect?

9 A. I guess, yeah.

10 Q. Okay. You indicated that the chin was wider than  
11 the average chin and square.

12 A. Yes.

13 Q. And that's true?

14 A. Yes.

15 Q. Okay. You indicated that the nose was very narrow  
16 at the base.

17 A. Yes.

18 Q. Is that correct?

19 A. Yes.

20 Q. And you also indicated that the person had very  
21 small lips. Do you recall that?

22 A. No.

23 Q. You indicated they had small -- like fin lips, I  
24 guess I should say. Do you understand what I mean?

25 A. Yes.

1 Q. Okay. You don't recall telling the officer that  
2 when you made your second composite?

3 A. I couldn't see the exact details of the lips and  
4 stuff, you know.

5 Q. It was kind of hard to see facial details.

6 A. Yeah.

7 Q. Okay. You don't recall if they had facial hair or  
8 not?

9 A. No.

10 Q. Okay. Do you recall it being a fairly warm night?

11 A. It was decent.

12 Q. You didn't need a coat, did you?

13 A. No.

14 Q. Okay. Certainly not a big puffy coat.

15 A. No.

16 Q. Now, since that time -- well, actually that night  
17 the officers took you for what we call a show-up, where they  
18 thought they had a suspect in custody and they asked you to  
19 come look at him. Do you remember that?

20 A. Yes.

21 Q. Okay. I think Jerry Trump went with you; is that  
22 correct?

23 A. Yes.

24 Q. And he didn't see anything at all, it's my  
25 understanding, with regard to the suspect.

1 A. No.

2 Q. Okay. You looked at the suspect that they had;  
3 correct?

4 A. Yes.

5 Q. Do you remember that?

6 A. Yes.

7 Q. Okay. And it's my understanding you were very  
8 hesitant and unsure about that person being the suspect.

9 A. No, I knew it wasn't him.

10 Q. Okay.

11 A. No.

12 Q. So if the officer wrote in her report that you were  
13 hesitant and unsure --

14 MR. CRANE: Well, now wait a minute, Judge.

15 Q. -- that would not be correct?

16 MR. CRANE: I got a motion in limine on this  
17 business right here.

18 THE COURT: You want to approach the bench then?

19 MR. CRANE: Yeah.

20 MS. BENSON: I don't mind withdrawing the question,  
21 however, Judge.

22 MR. CRANE: Okay.

23 MS. BENSON: That's okay.

24 MR. CRANE: She's already testified that -- the last  
25 question along this line was: That guy wasn't one of two

1 people she'd seen out by the car.

2 THE COURT: The question is withdrawn.

3 MS. BENSON: Thank you. Okay.

4 Q. Now sometime later you were working at Pizza Hut; is  
5 that correct?

6 A. Yes.

7 Q. Okay.

8 MR. CRANE: Make the same objection, Judge. And I  
9 think I know where she's going with this. Can we approach?

10 - - -

11 Counsel approached the bench and the following  
12 proceedings were held:

13 MS. BENSON: Judge, what I'm going to ask about is  
14 an occasion wherein she was working at Pizza Hut. She had a  
15 co-worker that she thought looked just like the suspect and  
16 called the police and talked to them about that. I think  
17 it's relevant to her certainty or lack thereof as to features  
18 of this person and ability to ID.

19 MR. CRANE: This person that she talked about, he  
20 was checked out. He was nowhere near there. And he is not  
21 the -- in any way, shape, or form involved in this thing.  
22 And Miss Benson, with all due respect, knows it, and it's  
23 directly contravening the motion in limine, evidence of other  
24 suspects, just like that last question was with the show-up.

25 MS. BENSON: If I could, Judge. I'm not at all

1 trying to suggest that the person --

2 THE COURT: Wait a minute. Mr. Crane is not here.

3 MR. CRANE: I can hear.

4 MS. BENSON: I'm not suggesting that this person was  
5 the perpetrator. I'm talking about her ability to make an ID  
6 that she thinks she sees this person and is so certain that  
7 it's that person that she calls the police. It goes to the  
8 credibility of her with regard to her description and  
9 identification issues.

10 MR. CRANE: Well, okay. Can I go ahead and ask her  
11 if she can identify the defendant then?

12 THE COURT: I assume you can.

13 MS. BENSON: Well, she can't. She can't unless she  
14 is going to lie today.

15 MR. CRANE: She hasn't looked over there. I don't  
16 know when she's seen him.

17 THE COURT: She's never seen him.

18 MR. CRANE: Not in person.

19 MS. BENSON: Not in person.

20 THE COURT: Well, I assume if you want to test her  
21 credibility by having her say other people look like that, I  
22 assume the state would be privileged to show that this person  
23 had nothing to do with it, number one. And number two, she  
24 could be asked to identify the defendant in this courtroom as  
25 well.





1 either side.

2 MR. CRANE: No.

3 You guys aren't subpoenaed, are you?

4 SPECTATOR: No, we're not.

5 THE COURT: All right. Go ahead. You may finish  
6 your examination.

7 MS. BENSON: Thank you, Judge.

8 Q. I'm going to ask you at this point about the other  
9 person that was there, that you were not able to get a  
10 description -- or a significant description of anyway. Okay?

11 A. Okay.

12 Q. You did get a look at that person when they stood  
13 up; is that correct?

14 A. Yes.

15 Q. Okay. And it's my understanding that that person  
16 was shorter than the other person? Is that correct?

17 A. Yes.

18 Q. It's also my understanding that that person was  
19 fatter than the person that had spoken to you. Is that  
20 correct?

21 A. He was a little bit bigger, yes.

22 Q. Okay. Do you recall using the word "fatter" before  
23 in your prior interviews with police?

24 A. Yeah. I --

25 Q. Okay. Did you notice anything else about that

1 person at all?

2 A. I noticed that it was a white male. He was white  
3 and he was young.

4 Q. Right. Other than being a white male.

5 A. Not really, no. No.

6 Q. Okay. You didn't notice anything about hats.

7 A. No. I -- I paid attention more to the one that was  
8 talking to me.

9 Q. Okay. And you didn't see a hat on that person  
10 either, did you?

11 A. No.

12 Q. Okay. And that person had on a T-shirt; is that  
13 correct?

14 A. Yes.

15 Q. Okay. They didn't have a jacket on or a  
16 long-sleeved shirt on, but a T-shirt; correct?

17 A. Yes.

18 Q. Okay. And just to make sure that the jury's clear  
19 on that, the two composites that you did, although quite some  
20 time apart, they are of the same suspect --

21 A. Yes.

22 Q. -- correct? The person that spoke to you.

23 A. Yes.

24 Q. Okay. You've never done a composite for the other  
25 person.

1 A. No.

2 Q. Okay.

3 MS. BENSON: One moment, Your Honor.

4 (Discussion off the record between defense counsel.)

5 MS. BENSON: Just one more question. Sorry.

6 Q. The person that you said spoke to you was the person  
7 coming around the back of the car, that walked around the  
8 back toward the alley; is that correct?

9 A. Yes.

10 Q. Okay.

11 MS. BENSON: Nothing further.

12 THE COURT: Redirect?

13 MR. CRANE: I don't think I got any more questions  
14 of this witness.

15 Thank you, ma'am.

16 THE COURT: May she be finally excused for the  
17 state?

18 MR. CRANE: Yes.

19 THE COURT: For the defendant?

20 MS. BENSON: Yes, Your Honor.

21 THE COURT: Thank you so much for coming. You're  
22 finally excused. Would ask you not to discuss your testimony  
23 with any other person who is to be called as a witness, but  
24 you're free to go. Thank you.

25 You may call your next witness.

1 MR. CRANE: Jerry Trump.

2 THE COURT: Would you come forward and raise your  
3 right hand, sir.

4 - - -

5 JERRY TRUMP,  
6 being first duly sworn by the Court, testified as follows:

7 THE COURT: Would you take the witness stand,  
8 please.

9 You may inquire.

10 - - -

11 DIRECT EXAMINATION

12 BY MR. CRANE:

13 Q. Give us your name, please, sir.

14 A. Jerry Trump.

15 Q. Jerry, how old are you?

16 A. Fifty-six.

17 Q. And back in -- where are you living now?

18 A. I'm living in Kirksville, Missouri.

19 Q. Okay. Back in October of 2001, how were you  
20 employed?

21 A. I was employed by the C & S Cleaning Company.

22 Q. And what was one of their places that you cleaned  
23 during the -- October, November of 2001?

24 A. The Columbia Daily Tribune.

25 Q. Okay. Just a couple blocks down this way; right?

1 A. Yes, sir.

2 Q. How long had you been a janitor there by that time?

3 A. I believe it was about six months.

4 Q. And what were your regular hours there at the  
5 Tribune?

6 A. We normally went in around 9 in the evening, 9 to  
7 10, and worked until 2 or 3.

8 Q. And, you know, you were a janitor.

9 A. That's correct.

10 Q. Cleaned up.

11 A. That's correct.

12 Q. Did you have any supervisory responsibility?

13 A. I did. I had advanced to being their lead person  
14 there. And I had two other employees that I managed.

15 Q. Was one of them Shawna Ornt, who just walked out as  
16 you walked in?

17 A. Yes.

18 Q. Okay. I want to direct your attention to October  
19 31st, 2001. About what time did you arrive there at the  
20 Tribune?

21 A. I believe we got there about 9 that evening.

22 Q. And is that -- was that normal?

23 A. Yes.

24 Q. Okay. What were you driving that night?

25 A. A 1997 I think Astro Chevy van.

1 Q. Where did you park it?

2 A. About the fifth place down from the rear of the  
3 building.

4 Q. Well --

5 A. In the employee parking lot.

6 Q. Okay. Which is right out on the other side of the  
7 alley from the dock there.

8 A. Correct.

9 Q. Okay. That night and into the early morning hours  
10 of 2001, normal evening?

11 A. Yes, it was.

12 Q. Cleaning up, doing your thing?

13 A. Correct.

14 Q. Did you know -- have occasion to know Kent Heitholt?

15 A. I did.

16 Q. Okay. And can you describe how you knew Kent.

17 A. Well, Kent worked late in the evenings, because  
18 obviously sports events went late into the day. And he  
19 worked late in the evening. And some of his staff would too.

20 Q. Okay.

21 A. And as we cleaned the building, we cleaned his  
22 office.

23 Q. All right. And so they -- the sports people would  
24 be there, Kent would be there, and you'd be cleaning up  
25 around them, kind of.

1 A. Correct. They were always friendly and --

2 Q. Show you State's Exhibit 1, 1A and 1B. Do you  
3 recognize that guy?

4 A. I sure do. Kent Heitholt.

5 Q. The big guy there?

6 A. Yes.

7 Q. Not the little one, but the big one there --

8 A. The big one.

9 Q. -- on the bottom?

10 A. Yeah.

11 Q. Okay. Kent Heitholt.

12 The night of November -- or early morning of  
13 November 1, 2001, do you recall -- or did you have occasion  
14 to be around when Kent left for what -- I guess you thought  
15 was for the evening?

16 A. Yes. I was at -- near the back doors. We had just  
17 finished mopping the stairwell that the employees usually  
18 use. And he said, "Oh, you just mopped that." And I said,  
19 "Yes." He said, "Well, I'll go out this other door."

20 Q. Okay.

21 A. And I held the door for him --

22 Q. All right.

23 A. -- as he went out.

24 Q. You didn't want him walking through your freshly  
25 mopped floor and he didn't have a problem with it?

1           A. Well, he was that kind of a person, that he would  
2 avoid those kinds of things, so that we didn't have double  
3 duty. Kent was very considerate.

4           Q. After he -- and he went on out to the parking lot?

5           A. Correct.

6           Q. And after Kent left the building, what did you do?  
7 Tell us what happened after that.

8           A. At that point I was cleaning the dock area. Kind of  
9 a floor all by itself. But there is an employee bathroom  
10 there. And I was in that bathroom cleaning. The door was  
11 propped open, as normal, because it's a small room. And  
12 Shawna came to me and asked about me going out to smoke with  
13 her. And I said, "Shawna, I've just been out to smoke, and I  
14 want to finish cleaning this bathroom so we can move  
15 downstairs as soon as possible. And I'll go out with you,  
16 though, in a few minutes." I said, "You can go on out by  
17 yourself. Just stay on the steps." And I said, "I'm real  
18 close here." I was just a few feet from the door.

19          Q. And what happened then?

20          A. I mean, she went out -- to my knowledge, at least,  
21 she -- I heard the door open and close.

22          Q. Okay. And after that, what happened?

23          A. Okay. I continued to clean. But just a minute or  
24 two later she came back in and said, "Somebody's outside  
25 there, ducking down behind Kent's car." And I said, "Shawna,



1 that can't be. Kent's already gone." And I said, "I think  
2 you just want me to go outside and have a cigarette with  
3 you." And I said, "I want to finish this work." And she  
4 insisted that somebody was out there. So I went out of the  
5 bathroom --

6 MR. ROGERS: I'm going to object to the narrative at  
7 this point, Your Honor.

8 THE COURT: I take it you're the one who's going to  
9 be doing the cross-examination of this witness.

10 MR. ROGERS: Yes, Your Honor.

11 THE COURT: Okay. The objection to the form of the  
12 answer is sustained. If you will ask specific questions --

13 MR. CRANE: Okay.

14 THE COURT: -- Mr. Crane.

15 Q. So, what -- after Shawna told you that, what did you  
16 and she do?

17 A. We went across the hall there, to the garage doors,  
18 and we -- I looked out the garage door window to see if I  
19 could see anybody out there.

20 Q. Okay. Now let me stop you right there and show  
21 you -- what happened to the doors here. State's Exhibit -- I  
22 got it right here. State's Exhibit 16. A photograph here of  
23 the -- actually that's all five doors: The three dock doors  
24 and the two we'll call it swinging doors?

25 A. Yes, sir.

1 Q. You recognize what's in those?

2 A. Yes. The bath --

3 Q. Now let me ask a question --

4 A. Okay.

5 Q. -- see, and you go on with -- when you first looked  
6 out on the lot, after Shawna came and got you and said  
7 there's -- she's seeing people out at the car --

8 A. Uh-huh.

9 Q. -- what was the first door you looked out of?

10 A. This door here. Or the windows there. Or the  
11 window.

12 Q. So that one was shut?

13 A. Yes. All of them were shut.

14 Q. And you looked out that window.

15 A. Correct.

16 Q. The little square part of the third door to the  
17 left. My left.

18 A. Correct.

19 Q. And then what did you do?

20 A. When I didn't see anybody, I still -- I took her at  
21 her word and I moved down to the first door.

22 Q. Okay. So that's the door closest to the swinging  
23 door here? So that would be the garage door on my right; is  
24 that correct?

25 A. Correct.

1 Q. Okay. And what happened at that point?

2 A. That was the door that we typically opened to remove  
3 trash from the building.

4 Q. Okay. And what happened?

5 A. And I unlocked it and unlatched it and opened it and  
6 raised it.

7 Q. And when you were standing there at that door, can  
8 you tell us what your location --

9 A. Well, I couldn't see Kent's car from here, where I  
10 had unlocked the door, so I had to move over to this side.

11 Q. Okay. So you were at the left side of -- we'll call  
12 that door number 1 then. Is that correct?

13 A. That's correct.

14 Q. Okay. And the reason why you couldn't see, if you  
15 were on the right side of that door, is because of this wall  
16 here?

17 A. That's correct.

18 Q. It divides the two swinging doors? Okay. Now when  
19 you were looking out that open door, is Shawna nearby?

20 A. Yes.

21 Q. Okay. And when you looked out there, what do you  
22 recall seeing?

23 A. I still didn't see anything. I saw Kent's car, or  
24 what I thought was Kent's car, and then -- but logic wanted  
25 to tell me no, that Kent was gone. You know. But again, I

1 took Shawna at her word and I sort of remembered that Kent  
2 had parked there usually.

3 Q. You were familiar with his car and --

4 A. Right.

5 Q. Okay.

6 A. And so I hollered. I may have called his name, but  
7 I know that I hollered, "Who's out there?" And I did that  
8 twice. And finally the third time I thought, Well, I'll try  
9 a trick that I've done with kids before. I said, "I see you  
10 out there. Who's out there?" And with that, two young men  
11 raised up from behind that car and said, "Someone's hurt out  
12 here, man." One of them said that.

13 Q. Okay. Yeah, they both didn't say that in unison?

14 A. No.

15 Q. Okay.

16 A. One of them said it.

17 Q. Okay. Do you know which -- well, let me ask you  
18 this. These two individuals that you saw at the car, do you  
19 recall how they were positioned at Mr. Heitholt's vehicle?

20 A. One was directly behind the front wheel on the  
21 driver's side, and one was behind the rear wheel on the  
22 driver's side.

23 Q. Okay. And so one was -- they're both on the  
24 driver's side, and one was to the front of the car and --

25 A. Correct.

1 Q. -- one was to the back of the car?

2 A. That's correct.

3 Q. Okay. And what about the lighting out there on the  
4 parking lot that night?

5 A. Well, it was lit from the top of the building,  
6 facing Kent's car and facing the parking lot. And as close  
7 as Kent was parked to the building, it was adequate for me to  
8 be able to see. I could pick out my van out there as well,  
9 because there's a light even further down the parking lot.

10 Q. All right. I was going to -- let me show you what's  
11 State's Exhibit 13 here. And let me direct your attention  
12 here to 13E.

13 A. Right.

14 Q. On -- this is -- we've got this photo here. You can  
15 see it in the daylight, but is there a light there?

16 A. Absolutely.

17 Q. Okay. What about underneath the -- what do you call  
18 that thing that sticks out over the garage doors?

19 A. I don't know that we called it anything.

20 Q. A roof?

21 A. A roof I guess.

22 Q. Yeah. Okay. You can drive up under there, though.

23 A. Right. Yeah. That's right.

24 Q. What about lighting up under --

25 A. There could be. And I think that was on as well.

1 Q. What about --

2 A. It wasn't very --

3 Q. -- 13F?

4 A. That -- there's a pole light here.

5 Q. And whose van's that?

6 A. That's my van.

7 Q. Okay. And so Kent's car was on this same side of

8 the lot, on down, and not visible in that photograph?

9 A. Correct.

10 Q. Okay. 13D, what do you see in that photograph?

11 A. That's Kent's car.

12 Q. Okay. That's where it was the night of the murder?

13 A. Right.

14 Q. Okay. These are some other vehicles on the lot?

15 A. Right.

16 Q. All right. Well, actually, that's your van in 13A.

17 A. Yes.

18 Q. And then another vehicle on the lot.

19 A. Right.

20 Q. Okay. What did you do after the two people stood

21 up? You said two young men thus far stood up, and you heard

22 one of them holler at you all.

23 A. Well, I was surprised that anybody was there. And I

24 immediately closed the garage door. When I heard that

25 somebody was hurt, I began to suspect that there may have

1     been foul play.

2             MR. ROGERS: I will object to that, Your Honor, as  
3     narrative, not responsive. The question was what he did.

4             MR. CRANE: Okay. That's fine. We can have that be  
5     stricken. I -- I think we'll all agree there was some foul  
6     play that night, but if you want to have that stricken,  
7     that's fine.

8             MR. ROGERS: Your Honor, I will object to  
9     Mr. Crane's comments when I make a perfectly normal  
10    objection.

11            MR. CRANE: Well, I mean, the answer's been given,  
12    is what I'm saying.

13            THE COURT: Well, if the answer is given that is not  
14    responsive or of a narrative nature, and there's an objection  
15    afterwards, I don't know that the lawyer would have an  
16    opportunity to make the objection before, not anticipating  
17    that. And I'll sustain the objection.

18            Is there a motion to strike on the --

19            MR. ROGERS: No, Your Honor.

20            THE COURT: -- floor? No?

21            MR. ROGERS: No.

22            THE COURT: All right.

23            Q. Mr. Trump, after you -- so you've seen these two  
24    individuals, and you close the garage door?

25            A. Correct.

1 Q. Okay. Just tell us what happened then. Strike  
2 that. What did you do then?

3 A. Well, I latched the door first. And then I -- I  
4 said to Shawna, "I think we ought to go call 911."

5 Q. Okay.

6 A. But she said, "I want to stay with you." And she --  
7 and I said, "Well, I'm going to go out and see what's going  
8 on." And I went out the employee door and -- while she held  
9 it.

10 Q. Okay. Yeah. When you say "employee door" --

11 A. This door.

12 Q. The door closest to the overhead garage doors?

13 A. Yes.

14 Q. Okay. And let me ask you, what was Shawna's  
15 emotional state as this situation progressed?

16 A. Well, Shawna was scared. But -- but Shawna usually  
17 was scared about being outside there at night. You know.  
18 Leery.

19 Q. Okay. And so what did you do after telling her to  
20 call 911? You said you went out that door closest to the  
21 garage door?

22 A. I let her hold the door for me, and I went out and I  
23 went down the steps and across the parking lot to the back  
24 side of Kent's car.

25 Q. Now, as you went across the alley, I'm going to show



1 you State's Exhibit 12, that divides the parking lot from the  
2 building --

3 A. Correct.

4 Q. -- what did you see?

5 A. Well, yeah. As soon as you immediately go down the  
6 steps and away from the building, you're in the --

7 Q. Okay. You're coming out this door?

8 A. Right.

9 Q. Okay.

10 A. And I could see two young men walking up the alley  
11 towards Fourth Street.

12 Q. Could you point out where you saw those individual  
13 for the jury, please?

14 A. Probably about this point.

15 Q. Okay. And they're headed which way?

16 A. East.

17 Q. Okay. Towards Fourth Street?

18 A. Towards Fourth Street.

19 Q. Okay. And at what point did you lose sight of them?

20 A. I didn't. When I walked around the other side of  
21 Kent's car and found Kent laying face down in a pool of  
22 blood, I assumed that he was probably dead at that point.  
23 And I called -- I hollered to Shawna, "Go call 911 now."

24 Q. Again?

25 A. Yes.

1 Q. Okay.

2 A. This time I told her definitely.

3 Q. Well, wait a minute. Hold it. When did you lose

4 sight of --

5 A. Well --

6 Q. -- the two guys?

7 THE COURT: Excuse me. If you'll wait until the

8 question is finished.

9 THE WITNESS: I'm sorry.

10 THE COURT: The court reporter has to write both the

11 question and the answer.

12 THE WITNESS: Apologize.

13 THE COURT: All right. You can finish your

14 question.

15 Q. Let's just stay with that topic for the moment.

16 A. Okay.

17 Q. You walked out the door. And where did you last see

18 these individuals? What were they doing and where did you

19 last see them?

20 A. They were merely walking up the alley, towards

21 Fourth Street.

22 Q. All right. Okay. After you saw Mr. Heitholt --

23 well, let me take you now to what you saw at the victim's

24 vehicle. You crossed over the alley and went to Kent's car?

25 A. Yes.

1 Q. And what did you see at that location?

2 A. I saw Kent laying face down, very near his car, in a  
3 pool of blood. It looked like the back of his head had  
4 been --

5 Q. At that -- well, go ahead. What did you -- did you  
6 notice anything about injuries he may have sustained to his  
7 head?

8 A. I assumed he'd been shot, but at that point I, you  
9 know, I didn't know. I'm not an expert on --

10 Q. You couldn't tell what had happened.

11 A. No. I knew something traumatic had happened.

12 Q. And then, once you saw that, what did you do with  
13 respect to Shawna?

14 A. I told Shawna, who was holding the door, to  
15 definitely go call 911.

16 Q. And then what did you do?

17 A. I turned around and walked back towards the Tribune.  
18 Back to the same location that I had exited.

19 Q. Okay.

20 A. But at that point the door had been closed. So I  
21 had to fumble for my keys.

22 Q. So you had a set of keys.

23 A. Oh, yes.

24 Q. Okay. And you got in that same door you had come  
25 out?

1 A. Correct.

2 Q. Okay. And then what happened?

3 A. Well, I did see the individuals going back over  
4 towards the door. Turning the corner at Fourth Street.

5 Q. Okay. On your way back to the building --

6 A. Correct.

7 Q. -- where did you see these individuals?

8 A. They were at the corner of the alley and Fourth  
9 Street.

10 Q. Okay. Showing you State's Exhibit 12, could you  
11 point that out.

12 A. Just right here.

13 Q. Okay.

14 MR. ROGERS: Excuse me. I couldn't see that. Too  
15 fast for me.

16 (Mr. Crane indicating.)

17 Q. Is that right, Jerry? I should have --

18 A. Yes. Right at the corner. Uh-huh.

19 Q. Okay. And then you did what?

20 A. I went back in the building.

21 Q. Okay. And that's -- I had that fouled up. Was that  
22 the last time you saw these individuals?

23 A. Yes.

24 Q. Okay. And you went on in, back in the building.

25 A. Correct.

1 Q. Now, before we talk about what happened then, can  
2 you tell the jury what you can recall about the description  
3 of these two individuals. Now -- and before you do that, you  
4 indicated that one was towards the rear of the car?

5 A. Correct.

6 Q. And one was towards the front of the victim's car,  
7 on the driver's side?

8 A. Correct.

9 Q. Okay. And at what point did you get your best look  
10 at them?

11 A. When they raised up to -- and said, "Someone's hurt  
12 out here, man."

13 Q. Okay.

14 A. When one of them said that.

15 Q. All right. Now, can you give us a description of  
16 the guy at the back?

17 A. I believe he was the one with dark hair. Looked a  
18 little older to me than the other. They were both -- it was  
19 nondescript, what they were wearing, I would say. I was so  
20 surprised and shocked when anybody stood up from behind there  
21 that, I guess, if anybody, I expected Kent.

22 Q. And you never saw Kent until you went out there --

23 A. No.

24 Q. -- right?

25 A. No.

1 Q. What about -- what about their race?

2 A. They were white.

3 Q. What about their sex?

4 A. Male.

5 Q. And can you give an age category?

6 A. I thought they were between the ages of 19, 20.

7 Q. Okay. Which of the two individuals did you get the

8 best look at?

9 A. Probably the one to the rear. He would have been

10 most lit. As far as the lighting was concerned.

11 Q. All right. And what kind of perspective did you

12 have on them when you saw them headed up the alley and then

13 all the way up to the corner of Fourth Street?

14 A. Well, I could tell they were medium build and about

15 six feet tall.

16 Q. But that wasn't the best look you got at them?

17 A. No.

18 Q. Okay. Let me ask you what you did after you went

19 inside the building, back inside after you got the keys and

20 got back -- got your keys and got back inside --

21 A. Right.

22 Q. -- what did you do then?

23 A. When I got upstairs, Shawna had gotten to the first

24 phone available and had 911 on the phone. And they were

25 asking her where we were located. And so she gave me the

1 phone to finish the conversation. And I explained to them we  
2 were in the Columbia Tribune building on Fourth Street. That  
3 the incident had occurred --

4 Q. Well, hang on a minute. I'm going to --

5 A. Okay.

6 MR. CRANE: Judge, I'm sorry for the delay here.

7 Hey, do you mind if I use a CD instead of a  
8 cassette?

9 MR. WEIS: No.

10 MR. CRANE: Now I've got -- I need to mark this.

11 What's that number again?

12 MR. KNIGHT: 28.

13 MR. CRANE: 28. And we represent that's the same  
14 contents as what we gave you on cassette.

15 MR. ROGERS: The 911 call?

16 MR. CRANE: Yeah.

17 MR. ROGERS: No objection, Your Honor.

18 THE COURT: You're offering Exhibit 28?

19 MR. CRANE: Yeah. Once we get it marked.

20 THE COURT: State's Exhibit 28 is admitted.

21 - - -

22 State's Exhibit 28 admitted into evidence.

23 - - -

24 MR. CRANE: Judge, I'd ask leave to play this. It  
25 is the 911 tape initially placed by Shawna Ornt. And then

1 the next person we hear is Mr. Trump here.

2 MR. ROGERS: No objection.

3 THE COURT: You may do that.

4 (Tape playing.)

5 Q. Is that you Jerry?

6 A. Yes.

7 (Tape playing.)

8 Q. That concludes that call?

9 A. (Nodding head up and down.)

10 (End of tape.)

11 Q. Jerry, after you got off the phone, what did you do?

12 A. Well, I continued to try to calm Shawna down a

13 little bit, and I went back outside.

14 Q. Who else was out there by the time -- who else had

15 gone out there at some point?

16 A. I believe two of Kent's sports writers. Or the

17 Tribune sports writers. But --

18 Q. Okay. On the tape, you indicate something about

19 Russ is out there?

20 A. Russ. Probably. I forgot --

21 Q. Who was Russ?

22 A. Russ was one of the writers.

23 Q. Sports guys?

24 A. Yes.

25 Q. Okay.



1 A. There were two or three there that night.

2 Q. That went on out there?

3 A. Right.

4 Q. Okay. Now, when you -- you said you went out after  
5 the 911 call then?

6 A. Correct.

7 Q. When you went out there, what did you see with  
8 respect to Kent Heitholt's body at that --

9 A. They had rolled him over and attempted CPR.

10 Q. From the original location you saw him, he'd been  
11 rolled over?

12 A. Correct.

13 Q. So he was on his back?

14 A. Yes.

15 Q. Let me now show you what's marked for identification  
16 as State's Exhibit 14.

17 This isn't in yet, is it? 14's not in, is it?

18 MR. KNIGHT: No.

19 Q. State's Exhibit 14, A, B, and C. And I'm going to  
20 ask you to take a look at what's depicted in those three  
21 photographs.

22 A. Yes.

23 Q. Okay.

24 A. That's Kent's car and Kent himself.

25 Q. Okay. Are these fair and accurate depictions of

1 what you saw when you went back out there, after you'd seen  
2 Kent first?

3 A. Yes.

4 Q. Okay.

5 MR. CRANE: Judge, I'd offer State's Exhibit 14, 14A  
6 B, and C.

7 MR. ROGERS: No objection.

8 THE COURT: State's Exhibits 14, 14A, B, and C, are  
9 admitted.

10 - - -

11 State's Exhibits 14, 14A, 14B, and 14C, admitted  
12 into evidence.

13 - - -

14 Q. Okay. You've already mentioned that the top  
15 photograph -- actually all these photographs show the  
16 victim's vehicle, and then Mr. Heitholt beside his vehicle as  
17 he was after the sports -- his coworkers had rolled him over.

18 A. Correct.

19 Q. Okay. And in State's Exhibit 14B we can see the  
20 building?

21 A. Yes.

22 Q. Okay. You can show -- you can make out the dock  
23 doors a little bit over here?

24 A. Right.

25 Q. There's the far -- far door, next door.

1 A. Oh, yeah. Okay.

2 Q. Is that right?

3 A. That's correct.

4 Q. Okay. And then there's this Dumpster enclosure  
5 here; correct?

6 A. Right. That had belonged to KFC, I think.

7 Q. All right. Okay. If you look at the top  
8 photograph, can you see that from where you are?

9 A. Yes.

10 Q. That would have been somewhat your perspective,  
11 other than you could not see the body --

12 A. I could not.

13 Q. -- when you looked out?

14 A. He was rolled over the other direction. I couldn't  
15 see him.

16 Q. Sir, you've got a criminal record, don't you?

17 A. Yes, I do.

18 Q. What have you been convicted of?

19 A. Endangering the welfare of a child.

20 Q. And that's a felony offense.

21 A. Yes, it is.

22 Q. And actually you pled in one case to five different  
23 counts in that; right?

24 A. That's correct.

25 Q. And when did you plead guilty to that?

1           A.  October the 4th, 1999.

2           Q.  1999.  And before -- that was before you got the job  
3 at the Tribune; right?

4           A.  That's correct.

5           Q.  At some point did you serve prison time for that --  
6 those convictions?

7           A.  Yes, I did.

8           Q.  And when was -- you first went to the penitentiary  
9 for 120 days?

10          A.  That's correct.

11          Q.  And then you got out?

12          A.  Correct.

13          Q.  And then you got sent back.

14          A.  Correct.

15          Q.  And in between there is when you worked at the  
16 Tribune.

17          A.  That's correct.

18          Q.  Where was it that you were convicted of these child  
19 endangerment offenses?

20          A.  In Audrain County.

21          Q.  Not here.

22          A.  No.

23          Q.  Okay.  You were sent to prison from when to when the  
24 second time around?

25          A.  My -- I was revoked on December the 17th, 19 -- or

1 excuse me, 2001, and was released December 13th, 2004.

2 Q. On that -- those offenses that you pled guilty to,  
3 what was your sentence? What was the --

4 A. Five-year sentence.

5 Q. Okay. A five-year sentence.

6 A. Correct.

7 Q. Okay. Now, just so we got the time line correct  
8 here, you were doing your thing, working at the janitor job.

9 A. That's right.

10 Q. And then the murder occurred.

11 A. Correct.

12 Q. And then later, totally unrelated case, you got  
13 sent, on the charges you've talked about, to the  
14 penitentiary.

15 A. Correct.

16 Q. Now --

17 MR. CRANE: This is subject to the defense motion  
18 here. Do you want to approach or --

19 MR. ROGERS: It would be a good time for the final  
20 recess of the day, Your Honor. It's about --

21 THE COURT: Yes. I think the jury -- it's been a  
22 couple hours since the jury's been sitting. And I -- it  
23 would be a good time to take a recess.

24 Ladies and gentlemen, the Court again reminds you of  
25 what you were told at the first recess of the Court. Until

1 you retire to consider your verdict, you must not discuss  
2 this case among yourselves or with others, or permit anyone  
3 to discuss it in your hearing. You should not form or  
4 express any opinion about the case until it is finally given  
5 to you to decide. Do not read, view, or listen to any  
6 newspaper, radio, or television report of the trial.

7 Why don't we try to make it as brief -- come back,  
8 say, at 5:15 if we can. That will be enough time, if the  
9 jurors need to do that.

10 And you may step down, sir.

11 THE WITNESS: Okay. May I go out to smoke or --

12 THE COURT: You may go out to smoke as long as  
13 you're back in five minutes.

14 THE WITNESS: Oh.

15 THE COURT: How's that.

16 - - -

17 The following proceedings were held out of the presence  
18 of the jury:

19 THE COURT: Mr. Crane, you brought up the issue of  
20 the motion in limine.

21 MR. CRANE: The defense motion, yeah.

22 THE COURT: Are you going to leave the courtroom?

23 MR. CRANE: I was going to go to the bathroom and  
24 come back, but if you want to do it now, we can.

25 THE COURT: If you are able to --

1                   MR. CRANE: That was another reason why I raised  
2 their motion.

3                   MR. ROGERS: I was about to ask for a recess first.

4                   THE COURT: All right. Do you wish to be heard  
5 again on that motion? Or you wish to refer back to the  
6 motion and arguments that you made?

7                   MR. ROGERS: We would refer back to the motion and  
8 argument, Your Honor, but if they are going to proffer some  
9 sort of in-court identification, I think they need to develop  
10 some evidentiary basis.

11                  THE COURT: All right. I don't know what they're  
12 going to do. Are you --

13                  MR. CRANE: Well, what I was going to do is -- and,  
14 you know, this the same thing we ran into at the motion  
15 hearing. I was going to ask Mr. Trump -- is he out of the  
16 room?

17                  MR. ROGERS: He went out to smoke.

18                  MR. CRANE: I was going to ask Mr. Trump about  
19 receiving, from his wife, this article, with the photographs.  
20 Ask him about that. Ask him whether or not -- you know, what  
21 his reaction to that was, et cetera. And a lot of this we've  
22 already litigated. And then what we never did -- but see,  
23 that's the thing. He's never been shown that, by anybody in  
24 the police department or my office or anybody in law  
25 enforcement. If he is unable to recognize the individuals in

1 those photographs, then it's game over. If he is, then the  
2 next question's going to be the form in which the exhibit  
3 he's looking at comes in. It's the article that he's  
4 described, but it's a newspaper article. So we'd have to  
5 figure out a way to deal with that.

6 Then the next question would be: Whether or not he  
7 sees one of the two individuals in the courtroom here today.  
8 He's never been asked that. We didn't do that last time  
9 because the defendant was in his jail clothing.

10 MR. ROGERS: That's my understanding also, Your  
11 Honor. And that's -- I was kind of expecting them to keep  
12 Mr. Trump here, to show him the newspaper article and to see  
13 if that's the one he saw. I don't think that would -- I  
14 mean, quite frankly, I don't think there's any question that  
15 it is. So I don't think that's a problem.

16 I think it is evidence of the suggestive nature of  
17 the out-of-court identification, but I don't think it's a --  
18 a concern of further tainting the identification with regard  
19 to the newspaper article.

20 With regard to the in-court identification, we don't  
21 have a lineup arranged. And the state has filed no motion  
22 for a lineup.

23 And I think the suggestive nature of the  
24 out-of-court display of the photograph with the headline will  
25 taint any possible in-court identification.



1           Having said that, I do agree with Mr. Crane, that  
2 if, in fact, Mr. Trump were to say, "No, that's not the guy,"  
3 that might solve our problem.

4           THE COURT: I don't suppose that Mr. Crane would be  
5 calling him if that's what he was going to say.

6           MR. CRANE: I don't know what he's --

7           THE COURT: That's just an educated guess.

8           MR. CRANE: No, I don't know what he's going to say.  
9 Nuh-uh. I don't. That's why I wanted to call him at that  
10 last motion hearing. And I haven't -- and he hasn't seen the  
11 article. I wanted to do that too.

12          THE COURT: All right. Well, let us -- let me just  
13 suggest to you that I am not going to permit you to offer, so  
14 that this jury may look at it, the entire article that we  
15 have tried to go to Lincoln County to avoid anyone having  
16 read that article.

17          MR. CRANE: Right.

18          THE COURT: Certainly if the photographs --

19                 (Mr. Crane showing the newspaper article to Court  
20 and counsel.)

21          THE COURT: There are very small photographs.

22          MR. CRANE: Well, what we were doing was: If that  
23 is the article, then showing it to him in a form that it  
24 would have appeared when he got it from his wife.

25          THE COURT: All right. But I do not -- I want you

1 to caution him not in any way to display this to the jury.

2 MR. CRANE: Understood. Yeah. That's understood.

3 THE COURT: And I will permit you to ask him about  
4 the circumstances of having received this and --

5 MR. CRANE: Yeah, I would --

6 THE COURT: -- and whether or not he recognized  
7 someone in that -- in those photographs.

8 MR. CRANE: I would have to establish that it was  
9 not government action before showing him the photo.

10 THE COURT: You better.

11 MR. CRANE: Yeah.

12 THE COURT: You best do that. Now, whether or not  
13 that is admitted, again, I'm telling you, I don't want that  
14 Tribune article text and the headlines before this jury.

15 MR. CRANE: I understand. And I didn't -- I thought  
16 that there would be objections if I didn't show it to him in  
17 the form that he allegedly first saw it, is why I did that.  
18 So, after that, the question becomes: The form in which it  
19 may go to the jury. I -- it's understood, Judge.

20 MR. ROGERS: My only problem with that, Judge --  
21 well, actually there's a couple of problems. One problem is  
22 that I think the headline, even though it is highly  
23 prejudicial -- because I guess it is highly prejudicial, is,  
24 however, part and parcel of the suggestiveness of the  
25 procedure. So, without the jury knowing what's on the

1 headline, they cannot have any chance of assessing the impact  
2 this would have on the reliability of this identification.

3 THE COURT: Well, if you want it to go to that  
4 jury --

5 MR. ROGERS: I don't. I don't want any of it to go  
6 to the jury.

7 THE COURT: I understand that. But understanding  
8 I'm going to permit Mr. Crane to show that exhibit to this  
9 witness, and ask -- however he's going to get it -- ask him  
10 if he's seen that or -- I don't know how he's going to lead  
11 up to it. If he's going to say he received some information  
12 from his wife --

13 MR. ROGERS: My -- am I incorrect here? I thought  
14 we were going to let him look at that outside the presence of  
15 the jury. Am I -- am I on the wrong page?

16 THE COURT: Well, I don't know that we -- at this  
17 point was -- we're going to do that.

18 MR. ROGERS: Mr. Crane, were you contemplating  
19 showing him the newspaper article outside the presence of the  
20 jury?

21 MR. CRANE: No, but I wasn't going to -- I was going  
22 to show it to him in the presence of the jury, without the  
23 jury seeing the newspaper article.

24 MR. ROGERS: Okay. See, I am on the wrong page. I  
25 would request, before that happens, that we find out: Is

1 that, in fact, what he saw? And then that we explore,  
2 outside the presence of the jury, the suggestiveness of the  
3 procedure and whatever governmental action may have been  
4 involved, and we go from there.

5 MR. CRANE: That's what I tried to do at the motion  
6 in limine.

7 THE COURT: Okay.

8 MR. ROGERS: But that was when Mr. Ferguson was  
9 sitting there in jail clothes.

10 MR. CRANE: And that's when we offered -- that's  
11 when I offered to -- him to leave during that hearing.

12 MR. ROGERS: And he didn't want to have to pick  
13 between his right to be present at a critical stage --

14 MR. CRANE: Okay.

15 MR. ROGERS: -- and his right not to be displayed in  
16 jail clothes.

17 MR. CRANE: All right. Well, I'm all ears, Judge.  
18 I really -- I'll do whatever the Court thinks is appropriate.  
19 I was prepared to do it in open court. I -- you know, I  
20 guess, if Mr. Trump can't identify anybody in the photos, and  
21 the jury's out of the room, I guess that's a good -- that's  
22 good for me they're out of the room. You know.

23 THE COURT: Let us call him before the jury is  
24 returned and ask him the questions that lead up to that. If  
25 he's totally unable to do it, then you'll move on to some

1 other issue.

2 MR. CRANE: All right. And now -- then --

3 THE COURT: Assume he can then identify it.

4 MR. CRANE: Yeah. Yeah, that's fine. I'm game for  
5 that. I would like to have, though, about ten minutes before  
6 we get Mr. Trump in here, so I can go to the rest room, just  
7 get a drink of water real quick, if that would be all right.  
8 Five minutes?

9 THE COURT: We'll take a brief recess.

10 MR. ROGERS: Thank you.

11 (Recess taken.)

12 - - -

13 The following proceedings were held out of the presence  
14 of the jury:

15 MR. CRANE: Judge, may we return the witness?

16 THE COURT: Yes, please.

17 - - -

18

19

20

21

22

23

24

25

1 JERRY TRUMP,  
2 resumed the stand and testified further:

3 THE COURT: Mr. Trump, you'll remember you're still  
4 under oath.

5 THE WITNESS: Yes, ma'am.

6 THE COURT: The prosecutor has a few preliminary  
7 questions to ask you before we bring the jury back into the  
8 courtroom.

9 THE WITNESS: Okay.

10 - - -

11 DIRECT EXAMINATION

12 BY MR. CRANE:

13 Q. Mr. Trump, I was asking you -- you testified I  
14 believe earlier that you were sent to the penitentiary and  
15 were there from December of '01 until when?

16 A. Until December 13th, 2004.

17 Q. Okay. Sir, after you were released, you were  
18 contacted by my office -- I believe you were contacted by  
19 Bill Hawes?

20 A. Correct.

21 Q. Who left. And you were asked to come and visit with  
22 us?

23 A. Yes.

24 Q. Okay. And that was the first time we'd ever met; is  
25 that right?

1 A. That's correct.

2 Q. And you came to the office, and Mr. Hawes was in the  
3 room with us?

4 A. Yes.

5 Q. And one of the things we were going to do that day  
6 was go down here to the Tribune building, and you were going  
7 to show us where you'd been and all that --

8 A. That's correct.

9 Q. -- when this happened; correct?

10 A. Correct.

11 Q. And I think we listened to the 911 tape, and I asked  
12 if you remembered that and et cetera.

13 A. Right.

14 Q. And during our conversation about what you'd seen  
15 out there, what did you tell me you'd received while you were  
16 incarcerated?

17 A. When -- it was printed in the paper that somebody  
18 had confessed to the murder and named another individual. My  
19 wife sent me a copy of that article from the Columbia Daily  
20 Tribune. And I didn't know she was sending that. In opening  
21 my mail, I first turned to the two pictures. And my mouth  
22 dropped. I didn't see the headlines or anything, because I  
23 recognized --

24 Q. How did you first turn to the two pictures? I  
25 mean --

1 A. That's just the way it was folded in the envelope.

2 Q. All right. And what did -- well, it was obviously  
3 an article about this.

4 A. Yes.

5 Q. Those photographs, when you saw those, what was your  
6 reaction?

7 A. I remembered them as the ones that I had seen behind  
8 Kent's car.

9 Q. That you've described here earlier when you were --  
10 the incident you described when the jury was in here.

11 A. Absolutely.

12 Q. Okay. Do you remember when you -- the date when you  
13 got the article?

14 A. Well, I'm assuming, but I think it was March or  
15 April.

16 Q. You don't remember the exact date?

17 A. No, I don't.

18 Q. Okay.

19 A. It would have been a week or two after the article  
20 first came out in the paper, I assume.

21 Q. Okay. Was this an article generated, to your --  
22 well, were these photographs in the article in a Columbia  
23 Daily Tribune?

24 A. I believe they were.

25 Q. Okay. Now, since that time, when you got that



1 article from your wife -- who obviously knew you were a  
2 janitor when it all happened; right?

3 A. Sure.

4 Q. -- has anybody from law enforcement, and when I say  
5 "law enforcement," Columbia police, highway patrol, sheriff,  
6 prosecutor's office, FBI, CIA, anybody shown you those  
7 photographs?

8 A. No.

9 Q. Okay. Now, you did look at various photographs at  
10 the request of the police after this crime occurred; correct?

11 A. That's correct.

12 Q. Did you pick out, as the -- as the people you'd seen  
13 out at the car at that night, from any of the photographs the  
14 police had provided you with?

15 A. No.

16 MR. CRANE: Judge, I'd ask leave to show the witness  
17 State's Exhibit -- you want to look at it again? State's  
18 Exhibit 30 for identification.

19 THE COURT: 30 is the front page of the Tribune that  
20 is dated 3-11-04?

21 MR. CRANE: Correct.

22 MR. ROGERS: May I make one preliminary inquiry of  
23 the witness before he's shown the exhibit, Your Honor?

24 THE COURT: Well, I would think that  
25 cross-examination might come after the examination of the

1 state.

2 MR. ROGERS: This is a -- maybe a voir dire of the  
3 witness kind of question.

4 THE COURT: Well, you may voir dire the witness for  
5 the purpose of making an objection, but you may not conduct a  
6 complete cross-examination of this witness.

7 MR. ROGERS: I don't intend to.

8 - - -

9 VOIR DIRE EXAMINATION

10 BY MR. ROGERS:

11 Q. How many pictures total were on the part that you  
12 first saw?

13 A. I remember two pictures.

14 Q. One of each of two different individuals?

15 A. Correct.

16 Q. Thank you.

17 MR. ROGERS: That's my only question. I don't have  
18 an objection, for the purposes of this hearing.

19 THE COURT: All right.

20 You may show him the exhibit.

21 - - -

22 RESUMED DIRECT EXAMINATION

23 BY MR. CRANE:

24 Q. Is this --

25 A. That's correct.

1 Q. -- the article?

2 A. And the part that I first saw was the top two  
3 pictures. The colored pictures.

4 Q. Oh. You mean -- well, going back to his question,  
5 the fold was between the two photos?

6 A. Yes.

7 Q. Well -- is this the article that your wife sent you?

8 A. Yes, it is.

9 Q. Okay. Now in that article, there's -- as far as --  
10 forget the photo of Kent.

11 A. Uh-huh.

12 Q. There's two photos, and a caption, and two photos  
13 below that.

14 A. That's correct.

15 Q. Did you see all of those photos when you opened --  
16 well, strike that. When you first opened the article, which  
17 two did you see?

18 A. The top two.

19 Q. And then did you also see the bottom two? When you  
20 got it opened.

21 A. When I opened it up, yes.

22 Q. And with respect to the top two photographs, what  
23 can you tell us about those photographs as they relate to the  
24 individuals you saw at the victim's vehicle that night?

25 A. I thought, Wow, these two faces look very familiar.

1 And I immediately went back to the night that we've been  
2 talking about, that Kent was killed.

3 Q. Now, after you saw these photographs, when was the  
4 first time you told anybody in law enforcement about those?

5 A. You.

6 Q. In that meeting on December 21st --

7 A. Somewhere, yeah.

8 Q. -- after you got out --

9 A. That's correct.

10 Q. -- of prison.

11 A. That's correct.

12 Q. Okay. And since then, nobody's showed you that.

13 A. No.

14 Q. That's the first time you've seen that since prison.

15 A. That's correct.

16 Q. What did you do with the article that your wife sent  
17 you?

18 A. I threw it away after a day or so.

19 Q. Okay.

20 A. We just weren't able to keep extra stuff.

21 Q. Okay.

22 MR. CRANE: Judge, I'd offer -- well, I guess it  
23 doesn't make any difference now. Do you want me to offer it  
24 for the purposes of this hearing, or just not offer it?

25 MR. ROGERS: I think for the purposes of this

1 hearing, it might as well be in the record.

2 MR. CRANE: Okay. Offer it for purposes of this  
3 hearing outside the presence of the jury.

4 THE COURT: 30 is admitted. I assume with your  
5 consent.

6 MR. ROGERS: For the purposes of this hearing,  
7 that's correct.

8 MR. CRANE: Okay.

9 - - -

10 State's Exhibit 30 admitted into evidence.

11 - - -

12 Q. Now, Mr. Trump, do you see in the courtroom here  
13 today one of the individuals that you saw at Mr. Heitholt's  
14 vehicle on the early morning hours of November 1, 2001?

15 A. Yes, I do.

16 Q. Could you point him out for us, please?

17 A. The defendant.

18 Q. Could you describe him for us, please?

19 A. Could I describe him?

20 Q. Yeah. We got to make a record.

21 A. I assume that he's --

22 Q. What's -- what's he wearing?

23 A. Oh, he's wearing a blue sweater, I'm sorry, red tie,  
24 looks like a white shirt from here --

25 A. Okay. He's seated --

1 A. -- dark hair.

2 Q. -- between the young lady and the gentleman with  
3 the --

4 A. And the attorney.

5 Q. Okay.

6 A. Maybe between two attorneys. I don't know.

7 MR. CRANE: Judge, I'd ask the record reflect that  
8 Mr. Trump has identified the defendant.

9 THE COURT: It will reflect that.

10 Do you have anything further to ask of this  
11 witness --

12 MR. CRANE: No.

13 THE COURT: -- Mr. Crane?

14 MR. CRANE: I do not, Your Honor.

15 THE COURT: You may inquire.

16 MR. ROGERS: Thank you, Your Honor.

17 - - -

18 CROSS-EXAMINATION

19 BY MR. ROGERS:

20 Q. Mr. Trump, where were you when you were shown  
21 this -- when you received this newspaper in the mail?

22 A. I didn't hear the first part of your question.

23 Q. Where were you when you received this newspaper in  
24 the mail?

25 A. I was in Bonne Terre Correctional Center.

1 Q. And that's a facility of the Missouri department of  
2 corrections; correct?

3 A. That's correct.

4 Q. And they have regulations concerning the mail, don't  
5 they?

6 A. Yes.

7 Q. And mail which is not legal mail, from your  
8 attorney, is subject to being opened and monitored before  
9 being given to the inmate; is that correct?

10 A. That's correct.

11 Q. And so when you got this newspaper in the mail, some  
12 correction officer had already opened it and seen what was in  
13 it.

14 A. Yes.

15 Q. And people at Bonne Terre, the staff at Bonne Terre,  
16 were aware of your situation as a witness in this case,  
17 weren't they?

18 A. I don't think so.

19 Q. Well, they played for you a videotape prepared for  
20 you and the other inmates, a videotape prepared by the  
21 Columbia Police Department concerning the murder of  
22 Mr. Heitholt, didn't they?

23 A. It was not played for me. It was played for the  
24 general population.

25 Q. Right. But "you" in the plural sense. Our language

1 is inadequate. Second person plural and second person  
2 singular are the same word, "you."

3 A. Okay.

4 Q. Right? Maybe I should say "y'all."

5 A. Okay.

6 Q. So they did play for y'all the videotape; correct?

7 A. That's correct.

8 Q. And that videotape had on it your voice from the 911  
9 call.

10 A. That's correct.

11 Q. And that videotape had on it your name.

12 A. That's correct.

13 Q. And so therefore, the correctional staff knew that  
14 you were a witness in the Heitholt murder.

15 A. No. I'll take that back, sir. I do not recall that  
16 the videotape that we saw specified my name. And I don't  
17 believe that it did. And the reason I say that is that I did  
18 not see it when it first came on the prison channel. That's  
19 -- I was at Pacific then. And two or three inmates that I  
20 knew pretty well came up to me and said, "I think you're on  
21 this video that they're showing. Your voice." And I said,  
22 "I don't know what you're talking about." And then I later  
23 listened to it. Or watched it. And I believe that the part  
24 that stated my name was omitted from that, that was played to  
25 the corrections.



1 Q. When you heard it later.

2 A. Yes. When I heard it at prison. I don't believe it  
3 specified me, or I think that -- I would have found all kinds  
4 of problems from other inmates. Or not all maybe, you know,  
5 but it would not have been a good scene for an inmate to have  
6 been identified that way. So I don't believe that anybody at  
7 that prison facility, any of them, knew that I was involved  
8 with this situation.

9 Q. But what you're trying to tell me is that somebody  
10 in the Missouri division of adult institutions of the  
11 department of corrections had realized that you were an  
12 inmate and redacted your name from the videotape; is that  
13 correct?

14 A. I don't know who took it out. I have no clue.

15 Q. But you're saying it was taken out because you were  
16 an inmate.

17 A. No. Maybe it was taken out just to not identify me  
18 to the general public.

19 Q. Okay.

20 A. I would assume that that tape maybe was played on  
21 television stations or wherever. I didn't think it was  
22 played just to inmates.

23 Q. But it was played once especially for inmates;  
24 correct?

25 A. At least once.

1 Q. At least once. And at that time, or at least the  
2 time it was played for you as an inmate, was when your name  
3 was not in it.

4 A. Yes. That's true.

5 Q. And then the newspaper which had been mailed to you  
6 by your wife -- does she live in Columbia, by the way?

7 A. She lived in Mexico, Missouri, at the time.

8 Q. Okay. And this newspaper mailed to you had been  
9 reviewed by the corrections staff, put back in the envelope,  
10 and the envelope was given to you; correct?

11 A. I -- yes. I don't know how much they reviewed it.  
12 You know, as long as there was -- it was not a big -- it was  
13 not the whole paper, it was a portion of a page, then I could  
14 receive that.

15 Q. All right. And you did.

16 A. Yes.

17 Q. And you're saying you saw the top two photographs.

18 A. That's correct. First.

19 Q. And did you see the headline?

20 A. No, I did not see the headline until after I  
21 unfolded it and opened it -- and opened the entire thing.

22 Q. And did you see the giant photo of Mr. Heitholt?

23 A. I did when I opened it, yes.

24 Q. You recognized him.

25 A. Yes, I did, immediately.

1 Q. Now, the person that you have identified in the  
2 courtroom today, is that person who you say was standing at  
3 the rear of the driver's side of Heitholt's vehicle or the  
4 person that you saw standing at the front?

5 A. As I recall, he was standing at the front of the  
6 vehicle.

7 Q. Front of the vehicle. And is that the person who  
8 you describe as having dark hair or the person you describe  
9 as having blond hair?

10 A. Dark hair.

11 Q. And so the other individual is the one that you  
12 describe as having blond hair.

13 A. Lighter, yes.

14 Q. Lighter.

15 A. Uh-huh.

16 MR. ROGERS: I believe those are all the questions I  
17 have for this witness, Your Honor.

18 THE COURT: All right.

19 MR. CRANE: Your Honor --

20 THE COURT: Any redirect on this witness?

21 MR. CRANE: I did want to ask a couple questions.

22 - - -

23 REDIRECT EXAMINATION

24 BY MR. CRANE:

25 Q. Mr. Trump, prior to today your deposition was taken

1 by the defense; is that correct?

2 A. That's correct.

3 Q. And at that deposition you met Mr. Rogers?

4 A. Yes, I did.

5 Q. And you also met -- I think Mr. Weis was present?

6 A. Yes.

7 Q. And was Ms. Benson back here present during your  
8 deposition?

9 A. Not that I recall.

10 Q. Okay. But for the record, the two males at the  
11 counsel table here, other than myself, Mr. Knight, and the  
12 defendant, are Mr. Rogers, who you previously met, and  
13 Mr. Weis, who you previously met.

14 A. That's correct.

15 MR. CRANE: That's all the questions I have.

16 THE COURT: Anything further?

17 MR. ROGERS: No, Your Honor.

18 THE COURT: All right. You may step down. If you  
19 would please step outside the courtroom briefly.

20 THE WITNESS: Am I dismissed?

21 THE COURT: Oh, no.

22 THE WITNESS: Okay.

23 THE COURT: Not yet. You're not dismissed. I'll  
24 let you know when you are.

25 (Witness excused from courtroom.)

1 MR. CRANE: Your Honor?

2 THE COURT: Yes.

3 MR. CRANE: I'd like to take up another matter  
4 before Mr. Trump returns.

5 The defense, based on current Missouri case law,  
6 would be allowed to impeach Mr. Trump with respect to his  
7 prior convictions. However, such impeachment would be  
8 limited to where the conviction occurred, what the name of  
9 the charge that he pled guilty or was convicted of is, the  
10 length of the sentence, and the date on which that  
11 conviction -- well -- or -- the date he pled guilty. The  
12 details, the specific elements of the offense are not  
13 admissible impeachment.

14 That's my motion -- oral motion in limine.

15 THE COURT: Well, let's get to the issue first. And  
16 I will take that up, Mr. Crane.

17 Do you wish to be heard again on your motion in  
18 limine?

19 MR. ROGERS: Yes, Your Honor.

20 I think, if you look at the testimony, there is  
21 sufficient state action to at least subject this to this  
22 Court's analysis of suggestiveness. They knew or should have  
23 known that he was a witness in this case. I think you can  
24 infer from his testimony that they redacted his name from the  
25 one that was shown to people in the department of corrections

1 that they knew it. That they opened and reviewed the  
2 newspaper article, and therefore should have been on notice  
3 as to the suggestive nature of the items.

4           With regard to the merits of the suggestiveness,  
5 Your Honor, what you consider is not only the suggestiveness  
6 of the display, which is overwhelming, overwhelmingly  
7 suggestive, but you also consider the length of time between  
8 the event and the identification. In this case, two and a  
9 half years. You consider the opportunity for the person to  
10 see and observe the person he identifies, which is certainly  
11 limited. You consider the description of the person, in  
12 terms of determining the reliability of the identification.  
13 And in this particular case, you consider it, especially in  
14 the fact that Mr. Trump is claiming that Mr. Ferguson is the  
15 person with dark hair, and yet we have a photograph of  
16 Charles Erickson taken that same night, where the hair was  
17 much darker than Mr. Ferguson's.

18           And ultimately, once the suggestiveness or a degree  
19 of suggestiveness is shown, then the Court has to decide  
20 whether the suggestiveness, when balanced against the indicia  
21 of reliability, is sufficient to say that this gives rise to  
22 the substantial likelihood of an irreparable  
23 misidentification. And I think that's been clearly shown  
24 here. In fact, we've seen the irreparable misidentification  
25 of Mr. Ferguson here in court.

1           So I think that, under all of the tests in the case  
2 law, that this both out-of-court and in-court identification  
3 should be suppressed.

4           And furthermore, Your Honor, that would merely put  
5 the state in the position they were in before Mr. Trump came  
6 into their office in December of 2004 and said, "Guess what I  
7 saw while in prison."

8           MR. CRANE: Your Honor, I would, as I did in the  
9 hearing on defense motion in limine, I would cite the Court  
10 to State versus Lawrence, 700 S.W.2d 111. In that case, a  
11 witness identification was from a newspaper photograph. The  
12 Court held that when the source of the alleged taint, which  
13 is being argued at this point by Mr. Rogers as to the  
14 contents of the article, is not governmental, the balancing  
15 test is not applicable. And as the Court knows, the  
16 balancing test is between the likelihood of irreparable  
17 misidentification versus the necessity for government to use  
18 identification procedures alleged as tainted.

19           Here there was no governmental action whatsoever.  
20 There has not been any governmental action from the  
21 standpoint of the prison guards letting his mail go through  
22 to him. There is no connection between the photographs that  
23 were generated by the Columbia Daily Tribune on March 11th,  
24 2004, and the prison videos -- or the video that was shown in  
25 the penitentiary that we've got right here, because they

1 hadn't been caught.

2           So there is no governmental connection. That was  
3 his wife sending the article. He opened it up and made his  
4 identification. He should be allowed to testify to it. If  
5 he can identify the defendant, he should be allowed to do  
6 that too, pursuant to Missouri law.

7           MR. ROGERS: Your Honor, I would just point out one  
8 more item of governmental action. Those are police  
9 photographs that were provided to the Columbia Daily Tribune.  
10 That's certainly governmental action.

11           THE COURT: The motion in limine to suppress the  
12 in-court identification by this witness is overruled.

13           I will move to the issue of the motion in limine by  
14 the state as to impeaching by prior convictions. Are you  
15 intending to go into the substance of any conviction that  
16 this defendant might have -- or this witness might have?

17           MR. ROGERS: I do not disagree with Mr. Crane's  
18 general statement about the scope of impeachment by prior  
19 conviction. However, I believe there are things which have  
20 been said on direct examination which have opened the doors  
21 to some cross-examination, which may or may not open the door  
22 to further detail on the impeachment. Before I -- if I think  
23 I've got there before I do it, I will certainly approach the  
24 bench and let the Court know.

25           THE COURT: Well, there are some rare occasions, I



1 would agree. I don't -- I haven't heard anything in this  
2 case yet, but I don't -- I haven't heard all his testimony.

3 MR. CRANE: Yeah, well, you're going to approach.

4 MR. ROGERS: I will approach.

5 MR. CRANE: Okay.

6 THE COURT: All right.

7 Bring the jury back into the courtroom. And get  
8 Mr. Trump back in.

9 Do we have a problem?

10 MR. CRANE: Can he come in when -- after the jury's  
11 been seated, Judge?

12 THE COURT: Sure.

13 (Discussion off the record between the Court and the  
14 marshal.)

15 THE COURT: The jury didn't want to cut this witness  
16 off today. And wouldn't mind staying a little past 6:30.  
17 However, there is a baseball game tomorrow night that they  
18 were aware of, and would hope that we could conclude tomorrow  
19 night by 6:30. And I am instructing our marshal to tell them  
20 that we'll go until this witness is concluded and that we  
21 will make strong effort tomorrow night to quit at 6:30.

22 So I will tell counsel -- I will tell counsel that  
23 you need to schedule your witnesses so that they might be  
24 able to have that one bit of enjoyment and watch the  
25 Cardinals.

1 All right.

2 MR. CRANE: This is our last witness of the evening?

3 THE COURT: Yes. I would assume -- I can't imagine  
4 that it would be done in a short period of time. I assume  
5 there would be substantial cross-examination, or -- I don't  
6 know. If you have someone who's brief, Mr. Crane, don't let  
7 them go. Maybe we'll finish --

8 MR. CRANE: No.

9 THE COURT: -- at quarter after 6.

10 MR. CRANE: Yeah. I -- we just had some people that  
11 had been waiting for a while.

12 THE COURT: All right. Well, in light of the fact  
13 that it's possible that you might get another witness on --

14 MR. CRANE: Yeah. I -- well, we'll --

15 THE COURT: -- don't let him --

16 MR. CRANE: -- it'd probably be better off if we let  
17 him go so they can have another -- have their evening.  
18 That's fine. We -- I already told my man to let him go.

19 THE COURT: Well, maybe you didn't understand. The  
20 jury is willing to stay past 6:30.

21 MR. CRANE: Oh.

22 THE COURT: It's tomorrow night they don't want to  
23 stay past 6:30.

24 MR. CRANE: Okay.

25 THE COURT: Bring the jury back in the courtroom,

1 please.

2 - - -

3 The following proceedings were held in the presence of  
4 the jury:

5 THE COURT: I apologize for keeping you so long,  
6 ladies and gentlemen. There were some legal issues that we  
7 needed to take up.

8 MR. CRANE: State would recall Mr. Trump.

9 THE COURT: Yes. Mr. Trump would be called to the  
10 courtroom.

11 You remember you're still under oath, Mr. Trump.

12 THE WITNESS: Yes, ma'am.

13 - - -

14 JERRY TRUMP,

15 resumed the stand and testified further:

16 RESUMED DIRECT EXAMINATION

17 BY MR. CRANE:

18 Q. Sir, while you were in the penitentiary, and I  
19 believe before the jury left, you indicated that was between  
20 December '01 and December '04?

21 A. That's correct.

22 Q. Okay. What did you receive in the mail, while you  
23 were incarcerated, from your spouse?

24 A. I received a -- the partial front page of the  
25 Columbia Tribune.

1 Q. Okay. And do you recall the time frame when you  
2 received this mailing from your wife?

3 A. March or April.

4 Q. Of --

5 A. Of '04.

6 Q. Okay. And when you opened this envelope --  
7 envelope?

8 A. Yes.

9 Q. -- from your wife, what was inside?

10 A. There was a newspaper article. And it was folded --

11 Q. Let me ask you: Were you aware that she was sending  
12 you this before you got it?

13 A. No.

14 Q. Okay. Now you opened up the envelope, and inside  
15 was what?

16 A. A newspaper article, with a letter. But the  
17 newspaper article struck my attention first. I was curious  
18 about what it was. And I looked at it while it was still  
19 folded.

20 Q. And when you opened that article, what did you see?

21 A. I saw that it was an article about the Kent Heitholt  
22 murder and the two that had come forward -- or one that had  
23 come forward.

24 Q. What was the first thing that your attention was  
25 drawn to when you opened up this envelope and looked at its

1 contents?

2 A. As soon as I opened the envelope is: The way the  
3 paper was folded, I saw the two pictures, only. I had no  
4 idea what the article was about. And I recognized the two  
5 pictures --

6 MR. ROGERS: Objection, Your Honor.

7 A. -- and faces.

8 MR. ROGERS: First of all, this is a narrative. He  
9 answered the question, and then he went on to say something.  
10 Secondly, I would like a continuing objection based upon our  
11 pretrial motion and as developed today.

12 THE COURT: You may have a continuing objection to  
13 your pretrial motion. And the answer is becoming a narrative  
14 one, and I'd ask the state to ask specific questions than  
15 rather have a narrative.

16 MR. CRANE: Very well, Judge.

17 Q. When you looked at these photos, what was your  
18 reaction?

19 A. I've seen these two faces before.

20 Q. Where?

21 A. At the Tribune, the night that Kent was killed.

22 Q. The night you've described to the jury earlier this  
23 afternoon?

24 A. Right.

25 Q. Prior to the time you saw these photographs in the

1 article that your wife sent you, had you looked at, at the  
2 request of law enforcement, the Columbia Police Department  
3 specifically, photographs of -- been provided photographs to  
4 look at of other individuals?

5 A. Yes.

6 Q. And in any of those other photographs that the  
7 police asked you to look at over the course of the  
8 investigation of this crime, did you ever pick out any of  
9 those photographs that you were shown?

10 A. No.

11 MR. CRANE: Judge, I'd ask to show what's marked for  
12 identification State's Exhibit 30.

13 THE COURT: You may show that to the witness. Do  
14 not display it to the jury until it's admitted into evidence.

15 Q. You understand that directive?

16 A. Yes.

17 Q. Mr. Trump, is -- do you recognize -- don't read  
18 anything off of the article; okay?

19 A. Okay.

20 Q. Do you recognize that as the same Columbia Daily  
21 Tribune article that you have described to the jury that you  
22 received from your wife?

23 A. Yes.

24 Q. And what's the date, just the date, of that article?

25 A. March 11th.

1 Q. Okay. And that's actually the front page of the  
2 paper; correct?

3 A. That's correct.

4 Q. Now, what is -- don't turn it around or anything.  
5 On that paper, when you first saw it, what did you see?

6 A. I saw the two pictures of the two individuals.

7 Q. Okay. Now there's four photographs on State's  
8 Exhibit 30; correct?

9 A. That is correct.

10 Q. Two up and two down. The first two you saw were the  
11 top two?

12 A. That's correct. The colored.

13 Q. And then what did you do with the paper?

14 A. I opened it up to see what it was about for sure.

15 Q. And then you saw the other two photographs.

16 A. When I saw Kent Heitholt, I put two and two  
17 together, but then began in earnest to read the article.

18 Q. Okay. But what was the first thing you saw?

19 A. Was the picture of both of the people that possibly  
20 had done it.

21 Q. All right. Were those the individuals that were --  
22 that you saw outside on November 1, 2001, at Kent Heitholt's  
23 car?

24 A. Yes.

25 MR. ROGERS: Objection. Leading.

1 THE COURT: Well, the question has been answered.  
2 MR. ROGERS: I objected as soon as he finished.  
3 THE COURT: Do you want to rephrase your question?  
4 MR. CRANE: Yeah.  
5 MR. ROGERS: I'll withdraw the objection.  
6 MR. CRANE: Yeah. I mean, it's kind of tricky --  
7 I'm trying to tiptoe a little bit around -- so can I ask that  
8 question?  
9 Q. You understood the question?  
10 A. Yes.  
11 Q. Okay.  
12 THE COURT: He answered the question, Mr. Crane.  
13 Q. Were those the -- those photographs --  
14 MR. ROGERS: I'm going to object if he's going to do  
15 it again as leading. But I was withdrawing my objection on  
16 the basis it had already been answered.  
17 THE COURT: He answered it preliminarily --  
18 MR. CRANE: Okay. All right.  
19 THE COURT: -- the first time you asked it,  
20 Mr. Crane.  
21 MR. CRANE: Okay.  
22 Judge, I would offer State's Exhibit 30, without at  
23 this time publishing it to the jury.  
24 MR. ROGERS: Your Honor, I have no objection to this  
25 being introduced for the record, but I do have an objection



1 that if at any time it get published to the jury. And I  
2 would suggest that -- you're ahead of me. You picked up the  
3 photograph that you referred to.

4 MR. CRANE: Right. Can I proceed, Your Honor?

5 THE COURT: 30 is admitted, but may not at this time  
6 be displayed to the jury.

7 MR. CRANE: Okay. We can do that.

8 - - -

9 State's Exhibit 30 admitted into evidence.

10 - - -

11 Q. Now let me show you what's already in evidence as  
12 State's Exhibits 19 and 20. 19 and 20. And are those the  
13 individuals that are depicted in the top two photographs that  
14 you first saw when you looked at that article?

15 A. Yes.

16 Q. Okay.

17 MR. CRANE: And those are already in evidence.

18 THE COURT: They are in evidence.

19 Q. And Mr. Trump, let me also show you what's in  
20 evidence as State's Exhibits 17 and 18 and ask if those are  
21 the bottom two photographs that were in the article dated  
22 March 11, 2004 --

23 A. Yes.

24 Q. -- that you saw -- that you received from your wife.

25 A. That's correct.

1 Q. Okay. Now, after you saw that article and those  
2 photographs, you were released from the penitentiary in  
3 December -- well, when were you released?

4 A. December the 13th, '04.

5 Q. All right. And when do you recall thereafter  
6 meeting in my office reference this case?

7 A. About a week later.

8 Q. Okay. And you came down to my office, and Mr. Bill  
9 Hawes, back there, was present when we met; is that correct?

10 A. That's correct.

11 Q. And on that occasion, we -- it's the first time we'd  
12 met; right?

13 A. That's right.

14 Q. And we were actually going to go on down to the  
15 Tribune, and you were going to show us your perspective down  
16 there?

17 A. Correct.

18 Q. And also I think we listened to the 911 tape  
19 together?

20 A. Correct.

21 Q. When was the first time you told anybody in law  
22 enforcement about seeing the photos of these two individuals  
23 that you recognize as the ones that were out at Kent  
24 Heitholt's car on November 1, '01?

25 A. At your office.

1 Q. Had you told anybody before that?

2 A. No.

3 Q. Mr. Trump, thereafter, were you shown State's  
4 Exhibit 30, the article, or those photos, before today?

5 A. No.

6 Q. Nobody from law enforcement showed you these photos  
7 until today.

8 A. That's correct.

9 Q. Okay. Sir, do you see here in the courtroom -- and  
10 I'm going to ask you to do this. If you do, point to the  
11 individual, if you see the either of the people that you saw  
12 that night, on 11-1-01, here in the courtroom with us today,  
13 please point out that individual.

14 MR. ROGERS: Your Honor, I object. And I would ask  
15 that this be subject also to my continuing objection, based  
16 upon the pretrial motion and the record we made earlier.

17 THE COURT: It will -- there will be a continuing  
18 objection until you tell me that there will not be.

19 MR. ROGERS: All right.

20 THE COURT: So it's understood that you are  
21 objecting to the witness's in-court identification, as well  
22 as the other matters. And it will continue.

23 MR. ROGERS: Thank you.

24 THE COURT: It is overruled.

25 MR. CRANE: Proceed, Your Honor?

1 THE COURT: Yes.

2 Q. Mr. Trump, if you see the individual here with us  
3 today, or individuals in the courtroom today that you saw on  
4 11-1-01 and the events you described out at Kent Heitholt's  
5 vehicle, would you point to that individual or individuals,  
6 please.

7 A. Yes. (Pointing.)

8 Q. Okay. Now, would you describe for us what the  
9 person you're pointing to is wearing.

10 A. He's wearing a blue sweater, it looks -- appears,  
11 and a red tie, white shirt.

12 Q. Okay.

13 A. Dark-haired.

14 Q. And --

15 A. Sitting between the woman and the gentleman that is  
16 challenged without hair.

17 Q. Okay.

18 MR. ROGERS: Which one?

19 A. Two men challenged.

20 Q. And that is one of the two individuals that you saw.

21 A. That's correct.

22 Q. Had you ever seen -- well, strike that.

23 MR. CRANE: Judge, I'd ask the record reflect the  
24 witness has identified the defendant.

25 THE COURT: It will.

1 Q. Had you ever seen that young man before the night of  
2 November 1, '01?

3 A. No.

4 Q. What about the other individual?

5 A. No.

6 MR. CRANE: No further questions of this witness,  
7 Judge.

8 THE COURT: You may inquire.

9 MR. ROGERS: Thank you, Your Honor.

10 May we approach?

11 THE COURT: Yes.

12 - - -

13 Counsel approached the bench and the following  
14 proceedings were held:

15 MR. ROGERS: Your Honor, it's my belief that, in  
16 accordance with the local rule, that Mr. Trump's deposition  
17 might become at issue, and therefore I would like to file  
18 with the Court the original, which does include the signature  
19 page.

20 THE COURT: Okay. I'll show that it is filed.

21 MR. ROGERS: Thank you.

22 THE COURT: Uh-huh.

23 - - -

24 The following proceedings were held in open court:

25 - - -

CROSS-EXAMINATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MR. ROGERS:

Q. Mr. Trump, it is fair to say, is it not, that these colored pictures, State's Exhibits 19 and 20, are the ones that attracted your attention when you opened the newspaper article from your wife.

A. When I opened the envelope, yes.

Q. When you opened the envelope containing the newspaper article.

A. Correct.

Q. And those leaped right out at you.

A. Yes.

Q. And then you went ahead and opened the rest of the article.

A. That's correct.

Q. And you saw a very large picture of Kent Heitholt.

A. Correct.

Q. And that was, in fact, the same picture that is shown in State's Exhibit 1A; is that correct?

A. I believe that's correct.

Q. And 1A is also in evidence. Correct?

A. Correct.

Q. And it was much larger than State's Exhibits 19 or 20.

A. Yes.

1 Q. The way you saw it displayed in the newspaper.

2 A. That's correct.

3 Q. And you, of course, immediately recognized

4 Mr. Heitholt.

5 A. That's true.

6 Q. Because you had worked there for a few months at

7 least.

8 A. Correct.

9 Q. And you knew him.

10 A. Right.

11 Q. And you talked to him.

12 A. Correct.

13 Q. And you were present the night he was killed.

14 A. That's correct.

15 Q. And you talked to the police about that.

16 A. Correct.

17 Q. And that's, when you saw the picture of

18 Mr. Heitholt, when you put two and two together, as you said.

19 A. Correct.

20 Q. And that's when you said you associated these people

21 in this picture with the night Mr. Heitholt was killed.

22 A. Well, I knew when I saw the two pictures of the two

23 boys, they were the ones I had seen on the night that he was

24 killed.

25 Q. But you told us earlier that after seeing Heitholt's

1 picture is when you put two and two together.

2 A. Right.

3 Q. Okay. Now, you also saw, when you opened the  
4 newspaper article up and started reading the whole thing, the  
5 other two pictures, Exhibits 17 and 18. The black and white  
6 ones.

7 A. Correct.

8 Q. And those did not look as familiar to you as the  
9 colored pictures; is that correct?

10 A. No, not necessarily. They looked familiar too.  
11 I -- at that point I was more focused on the article itself.

12 Q. Now, you have described two individuals that you saw  
13 that night; is that correct?

14 A. That's correct.

15 Q. And both of those individuals you have described as  
16 being close to six feet tall.

17 A. Close, yes.

18 Q. In fact, you described them as being six feet tall  
19 the night it happened, didn't you?

20 A. Right.

21 Q. And how tall do you think I am?

22 A. Five six. Five five.

23 Q. Nowhere close to six foot.

24 A. No.

25 Q. And the people you saw that night were both taller



1 than me.

2 A. Yes.

3 Q. Significantly. Significantly taller than I am.

4 A. Right.

5 MR. ROGERS: Mr. Ferguson, would you please stand  
6 next to me?

7 (Defendant complying.)

8 MR. ROGERS: Thank you.

9 Q. You can't tell how tall somebody is when you see  
10 their picture in the paper, can you?

11 A. No.

12 Q. But you can when you see them on the parking lot.

13 A. Well, you can if they were standing straight up.

14 Q. Yeah.

15 A. But they weren't.

16 Q. And if they're not standing straight up, they're  
17 going to look shorter and not taller.

18 A. Perhaps.

19 Q. And -- let's go back to the early morning of  
20 November 1st and the night of Halloween, November -- excuse  
21 me, October 31st. At that time you worked for C & S  
22 Maintenance Company; is that correct?

23 A. Cleaning Company.

24 Q. Cleaning Company. And that was a private company  
25 that contracted with the Columbia Daily Tribune and other

1 businesses to do janitorial work.

2 A. That is correct.

3 Q. And there was a crew of three people who worked for  
4 C & S who were responsible for the Tribune building that you  
5 worked at.

6 A. That's correct.

7 Q. And that crew included yourself.

8 A. Correct.

9 Q. It included Shawna Ornt.

10 A. Uh-huh.

11 Q. You have to say yes or no, because --

12 A. Yes.

13 Q. -- she's trying to get --

14 A. I'm sorry. Yes.

15 Q. Okay. And that crew included another guy named Mike  
16 Haynes?

17 A. I believe that's correct.

18 Q. Okay. And Mike Haynes is a Caucasian? A white guy?

19 A. No.

20 Q. He's a black guy.

21 A. He's black.

22 Q. Okay. Do you also know a guy named Mike Boyd who  
23 worked there at the Tribune?

24 A. Yes.

25 Q. He didn't work for C & S Cleaning, did he?

1 A. No.

2 Q. He was a reporter for the Tribune.

3 A. That's correct.

4 Q. A sports reporter. Worked for Kent Heitholt.

5 A. Right.

6 Q. He's black.

7 A. Correct.

8 Q. Okay. And did you see him leave that night?

9 A. I don't remember seeing Mike leave, no.

10 Q. You do remember seeing Kent leave.

11 A. Yes.

12 Q. And after you saw Kent leave, you were in the dock

13 area, weren't you?

14 A. In the dock area? Did you say dock?

15 Q. Dock.

16 A. Yes.

17 Q. The -- you're not outside on the loading dock, but

18 you're --

19 A. No.

20 Q. -- in on the same level as the loading dock,

21 cleaning the hallway and then moving into the bathroom to

22 clean it; correct?

23 A. That's correct.

24 Q. And if Boyd had left afterwards, you would have seen

25 him, wouldn't you?

1 A. Not necessarily.

2 MR. CRANE: That calls --

3 A. Because there was the other exit door.

4 Q. That didn't go past where you were.

5 A. That's correct.

6 Q. All right. And I missed a couple of looks at the  
7 door photos, I think. Calling your attention to Exhibit --  
8 State's Exhibit 16?

9 A. Uh-huh.

10 Q. You've seen this before. This is --

11 A. Yes.

12 Q. -- what I call the door photo. It shows three  
13 garage doors.

14 A. Correct.

15 Q. Overhead doors like garage doors.

16 A. Right.

17 Q. And then it shows another door that comes out and  
18 down some steps, that's sort of on the same level as the  
19 loading dock?

20 A. Correct.

21 Q. And that's a door that would have been where you  
22 would have known it if Mr. Boyd had come out it.

23 A. Unless I had been in that bathroom or checking on  
24 the other Mike that worked for us in this other area.

25 Q. Okay.

1           A. The employees at the Tribune never had a practice of  
2 telling me or other of C & S employees that they were  
3 leaving.

4           Q. Okay.

5           A. And --

6           Q. But if they saw you on their way out, they said  
7 good-bye.

8           A. Sure.

9           Q. They were friendly.

10          A. Right. But I don't remember seeing him leave.

11          Q. And then you say the "other door." And the "other  
12 door" is the door that opens independently of the indentation  
13 of the loading dock; correct?

14          A. That's correct. It goes up another set of steps.

15          Q. And that is to the east or Fourth Street side of the  
16 loading dock.

17          A. That's correct.

18          Q. And did you see Kent Heitholt leave that night?

19          A. Yes, I did.

20          Q. And which door did he go out?

21          A. He ended up going out the door that typically the  
22 employees didn't go out, because we had -- or Mike had just  
23 mopped the stairwell, where he would typically go, and he  
24 said, "Well, if that's wet, then I'll go out this other  
25 door."

1 Q. Okay.

2 A. And I was able to precede him just a little bit, and  
3 I held the door for him.

4 Q. Now at that time do you know whether Mr. Boyd had  
5 left the building or not?

6 A. No.

7 Q. Okay. And you don't know -- you weren't looking at  
8 your watch to time Mr. Heitholt, were you?

9 A. Not nec -- no.

10 Q. So you don't know what time that was, exactly.

11 A. The only way I would have to reference that is that  
12 I had been to smoke just previous to that, and I was still  
13 hearing the music up the street.

14 Q. Wait a minute. My question was: Did you look at  
15 your watch and --

16 A. No.

17 Q. -- know what time it was?

18 A. No.

19 Q. Okay. Now, what time do you think you got to work  
20 that night?

21 A. Around 9.

22 Q. Do you usually get there before the other two people  
23 on the crew?

24 A. No. Sometimes I did. I usually picked Mike up.

25 Q. How about Shawna?

1           A. I occasionally gave her a ride, but she usually was  
2 coming from Hallsville, which would have been out of my way.  
3 So she usually came a different way.

4           Q. And she usually showed up on her own.

5           A. Yes.

6           Q. She wouldn't show up an hour or an hour and a half  
7 after you came.

8           A. No. Not if we had agreed to start working at 9 or  
9 whatever time.

10          Q. You don't have any reason to dispute that she  
11 started at 10 or 10:30?

12          A. No. She may have.

13          Q. At some point -- you and she were in the habit of  
14 going out to take smoke breaks together, weren't you?

15          A. Yes.

16          Q. But you had taken a smoke break without her on --  
17 during the early morning hours of November 1st.

18          A. That's correct.

19          Q. And by the way, when I say November 1st, I mean,  
20 November the 1st, 2001; right?

21          A. Right.

22          Q. We're on the same page here.

23          A. Correct.

24          Q. That's the only November 1st you ever worked there,  
25 isn't it?

1 A. Right.

2 Q. Okay. And when she came and told you she wanted to  
3 go take a smoke break, you told her you were busy cleaning  
4 the rest room, you wanted to finish the rest room before you  
5 took a smoke break, because you'd just had one not too long  
6 before.

7 A. That's correct.

8 Q. Okay. And that's when she went out by herself.

9 A. Yes.

10 Q. And then you heard the door close behind her.

11 A. Yes. I believe I did.

12 Q. When you say you heard the door close behind her --

13 A. She may have put a newspaper in the door, but I  
14 heard it at least thud --

15 Q. Okay.

16 A. -- against that.

17 Q. You're talking about the swinging door next to the  
18 garage doors.

19 A. That's correct.

20 Q. And that is a door that has a lock that you need a  
21 key to get back in. It always locks when you close it behind  
22 you.

23 A. All of them did, yes.

24 Q. Okay. And at that time do you know whether or not  
25 one of the three garage doors was up? Open?



1 A. Absolutely not.

2 Q. Absolutely you don't know or --

3 A. No. Absolutely it was not open.

4 Q. There was not a garage door open.

5 A. No.

6 Q. Can a garage door be opened from the outside?

7 A. No.

8 Q. So there's no way, if this door, this swinging door,  
9 locked behind Shawna, she could have climbed over the railing  
10 onto the loading dock and gone through a garage door.

11 A. No.

12 Q. To get back into the building.

13 A. No.

14 Q. And she didn't have a key to this door, did she?

15 A. I don't know if she did or not at that time. That's  
16 why the newspaper was sometimes used. We were following  
17 other Tribune employees.

18 Q. If she also -- you carried a key to the outer doors.

19 A. Sure.

20 Q. And when you smoked together, you could open the  
21 door with your key.

22 A. Right.

23 Q. And in fact, you used your key to open the door  
24 after you went out onto the loading dock and into the parking  
25 lot this night.

1           A. That's correct.

2           Q. When Shawna came back into the building, however she  
3 got in, and told you that she had seen somebody behind Kent's  
4 car, that's when you, after she had insisted, accompanied her  
5 back outside; correct?

6           A. Well, no. First we went across the hallway from  
7 that rest room on the dock and looked out that garage door.

8           Q. And couldn't see anything.

9           A. No. Couldn't see anything.

10          Q. And that's when you went --

11          A. Yes.

12          Q. -- back outside.

13          A. No. Well, I opened the first garage door and yelled  
14 for -- "Who's out there."

15          Q. Okay. So you were doing that from still in the  
16 building.

17          A. That's correct.

18          Q. Okay. Now at that time were you carrying anything?

19          A. Not that I recall, no.

20          Q. You weren't carrying a vacuum cleaner or a cord or  
21 anything like that.

22          A. No.

23          Q. And neither was Shawna.

24          A. No.

25          Q. And so when the garage door -- did you -- was

1 opened, none of your cleaning equipment was visible from the  
2 outside through the garage door, was it?

3 A. Shouldn't have been, no.

4 Q. Okay. You didn't use power equipment for doing what  
5 you were doing in the bathroom, did you?

6 A. No, but I would have had a mop bucket on that floor  
7 somewhere.

8 Q. But nothing with a cord.

9 A. No. No.

10 Q. And then when you looked out and yelled and got no  
11 response -- correct?

12 A. That's correct.

13 Q. -- did you then walk on out and continue to yell?

14 A. No. I stayed where I was.

15 Q. And continued --

16 A. And yelled.

17 Q. And you yelled a second time and got no response.

18 A. That's correct.

19 Q. And that's when you said that you tried a trick you  
20 had used with kids before.

21 A. Right. With my own.

22 Q. With your own kids before. With children who were  
23 entrusted to your care.

24 A. That's correct.

25 Q. And that was telling them, falsely, "I know you -- I

1 see you there. Who are you?" Or something like that?

2 A. That's correct.

3 Q. And you'd done that to your own kids before.

4 A. That's right.

5 Q. And then that's when you say you saw two people

6 stand up.

7 A. That's correct.

8 Q. By Kent's car.

9 A. That's correct.

10 Q. And there was one person who was towards the rear of

11 the car.

12 A. That's right.

13 Q. And there was one person who was towards the front

14 of the car.

15 A. That's correct.

16 Q. And you say that they were both on the driver's side

17 of the car.

18 A. That's correct.

19 Q. And the person who was towards the rear of the car,

20 is that the person that you say is Mr. Ferguson, who you

21 identified today?

22 A. That's the way I recall it, yes.

23 Q. The person towards the rear of the car.

24 A. That's correct.

25 Q. And is that the person who said to you, "Somebody's

1 hurt here, man"?

2 A. No. I don't know who said that.

3 Q. You don't know which one said that.

4 A. No. Because I believe that was said when they were  
5 still crouched down behind the car.

6 Q. And -- so nobody stood up and said that. That was  
7 said before they stood up?

8 A. I think it was about the same time, but it was -- I  
9 think they were still hidden from me when they said that.

10 Q. And it certainly couldn't have been somebody who  
11 stood up and looked at Miss Ornt and said that to her.

12 A. Said it to Shawna?

13 Q. Yeah.

14 A. No.

15 Q. No. Couldn't have happened like that.

16 A. No.

17 Q. Okay. Now you described two people to the police;  
18 correct?

19 A. Correct.

20 Q. And you described them both as white males, around  
21 six feet tall; correct?

22 A. Correct.

23 Q. Thin.

24 A. Right. Or medium build. Thin I think is what I  
25 first told the police.

1 Q. Okay. And was either of these men wearing a hooded  
2 sweatshirt?

3 A. Not that I recall.

4 Q. And that's something you would have the opportunity  
5 to see, because you saw these people from different angles.

6 A. Right.

7 Q. And neither, that you can recall, was wearing a  
8 hooded sweatshirt.

9 A. Not that I recall.

10 Q. With either the hood up or the hood down.

11 A. No.

12 Q. Okay. And the person towards the rear of the car,  
13 was that the person with light hair or the person with dark  
14 hair?

15 A. As I recall, it was -- the person at the rear was --  
16 had the darker hair.

17 Q. Had the darker hair. And that's the person that you  
18 have identified today as Mr. Ferguson.

19 A. That's correct.

20 Q. And by the way, when you identified Mr. Ferguson a  
21 few minutes ago -- he's sitting over here at the table;  
22 right?

23 A. Correct.

24 Q. You've been in court before. You know where  
25 defendants sit, don't you?

1 A. Right.

2 Q. Okay. And you know me, because we met before --

3 A. Right.

4 Q. -- back in June.

5 A. Correct.

6 Q. You know Mr. Weis, because you met him before, back  
7 in June.

8 A. Right.

9 Q. And Miss Benson may be blond, but she's no male.

10 A. Right.

11 Q. Okay. And you know these guys. The prosecutors.

12 A. Right.

13 Q. So, by process of elimination, it's not too hard to  
14 figure out who's the defendant, is it?

15 A. No. It's not.

16 Q. You've described these individuals as being -- to  
17 the police as being 19 or 20 years old.

18 A. Yes.

19 Q. And you consider yourself a pretty good judge of the  
20 age of young males.

21 A. Well, I don't know how good, but that was my guess  
22 at that point.

23 Q. Okay. And would you say that the individuals  
24 depicted in State's Exhibits 19 and 20 appear to be about 19,  
25 20 years old?

1 A. Thereabouts, yes.

2 Q. Okay.

3 A. Maybe a little older at that point.

4 Q. All right. But they could be, at the time these  
5 pictures were taken, 19 and 20?

6 A. Right. I've learned over the years, though, that  
7 that can fool you, so --

8 Q. All right.

9 A. -- I don't know.

10 Q. You would agree that the people depicted in State's  
11 Exhibits 17 and 18 look younger than the people in Exhibits  
12 19 and 20.

13 A. Yes.

14 Q. Considerably younger.

15 A. Some younger, yes.

16 Q. And you would not mistake either of these  
17 individuals --

18 A. No.

19 Q. -- for being 19 or 20 years old, would you?

20 A. I don't know. It just kind of depends. By -- at  
21 that point in my life, I had worked with kids a lot, and so  
22 I -- you know, I -- maybe I was -- did feel like I was a good  
23 judge of that.

24 Q. You had worked with kids a lot?

25 A. Yes.



1 Q. And where have you worked with kids a lot?  
2 A. Different places.  
3 Q. Were you working with kids in November of 1997?  
4 A. Yes.  
5 Q. Where were you working with kids then?  
6 A. At the Missouri Military Academy, Mexico, Missouri.  
7 Q. And were you still working there in January of 1998?  
8 A. Yes.  
9 Q. In February 1998?  
10 A. Yes.  
11 Q. In April 1998?  
12 A. Yes.  
13 Q. And in May of 1998?  
14 A. Yes.  
15 Q. And is it fair to say that it was in the context of  
16 your employment at the Missouri Military Academy that you  
17 were charged with --  
18 MR. CRANE: Judge, I'm going to object. Same reason  
19 I stated earlier.  
20 THE COURT: Would you approach the bench.  
21 MR. ROGERS: I wasn't there yet, but I would be  
22 happy to approach.  
23 - - -  
24 Counsel approached the bench and the following  
25 proceedings were held:

1                   MR. ROGERS: I was going to ask him: Were charged  
2 with endangering the welfare of a child in the first degree,  
3 which I think is within the scope of what you agree is proper  
4 impeachment.

5                   MR. CRANE: That's what you were going to ask him.

6                   MR. ROGERS: That's what I was going to ask him.  
7 But I'm glad we approached, because I assume he would say  
8 yes, and I intend to ask him that "Isn't it true that those  
9 charges involved sexual contact with a 16-year-old male and  
10 you were able to get" --

11                  MR. CRANE: That's not where that question was  
12 going.

13                  MR. ROGERS: That's exactly --

14                  MR. CRANE: You were going: "And it was your  
15 employment connected with" --

16                  MR. ROGERS: I already established his employment on  
17 the dates, and I was going to ask: "Was that employment" --  
18 was it in connection with that employment that he was charged  
19 with endangering the welfare of a child.

20                  MR. CRANE: He can't do that.

21                  THE COURT: I'm going to sustain the objection.

22                  MR. ROGERS: Your Honor, excuse me. I think it's  
23 been opened up. He volunteered having worked with kids. I  
24 didn't ask him that. He volunteered it.

25                  THE COURT: That has nothing to do with convictions.

1 MR. ROGERS: Okay.

2 - - -

3 The following proceedings were held in open court:

4 Q. And that military academy was located in Moberly,  
5 Missouri; is that correct?

6 A. No.

7 Q. Where was it?

8 A. Mexico, Missouri.

9 Q. Mexico, Missouri. I'm sorry. And that's Audrain  
10 County.

11 A. Correct.

12 Q. And on August 2nd, 1999, you entered pleas of guilty  
13 in the Circuit Court of Audrain County, Missouri, to five  
14 different counts of endangering the welfare of a child in the  
15 first degree --

16 A. That's correct.

17 Q. -- a class D felony; correct?

18 A. Pardon me?

19 Q. A class D felony.

20 A. That's correct.

21 Q. And that's five different counts, that occurred on  
22 five different dates, in Audrain County, Missouri.

23 A. That's correct.

24 Q. And for each of those sentences, each of those pleas  
25 of guilty, you were sentenced to a term of five years in the

1 Missouri department of corrections; is that correct?

2 A. To run concurrently, yes.

3 Q. To run concurrently.

4 A. Correct.

5 Q. Five counts, five years each count, all together.

6 A. Correct.

7 Q. Total of five years. Right?

8 A. That's correct, sir.

9 Q. And you were placed on probation after having served

10 120 days of that sentence; is that correct?

11 A. That's correct.

12 Q. And where did you serve that 120 days?

13 A. Partially at Fulton Reception Diagnostic Center and

14 partially at Farmington Correctional Center.

15 Q. Farmington Correctional Center in Farmington,

16 Missouri.

17 A. Correct.

18 Q. And after that 120 days, you were released on

19 probation.

20 A. That's correct.

21 Q. And you were required, as a condition of your

22 probation, to participate in a program --

23 MR. CRANE: Well, Judge, I'm going to object to this

24 line of questioning. That's improper impeachment.

25 THE COURT: The objection is sustained.

1 Q. Why were you living in Columbia on November the 1st,  
2 2001?

3 MR. CRANE: Same objection, Judge.

4 THE COURT: Are we talking about something that  
5 potentially might relate to the impeachment that you were  
6 going into?

7 MR. ROGERS: No. I don't think -- well, I don't  
8 think so. I mean, everything -- but I'm just asking him,  
9 wasn't he required as part of his --

10 MR. CRANE: Well, Judge, I'm going to object to  
11 that.

12 THE COURT: The conditions of his probation are not  
13 subject to inquiry as far as the impeachment --

14 MR. ROGERS: Okay.

15 THE COURT: -- in this particular area. So that you  
16 understand the Court's ruling, sir.

17 MR. ROGERS: All right. Thank you.

18 Q. Let me put it this way. It was while you were on  
19 that probation that you lived in Columbia.

20 A. Correct.

21 Q. And worked for C & S Cleaning Company.

22 A. That's correct.

23 Q. And after the death of Mr. Heitholt, but unrelated  
24 to the death of Mr. Heitholt, your probation was revoked.

25 A. That's correct.

1 Q. And then you were ordered back into the Missouri  
2 department of corrections.

3 A. That's correct.

4 Q. And where did you go then?

5 A. I went back to Fulton for about five months, to  
6 Pacific for about a year or year and a half, and then to  
7 Bonne Terre to complete the three years.

8 Q. And that was when Bonne Terre opened?

9 A. Well, shortly thereafter. It had been open a while.

10 Q. And it was at Bonne Terre that you received the  
11 newspaper from your wife.

12 A. Correct.

13 Q. Now, let's go back to the two people you saw in the  
14 parking lot. You described the person at the rear of the car  
15 as the person having the darker hair. Correct?

16 A. That's what I -- that's what I said, yes.

17 Q. Okay. And that's what you told the police then.

18 A. That's correct.

19 Q. That's what you told us today.

20 A. Sure.

21 Q. And then -- you told the police then that this  
22 person was wearing a baseball cap pushed back on his head.

23 A. I recall saying that, yes. And that's why -- I  
24 still sort of remember that.

25 Q. So you remember that.

1 A. Right.

2 Q. Okay. And was this person wearing a shirt?

3 A. He had some kind of a top on, yes.

4 Q. Was he wearing a jacket?

5 A. I don't recall.

6 Q. Do you recall talking to Detective Lloyd Simmons the  
7 day after this happened?

8 A. I don't specifically remember that name, but I  
9 talked to a detective, yes.

10 Q. Do you recall describing the person who sat -- who  
11 was near the rear of the car as a white male, younger,  
12 possibly near the age of 20, who had dark hair?

13 A. Uh-huh.

14 THE COURT: Is that yes?

15 THE WITNESS: Yes. I'm sorry.

16 MR. ROGERS: Thank you. Thank you, Your Honor.

17 Q. You told him the individual was wearing a ball cap  
18 that was somewhat sitting back on the back portion of his  
19 head? Correct?

20 A. Correct.

21 Q. And that you initially looked at the suspect, and  
22 you thought he looked somewhat like Kent.

23 A. Yes.

24 Q. And that you -- that the suspect had a round face.

25 A. Yes. That's what -- I may have said that, yes. If

1 that's what it said.

2 Q. You told the detective, whatever his name was, that  
3 the second suspect was also a white male in his early 20s; is  
4 that correct?

5 A. That's correct.

6 Q. And that the second suspect, which would have been  
7 the one by the front of the car, had a thinner face than the  
8 first suspect.

9 A. Yes.

10 Q. Okay.

11 A. I'll agree with you anyway that that's what that  
12 says.

13 Q. Okay. And that's what you remember telling him,  
14 isn't it?

15 A. Right.

16 Q. Okay. You also told him that you were not certain  
17 if you could identify those people.

18 A. Correct.

19 Q. Now could you tell us now, from your memory, whether  
20 either of the people that you saw was wearing a jacket?

21 A. No, I couldn't tell you that for sure.

22 Q. Could you tell us whether either of the people you  
23 saw was wearing a long-sleeved shirt?

24 A. Not -- not for sure, no.

25 Q. Could you tell us whether either of the people you



1 saw was wearing a short-sleeved T-shirt?

2 A. No.

3 Q. And you did listen earlier today to the 911 tape.

4 A. Yes.

5 Q. And in the 911 tape, you heard your own voice.

6 A. Correct.

7 Q. And you heard your own voice say that these people  
8 were not wearing caps or jackets.

9 A. At that time, that's correct. Um --

10 Q. Okay. You've answered. Now let me ask you this.  
11 You did go -- as we say -- as I say, you and I have met  
12 before; right?

13 A. Right.

14 Q. And we met in Mr. Crane's office back on June the  
15 29th of this year, didn't we?

16 A. Correct.

17 Q. And you had -- gave what was called a deposition.

18 A. That's correct.

19 Q. And that is testimony under oath, with a court  
20 reporter. Correct?

21 A. Correct.

22 Q. And I asked you some questions there. Correct?

23 A. Yes.

24 Q. And do you recall the following questions being  
25 asked and the following answers given?

1 MR. ROGERS: Your Honor, starting on page 25.

2 THE COURT: Here. Here's the deposition that has  
3 been filed.

4 THE WITNESS: Thank you.

5 Q. For your edification or help or use. Convenience.  
6 And starting on page 25, at line 4.

7 A. Okay.

8 Q. "QUESTION: Okay. And could you tell what either of  
9 them was wearing?

10 "ANSWER: No, not really.

11 "QUESTION: Could you tell --

12 And then you answer: "A jacket. I believe both of  
13 them had jackets on. It was, you know, pretty cool, but --

14 "QUESTION: Do you remember that?

15 "ANSWER: Yes, I do. I'm not guessing that."

16 Were those your answers to those questions under  
17 oath back on June the 29th, 2005?

18 A. That would be true. That's what I answered then,  
19 yes.

20 Q. Okay. And so at that time you were not guessing and  
21 you -- at that time your memory was that both of these people  
22 were wearing jackets.

23 A. That's correct.

24 Q. Okay. But you don't remember that now.

25 A. Not necessarily.

1 Q. And in fact, you've heard on the 911 tape that you  
2 that very night said they weren't wearing jackets or caps.  
3 Right?

4 A. That's right. I heard, yes.

5 Q. Thank you.

6 MR. ROGERS: Those are all the questions I have.

7 THE COURT: Redirect?

8 MR. CRANE: I don't think I've got any other  
9 questions of this witness, Judge.

10 THE COURT: May Mr. Trump be finally excused? For  
11 the state.

12 MR. CRANE: He may.

13 MR. ROGERS: Yes for the defense, Your Honor.

14 THE COURT: For the state as well?

15 MR. CRANE: Yes.

16 THE COURT: Mr. Trump, you are finally excused now.

17 THE WITNESS: All right.

18 THE COURT: Would ask you not to discuss your  
19 testimony with any other person who's to be called as a  
20 witness, but you're free to go. Thank you.

21 THE WITNESS: Thank you.

22 THE COURT: Mr. Crane, do you have a very brief  
23 witness to call who maybe has been waiting all day to testify  
24 and will take 10 or 15 minutes to testify, or --

25 MR. CRANE: No. What I could do at this juncture is

1 offer a stipulation.

2 (Mr. Crane showing a document to Mr. Rogers.)

3 MR. ROGERS: That's fine.

4 MR. CRANE: We'll offer a stipulation entered into  
5 by the state and the defense.

6 Do you have --

7 MR. ROGERS: I have no objection, and we do enter  
8 into that stipulation. And what's the --

9 MR. CRANE: The other one is the log-out time of  
10 2:08 a.m., Kent Heitholt. It doesn't show when he left the  
11 building, but it shows that's when he logged off the  
12 computer.

13 MR. ROGERS: That's Exhibit 31. And also Exhibit  
14 29. And we both -- we do stipulate to both those exhibits.

15 THE COURT: And we should show those as being  
16 admitted. And you're going to read them to the jury?

17 MR. CRANE: Yeah. I'll read it and describe it,  
18 with any added things Mr. Rogers wants to put in.

19 THE COURT: State's Exhibits 29 and 31 are admitted.

20 - - -

21 State's Exhibits 29 and 31 admitted into evidence.

22 - - -

23 THE COURT: You may read those to the jury.

24 MR. CRANE: Ladies and gentlemen, State's Exhibit 29  
25 is what's called a stipulation, meaning it's something both

1 sides agree to.

2           And it is: That the state and the defense agree  
3 that on November 1, 2001, the Tribune janitor's 911 call that  
4 we listened to was made at 2:26:55 a.m. 2:26 minutes and 55  
5 seconds a.m. And the first police officer arrived at the  
6 crime scene on the Tribune parking lot at 2:30 and 57  
7 seconds a.m.

8           And that's State's Exhibit 29. And we'll have a  
9 copy of that for the jury.

10           And then the other one is simply a document that  
11 came from the Tribune records, that indicates in the  
12 highlighted portion that Kent Heitholt logged off of his  
13 computer at 2:08 a.m. on November 1, 2001.

14           And that will also be marked as an exhibit, 31.

15           THE COURT: Do you care to add anything to those  
16 stipulations?

17           MR. ROGERS: I think they've heard enough from me  
18 today, Judge.

19           THE COURT: Ladies and gentlemen, the Court again  
20 reminds you of what you were told at the first recess of the  
21 Court. Until you retire to consider your verdict, you must  
22 not discuss this case among yourselves or with others, or  
23 permit anyone to discuss it in your hearing. You should not  
24 form or express any opinion about the case until it is  
25 finally given to you to decide. Do not read, view, or listen

1 to any newspaper, radio, or television report of the trial.

2 We will resume tomorrow morning at 8:30. Ask the  
3 jury be returned at that time. And have a good supper and a  
4 restful night. We'll see you in the morning, ladies and  
5 gentlemen.

6 - - -

7 The following proceedings were held out of the presence  
8 of the jury:

9 THE COURT: How many witnesses does the state intend  
10 to call tomorrow? If you know.

11 MR. CRANE: Well, we've got some more witnesses,  
12 Judge.

13 THE COURT: Well, let me ask this question in a  
14 different way. Do you anticipate on closing tomorrow? I'm  
15 just trying to make sure that the scheduling is such so that  
16 if defendant has witnesses that he wishes to present.  
17 Tomorrow will be the third day of trial. Do you anticipate  
18 resting tomorrow?

19 MR. CRANE: But for cross-examination. But I mean,  
20 with all due respect, you know, I don't -- that's the thing.  
21 I don't know how long the cross-examination would run. We've  
22 got various -- we've got some crime scene evidence that may  
23 take a while and I think will be the subject of some lengthy  
24 cross-examination. I don't think anybody's going to be as  
25 long as the Erickson witness. We'll certainly --

1           MR. ROGERS: I certainly hope not, Judge. Otherwise  
2 we're going to have to put in for my retirement. Having said  
3 that, depending on what they do on direct examination, I  
4 believe that the crime scene kind of stuff can go quickly.

5           THE COURT: Are there expert witnesses that you're  
6 intending to call, or an expert witness, Mr. Crane, tomorrow,  
7 that you would intend to call?

8           MR. KNIGHT: Yes, a few.

9           THE COURT: Yes?

10          MR. KNIGHT: Yes.

11          THE COURT: Mr. Knight has answered for you here.

12          MR. CRANE: That's fine.

13          MR. KNIGHT: I'll be taking those witnesses.

14          THE COURT: All right. And that might be a lengthy  
15 witness.

16          MR. ROGERS: There may be some dispute as to what  
17 constitutes an expert witness. You're talking physical  
18 evidence people?

19          MR. KNIGHT: Uh-huh.

20          THE COURT: Okay.

21          MR. KNIGHT: Yes.

22          MR. ROGERS: They may be lengthy from the state's  
23 point of view. I don't think they'll be that lengthy in  
24 cross.

25          THE COURT: All right.

1           MR. ROGERS: And I'm doing what I can to stipulate  
2 and agree to some of these exhibits and stuff.

3           THE COURT: What I'm trying to get at is: I don't  
4 want a period of time that either the state rests, and the  
5 defense, if it cares to present evidence, will have no  
6 witnesses here. I want to make sure that you communicate  
7 well enough that we do not have a situation like that.  
8 Because I don't want the jury sitting twirling its collective  
9 thumbs while we wait for witnesses to be called.

10          MR. ROGERS: We plan to have witnesses available  
11 Thursday morning. And I'm confident that the state will not  
12 rest very long before 6:30 tomorrow evening.

13          MR. CRANE: You're going to let them go a little  
14 early too, aren't you?

15          THE COURT: Well, I've told them that we will recess  
16 no later than 6:30. So --

17          MR. ROGERS: If you guys can finish up --

18          THE COURT: But I don't mean 3:00 in the afternoon  
19 either.

20          MR. ROGERS: We actually could have a witness here  
21 at 3:15 if that happens, but I'm not holding my breath.

22          THE COURT: All right. Well, I'm not either. But  
23 sometimes things happen differently than we anticipate. I  
24 just did not want to have three hours go by and not have any  
25 witnesses and have the case, heaven forbid, go into next



