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P R O C E E D I N G S

October 19, 2005

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

(Other cases heard.)

THE COURT: And we will take up 165368-01, State of Missouri versus Ryan William Ferguson. What says the state?

MR. CRANE: Ready.

THE COURT: The defense?

MR. ROGERS: Ready, Your Honor.

THE COURT: Preliminary matters for the state?

MR. CRANE: Judge, that excerpt of the jail conversation between Mr. Erickson and his mother, that the state played, it also includes the excerpt that the defense played. I had not marked that. And I would like to now offer the segment that was played by the state, which, you know, again, includes what the defense put into evidence. That has now been marked as State's Exhibit E-1, because the original tape in its entirety that I had -- that had come into evidence without publishing to the jury is E, Defendant's E. And so I just marked this E-1. And would offer it at this time.

MR. ROGERS: And no objection, Your Honor. We agree to that marking.

1 THE COURT: All right. I'll show E-1 is admitted.

2 - - -

3 State's Exhibit E-1 admitted into evidence.

4 - - -

5 MR. ROGERS: And on behalf of the defendant, Your
6 Honor, a couple of housekeeping --

7 THE COURT: Just a minute. Let me -- is that all
8 you have, Mr. Crane?

9 MR. CRANE: Yes.

10 THE COURT: All right. For the defense.

11 MR. ROGERS: Thank you, Your Honor.

12 Just a couple of housekeeping matters. The plastic
13 overlays on Defendant's Exhibit B, which is the out-of-date
14 aerial photograph of downtown Columbia, which have been
15 written on during the examination of Mr. Ferguson -- or
16 Mr. Erickson, the first overlay, which has on it his initials
17 and the date March 10th, 2004, has been marked as Exhibit
18 B-1. And the second plastic overlay, which has on it
19 Mr. Erickson's initials and the date 10-1-04 has been marked
20 Exhibit B-2.

21 MR. CRANE: What -- there's B-1 and B-2, are the
22 transparencies?

23 MR. ROGERS: Are the transparencies so far. And
24 those were both part of the exhibit. And the markings on the
25 transparencies were created on the record during his

1 testimony.

2 THE COURT: Are you offering them?

3 MR. ROGERS: I am offering them, yes.

4 THE COURT: All right. Is there an objection?

5 Mr. Crane?

6 MR. CRANE: No. No objection.

7 THE COURT: Defendant's B-1 and B-2 are admitted.

8 - - -

9 Defendant's Exhibits B-1 and B-2 admitted into
10 evidence.

11 - - -

12 THE COURT: I assume they would not have meaning
13 except as they are placed over the aerial photograph that the
14 drawing was made from?

15 MR. ROGERS: Exactly. Exhibit B.

16 THE COURT: All right. Anything further?

17 MR. ROGERS: Not on behalf of the defendant.

18 MR. KNIGHT: One more thing, Your Honor. I'm sorry.

19 We have evidence that, at the diner that you've heard about,
20 there was some blood found and also some fingerprints there.

21 And they -- the fingerprints checked to a person named

22 Frankie Davis, and so did the blood. We've interviewed

23 Frankie Davis. And he was a person who just happened to be

24 at the diner around the time of the murder and he happened to

25 have had a nose bleed. He's totally unconnected to this

1 homicide.

2 I talked to Mr. Rogers about this a few moments ago,
3 and he said that he was not going to cross-examine Jeff
4 Nichols about this issue; finding blood, fingerprints, at the
5 diner. I'm certainly not intending to get into that
6 evidence. This would be -- this would be under the purview,
7 it seems like, of other suspects. And certainly Frankie
8 Davis is not connected to this crime. It's my understanding
9 the defense is not going to adduce any evidence on this
10 issue, and neither will we.

11 MR. ROGERS: That's my understanding, Your Honor.
12 And I did advise Mr. Knight that, at the time that we
13 submitted materials to our expert, Mr. Singer, the blood had
14 not been tested for DNA, and he I think has noted that in his
15 report that's supposedly being faxed to us this morning. But
16 we don't intend to ask him about it, and we do not intend to
17 create Frankie Davis as a phantom suspect or say anything
18 else about it. And I don't intend to ask anybody about the
19 blood found at the diner that belongs to Mr. Davis. Or the
20 vomit found when he threw up from having breakfast at the
21 diner.

22 THE COURT: It doesn't sound like a very appetizing
23 place to have breakfast.

24 MR. ROGERS: Well, we don't even have it on our map,
25 Judge.

1 that particular wish, but we'll try to do the best we can in
2 other areas.

3 If you would answer as the clerk calls your names,
4 please.

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

6 THE COURT: The clerk may be excused.

7 (Clerk excused.)

8 THE COURT: State may call its next witness.

9 MR. CRANE: Your Honor, at this time the state would
10 offer into evidence State's Exhibit 23 and 24, which are
11 certified business records of the attendance of the defendant
12 and the attendance of Charles Erickson during the time frame
13 in question. They do have attached to these an explanation
14 of the codes as to how -- so they can interpret -- the jury
15 may interpret these documents.

16 THE COURT: Have you shown those --

17 MR. ROGERS: No objection.

18 THE COURT: All right. State's Exhibits 23 and 24
19 are admitted.

20 - - -

21 State's Exhibits 23 and 24 admitted into evidence.

22 - - -

23 MR. CRANE: And with that, the state calls Robert
24 Thompson.

25 THE COURT: I will say, while the witness is coming,

1 that we do not permit cell phones to be on in this courtroom,
2 not even on a vibrating mode. And no cameras, other than
3 those authorized under Supreme Court rule, are authorized to
4 be in this courtroom, out and taking pictures. If your phone
5 goes off, we will check it until the conclusion of this
6 business day.

7 Raise your right hand, sir.

8 - - -

9 ROBERT RONALD THOMPSON,

10 being first duly sworn by the Court, testified as follows:

11 THE COURT: Would you take the witness stand.

12 - - -

13 DIRECT EXAMINATION

14 BY MR. CRANE:

15 Q. Give us your name please, sir.

16 A. Robert Ronald Thompson.

17 Q. And what was your occupation back in October of
18 2001?

19 A. I was a sports writer at the Columbia Tribune.

20 Q. And that's the Tribune right here in town, down the
21 street; correct?

22 A. Yes.

23 Q. How long did you have that job?

24 A. Four years.

25 Q. And what are you doing now?

1 A. I'm working in Dallas, Texas, as a loan officer for
2 Countrywide Home Loans.

3 Q. Okay. How did you know the victim in this case,
4 Kent Heitholt?

5 A. He was my sports editor. He was a close friend and
6 kind of a mentor to me.

7 Q. Show you what's marked as State's Exhibits 1, 1A and
8 1B. Do you recognize the bigger guy in that photo -- those
9 two photographs?

10 A. Yes, sir.

11 Q. And who's this individual hugging him there?

12 A. That's Jim Robertson, our managing editor.

13 Q. Okay. What was Kent's position at the Tribune?

14 A. He was the sports editor.

15 Q. And what -- briefly could you explain to us what
16 that entailed, being a sports editor.

17 A. He -- just in charge of the sports department. He
18 oversaw, you know, all of us, handed out story assignments,
19 edited our stories, laid out the paper, laid out each page,
20 and sized the photos.

21 Q. Did he do any writing himself?

22 A. Sure. He did lots of writing as well.

23 Q. Can you tell us a little bit about what Kent's
24 normal work day, if there was a normal work day, what it
25 would have been like?

1 A. Yeah. We all -- we all worked kind of odd hours. I
2 mean, our normal work day was -- you know, we'd get in before
3 9:00 in the morning, and we would work 'til about 1, which is
4 when the afternoon paper had to be off the floor. After 1,
5 we would go eat lunch usually, and then we would -- some of
6 us either had press conferences to go to or, you know, games
7 to cover that evening. So we would kind of adjourn for the
8 day sometimes. Or other people -- other times we would just
9 go back to the office after lunch and finish up what we were
10 working on.

11 Usually Kent would go back to the office after lunch
12 and kind of get started planning the next day's paper. And
13 then he would usually knock off around 3 or so, go pick up
14 his kids from school, or, you know, wherever they were at,
15 and then he would come back in about 8, 9:00 at night and
16 stay, you know, until 1, 2:00 at night.

17 Q. The Tribune is a daily paper?

18 A. It's daily. And then we're -- afternoon, Monday
19 through Friday, and then mornings on Saturday and Sunday.

20 Q. Does the sports department have its own area in the
21 building?

22 A. Yes, sir. We kind of had our own little room there.

23 Q. And how many -- when you were employed there, back
24 at the time of this homicide, how many sports people were
25 there? How many guys did you work with? Or gals. I

1 shouldn't be sexist.

2 A. We had a sports editor, Kent; assistant sports
3 editor; then we had, like, four full-time writers like
4 myself, including myself; and then we had some part-timers
5 that just covered stories. You know, per-story basis.

6 Q. How many people -- can you estimate how many people
7 worked in the main Tribune -- in the building itself?

8 A. I'd say at least several hundred.

9 Q. Okay.

10 A. Hundred to two hundred somewhere.

11 Q. The 31st of October, 2001, when did you get to work?

12 A. I covered a game that night, and I was planning on
13 writing my story from home for the next day. I usually did
14 that, rather than to have to go in at night. And -- but on
15 this particular night I had to research a fact for one my
16 stories, so I came in about a little after midnight to use
17 the microfilm to call up an old newspaper. And so I didn't
18 even get there until a little after midnight that night.

19 Q. While you were -- well, let me ask you, what were
20 you driving that night?

21 A. A Honda Civic.

22 Q. And where did you park?

23 A. Facing Providence, in the parking lot right behind
24 the building, kind of behind where Enterprise Rental Car is
25 right now.

1 Q. Is it the same parking lot where Kent parked?

2 A. Yes.

3 Q. Okay. Do you remember who was in the sports area
4 while you were there that night?

5 A. Yes, sir. It was -- Kent was there; our high school
6 writer at the time, Russ Baer, was there; and our -- one of
7 our part-timers, Michael Boyd, was there.

8 Q. Okay. Anything unusual that night? I mean, up
9 until when Kent left?

10 A. No. It was kind of a typical night. I mean -- the
11 only thing unusual was the fact that I was in there that
12 late, you know. I'm usually --

13 Q. You usually weren't in there that late?

14 A. No. I usually tried to work from home at night.

15 Q. What time, approximately, do you remember Kent
16 leaving to go home or taking off for the night?

17 A. Usually about the same time he always did. I mean,
18 about -- a little after -- I'd say about between five and ten
19 after 2.

20 Q. And that was it. He was going home?

21 A. Yeah. He was like, "See you guys. I'm out of
22 here." He's like, you know, "Don't work too late. See you
23 in the morning."

24 Q. What about Russ Baer? What did he do at that point?

25 A. We were both sitting at our desk working.

1 Q. Okay. So you and Russ stayed where you were at?

2 A. Right.

3 Q. What about Mike Boyd?

4 A. He left -- walked out the door with Kent.

5 Q. We've got an exhibit in evidence that indicates,
6 it's State's Exhibit 31, that indicates Kent logged off of
7 his computer at 2:08 a.m. Anything unusual about that?

8 A. No. That was about the same time -- at 2:00 -- at
9 least -- I don't know if the systems still do that down
10 there, but at the time, if you log -- if you wanted to do any
11 kind of pagination, which is the layout program, you had to
12 log off at 2:00, and you couldn't, like, log back in until,
13 like, 6:00 in the morning, just while the system updated or
14 whatever it needed to do. But you could still use Word and
15 some of the basic programs. So that -- Russ and I were
16 finishing up our stories for the next day. And then Kent and
17 Mike had done all they could do, so they had to log off.

18 Q. Okay. What happened after Kent left?

19 A. It was about 15, 20 minutes later, the -- two
20 members of the cleaning crew came -- came into the sports
21 department. And they were kind of upset or excited. And the
22 girl asked -- I can't remember her name. Shawna, I think.
23 She came in and she was like, "Where's Kent? Where's Kent?"
24 And Russ and I -- and I kind of looked up from my computer,
25 and I was like, "Well, he left 15 minutes ago." And they

1 said -- or she said, "Well, his car's still out there." And
2 about -- and then Jerry walked up and he said, "There's two
3 guys standing out by his -- the car, and I think somebody's
4 hurt." And that's when I -- I grabbed my keys and just tore
5 on out the side door.

6 Q. All right. When you went outside, do you have a
7 memory of which of the doors out to the parking lot you left
8 from?

9 A. Yes, sir. The -- the side entrance to the Tribune.

10 Q. Was it a swinging door or one of the dock garage
11 type doors?

12 A. No. It was the swinging door.

13 Q. Okay. There's two of those.

14 A. Right.

15 Q. Was it the one that --

16 A. We didn't usually use the dock entrance. We used --
17 we had a key to the side door.

18 Q. Okay. It's the one that's right down on the --

19 A. Right.

20 Q. -- parking lot --

21 A. Uh-huh.

22 Q. -- floor, but you don't go down steps.

23 A. You do go down the steps, and then you're --

24 Q. You do go down steps or you don't?

25 A. You go down steps inside.

1 Q. Oh. Okay. Then you're out on the pavement when you
2 come out the door?

3 A. Right.

4 Q. Okay. And what happened? You went outside. And
5 tell us what you did.

6 A. I went outside and immediately looked at Kent's --
7 looked towards Kent's car. And I could see him laying
8 underneath the car, kind of half underneath, half -- it
9 was -- his head was by the -- kind of by the left rear tire.
10 And I just -- I mean, I just kind of locked in on him and ran
11 over to him and was, you know, yelling, you know, "Kent.
12 What happened? Kent." You know. I --

13 Q. So when you ran out the door -- well, let me
14 rephrase that. You left the sports area in a hurry, and you
15 hit the door running, if you will?

16 THE COURT: You need to speak your answer. Say yes
17 or no.

18 A. Yes.

19 Q. All right. And you're running and you see Kent.

20 A. Right.

21 Q. Okay. And I interrupted you. You said you were
22 yelling his name. Tell us what happened when you got to the
23 body.

24 A. Well, I -- I mean, I ran up to the car and I, you
25 know, I kind of knelt down beside him and I was shaking him

1 and I was saying his name and I was like, "Kent. Kent, what
2 happened? Kent." You know. "Wake up, Kent."

3 Q. Was there -- was he responsive at all?

4 A. No, sir.

5 Q. What did you note about blood?

6 A. It was everywhere. It was --

7 Q. Other than you, who else ran outside?

8 A. It seemed like 20 or 30 seconds later, the -- Jerry
9 and Shawna came back outside, at the door that -- they came
10 outside the door, and I yelled at them. I said, "Kent's hurt
11 bad. Call 911." And --

12 Q. So they weren't over at the body?

13 A. No. They were kind of -- just outside.

14 Q. Okay.

15 A. And I turned and yelled at them. I said, "Kent's
16 hurt. He's hurt really bad." I said, "Go call 911." And
17 about that time Russ Baer had come outside. And he came over
18 to, you know --

19 Q. So he came on out to you --

20 A. Right.

21 Q. -- with Kent?

22 A. Right.

23 Q. Okay. Can you describe for us how Kent's body was
24 positioned when you first found it?

25 A. He was -- his lower body -- his legs and stuff were

1 kind of underneath the back end of the car. His upper body
2 was kind of -- he was kind of slumped over on his left side,
3 on his -- not really on his stomach, but kind of halfway on
4 his side and on his stomach.

5 Q. Was he face up or face down?

6 A. He was, like, face down. Kind of (indicating).

7 Q. Was his -- was his face on the pavement?

8 A. It was either on the pavement or, like, laying on
9 his left arm, partially on the pavement.

10 Q. Okay. Now after you ran up and knelt down by him
11 and you said you yelled at him and shook him, what did you
12 do? Well, let me ask you this. And Russ came out.

13 A. Right.

14 Q. To you and Kent. What happened then?

15 A. We took his -- I took his pulse on his neck, and
16 there was no pulse. And I think -- we checked -- one of us
17 took the pulse on his wrist, and there was no pulse. The
18 whole time we were trying to talk to him, trying to get some
19 sort of response. And, you know, we weren't sure what to do.
20 One of us was like, "Well, let's -- let's roll him over. We
21 got to, you know, roll him over, you know." I don't know
22 exactly why we did it, but we rolled -- one of us
23 supported -- I think I supported his head, and Russ kind of
24 rolled his shoulder back over. So we got him on his back,
25 just to see -- I mean, I mainly wanted to just get a look at

1 him. Because I couldn't even really look at his face that
2 well, the way he was laying before us. So we rolled him
3 over. And there was no response when we rolled him over.

4 Q. Okay. Well, no response when you rolled -- did you
5 check for -- check his wrist and neck pulse again, trying to
6 get something?

7 A. Yeah.

8 Q. So you did that before and after you turned him
9 over?

10 A. Yes, sir.

11 Q. Okay. Or rolled him over, I should say.

12 A. (Nodding head up and down.)

13 Q. Did you see anyone outside, on or near the parking
14 lot when you ran out there?

15 A. No, sir.

16 Q. Okay. And in any event, where was your focus?

17 A. Yeah, I was just concerned about Kent. I mean, I
18 didn't really -- I just kind of locked in on that and I was,
19 you know, just frantic, trying to -- trying to help him.

20 Q. What happened after you'd rolled him over and you
21 and Russ checked for his pulse? Who eventually arrived?

22 A. I'd say, you know, five to ten minutes later the
23 police showed up first. And there was at least three cars, I
24 believe, and there was, like, I'd say, seven or eight police
25 officers on the scene first.

1 Q. Did it seem like a long time while you were waiting
2 for somebody to show up?

3 A. Yeah.

4 Q. Okay.

5 A. I mean --

6 Q. Did you time that?

7 A. I didn't time it, but it seemed like forever.

8 Q. You were out there with your co-worker, bleeding.
9 Police showed up.

10 A. (Nodding head up and down.)

11 Q. Initially, was it one officer, followed by others?

12 A. Yes, sir.

13 Q. Were those uniformed police officers that first
14 arrived initially?

15 A. Yes.

16 Q. And within a short period of time after the first
17 one, about how many police officers arrived at the scene? In
18 your estimate.

19 A. Seven or eight.

20 Q. Okay. A number of patrol cars, activity?

21 A. (Nodding head up and down.)

22 Q. And --

23 THE COURT: That's a yes?

24 THE WITNESS: Yes, sir.

25 Q. During --

1 MR. CRANE: I'm sorry, Judge.

2 Q. During that sequence, what other emergency personnel
3 arrived?

4 A. The paramedics showed up shortly after that.

5 Q. All right. And do you remember how many of those
6 people arrived?

7 A. Four or five.

8 Q. All right. And -- now, were you still on the
9 parking lot when all of this was going on?

10 A. Yes, sir.

11 Q. Okay. Were you there -- well, strike that. What
12 did you see the medical personnel, the ambulance people,
13 paramedics, whatever you want to call them, do with respect
14 to Kent?

15 A. You know, they were trying to revive him. They cut
16 open his shirt and, you know, tried CPR. And they did the
17 defibrillator. You know, tried to shock him. You know, we
18 were kind of standing off in the -- you know, 20 yards away,
19 so I didn't see everything that they did, but, you know, they
20 were just trying --

21 Q. You saw them --

22 A. They were trying to bring him back, yeah.

23 Q. You saw them making efforts to work with him.

24 A. Yes.

25 Q. Okay. When did you talk first with somebody with

1 the police?

2 A. Shortly after the first officer arrived. I mean,
3 she got out and immediately asked us what happened.

4 Q. How long did you stay around the scene? Well, I
5 realize you can't necessarily give me an exact estimate, but,
6 I mean, were you around for a while?

7 A. Yes, sir.

8 Q. Okay. I mean, it wasn't like you immediately left
9 after you saw the paramedics working on him?

10 A. No. I was there for 45 minutes to an hour.

11 Q. In fact, could you just drive off?

12 A. No.

13 Q. How come?

14 A. They wouldn't let -- they had our cars all taped in
15 to the crime scene. They said we'd have to get them in the
16 morning.

17 Q. The police tape went around the perimeter of the
18 parking lot?

19 A. Right.

20 Q. How did you eventually leave?

21 A. Kent's son Vince heard what happened and drove up to
22 the paper, and I met him kind of out front, because I didn't
23 want him to see his dad laying, you know, in the parking lot.
24 So I pretty much -- I rode with him home that night.

25 Q. Before you left, in addition to the uniformed police

1 officers, did you see a plainclothes -- what appeared to be
2 plainclothes or non -- you know, you know, regular police,
3 uniformed personnel?

4 A. Yes, sir.

5 Q. And you mentioned that Mr. Heitholt's son arrived
6 and drove you off? Got you out of there for a while?

7 A. Right. We went -- we went down to the major crimes
8 office.

9 Q. Do you remember any other civilians, not medical
10 personnel, not police officers, that you saw that night, at
11 the -- down at the scene?

12 A. I saw Jim Robertson, our managing editor.

13 Q. He's the guy in the lower photo there with Kent?

14 A. Right. And Jack Waters, publisher of the paper, was
15 there. And -- you know, nobody was -- this was obviously
16 outside the actual crime tape. Everybody was kind of --
17 there was a lot of people gathering by that time.

18 Q. Let me show you photographs; okay, sir?

19 A. Okay.

20 Q. These are some photographs that are in evidence
21 as -- these are some still photographs that are in evidence
22 that were taken off the videotape of the crime scene that
23 night.

24 MR. CRANE: And Judge, if I could, I'd ask the
25 witness to step down.

1 THE COURT: You may step down, sir.

2 Q. If we look up here in 13A, do you see your vehicle
3 in that photograph?

4 A. Yes, sir.

5 Q. Could you show the jury where that is?

6 A. (Indicating.)

7 Q. Okay. So that was your car?

8 A. Yes, sir.

9 Q. Okay. 13B isn't there any more, but do you
10 recognize what that was?

11 A. Yes, sir. The Dumpster for the -- I think the KFC
12 or whatever restaurant that was.

13 Q. Okay. Dumpster enclosure right by the park -- we
14 see it right by your car, is that correct, in the other
15 photo?

16 A. Yes.

17 Q. Okay. 13C is a perspective looking back at the
18 building. 13D, do you recognize this vehicle in that
19 photograph?

20 A. Yes, sir. That was Kent's car.

21 Q. And around this rock corner and up that alley you'd
22 go to Fourth Street; is that right?

23 A. Correct.

24 Q. 13E, there is a police car in the photograph?

25 A. (Nodding head up and down.)

1 Q. And you were there while a lot of that was going on?

2 A. Yes, sir.

3 Q. And over in this area are some individuals that were
4 standing around as the police worked the scene?

5 A. Right.

6 Q. Okay. And 13F then is a photograph of this van
7 that's previously been identified as Jerry Trump's. And the
8 light pole.

9 A. (Nodding head up and down.)

10 Q. All right. Now, I want to ask you if you recognize
11 what's marked for identification as State's Exhibit 11, 11A
12 and 11B. Are these fair and accurate depictions of the
13 Tribune area as it appeared on -- close in time to when this
14 crime occurred?

15 A. Yes, sir.

16 Q. Okay. You note the Dumpster --

17 A. (Nodding head up and down.)

18 Q. -- enclosure there?

19 A. Uh-huh.

20 Q. Okay.

21 MR. CRANE: Your Honor, I'd ask to admit -- or I
22 would offer State's Exhibit 11, 11A and 11B.

23 THE COURT: Is there an objection?

24 MS. BENSON: No objection, Your Honor.

25 THE COURT: State's Exhibits 11, 11A and 11B, are

1 admitted.

2

- - -

3 State's Exhibits 11, 11A and 11B, admitted into
4 evidence.

5

- - -

6 Q. Looking at 11A, Fourth Street, parking lot of the
7 Tribune. Correct?

8 A. (Nodding head up and down.)

9 Q. There's a tree right here where Kent's vehicle would
10 have been, in this area?

11 A. Yes.

12 Q. And then do you -- well, do you see Providence Road?

13 A. Yes, sir.

14 Q. Okay. Can you point it out for the jurors, please?

15 A. (Indicating.)

16 Q. Providence. And then the alley that we talked about
17 back here on the other photograph, can you show them where
18 that runs on either of these two photographs? If you look
19 down here on 11B.

20 A. (Indicating.)

21 Q. Okay. And the -- did I already have you point out
22 the Dumpster enclosure?

23 A. Yes.

24 Q. Obviously all these cars weren't on the lot.

25 A. Correct.

1 Q. But this is an accurate aerial of -- close in time
2 to whenever it was?

3 A. (Nodding head up and down.)

4 Q. Okay.

5 THE COURT: Is that a yes?

6 THE WITNESS: Yes.

7 Q. Sir, I want to show you what's marked for
8 identification as 15, 15A through 15H. Ask if you recognize
9 what's in this series of photographs.

10 A. Yes, sir.

11 Q. Are these fair and accurate depictions -- and let me
12 make sure I phrase this correctly -- fair and accurate
13 depictions of the area where you found Kent, the body, as it
14 was after you and Russ Baer turned him over?

15 A. Yes.

16 MR. CRANE: Your Honor, I would offer State's
17 Exhibit 15, 15A through 15H.

18 MS. BENSON: No objection, Your Honor.

19 THE COURT: State's Exhibits 15 and 15A through H
20 are admitted.

21 - - -

22 State's Exhibits 15, 15A through 15H, admitted into
23 evidence.

24 - - -

25 Q. Okay. Now Mr. Thompson, directing your attention to

1 15B, C, and D for the moment, the body had been in what
2 position -- and maybe you can describe it best in 15E as
3 well. If you could describe how it was when you, and I know
4 it's not pleasant, but when you first went and found it.

5 A. He was laying -- his legs were kind of under the
6 back end, kind of sticking out that way, and his head was --
7 head and arms were, like, ,right about here, and he was kind
8 of laying on his left side.

9 Q. So if he's rolled over, he would be more in that
10 position.

11 A. Correct.

12 Q. Okay. Now I want to direct your attention to 15F.
13 When you and Russ turned the victim over, you said you did
14 what with his head?

15 A. Just kind of supported it so his head didn't conk
16 back on the pavement.

17 Q. Okay. So there -- we'll have some discussion about
18 this later, but there's some spatter from this blood-pooling
19 area in 15F?

20 A. (Nodding head up and down.)

21 Q. That was not something that you created --

22 A. That's correct.

23 Q. -- when you were out there.

24 A. No, sir.

25 Q. Okay. Now also in 15F -- well, let me ask you, do

1 you remember noticing anything by the victim's head area when
2 you were out there?

3 A. I re -- I distinctly remember the belt buckle.

4 Q. Okay. And that's in 15F.

5 A. (Nodding head up and down.)

6 Q. Okay. Now the position of the belt buckle, as far
7 as you know, did not change.

8 A. Right. We didn't touch it.

9 Q. I mean, you didn't move it.

10 A. I didn't -- no. Neither one of us touched it.

11 Q. 15G and 15H show some items that were underneath the
12 car. Do you remember any -- noticing any of those with any
13 particular -- do you remember seeing those?

14 A. I remember -- I remember seeing some stuff on the
15 ground. I didn't, you know, stop to see what it was.

16 Q. Okay. You didn't handle any of that?

17 A. No.

18 Q. Okay. 15A here's obviously also after the police
19 had arrived; correct?

20 A. Right.

21 Q. And again, another shot of what?

22 A. My car.

23 Q. Okay. Also showing you State's Exhibit -- this is
24 in evidence -- State's Exhibit 14. 14A here would not be the
25 position -- this is a perspective from the building?

1 A. (Nodding head up and down.)

2 Q. But that would not be the original location of the
3 body; is that correct?

4 A. No. That is not how he was laying when I walked up
5 to him.

6 Q. And then you see these are coming from a different
7 angle --

8 A. (Nodding head up and down.)

9 Q. -- back to the building. 14B.

10 A. (Nodding head up and down.)

11 Q. 14C.

12 A. (Nodding head up and down.)

13 Q. One more thing I wanted to show you here.

14 Let me show you what's in evidence as State's
15 Exhibit 99 and ask if you recognize that vehicle. And if so,
16 what you recognize it as.

17 A. Yes, sir. That's the car of Mike Boyd, the
18 part-time --

19 Q. The guy you talked about that went out with Kent?

20 A. (Nodding head up and down.)

21 Q. Okay. Is there anything -- how is it you recognize
22 that? I don't know if you can see it with the glare or not.

23 A. Yeah. He's got the Southeast Missouri sticker and
24 the Sikeston Bull Dogs sticker.

25 Q. Little Sikeston Bull Dog thing there. And what is

1 it? It's Southeast Missouri?

2 A. (Nodding head up and down.)

3 Q. Okay. That's what you remember in particular on
4 this vehicle?

5 A. Yes. He was real proud about Sikeston.

6 Q. Okay. You can return to the stand, sir.

7 MR. CRANE: Your Honor, at this time the state would
8 offer, through Mr. Thompson, the videotape of the crime scene
9 that was taken obviously after the police arrived that night.
10 And it's State's Exhibit 32. And Mr. Weis has been kind
11 enough to let me play it on his equipment.

12 MS. BENSON: No objection, Your Honor.

13 THE COURT: No objection?

14 MR. CRANE: There's no audio.

15 THE COURT: All right. State's Exhibit 32 is
16 admitted.

17 - - -

18 State's Exhibit 32 admitted into evidence.

19 - - -

20 THE COURT: You're asking to display this to the
21 jury now? To publish it to the jury?

22 MR. CRANE: Yes, Judge.

23 THE COURT: You may do so.

24 (Videotape playing.)

25 Q. That's your car there?

1 A. Yes, sir.

2 (Videotape playing.)

3 Q. Whose white car is that?

4 A. That's Russ's car.

5 Q. Russ Baer?

6 A. Yes.

7 (Videotape playing.)

8 Q. Who's the guy on the right?

9 A. I believe that was Jerry.

10 Q. The janitor?

11 A. Yes.

12 (End of tape.)

13 Q. Do you remember if the car door was open or

14 closed -- excuse me, the driver's side -- driver's door was

15 open or closed when you went out there?

16 A. I don't remember for sure. I think it was closed.

17 Q. You were -- did you close it?

18 A. No, I didn't close it.

19 Q. Okay. Obviously, Mr. Thompson, there was a lot of

20 blood on the pavement. When you went up and -- you know,

21 first got to Kent and shook him and took his pulse -- tried

22 to take his pulse and then rolled him over and tried to take

23 his pulse again, did you step in blood?

24 A. I might have.

25 Q. I mean, there was a lot of blood there. Tough not

1 to.

2 A. Yeah.

3 Q. And Russ was right there with you?

4 A. (Nodding head up and down.)

5 THE COURT: Is that a yes?

6 THE WITNESS: Yes.

7 Q. Okay. Do you remember what kind of shoes you had
8 on?

9 A. I know I had tennis shoes on, but I'm not sure what
10 brand or --

11 Q. Did you notice what Russ had on?

12 A. No, sir.

13 MR. CRANE: No further questions of this witness.

14 Thank you, sir.

15 THE COURT: Counsel for the defendant may inquire.

16 MS. BENSON: Thank you.

17 THE COURT: And we have the lights coming back on,
18 but they don't come back immediately, because I think they're
19 halogen lights.

20 - - -

21 CROSS-EXAMINATION

22 BY MS. BENSON:

23 Q. You had known Kent Heitholt for some time; is that
24 right?

25 A. Yes, ma'am.

1 Q. You said he was your mentor?

2 A. Yes.

3 Q. You worked with him in Louisiana; is that correct?

4 A. He was my sports -- my sports editor at the
5 Shreveport Times.

6 Q. And then you followed him here?

7 A. Followed him up here, yes.

8 Q. To Missouri. Okay. And at the time you were
9 acquainted with Vince and living with Vince; is that correct?

10 A. Right. He -- Vince was renting out my -- the extra
11 room in my apartment.

12 Q. It was Kent's practice to work until 2 a.m.; is that
13 correct? That was a common known thing among Tribune
14 employees; is that right?

15 A. Right.

16 Q. Okay. And on this occasion, you said you believe
17 that he left around 2:10 in the morning; is that correct?

18 A. Correct.

19 Q. Okay. And you think he left with Michael Boyd? Or
20 close to the same time as Michael Boyd anyway.

21 A. Correct.

22 Q. Okay. Could you describe Michael Boyd, please?

23 A. He's a black guy in his I'd say early 30s. Kind of
24 short. Stocky.

25 Q. He's not a regular-looking, middle-aged white guy?

1 A. No.

2 Q. Okay. I'm unfortunately going to have to refer you
3 back to State's Exhibit 15 briefly. When you came out and
4 saw the body, it was face down; is that correct?

5 A. Kind of on his left side. Kind of halfway on his
6 side and halfway on his stomach, so.

7 Q. Okay.

8 A. It was kind of like -- kind of like that
9 (indicating).

10 Q. Okay. And you say that part of his legs were
11 sticking actually underneath the car; is that correct?

12 A. Right.

13 Q. And that would be underneath the back of the car?

14 A. Back end of the car.

15 Q. Okay. So when you rolled him over, you would have
16 rolled him from the direction of the wall over onto his back,
17 toward the building.

18 A. Right. He was kind of laying like that
19 (indicating). And one -- I think I supported his head, and
20 Russ just took his right shoulder and just kind of flipped
21 him like that, to his back.

22 Q. Okay. Just flipped his shoulder area?

23 A. Right.

24 Q. Okay. Now, when you found him, however, he was
25 partially under the back of the car. He wasn't up at the

1 driver's side area of the car.

2 A. No.

3 Q. Okay. He wasn't in the doorway of the car?

4 A. No. I mean, his legs were pretty much where they

5 are -- where they are.

6 Q. Okay. Right there at the rear of the car.

7 A. Correct.

8 Q. Okay. And you said that you couldn't remember for

9 sure, but you think that the car doors were closed. Is that

10 right?

11 A. Yes.

12 Q. Okay. Kent was a pretty big man, was he not?

13 A. Yeah.

14 Q. About how tall was he?

15 A. Six three.

16 Q. About how much did he weigh? Do you know?

17 A. 300, 310. Somewhere in that range.

18 Q. Okay. And when you turned the body, you and Russ

19 both kind of pushed him over? You held his head.

20 A. Just rolled him over, right.

21 Q. You just rolled him. Okay. You weren't -- you

22 didn't pull the body anywhere or push the body anywhere.

23 Just rolled him over.

24 A. No. We just wanted to roll him over.

25 Q. Okay. Now when you came out that night and ran to

1 the body, you didn't see anybody in the area at that time.

2 A. No. I just kind of locked in on -- I saw Kent
3 laying there, and that's --

4 Q. But nothing distracted you, like people running or
5 anything like that.

6 A. No.

7 Q. You didn't observe running in the area or down the
8 alley?

9 A. No.

10 Q. Okay. You didn't see anybody running past the
11 alley?

12 A. (Shaking head from side to side.)

13 Q. And so obviously you didn't yell at anybody --

14 THE COURT: Excuse me. You'll have to answer again.
15 I know it's normal to shake your head, but if you'd answer
16 yes or no, please.

17 A. No, ma'am. I didn't see anybody.

18 Q. Okay. And obviously, since you didn't see anyone,
19 you didn't yell at anyone running down the alley.

20 A. No, ma'am.

21 Q. Okay. And you didn't hear anything unusual that
22 night, either inside or outside, did you?

23 A. No, ma'am.

24 Q. Okay. Now you indicated that you were alerted to a
25 problem by the janitors; is that right?

1 A. That's correct.

2 Q. And that was Shawna and Jerry?

3 A. Yes.

4 Q. All right. So both of -- both Shawna and Jerry came
5 up to your sports-writing area?

6 A. Right. They -- there's kind of like two doorways to
7 where the sports department is. And Shawna came in first and
8 said, "Where's Kent?"

9 Q. And how long did it take for Jerry to get there?

10 A. I don't know. Seconds. 30 seconds later maybe.

11 Q. Okay.

12 A. She was a little bit upset, shaken up, and then he
13 walked up. She was trying to explain what, you know, what
14 was going on.

15 Q. Okay. And at that time she was asking where Kent
16 was.

17 A. Right.

18 Q. Okay. Did Jerry say anything?

19 A. He said -- we said, "Kent left about 15 minutes
20 ago." And they -- I think Jerry said, "His car's still out
21 there, and there's two guys standing there, and I think
22 somebody's hurt."

23 Q. Okay.

24 A. And then once I heard --

25 Q. So he didn't say that he had seen Kent's body at

1 that point.

2 A. No.

3 Q. He wasn't sure what had happened at that point.

4 A. Right. I don't think -- yeah, he -- they were just

5 kind of confused.

6 Q. Okay. All right. And you don't know if they had

7 called 911 at that time?

8 A. No, they hadn't.

9 Q. They had not?

10 A. Had not.

11 Q. Okay. So it was only after you and Russ went down

12 there and you turned and told them to call 911 that they did

13 that --

14 A. Yeah.

15 Q. -- is that correct?

16 A. I ran out there first; found Kent. They -- Jerry

17 and Shawna had walked back outside by that time. I screamed

18 at them to call 911. And that's about the time Russ was

19 walking out.

20 Q. Okay. You indicated when you looked at the scene,

21 that there was blood all over the place; is that correct?

22 A. Correct.

23 Q. On the car? On the ground?

24 A. It was everywhere -- it seemed like it was

25 everywhere. I mean, it was just --

1 Q. Okay. Certainly seems like whoever did that would
2 get blood on them, doesn't it?

3 MR. CRANE: Well, Judge, I'm going to --

4 MS. BENSON: I'll withdraw that.

5 MR. CRANE: -- object. That calls for speculation.

6 THE COURT: Sustained.

7 MS. BENSON: I'll withdraw that.

8 Q. Now, you had mentioned on direct that there were a
9 number of people gathering around; correct?

10 A. Correct.

11 Q. But most of those people were outside of the
12 evidence tape area; correct?

13 A. Other than the police and the medical personnel --

14 Q. Right. Police and the medical personnel were on the
15 scene, within --

16 A. Right.

17 Q. -- the tape; right?

18 A. Correct.

19 Q. But everybody else was outside the tape?

20 A. Yes.

21 Q. Okay.

22 MS. BENSON: Nothing further.

23 THE COURT: Redirect?

24 MR. CRANE: No further questions of this witness.

25 Thank you, sir.

1 THE COURT: May he be finally excused? For the
2 state.

3 MR. CRANE: He may.

4 THE COURT: For the defendant.

5 MS. BENSON: Yes, Your Honor.

6 THE COURT: Thank you for coming. You're finally
7 excused. Would ask you, Mr. Thompson, not to discuss your
8 testimony with anyone who's yet to be called as a witness.

9 THE WITNESS: Yes.

10 THE COURT: But you're free to go.

11 THE WITNESS: Thank you.

12 MR. CRANE: Your Honor, Mr. Knight will take the
13 next three witnesses.

14 THE COURT: That's fine.

15 You may call your next witness, Mr. Knight.

16 MR. KNIGHT: Jeff Nichols.

17 THE COURT: Would you raise your right hand.

18 - - -

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25

1 JEFF NICHOLS,
2 being first duly sworn by the Court, testified as follows:

3 THE COURT: Would you take the witness stand,
4 please.

5 - - -

6 DIRECT EXAMINATION

7 BY MR. KNIGHT:

8 Q. Please state your name.

9 A. Jeff Nichols.

10 Q. And where are you employed?

11 A. Columbia Police Department.

12 Q. How long have you been employed at CPD?

13 A. Approximately 13 years.

14 Q. And in what capacity are you employed there?

15 A. I'm a detective in the major crimes division.

16 Q. And how long have you been a detective there?

17 A. Seven, eight years, roughly.

18 Q. All right. And before you became employed at CPD,
19 where were you employed?

20 A. University of Missouri Police Department.

21 Q. And what did you do there?

22 A. Well, I was a road officer there for a year and then
23 a detective there for four years.

24 Q. Okay. And as a detective at CPD, the Columbia
25 Police Department, what is your general area of expertise?

1 A. Forensics, or crime scene investigation.

2 Q. Okay. And you are a crime scene investigator;
3 right?

4 A. Yes.

5 Q. What does a crime scene investigator do?

6 A. Well, the primary purpose is to locate or identify
7 possible items of evidence at a crime scene, collect those
8 items, and preserve those for further analysis or
9 preservation of evidence.

10 Q. Okay. And approximately how many crime scenes have
11 you investigated?

12 A. Well, roughly 1,400.

13 Q. Okay. And approximately how many murder cases have
14 you testified in?

15 A. Roughly 25 to 35. I've been involved in between --
16 well, roughly 76 death and homicide investigations
17 specifically.

18 Q. All right. And what professional organizations are
19 you a member of?

20 A. Well, the Fraternal Order of Police, the
21 International Association of Identification, which is a
22 forensics-based organization, the International Association
23 of Blood Stain Pattern Analysts.

24 Q. Okay. And what's your educational background?

25 A. I have a undergraduate degree from the University of

1 Missouri and I have 18 master credit hours from Central
2 Missouri State University.

3 Q. All right. And how many hours of police training
4 have you received?

5 A. Approximately 2,000.

6 Q. All right. What is blood stain pattern analysis?

7 A. Basically boils down to interpreting blood stain
8 patterns at a crime scene.

9 Q. Okay. And we're going to describe that a little bit
10 more later on in your testimony, but in December of 2000,
11 where did you go to learn about blood stain pattern analysis?

12 A. I went to the Miami-Dade police training academy in
13 Miami, Florida.

14 Q. Okay. And can you describe that academy that you
15 went to?

16 A. It was a week-long training program. It was taught
17 by one of the criminalists that specialize in blood stain
18 pattern analysis, Toby Wilson. The course was half or
19 roughly half classroom work and then hands-on techniques and
20 field work.

21 Q. Okay. And so this class you said lasted one week.
22 You were there eight hours a day for the entire week; is that
23 correct?

24 A. Yes.

25 Q. And how was blood stain pattern analysis taught to

1 you?

2 A. Well, we started off with, you know, history. They
3 got into the different types of classifications of stains.
4 And then we would take that information, go into a laboratory
5 setting, where they would demonstrate with actual horse blood
6 the type of stain that they were -- they would recreate that
7 stain essentially. And then show us what that stain would
8 look like.

9 Q. Okay. So part of your training then was actually
10 hands-on work with blood stain pattern analysis; is that
11 correct?

12 A. Yes.

13 Q. Okay. And what were you required to do at the end
14 of this class?

15 A. Well, we had a project that we actually had to do
16 the interpretation on the stains that was -- that had been
17 set up and give a report of what our interpretation was.

18 Q. Okay. And so you did a presentation at the end; is
19 that correct?

20 A. Yes.

21 Q. And so at the end of the class pretty much -- you
22 received a certification; is that correct?

23 A. Yes.

24 Q. In what?

25 A. Having completed the class successfully in blood

1 stain pattern analysis.

2 Q. Okay. And since December 2000, when you went to
3 this class, what did you study with regard to blood stain
4 pattern analysis?

5 A. Well, I have certainly become more involved in doing
6 analysis on stains at crime scenes. I also have several
7 texts that I review frequently. I receive information from
8 the association that I'm affiliated with on information about
9 crime stain cases and often review this information during my
10 lectures that I give.

11 Q. Okay. And so you've done blood stain pattern
12 analysis at crime scenes, is that correct, since 2000.

13 A. Yes.

14 Q. Okay. And you've done that for the Columbia Police
15 Department; is that right?

16 A. Yes.

17 Q. And other police agencies; is that correct?

18 A. Yes.

19 Q. What other police agencies have retained you to do
20 blood stain pattern analysis?

21 A. Fulton Police Department, which is in Callaway
22 County, just to the east of us here in Boone; Adair County in
23 northern Missouri; the Major Case Squad; cases that stem from
24 the Boone County Sheriff's Department.

25 Q. And you actually have taught -- you've actually

1 taught classes in this area; is that correct?

2 A. Yes.

3 Q. Where?

4 A. At the -- well, at the University of Missouri I have
5 done some lectures on blood stain pattern analysis. I've
6 also done -- provided a lecture to the International
7 Association of Identification, at their international
8 conference, which was held in St. Louis. And I talked about
9 blood stain pattern there as well as luminol.

10 Q. All right. So what is blood spatter?

11 A. Well, blood spatter is essentially blood that is set
12 into motion, and that blood then comes in contact with a
13 surface, creating spatter. A spatter pattern.

14 Q. Okay. And what is the difference between low-,
15 medium-, and high-velocity spatter?

16 A. Well, low-, medium-, and high-velocity spatter stems
17 from a group of impact patterns. That refers to the object
18 or the force that is placed upon existing blood, which
19 therefore puts that blood into motion and creating a specific
20 type of pattern.

21 Q. Well, give an example then to this jury, if you can,
22 of low-velocity spatter.

23 A. Well, low-velocity spatter would be considered blood
24 that is affected only by gravity, such as blood dripping from
25 your nose if you had a nose bleed, blood flowing from a cut

1 on your hand, blood pooling on the ground as a result of
2 gravity.

3 Q. Just blood dropping straight down to the ground; is
4 that right?

5 A. Blood dropping straight down.

6 Q. Okay. Can you also explain what medium-velocity
7 spatter would come from. What would that look like?

8 A. Well, medium-velocity spatter is typically
9 associated with assault type acts; beatings, where an object
10 is used, some type of weapon is used, to set the blood into
11 motion. And certainly there's a blood-causing act which has
12 to cause a flow of blood, but then once that blood is struck
13 again, then the blood is therefore set into motion. And
14 typically we are talking about a force between 5 and 25 feet
15 per second on average and stains that are anywhere between 1
16 and 4 millimeters in size.

17 Q. Tell us about high-velocity spatter.

18 A. High-velocity spatter produces a misting pattern on
19 blood. The blood does not travel as far as a result of this
20 mist. We see high-velocity spatter associated with gunshot
21 victims, explosions, some mechanical cases. But it's where
22 that you have blood that's impacted by some type of force
23 where we're looking at a hundred feet per second or more.
24 And you get stains that are very small. Usually a
25 millimeter -- one millimeter or less.

1 Q. Pretty much a mist a lot of the times; is that
2 correct?

3 A. A mist, yes. Now, all of these stains, we have to
4 keep in mind, possibly contain stains that would fit the
5 definition of low velocity or medium velocity in the case of
6 a high-impact case. But --

7 Q. Such as this?

8 A. -- when we -- when we look at the majority of the
9 stains -- we evaluate based on the majority of the stains.
10 And if the majority of the stains meet the criteria of a
11 specific impact group, then that's what we determine caused
12 the impact.

13 Q. So now you've explained to us the different
14 velocity -- or different spatter velocities; correct?

15 A. Yes.

16 Q. But there are two types of spatter; is that correct?
17 Impact and cast-off. Is that right?

18 A. Well, there are actually three different groupings.
19 We have passive stains. And that would be your low impact,
20 low velocity. And then you have impact, a grouping of impact
21 stains, where you're talking about your gunshot, weapon
22 impacts. And then you have transfer stains, where you're
23 talking about blood being on an object which comes in contact
24 with a surface. So you have three groups, but --

25 Q. Well, okay. I know three groups, but I'm just

1 talking about spatter right now. And you've got -- you've
2 got either cast-off spatter or we have impact spatter; is
3 that correct?

4 MR. ROGERS: I'll object to this as leading, Your
5 Honor.

6 THE COURT: Sustained as to the form of the
7 question.

8 Q. What are the two different types of spatter?

9 A. Well, you have impact spatter. And there again, the
10 cast-off is usually a result of an impact. And that spatter
11 is where you have blood that comes off of an object,
12 typically a weapon, and gravitational force or centrifugal
13 force has an impact on that liquid, blood. Therefore, when
14 the weapon is in motion, the blood then comes off the weapon
15 and then trans -- it then impacts a surface.

16 Q. That's called cast-off; correct?

17 A. Cast-off, yes.

18 Q. Okay. And explain to the jury then what impact is.

19 A. Well, that would be when the object came in contact
20 with, in this case, the victim's head.

21 Q. All right. And then the blood is dispersed; is that
22 correct?

23 A. And it would set the blood in motion, and it would
24 be a random dispersion of blood.

25 Q. What are tails?

1 A. Well, tails are associated with blood stains that
2 come in contact with a surface at an angle. And you have a
3 -- sort of a wave motion of blood once the stain impacts the
4 surface. And let's say, for example, if a stain came in --
5 the flight path of the stain or drop of blood was at about a
6 45-degree angle, once that blood contacted the surface, it
7 would elongate, in sort of an eclipse. There would be a wave
8 pattern or a wave motion. The blood would roll off and
9 create a tail at the end of that stain.

10 Q. So what do tails then indicate with regard to the
11 direction of travel of a spatter?

12 A. Well, the tail points in the direction of which the
13 blood droplet was travelling.

14 Q. So it's just the opposite of what we think it would
15 be. Usually a tail's behind something. Correct?

16 A. Yes.

17 Q. The tail's actually in front, when we're talking
18 about blood spatter; right?

19 A. Yes.

20 Q. And you already I think briefly testified about
21 blood transfer. What is that?

22 A. Well, in most cases, that is where you have an
23 object that has blood on it, and that object comes in contact
24 with an object that does not have blood on it, and it
25 therefore transfers blood to that object which is clean.

1 Q. Okay. What is luminol?

2 A. Luminol is a product that is a presumptive test --
3 that we use as a presumptive test for blood.

4 Q. All right. And in March of 2000, where did you go
5 to learn about luminol?

6 A. I went to the Kansas City crime lab in Kansas City,
7 Missouri.

8 Q. And how long did you attend classes there?

9 A. I was there for I believe three days at the Kansas
10 City police crime lab.

11 Q. Do you remember who taught the classes?

12 A. Linda Netzel.

13 Q. Okay. And what was her occupation?

14 A. She was a chemist.

15 Q. Okay. And at the KCPD crime lab; is that correct?

16 A. Yes.

17 Q. What did she specialize in?

18 A. Well, her -- I believe her overall specialty was
19 serology.

20 Q. Please describe the training you received in the use
21 of luminol there.

22 A. Well, it focussed on the history of luminol; the
23 preparation of the chemical. They actually put the chemical
24 together there at the lab. They taught how to do that. They
25 took us to a remote site where, there again, we used horse

1 blood, because luminol is not human specific. It will react
2 with animal blood as well. So we studied the reactions that
3 you would typically get with luminol, so we'd understand what
4 this chemiluminescence was.

5 When I talk about chemiluminescence, I'm referring
6 to a -- kind of a light blue glow or light. The chemical,
7 once it comes in contact with blood, will produce its own
8 light. So, in a dark environment, you can see this
9 chemiluminescence occurring.

10 Once we were -- began doing this type of work, we
11 studied a number of different substrates; surfaces that had
12 been cleaned, washed. We also looked at several different
13 other types of objects and chemicals that luminol sometimes
14 reacts with and gives what we refer to as a false positive,
15 that would not be blood, which usually involve iron objects,
16 because research has shown that the luminol is reacting with
17 the heme group in blood and the iron that's found there, and
18 that it's not uncommon for it to react with, let's say, a
19 wrench or some other type of metal object. It also reacts
20 with some types -- some household cleansers or cleaners.
21 Usually bleach products. And so we used some bleach product,
22 and she demonstrated how this reaction would also occur with
23 some bleach product.

24 Q. But when you apply the luminol to something like
25 human blood, as opposed to -- well, and you would also apply

1 it -- if you apply it to maybe rust metal or household
2 cleaning products, bleach, things like that, that luminol
3 reacts with, explain the difference in the reaction to those
4 three groups of things: Blood, rust iron, bleach.

5 A. Well, if you are getting a rust iron reaction,
6 typically you can see the object that it's reacting with,
7 because it's right there in front of you. If you are getting
8 a reaction with bleach, it also provides kind of a foggy
9 appearance. Now keep in mind that the rust reaction, as well
10 as the bleach reaction, the duration of that reaction is not
11 as long as it will be with blood. So a blood reaction is
12 more intense, the reaction is more intense, and the duration
13 is longer.

14 Q. At the end of your training there at the KCPD crime
15 lab, did you receive a certification in the use of luminol?

16 A. I did.

17 Q. Okay. And also you've kept up to date studying the
18 use of luminol on your own since then; is that correct?

19 A. Yes.

20 Q. All right. And also in connection with your job at
21 CPD, you've used luminol at crime scenes since then; is that
22 right?

23 A. Yes.

24 Q. And you've been retained by other agencies to do so;
25 is that correct?

1 A. Yes.

2 Q. All right. And you've also actually taught people
3 how to use luminol; is that correct?

4 A. Yes.

5 Q. All right. And so luminol is just basically used by
6 police agencies to detect nonvisible blood; is that right?

7 A. Yes.

8 Q. All right. Let's move along then. November 1st,
9 2001, at about 2:30 a.m., somebody contacted you at home; is
10 that correct?

11 A. Yes.

12 Q. Who was that?

13 A. My supervisor, Sergeant Monticelli. Steve
14 Monticelli.

15 Q. And what did he request you to do?

16 A. He requested that I respond to the Tribune parking
17 lot, on the north side of the building.

18 Q. Okay. And to investigate a murder; is that correct?

19 A. Yes.

20 Q. All right. And you actually went to that location;
21 is that correct?

22 A. I did.

23 Q. And when you got there, was the crime scene taped
24 off?

25 A. Yes.

1 Q. All right. And you saw Kent on the ground; is that
2 right?

3 A. Yes.

4 Q. And what injuries did you notice to him?

5 A. I noticed that there was a lot of blood on the
6 ground as well as on his person. Most of the injury appeared
7 to be around the head. And upon doing a little closer
8 examination, I noticed that there were numerous defects to
9 the head of Mr. Heitholt.

10 Q. Okay. And for orientation purposes, real quickly,
11 Detective Nichols, could you please step down off the witness
12 stand?

13 A. Sure.

14 Q. I'm going to have you look at a few exhibits here.
15 Do this orientation real quickly. They've seen this is a
16 million times. But this is over -- it's an aerial
17 photograph; is that correct?

18 A. Yes.

19 Q. Okay. And where's the Tribune parking lot on this?

20 A. Just below number 2.

21 Q. All right.

22 MR. KNIGHT: And this right here I think has already
23 been admitted, number 12.

24 MR. ROGERS: It has.

25 MR. CRANE: Correct.

1 Q. Show you what's been marked as State's Exhibit
2 Number 12. This is a diagram of the crime scene; is that
3 correct?

4 A. Yes.

5 Q. So when you initially arrived at the crime scene,
6 you saw Kent's body in this area; is that correct?

7 A. Yes.

8 Q. All right. I'm going to show you what's been marked
9 as State's Exhibit 14. Can you hold that, please? These
10 photographs have already been admitted into evidence, but
11 these pretty much just show far-away shots of Kent's car and
12 Kent; is that correct?

13 A. Yes.

14 Q. From different angles.

15 A. Yes.

16 Q. All right. And you testified that you saw blood
17 around Kent; is that correct?

18 A. Yes.

19 Q. You can see it right there; is that correct?

20 A. Yes.

21 Q. We're going to talk about that a little bit more,
22 but you saw two different blood pools; is that right?

23 A. Yes.

24 Q. All right. And where were they? If you can show
25 the jury.

1 A. Well, the first area where there was a quantity of
2 blood on the pavement was right here, just to the -- next to
3 the rear wheel of the car. And the other pooling of blood
4 was right next to the victim's head.

5 Q. Okay. I'd like to show you what's been marked as
6 State's Exhibit 15. It's already in evidence. This is a
7 photo of Kent from that angle; is that correct?

8 A. Yes.

9 Q. Here he is again. Is that right?

10 A. Correct.

11 Q. We show -- in 15C, you can see that blood is
12 streaming down towards the west; is that correct?

13 A. Yes.

14 Q. The parking lot itself is sloped; is that right?

15 A. Correct.

16 Q. From which -- it's sloped down from where to where?

17 A. From east to west. It slopes downhill.

18 Q. Okay. You can see that again here in 15D.

19 15E and 15F, what did you notice about a foot north
20 of Kent's head?

21 A. A belt buckle and a partial section of the belt.

22 Q. Okay. And what did you notice about this belt?

23 A. Well --

24 Q. Or the belt buckle?

25 A. Like I said, part of the -- or the majority of the

1 belt was missing. As clearly see there, in State's Exhibit
2 15F, the buckle had blood on it. Had some blood spatter on
3 it. And closer examination of the leather stitching area,
4 where the belt had been ripped away from it, it appeared that
5 it actually had been torn, versus cut, because you could see
6 small leather strands or fibers extending out in the
7 direction which it would have been torn apart. It was not a
8 real clean cut like you would expect to see with a
9 sharp-edged instrument like a knife or a razor blade.

10 Q. Officer Nichols, if you can come back behind this,
11 this photo layout here, I'd appreciate it. I'm going to show
12 you what's been marked as State's Exhibit 35. What is this?

13 A. This is a pair of pants that Mr. Heitholt was
14 wearing the night of the murder.

15 MR. KNIGHT: Your Honor, I'd offer State's Exhibit
16 35.

17 MR. ROGERS: No objection, Your Honor.

18 THE COURT: State's Exhibit 35 is admitted.

19 - - -

20 State's Exhibit 35 admitted into evidence.

21 - - -

22 Q. I'd like to show you, when I get over there, what's
23 also marked as State's Exhibits 36 and 37. 36, what is this?

24 A. It's Mr. Heitholt's T-shirt.

25 Q. 37, what is this?

1 A. It's Mr. Heitholt's sweater.

2 MR. KNIGHT: Your Honor, I'd offer State's Exhibits
3 36 and 37 also.

4 MR. ROGERS: No objection, Your Honor.

5 THE COURT: 36 and 37 are admitted.

6 MR. KNIGHT: Thank you, Your Honor.

7 - - -

8 State's Exhibits 36 and 37 admitted into evidence.

9 - - -

10 Q. Detective Nichols, taking a look at the pants, first
11 of all, obviously what do we have all over the pants?

12 A. Quite a bit of blood.

13 Q. What did you notice in the right knee area?

14 A. A saturation stain.

15 Q. Okay. And the rear, what did you notice also?

16 A. There's some -- what appears to be some blood
17 clotting, blood transfer on the back.

18 Q. Now, what is this right here?

19 A. That would be a belt loop that is part of the
20 victim's pants.

21 Q. And what did you notice about the condition of this
22 belt loop?

23 A. It was torn.

24 Q. Okay. Talking about -- this is the front; right?
25 Front -- first one on the left, belt loop; is that right?

1 A. Correct.

2 Q. And then what did you notice about this belt loop
3 over here on the side?

4 A. The next belt loop is torn as well.

5 Q. Okay. The other belt loops on the back and on the
6 right, they're pretty much intact?

7 A. Those are intact.

8 Q. Okay. And 36, this is the T-shirt Kent was wearing;
9 is that correct?

10 A. Yes.

11 Q. Okay. What did you notice all over that shirt?

12 A. There again, it was saturated with blood.

13 Q. Front and back?

14 A. Yes.

15 Q. Okay. 37, this is a sweater you identified?

16 A. Yes.

17 Q. What did you notice about this?

18 A. Well, it too had a quantity of blood saturated into
19 the fabric. And there again, both of these articles had been
20 -- looked like they had been cut and opened.

21 Q. Like to show you what's been marked as State's
22 Exhibit 40. What are these?

23 A. Those are Mr. Heitholt's tennis shoes.

24 MR. KNIGHT: Your Honor, I'd offer State's Exhibit
25 40.

1 MR. ROGERS: No objection.

2 THE COURT: State's Exhibit 40 is admitted.

3 - - -

4 State's Exhibit 40 admitted into evidence.

5 - - -

6 Q. Can you hold those for a second, please? Did you
7 notice any blood on those?

8 A. Well, there is a small amount of blood on the shoes,
9 on the sides. But we did not notice any quantity of blood on
10 the soles.

11 Q. Okay. Can you set those down, please? On the
12 ground would be good. I want to talk to you a little bit now
13 about blood stain pattern interpretation.

14 MR. KNIGHT: And this has not been admitted, to my
15 knowledge.

16 THE COURT: What exhibit are we looking --

17 MR. KNIGHT: State's Exhibit 34.

18 THE COURT: It is not admitted.

19 MR. ROGERS: I have no objection to it being

20 admitted, Your Honor. He's about to offer it, I think, so.

21 I don't -- I'm not worried about the foundation. I'm sure he
22 will explain that when he gets there.

23 THE COURT: Are you are you offering Exhibit 34?

24 MR. KNIGHT: Yes, Your Honor. 34, 34A through 34K.

25 MR. ROGERS: And no objection.

1 THE COURT: State's Exhibits 34, 34A through K, are
2 admitted.

3 - - -

4 State's Exhibits 34, 34A through 34K, admitted into
5 evidence.

6 - - -

7 Q. These are photographs basically of the inside of
8 Mr. Heitholt's car; is that correct?

9 A. Yes.

10 Q. Okay. 34A, what did you notice there? That's --
11 for the record, that is a photograph of the inside of his
12 driver's side door; is that correct?

13 A. Yes.

14 Q. Okay. What did you notice on the glass there?

15 A. There's several blood stains on the glass.

16 Q. You just put a piece of -- or somebody put a piece
17 of paper up on the outside of the glass so you could
18 photograph that; is that correct?

19 A. That's correct. The stains were on the inside of
20 the glass.

21 Q. And what kind of stains were they?

22 A. Well, those appear to be stains resulting from an
23 impact of some type.

24 Q. Okay. And can you tell the velocity?

25 A. Well, it would be -- they fall within the category

1 of medium-velocity impact.

2 Q. Okay. Something must have set these stains into
3 motion; is that correct?

4 A. That's right.

5 Q. They weren't falling straight down.

6 A. Correct.

7 Q. Okay. And once again, 34B is a close-up of A; is
8 that right?

9 A. Yes.

10 Q. And once again, it's showing the impact spatter on
11 the inside of the driver's door window; is that correct?

12 A. Yes.

13 Q. Okay. 34C, what is this right here?

14 A. That too is a blood stain.

15 Q. Okay. What kind?

16 A. There again, the stain's characteristic of
17 medium-velocity impact.

18 Q. Okay. 34D, right here, right here, what did you
19 see?

20 A. The same. A stain. Blood stain. Also
21 characteristic of a medium-velocity impact.

22 Q. And these -- all of these stains, 34C through 34F,
23 are all the driver's side door; is that correct?

24 A. Yes.

25 Q. Front driver's side door.

1 A. Yes.

2 Q. 34D, you testified about the blood there. 34B, more
3 blood on that door, inside; is that correct?

4 A. Yes.

5 Q. 34F, a particularly large stain; is that correct?

6 A. It's larger, yes.

7 Q. Okay. 34G, what is this generally?

8 A. Well, that's the floorboard.

9 Q. On the driver's side; right?

10 A. On the driver's side.

11 Q. Okay. What did you notice there?

12 A. There also appears to be a stain on the floorboard.

13 Q. Okay. Right here? It's kind of a far-away photo of
14 that; is that correct? That floorboard?

15 A. Yes.

16 Q. Stain right there; right?

17 A. Yes.

18 Q. Okay. 34I. What did you notice here? I guess you
19 can call that door frame; right?

20 A. Yes.

21 Q. Driver's side door frame?

22 A. Yes. On the lower part of the driver's side door
23 frame.

24 Q. Okay. I notice -- what did you notice there?

25 A. There were also some stains there.

1 Q. What kind of stains?

2 A. They too appeared to be impact stains.

3 Q. Low velocity?

4 A. Not necessarily up in this area, because there were
5 some stains that were up higher on the frame itself. I did
6 notice some stains along the lower edge of the frame.

7 Q. Are we talking about what's in 34J and 34K?

8 A. Yes. And this would be in the area of the rear
9 portion of the driver door frame. And along this door edge
10 of the frame there were some stains that were more
11 characteristic of blood falling in a downward direction. One
12 would say that would be characteristic of a low impact. But
13 there again, as I mentioned before, it's not uncommon to see
14 a few stains associated with a medium-impact spatter that
15 would be considered in and of itself either high impact or
16 low.

17 Q. Well, medium impact or low.

18 A. In -- well, in a medium --

19 MR. ROGERS: I'm going to object to the misleading
20 nature of the question, Judge. The witness gave a very clear
21 answer that Mr. Knight is wanting to change.

22 THE COURT: The objection is sustained.

23 Q. How is the blood information that you saw inside of
24 this car -- and you only saw blood, for that matter, inside
25 the car, in the front driver's side area; correct?

1 A. Yes.

2 Q. How is the blood information that you saw inside the
3 car consistent with Kent being in an upright position and
4 inside of his car door when he was struck?

5 A. Well, certainly you have stains that are higher on
6 the door that appear to have been travelling in that
7 direction, in a direction from, like I say, from the rear
8 portion of the door frame area toward the front. Along with
9 that, I noticed the stains at the bottom of the door frame,
10 which would suggest that the victim was standing next to that
11 door frame and blood then began to drip or fall from his head
12 or from a wound downward, striking the lower part of the door
13 frame.

14 Q. I'd like to show you what's been marked as State's
15 Exhibit 33, which is already in evidence. And now I want to
16 talk to you about blood information that you saw --

17 THE COURT: Excuse me. 33 is not in evidence.

18 MR. CRANE: Yeah, I don't think it is.

19 MR. KNIGHT: Okay. I'm sorry.

20 MR. ROGERS: If you're offering it, I have no
21 objection.

22 MR. KNIGHT: I thought it was.

23 THE COURT: You're offering it?

24 MR. KNIGHT: Yes, I am, Your Honor.

25 THE COURT: State's Exhibit 33 is admitted.

1 MR. KNIGHT: Okay.

2 - - -

3 State's Exhibit 33 admitted into evidence.

4 - - -

5 Q. And this is blood information that you saw on the
6 outside of the car; is that correct?

7 A. Yes.

8 Q. All right. And 33A, tell us what you noticed in
9 this area right here.

10 A. Well, there was a lot of blood information here,
11 but, there again, it was all consistent with this type of
12 assault. There was some blood transfer and blood pooling on
13 the ground, on the pavement, next to the rear left wheel of
14 the vehicle. There was some what appeared to be blood
15 transfer onto the hubcap of the rear left wheel. And there
16 also was blood spatter, medium-velocity spatter, resulting
17 from some type of strike to the victim, and blood therefore
18 radiated out and ran in that direction.

19 Q. All right. And over here, 33B, you can see the
20 transfer on the wheel. You can also see cast-off. Is that
21 correct? Or, more specifically, 33C. What do you see right
22 here?

23 A. Well, 33C has a unique stain pattern there next to
24 the gas cap cover. That in and of itself is consistent with
25 cast-off, which possibly occurred in very close proximity to

1 the vehicle.

2 Q. So this -- this cast-off right here, would that be
3 consistent with a weapon casting blood off in this direction?

4 A. Certainly.

5 Q. Okay. And when you looked at this closely, you
6 could tell that the tails went in this direction; is that
7 correct?

8 MR. ROGERS: Objection. That's leading.

9 THE COURT: Sustained. As to the form of the
10 question.

11 MR. KNIGHT: I'll rephrase.

12 Q. Which direction are the tails going?

13 A. Well, these blood stains were travelling in a
14 downward direction. Sort of in an angular direction toward
15 the rear tire.

16 Q. Okay. From right to left; right?

17 A. Correct.

18 Q. Okay. How is this cast-off right here consistent
19 with Kent's head being right in this area when it was struck
20 with a weapon?

21 A. Well, it was reasonable to assume, given the blood
22 information visible right here, that his head would have been
23 above the pavement, somewhere in this general vicinity,
24 depending on the angle of which the assailant was striking
25 him. Blood was on the weapon itself at that point. And as a

1 result of when it came in contact with the victim, it was
2 then set into motion and come into contact with the surface
3 of the vehicle.

4 Q. So would it be consistent with the weapon coming
5 down like this?

6 A. Certainly would, yes.

7 Q. Okay. 33F, you already testified about transfer
8 that was on this wheel; correct?

9 A. Yes.

10 Q. Okay. And how is this transfer, this big stain
11 right here, how is that consistent with Kent's head coming in
12 contact with that wheel?

13 A. Well, since Mr. Heitholt's head was the source of
14 blood in this case, blood was obviously flowing from the
15 head. There was a fairly large quantity of blood here on
16 the -- that came in contact with the wheel. As a result of
17 the quantity, you can see that blood actually began to start
18 dripping or rolling down the side of the wheel itself. In a
19 couple of places it appears that blood went all the way to
20 possibly the pavement. But that would be consistent with the
21 victim's head coming in contact with the wheel, transferring
22 a sizeable quantity of blood from the head to the hubcap.

23 Q. Okay. And back to 33C. You've already testified
24 about this cast-off you saw coming at a downward angle from
25 right to left --

1 A. Yes.

2 Q. -- correct? But besides this linear cast-off that
3 we have here, what other blood information do you see in 33C
4 and also see in the close-up of 33F, with regard to impact
5 spatter?

6 A. Well, there are stains that are also travelling in
7 an upward direction. And it can easily -- these stains can
8 easily be observed in 33C, where you note -- where you notice
9 that the tails from the elliptical stains were travelling in
10 an upward direction.

11 There are also stains that take on different shapes
12 in this particular area of the hubcap. Not all of those are
13 at a very distinctive angle here. We have some stains that
14 are probably more like 75-, 85-, to 95-degree angle. They're
15 more circular in size -- or in shape.

16 So, what this suggests to me, because some of these
17 stains are radiating out in different directions, is that
18 when the victim's head was in this area, if it --

19 Q. Now we're talking lower than in this area; correct?

20 A. Yes. Lower down --

21 Q. On the ground.

22 A. Down next to the hubcap of the wheel.

23 If the head slammed against this hubcap, that would
24 create some radial pattern to some degree, but with all the
25 blood information and the spatter information on that wheel,

1 it suggests to me that the victim was more than likely struck
2 at least once, if not maybe more, while he was right here in
3 this area. While his head was right here in this area, by
4 the hubcap of the wheel.

5 Q. All right. We haven't talked too much -- I don't
6 think we talked at all about 33H, but we have some cones here
7 on the south side -- or the north side of this vehicle; is
8 that correct?

9 A. Yes.

10 Q. And what are these cones -- why did you put those
11 cones down there?

12 A. Well, those cones just simply give a -- just a
13 reference -- they're a reference marker to the outer
14 parameter of the blood spatter that radiated northward across
15 the parking lot.

16 Q. Okay. And as you can see here, you've got a cone
17 that's about three parking spaces away from where Kent's
18 vehicle was; is that correct?

19 A. Yes.

20 Q. Okay. So we have blood spatter radiating out a
21 significant distance; is that correct?

22 A. Yes.

23 Q. All right. 33G, coming back to this, you testified
24 earlier that there were two distinct blood pools that you
25 saw; is that right?

1 A. Yes.

2 Q. And there was blood pooling right next to Kent's
3 head; correct?

4 A. Yes.

5 Q. Okay. This -- these cones, that show the outer
6 perimeter of the blood spatter that you saw in the parking
7 lot, let me ask you, how -- how are those locations, the
8 blood spatter that you found there, how is that consistent
9 with Kent's head getting slammed, one way or another, into
10 the concrete, causing the spatter to disperse that way?

11 MR. ROGERS: Objection. That's leading.

12 THE COURT: Sustained.

13 Q. Okay. Well, how is this spatter you saw consistent
14 with Kent's head getting slammed into the concrete?

15 MR. ROGERS: Same objection to the same question.

16 Q. How?

17 THE COURT: You may rephrase your question,
18 Mr. Knight. The objection is sustained.

19 Q. Explain to us, in your judgment, how this pool right
20 here, this pooling right here, this blood, could relate to
21 all this blood spatter you saw that radiated north.

22 A. Well, it was very clear, looking at the surface of
23 this parking lot, that a quantity of blood was set into
24 motion as a result of Mr. Heitholt's head striking the
25 pavement where blood existed. Therefore, with that, he

1 obviously was bleeding in that area. Blood was running from
2 his person onto the ground. His head was therefore either
3 struck with an object, his head could have been slammed onto
4 the pavement, but as a result of that impact force, blood
5 from that pool radiated out, across the pavement, and went in
6 that direction.

7 Now I can't say that every single drop, because I
8 didn't examine every single drop, came from that particular
9 event. But the majority of the blood that went in a
10 northerly direction came back, because, there again, we're
11 talking about elongated stains. And at an angle of 5 to 10
12 degrees, the stains are going to be elongated even more than
13 they would be at 35 or 40 degrees.

14 So these stains were extremely elongated, and they
15 were radiating out from the same point, what we referred to
16 as point of convergence. And that came right back to where
17 this pool of blood was right underneath the victim's head.

18 Q. Okay.

19 THE COURT: Mr. Knight, are you at a point where we
20 might take our mid-morning recess? Since it's been a couple
21 -- almost a couple hours since the jury was here.

22 MR. KNIGHT: Sure.

23 THE COURT: If you -- if there's something else you
24 need to do to finish this line of questioning --

25 MR. KNIGHT: I think this would be a good point to

1 stop.

2 THE COURT: All right.

3 Ladies and gentlemen, we will take our mid-morning
4 break.

5 The Court again reminds you of what you were told at
6 the first recess of the Court. Until you retire to consider
7 your verdict, you must not discuss this case among yourselves
8 or with others, or remain in the presence of anyone who is
9 discussing it in your hearing. You should not form or
10 express any opinion about the case until it is finally given
11 to you to decide. Do not read, view, or listen to any
12 newspaper, radio, or television report of the trial.

13 If you'll let me know when the jurors are finished
14 to come back. And I would imagine 10 or 15 minutes would
15 give them enough time.

16 The jury may be excused.

17 - - -

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

20 THE COURT: And I'd ask the witness to return as
21 well.

22 THE WITNESS: Thank you.

23 THE COURT: We'll see you. We'll be in recess.

24 (Recess taken.)

25 - - -

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

3 MR. ROGERS: Your Honor, may we approach before we
4 bring the jury back?

5 THE COURT: Sure. Real quickly.

6 - - -

7 Counsel approached the bench and the following
8 proceedings were held:

9 MR. ROGERS: It has been brought to our attention
10 that witnesses who are standing outside the courtroom can
11 hear the audio feed from the media room, for lack of a better
12 term. And I would just ask that the parties be advised to
13 make sure that their witnesses who are excluded from the
14 courtroom not stand outside there, but go someplace else.

15 MR. CRANE: I'll do that.

16 THE COURT: Are your -- usually the prosecutor keeps
17 their witnesses downstairs on the second floor. Now I don't
18 know --

19 MR. ROGERS: Nobody's told me that other witnesses
20 have been there. I'm just saying that members of the public
21 who are out there can certainly hear what's being said in the
22 courtroom. If somebody is a witness and they're obeying the
23 sign that says no witnesses in the courtroom, they could
24 still be hearing.

25 THE COURT: I trust you will be doing that as well.

1 MR. ROGERS: I certainly will.

2 THE COURT: All right. I'd ask the prosecutor just
3 to talk to an investigator --

4 MR. KNIGHT: I will.

5 THE COURT: -- to make sure they stay downstairs.

6 MR. KNIGHT: Sure.

7 THE COURT: Even if it takes a few minutes extra to
8 get them up here.

9 MR. KNIGHT: Okay.

10 THE COURT: I don't suspect -- do you think we'll
11 finish with him before noon?

12 MR. KNIGHT: No, I don't think so.

13 THE COURT: All right. Well, then, just let your
14 investigator know.

15 MR. KNIGHT: Yeah. And I know that the witnesses
16 are down there right now.

17 THE COURT: All right. Well, just let your
18 witnesses -- or your investigator know.

19 MR. ROGERS: Thank you.

20 THE COURT: You're welcome.

21 - - -

22 The following proceedings were held in open court:

23 THE COURT: You may bring them in.

24 - - -

25 The following proceedings were held in the presence of

1 the jury:

2

- - -

3

JEFF NICHOLS,

4 resumed the stand and testified further:

5

MR. KNIGHT: May I proceed?

6

THE COURT: Yes, you may proceed.

7

MR. KNIGHT: Okay.

8

- - -

9

RESUMED DIRECT EXAMINATION

10 BY MR. KNIGHT:

11

Q. Detective Nichols, I'd like to show you what's been

12

marked as State's Exhibit 39, 39A through 39G. What are

13

those photographs of?

14

A. Those are photographs of photo markers as well as

15

footwear transfer impressions, bloody footwear tread

16

impressions, on the pavement next to Mr. Heitholt's vehicle.

17

Q. On the driver's side of the vehicle; is that

18

correct?

19

A. On the driver's side of the vehicle, yes.

20

MR. KNIGHT: And Your Honor, I'd offer State's

21

Exhibit 39, 39A through 39G.

22

MR. ROGERS: No objection, Your Honor.

23

THE COURT: State's Exhibit 39, 39A through G, are

24

admitted.

25

MR. KNIGHT: Thank you, Your Honor.

1

- - -

2

State's Exhibits 39, 39A through 39G, admitted into
3 evidence.

4

- - -

5

Q. Please step down off the stand. What's in 39A?
6 What do you see there?

7

A. Well, I see the victim's vehicle. There's a large
8 blood stain next to the rear left wheel, as well as the
9 numerical photo markers that I placed on the pavement next to
10 what appeared to me to be bloody footwear transfers.

11

Q. You got five photo markers; is that correct? 1
12 through 5?

13

A. Yes.

14

Q. All right. And then that would be depicted in 39B.
15 Defendant's C, D, E, F, G are all close-ups of 1 through 5;
16 is that right?

17

A. Yes.

18

Q. And what could you tell about these shoe prints that
19 you saw? Did you compare these shoe prints to each other?

20

A. Well, not formally. I mean, I did a -- just a
21 visual comparison right there. And I noticed that the tread
22 design was certainly different.

23

Q. How many different tread designs did you see?

24

A. Well, the visual tread patterns appeared to have
25 been generated by two different shoe tread types or styles or

1 designs.

2 Q. Okay. And of those two different tread types that
3 you saw, how do those compare to the victim's shoe tread?

4 A. They don't. They don't match the victim's shoe
5 tread.

6 Q. Okay. Stay right there for a second. Now, I'd like
7 to direct your attention to I believe it was November 3rd.
8 That evening. A couple nights after this homicide. What did
9 you and other police officers do?

10 A. We decided that it was important for us to locate a
11 trail, and we used luminol as a means to do that. And we
12 went on essentially a tracking mission, if you will.

13 Q. And where did you apply this luminol that night?

14 A. Well, I began applying luminol in the area at the
15 corner of the -- would be the northeast corner of the Tribune
16 building, right adjacent to Fourth Street, and at that point
17 traveled south on the sidewalk toward Broadway.

18 Q. I'd like to show you what's been marked as State's
19 Exhibit 42, 42A, 42B. What are these two photographs?

20 A. Aerial photographs of the Columbia Daily Tribune at
21 different angles.

22 Q. And would this help you explain where you applied
23 luminol on the 3rd and 4th of November?

24 A. Certainly.

25 Q. Okay.

1 MR. KNIGHT: Your Honor, I'd offer State's Exhibit
2 42, 42A and 42B.

3 MR. ROGERS: No objection.

4 THE COURT: State's Exhibits 42, 42A and B, are
5 admitted.

6 - - -

7 State's Exhibits 42, 42A and 42B, admitted into
8 evidence.

9 - - -

10 Q. You said that you began to apply luminol on the
11 northeast corner of the Tribune. Is that where I'm pointing
12 right now, 42A?

13 A. Yes.

14 Q. Okay. On the sidewalk; is that right?

15 A. Yes.

16 Q. All right. And that night, where did the trail
17 lead?

18 A. South.

19 Q. Okay. So -- in which direction are you talking
20 about here in this area? Just to orient everybody, of course
21 this is the Tribune building right here. This is Providence
22 right here; is that correct?

23 A. Yes.

24 Q. This would be Ash over here?

25 A. Yes.

1 Q. Walnut right here; is that correct?

2 A. Yes.

3 Q. Okay. So you started right here. The sidewalk, you

4 really can't see it too well right at that particular point;

5 is that correct?

6 A. Correct.

7 Q. Shaded by the trees?

8 A. Yes.

9 Q. Okay. You started there; is that right?

10 A. Yes.

11 Q. Okay. And which way did this trail go?

12 A. South, along the sidewalk, and it continued, once it

13 crossed Walnut, continued south along the sidewalk, towards

14 Broadway, which would be the next street south of Walnut.

15 Q. Okay. And so this -- this photo right here pretty

16 much gets us to Walnut; correct? And then across Walnut a

17 little ways; right?

18 A. Yes.

19 Q. And then 42B, taken from a little bit different

20 angle up there in that helicopter, because you were taking

21 the photos, weren't you?

22 A. Yes.

23 Q. All right. And we see the Tribune building again

24 right here; is that correct?

25 A. Yes.

1 Q. But we've got Providence coming at an angle like
2 this?

3 A. (Nodding head up and down.)

4 Q. Right?

5 A. Yes.

6 Q. Ash -- yeah, Ash and Walnut; is that right?

7 A. Yes.

8 Q. And this would have been Broadway, about right here
9 where this corner is; is that correct?

10 A. Correct.

11 Q. Okay. You said the luminol trail extended south on
12 Fourth, across Walnut; is that right?

13 A. Yes.

14 Q. Still on Fourth. And show us -- from here; is that
15 correct?

16 A. Yes.

17 Q. Coming down; right?

18 A. Correct.

19 Q. Where did the luminol trail end?

20 A. It ended at Broadway.

21 Q. Okay. Or trails; right? There were two trails.

22 A. Yes.

23 Q. All right. I'd like to show you what's been marked
24 as State's Exhibit 41, 41A through 41E. What are these
25 photographs of?

1 A. 41A is a photograph of the area where we began
2 applying luminol, at the northeast corner of the Tribune
3 building. And then 41 --

4 Q. Extending all the way to 41E; is that right?

5 A. -- D through E is of the sidewalk travelling south
6 along Fourth.

7 MR. KNIGHT: Your Honor, I'd offer State's Exhibits
8 41, 41A through 41E.

9 MR. ROGERS: No objection.

10 THE COURT: State's Exhibits 41, 41A through E, are
11 admitted.

12 - - -

13 State's Exhibits 41, 41A through 41E, admitted into
14 evidence.

15 - - -

16 Q. 41A, what does that show?

17 A. Again, that's the northeast corner of the Tribune
18 building and the alley that runs east and west on the north
19 side of the building.

20 Q. Okay. Kent's car was parked right in here; is that
21 correct?

22 A. Yes.

23 Q. All right. So coming up the alley, you testified
24 earlier about the slope?

25 A. Yes.

1 Q. It slopes downward from east to west; is that right?

2 A. That's right.

3 Q. Okay. You can actually see photo marker number 1
4 right there; is that correct?

5 A. Correct.

6 Q. Right at this corner. And what is that? What does
7 that represent?

8 A. Well, that represents a positive reaction site or
9 location.

10 Q. Okay. And you were doing this at night; is that
11 correct?

12 A. Yes.

13 Q. And why is that?

14 A. Well, luminol produces a chemiluminescence, which
15 is -- can be observed or seen best in darkness.

16 Q. Okay. Photograph 41B, what does it show?

17 A. There again, it shows the reactionary sites on the
18 sidewalk as the trail travels south on Fourth Street.

19 Q. Corresponding to this area right in here; is that
20 right?

21 A. Yes.

22 Q. Okay. 41C, what does that show?

23 A. 41C also has photo markers laid out on the sidewalk
24 at each reactionary site. And that is about halfway or so
25 down the block, almost to Walnut Street. The stop sign would

1 be at Walnut Street.

2 Q. Right in this area; is that correct?

3 A. Yes.

4 Q. Okay. Now, I see two different lines of photo
5 markers here. What does that mean --

6 MR. ROGERS: Objection, Your Honor.

7 THE COURT: I'm sorry?

8 MR. ROGERS: That's leading.

9 MR. KNIGHT: Okay. I'll rephrase it.

10 THE COURT: You may.

11 Q. How many lines of photo markers do you see in 41C?

12 A. Well, there are two.

13 Q. All right. And what did this indicate to you?

14 A. Well, it appeared that -- there appeared to be two
15 different paths of travel or two different -- possibly two
16 individuals travelling down the same direction.

17 Q. Okay. Two different shoe print paths; is that
18 correct?

19 A. Yes.

20 Q. Okay. And let's -- let's start back here at 1,
21 though. What did you notice about the distances between each
22 luminescence or each luminol reaction that you obtained,
23 starting at this point right here when you first detected
24 luminol, going south. As you went south, what did you notice
25 about the differences in the spacing between the reactions

1 you were getting?

2 A. Well, it was interesting, because at the corner of
3 the building, the spacing between the reactionary sites was
4 consistent with a casual step.

5 Q. A walk?

6 A. A walk, yes. As we traveled further down the
7 sidewalk, those spaces began to get a greater distance
8 between the two --

9 Q. Indicating --

10 A. -- between each reactionary site, which suggested to
11 me that whoever made this, this path, was walking at first
12 and then began to run.

13 Q. Okay. And you said that where number 1 is, that's
14 where you first detected what you thought was blood; is that
15 correct? Nonvisible blood. With luminol. Right?

16 A. Yes.

17 Q. Okay. Now -- and then these all, as you said,
18 they've gone -- they go south. Did you at any time apply
19 luminol to this area, this sidewalk going north of that -- of
20 photo marker number 1?

21 A. No.

22 Q. Okay. So you didn't apply luminol anywhere in this
23 area; is that correct?

24 A. That's correct.

25 Q. All right. 41D and 41E, what are these photographs

1 of?

2 A. 41D is, there again, the sidewalk, travelling south
3 along Fourth Street, right at the intersection of Walnut.

4 And 41E is further south on Fourth Street, approaching the
5 intersection of Broadway.

6 Q. Okay. And where did the luminol trail end, once
7 again?

8 A. It totally faded out by the time I got -- or I
9 reached Broadway.

10 Q. Okay. So, once again, this is Broadway, correct,
11 down here?

12 A. Yes.

13 Q. And the luminol trail faded right here.

14 A. Yes.

15 Q. And this first -- you basically applied luminol two
16 different nights; is that correct?

17 A. Yes.

18 Q. The first night was November 3rd; is that right?

19 A. Yes.

20 Q. And that's when you got to Walnut right here; is
21 that correct?

22 A. Correct.

23 Q. And then the next night, on the 4th, you applied in
24 this area between Walnut and Broadway, is that correct, on
25 the 4th.

1 A. Yes.

2 Q. All right. You can stay down here for a little bit
3 more. You collected various items of evidence at the crime
4 scene; is that correct?

5 A. Yes.

6 Q. Okay. I'm going to show you what's been marked as
7 State's Exhibit 44, 44A through 44J. What is this? Or what
8 are these?

9 THE COURT: If you'll wait just a second. I don't
10 know that defense counsel has seen the exhibit that you're
11 examining. Don't turn it towards the jury.

12 MR. ROGERS: I've seen them all. That's fine.

13 Q. What are these photographs of?

14 A. 44A through 44I are of photographs taken at the
15 crime scene, and 44J is a sketch of the crime scene.

16 Q. Okay.

17 MR. KNIGHT: Your Honor, I'd offer State's Exhibits
18 44A through 44J.

19 MR. ROGERS: No objection.

20 THE COURT: State's Exhibits 44, 44A through J, are
21 admitted.

22 MR. KNIGHT: Thank you, Your Honor.

23 - - -

24 State's Exhibits 44, 44A through 44J, admitted into
25 evidence.

1

- - -

2 Q. What are these letter markers you have there
3 depicted on those photographs?

4 A. Well, those markers are in place as a reference,
5 visual reference.

6 Q. Okay. And what did you collect in the area that's
7 marked A?

8 A. Do you mind if I get down --

9 Q. Sure.

10 A. -- and take a closer look?

11 That would be a small pile of cat food.

12 Q. Okay. B, what did you see there?

13 A. Some coins. Primarily pennies.

14 Q. Where were those located? And right down here we've
15 got 44J, is a diagram that you made; is that correct?

16 A. Yes.

17 Q. And this shows the location of each of these items
18 pictured in these photo markers on here; is that correct?

19 A. Yes.

20 Q. So going back to A, you said that you saw cat food;
21 is that right?

22 A. Yes.

23 MR. KNIGHT: And can everybody see this little
24 diagram right here? Can you see that?

25 (Jurors nodding their heads up and down.)

1 MR. KNIGHT: Okay.

2 Q. A was where? Where did you find that again?

3 A. There was a small retaining wall right along the
4 western edge of the parking lot. And the cat food had been
5 placed on top of that small retaining wall.

6 Q. What was this area right in here?

7 A. That was a Dumpster.

8 Q. Okay. Once again, we've got Kent's car parked right
9 here; is that correct?

10 A. Yes.

11 Q. Okay. So we've got A, you collected that. B, you
12 testified about the pennies. Where were those found?

13 A. That was a small drive area just to the west of the
14 parking lot. And the pennies were in the drive.

15 Q. C, what is this?

16 A. That's the belt buckle.

17 Q. Okay. And you collected that also. And you
18 testified before that was just north of Kent's head; is that
19 correct?

20 A. Yes.

21 Q. D, that was a dime?

22 A. Dime.

23 Q. Marked "D" down here; is that right?

24 A. Yes.

25 Q. Okay. So also in close proximity to Kent. 44G,

1 right here, do you remember what that was?

2 A. I want to say that may have been a schedule. It was
3 a document, I believe.

4 Q. Could this have been a Jiffy Lube receipt? I can
5 show you, if you'd like to see.

6 A. I'm not sure. I thought that was a document
7 possibly, but it's difficult to see in that photograph.

8 There should be a log. Evidence log.

9 Q. I'd like to show you what's been marked as State's
10 Exhibit 52. Did you collect this?

11 A. Yes. And the photo marker G.

12 Q. So that would be G right there; right?

13 A. That would correspond with that item, yes.

14 Q. Okay. Then we've got H right here. What is that?
15 Well, actually let's get back to F. I skipped over that.
16 What is that?

17 A. A Snickers candy bar bag that was empty.

18 Q. E, you skipped on that too. What did you find there
19 generally? And I'm going to show you these exhibits in a
20 second.

21 A. That was sort of a collective area. That included
22 numerous documents and schedules and things, along with a
23 piece of glasses. Lens from reading glasses.

24 Q. Underneath the driver's side in Kent's car; is that
25 correct?

1 A. Yes. And his cell phone.

2 Q. Okay. And again, F up here is just south; is that

3 right?

4 A. Yes.

5 Q. H, what is this?

6 A. Well, this is a manhole cover, if you will. And

7 there was a paper bag lying on top of the manhole cover.

8 Q. And I, what is that?

9 A. A piece of Styrofoam of some type.

10 Q. Okay. If you can just dig in this box there, we're

11 going to go through -- those exhibits should be pretty much

12 in order. 45, do you see that in there?

13 A. Yes.

14 Q. Those are the pennies you collected?

15 A. They correspond --

16 MR. ROGERS: Am I to assume that, after he

17 identifies them, you're offering them?

18 MR. KNIGHT: Sure.

19 MR. ROGERS: Okay.

20 Q. Those are the pennies that you found that you just

21 testified about; is that correct?

22 A. Photo marker B.

23 Q. Okay.

24 MR. ROGERS: No objection.

25 Q. 46 --

1 THE COURT: Excuse me, Mr. Knight. Are you offering
2 that now?

3 MR. KNIGHT: No. I was going to wait until --

4 MR. ROGERS: Oh, I thought you were going to offer
5 them -- I don't care.

6 MR. KNIGHT: No. Not one at a time.

7 THE COURT: All right. I didn't understand from
8 defense counsel's statement.

9 MR. ROGERS: I didn't either.

10 Q. 46, what is that?

11 A. The cat food, which was in photo marker A.

12 Q. Okay. 47?

13 A. The belt buckle.

14 Q. Okay. 48, do you see that in there?

15 A. Yes. The lens from a pair of glasses.

16 Q. And those were found where?

17 A. Underneath the vehicle.

18 Q. Okay. 49, do you see those?

19 A. Miscellaneous documents and media guides from
20 underneath the vehicle.

21 Q. Right in here; is that correct?

22 A. Yes.

23 Q. Okay. 50?

24 A. Nokia cellular phone, which was also underneath the
25 vehicle, corresponding with photo marker E.

1 Q. Okay. 51?

2 A. Snickers candy bar bag in photo marker F.

3 Q. Okay. 52?

4 A. Jiffy Lube receipt in photo marker G.

5 Q. 53.

6 A. The black -- or the empty paper bag on the manhole
7 cover in photo marker H.

8 Q. And 54?

9 A. Piece of brown Styrofoam, photo marker I.

10 Q. 55.

11 A. Columbia College folder, corresponding to photo
12 marker E.

13 Q. And then --

14 MR. KNIGHT: Your Honor, at this time I'd offer
15 State's Exhibits -- I think it's 45 through 55.

16 THE COURT: 47 is already in evidence.

17 MR. KNIGHT: Okay.

18 MR. ROGERS: I have no objection to any of them,
19 Judge, including the one that's already in.

20 THE COURT: All right. 45, 46, 48, 49, 50, 51, 52,
21 53, 54, and 55 are admitted into evidence, 47 having already
22 been admitted.

23 MR. KNIGHT: Thank you, Your Honor.

24 - - -

25 State's Exhibits 45, 46, 48, 49, 50, 51, 52, 53,

1 54, and 55 admitted into evidence.

2 - - -

3 Q. What did you locate in front of this vehicle?

4 Parking spaces in front of Kent's car. This area.

5 A. Some cigarette butts.

6 Q. Showing you 14B, did you collect those?

7 A. Yes.

8 Q. Do you see State's Exhibit 56 in there?

9 A. Yes.

10 Q. Those are those cigarette butts and cigar butt that
11 you collected?

12 Do you want to open that up?

13 A. I need to open it because this is not -- this is a
14 container from the lab.

15 Q. Okay.

16 (Witness opening exhibit.)

17 A. Yes.

18 Q. 57, do you see that there?

19 A. Yes. Hickman girls basketball schedule.

20 Q. And where did you locate that?

21 A. That was on the ground, south of the victim's
22 vehicle.

23 Q. Somewhere in this area?

24 A. Somewhere in this area.

25 Q. 58, do you see that there?

1 A. Yes. This was a swab of blood which I collected
2 next to the victim's vehicle.

3 Q. Okay.

4 MR. KNIGHT: Your Honor, I'd offer State's Exhibits
5 56, 57, and 58.

6 MR. ROGERS: No objection.

7 THE COURT: State's Exhibits 56, 57, and 58 are
8 admitted.

9 - - -

10 State's Exhibits 56, 57, and 58 admitted into
11 evidence.

12 - - -

13 Q. Now, eventually Kent's body was taken away from the
14 scene; is that correct?

15 A. Yes.

16 Q. All right. And before -- before he was taken away
17 from the scene, what did you do with regard to his hands?

18 A. I put paper bags over his hands.

19 Q. Okay. We're going to talk about that a little bit
20 more. What was also placed over his body?

21 A. Well, he was placed into a body bag.

22 Q. Okay. Do you remember what color that was?

23 A. White.

24 Q. Okay. And after his body was removed from the crime
25 scene, did you collect additional evidence that was close to

1 him?

2 A. Yes.

3 Q. Okay. I'd like to show you what's been marked as
4 State's Exhibit 59, 59A through 59G.

5 MR. ROGERS: No objection.

6 MR. KNIGHT: Okay.

7 Q. And generally what are these photographs of?

8 A. Again, loose change that was on the pavement, some
9 of which was underneath the victim's body.

10 Q. And you found this when the body was removed; is
11 that correct?

12 A. Correct.

13 MR. KNIGHT: Your Honor, I'd offer State's Exhibits
14 59, 59A through 59G.

15 MR. ROGERS: No objection, Your Honor.

16 THE COURT: State's Exhibits 59, 59A through G, are
17 admitted.

18 - - -

19 State's Exhibits 59, 59A through 59G, admitted into
20 evidence.

21 - - -

22 Q. 59A shows Kent, of course. But you've got photo
23 marker D that you testified about previously. And that is a
24 dime; is that right?

25 A. Yes.

1 Q. Okay. But also, what is this chalk that I see here
2 in 59C, D, E, and F? What does that represent?

3 A. It just simply represents a visual aid, to give an
4 idea -- or allow the viewer to understand that there was
5 items of evidence, potential evidence, underneath the body.
6 And so therefore that's the body location, or rough location
7 of where the body was at. And I did the chalk line to give
8 that representation.

9 Q. Okay. And so 59C, we can see three coins here. And
10 also we can see that in 59D.

11 A. Yes.

12 Q. What are those?

13 A. Three dimes.

14 Q. Okay. And they were underneath what part of Kent's
15 body before his body was removed?

16 A. It would have been the left arm.

17 Q. Okay. And then down here, 59F, this corresponds to
18 E, doesn't it?

19 A. Yes.

20 Q. E and F? And E, this outline right here, the
21 bottom, what does this show?

22 A. Well, that's where the legs were at. Actually, the
23 right leg sort of bent outward and came in. So I believe the
24 dime may have been somewhere underneath that right leg.

25 Q. So right here you got a dime that you just testified

1 about; is that correct?

2 A. Yes.

3 Q. And those were collected from the area of his feet.

4 A. Yes.

5 Q. After his body was removed; right?

6 A. Yes.

7 Q. They were seen after his body was removed; right?

8 A. Yes.

9 Q. Okay. I'd like to show you what's been marked as
10 State's Exhibit 60. What's that?

11 A. One dime on the ground north of the victim. Photo
12 marker D.

13 Q. Okay. And like to show you what's been marked as
14 State's Exhibit 61. What is that?

15 A. Four dimes and one penny. They correspond to photo
16 marker J.

17 Q. Okay.

18 MR. KNIGHT: Your Honor, I'd offer State's Exhibits
19 60 and 61.

20 MR. ROGERS: No objection.

21 THE COURT: State's Exhibits 60 and 61 are admitted.

22 - - -

23 State's Exhibits 60 and 61 admitted into evidence.

24 - - -

25 Q. And for clarification here, what's inside of 61 is

1 really a picture in 59D, these three dimes, and 59F, this
2 dime and this penny, for a total of four dimes and one penny;
3 is that correct?

4 A. That's correct.

5 Q. Okay. And I don't know if we made this clear or
6 not. I don't think we did. 59D, these three dimes were
7 underneath what part of Kent's body?

8 A. There again, the left arm, upper arm area.

9 Q. Okay. What happened -- after you were done
10 processing the crime scene, what happened to this vehicle?

11 A. It was removed.

12 Q. Okay. And where was it taken?

13 A. Don Lake tow service.

14 Q. All right. And before it was taken there, did you
15 put seals on the car?

16 A. I did.

17 Q. Which is normal -- normal procedure.

18 A. Yes.

19 Q. Okay. And it was taken up to Don Lake's, and later
20 on that same day -- because you really got out there on the
21 morning of November 1st; right?

22 A. Yes.

23 Q. Later on that same day did you have the opportunity
24 to process that vehicle?

25 A. I did.

1 Q. I mean, you searched the vehicle for evidence; is
2 that right?

3 A. Yes.

4 Q. Okay. About what time was this crime scene cleared,
5 do you remember?

6 A. Sometime prior to 9:00.

7 Q. Okay.

8 A. 9:00 a.m.

9 Q. About what time did you start processing the
10 vehicle? Do you remember?

11 A. No --

12 Q. Approximately.

13 A. -- I don't remember --

14 Q. Okay.

15 A. -- exact time.

16 Q. All right. And did you dust the inside and the
17 outside of the car for fingerprints?

18 A. Yes.

19 Q. Okay. I'd like to show you what's been marked as
20 State's Exhibit 66. Actually I'd like to show you what's
21 been marked as State's Exhibit 72. What does this show?

22 A. Is that all-inclusive?

23 Q. Yeah. What's 72A -- or what's 72A and 72B?

24 A. The victim's vehicle.

25 Q. Just showing a shot from the driver's side and

1 passenger side; is that right?

2 A. Yes.

3 Q. And then what does 72C and D show?

4 A. That is a line diagram representing the vehicle.
5 The victim's car.

6 Q. Okay. And this also indicates where fingerprints
7 were located inside and outside of the vehicle?

8 A. That's right.

9 Q. Talking about C and D?

10 A. Yes.

11 MR. KNIGHT: Your Honor, I'd offer State's Exhibit
12 72, A through D.

13 MR. ROGERS: May I voir dire the witness very
14 briefly, Your Honor?

15 THE COURT: You may.

16 - - -

17 VOIR DIRE EXAMINATION

18 BY MR. ROGERS:

19 Q. Did you prepare the diagrams yourself?

20 A. I did not prepare that -- those two particular
21 diagrams, no.

22 Q. Okay. But you have gone over them to make sure that
23 the indications on them are accurate with regard to what you
24 found.

25 A. Yes.

1 MR. ROGERS: No objection, Your Honor.

2 THE COURT: State's Exhibit 72, A through D, are
3 admitted.

4 MR. KNIGHT: Thank you, Your Honor.

5 - - -

6 State's Exhibits 72, 72A through 72D, admitted into
7 evidence.

8 - - -

9 RESUMED DIRECT EXAMINATION

10 BY MR. KNIGHT:

11 Q. And then this is what I was trying to show you
12 earlier, but State's Exhibit 66, what are these?

13 A. Those are fingerprints removed from the vehicle.

14 Q. Okay. These are cards; right?

15 A. Yes.

16 Q. Okay.

17 MR. KNIGHT: Your Honor, I'd offer State's Exhibit
18 66.

19 MR. ROGERS: No objection, Your Honor.

20 THE COURT: State's Exhibit 66 is admitted.

21 - - -

22 State's Exhibit 66 admitted into evidence.

23 - - -

24 Q. How did you go about processing this vehicle for
25 fingerprints or find fingerprints on the vehicle? What did

1 you do?

2 A. Well, I did a visual inspection of the vehicle prior
3 to actually applying dust. That's simply done with a
4 flashlight. Once I did the visual inspection, then using a
5 product that's referred to as a bichromatic powder, it has
6 both dark and silver powder mixed together. It works well on
7 any surface type. Using a feather duster, which is a brush,
8 you dip the duster into the powder, and then apply that
9 powder to the surface of the vehicle. If a latent
10 fingerprint appears, then that fingerprint is eventually
11 collected using a piece of tape. Simply roll the tape across
12 the latent print, pull the tape up, and then place that tape
13 onto a white surface, allowing nice contrast with the powder,
14 and develop the print.

15 Q. Okay. So you did that in this case; right? You had
16 a whole bunch of tape lifts, and you put those on the cards
17 on State's Exhibit 66; is that right?

18 A. Yes.

19 Q. Okay. And what areas, starting with the outside of
20 the car, what areas did you dust in order to try to find
21 latent fingerprints? Meaning unknown fingerprints.

22 A. Well, I was assisted with --

23 MR. ROGERS: I object to that as misleading. I
24 don't think "latent" means unknown.

25 THE COURT: Sustained.

1 Q. Do you know the source of any of these fingerprints
2 that you found?

3 A. The source?

4 Q. Yeah. The source of any of them. Were you able to
5 determine the source of any of these fingerprints?

6 A. No.

7 Q. Okay. So to you were those fingerprints unknown?

8 A. They were, yes, unknown.

9 Q. Okay. Go ahead.

10 A. The entire exterior of the car was dusted. And then
11 the interior portions of the vehicle that the surfaces were
12 such that they would retain an identifiable print were
13 dusted.

14 Q. Okay. So for instance then the upholstery wasn't
15 dusted; correct?

16 A. Correct. That's -- that's a material that is not --

17 Q. Conducive to leaving behind fingerprints?

18 THE COURT: If you'll allow the witness to finish
19 the -- the witness was answering while you began your next
20 question, Mr. Knight.

21 MR. KNIGHT: I apologize.

22 THE COURT: And the same thing is true for the
23 witness. If you will please allow Mr. Knight to finish
24 before you start answering.

25 MR. KNIGHT: Yeah.

1 Q. Got that?

2 A. Yes.

3 THE COURT: Okay.

4 Q. Did you then -- did you dust the seats or the carpet
5 for prints?

6 A. No.

7 Q. What areas inside the car did you dust?

8 A. Interior windows, rear view mirror, the -- portions
9 of the dash, including the area where the odometer is.

10 Q. Okay. So, we have these two diagrams right here, C
11 and D, that just correspond to the ones above; is that right?
12 The photos above; is that right?

13 A. Yes.

14 Q. Okay. And on both of these diagrams, what do we
15 have written in red ink?

16 A. Those are prints or print locations discovered
17 inside the vehicle.

18 Q. As opposed to -- what did we have written in blue
19 ink on each one of these diagrams?

20 A. Prints that were discovered on the exterior of the
21 car.

22 Q. Okay. And without going through all of these
23 fingerprint cards that you lifted, a number of these, right,
24 it was I think all the way up through N; is that correct? 1A
25 through 1N? Rear view mirror.

1 A. Oh, yes.

2 Q. You've had the opportunity to look at these cards
3 and to compare them to these diagrams, as far as the
4 locations of the prints that you collected; is that right?

5 A. Yes.

6 Q. Okay. So, let's just start out here. 1A, 1B, those
7 are both in blue, indicating that they are on what part of
8 the car? Inside or outside?

9 A. Outside.

10 Q. Okay. And you recovered prints from there; is that
11 correct? From this location.

12 A. Yes.

13 Q. Which would be on the door frame of the driver's
14 side door; right?

15 A. Yes.

16 Q. Okay. And were these -- did you pretty much lift
17 the same print twice?

18 A. I did.

19 Q. Is that what 1A and 1B is?

20 A. Yes.

21 Q. The same thing, two different times.

22 A. Correct.

23 Q. Okay. Moving on to 1C in red, meaning the inside of
24 the car; right?

25 A. Yes.

1 Q. This is on what part of the inside of the vehicle?
2 A. The rear passenger, on the right side of the car.
3 The passenger side of the car.
4 Q. 1D, where was that located?
5 A. That would be on the right front door of the
6 vehicle, again on the passenger side.
7 Q. And once again, that would be inside; right?
8 A. Inside.
9 Q. Okay. And then E, 1E, where did that come from?
10 A. That was on the exterior of the same door.
11 Q. This location right there. Self-explanatory;
12 correct?
13 A. Yes.
14 Q. Okay. 1F, where did that come from?
15 A. That was on the rear door on the left side of the
16 vehicle or the driver's side of the vehicle.
17 Q. And that one --
18 A. On the inside.
19 Q. Okay. What about 1G?
20 A. In the same location.
21 Q. Okay. And then where's 1H on there? You see it
22 right there?
23 A. Yes. That would be the driver's side or left side
24 rear quarter panel.
25 Q. Okay. And what about 1I? Where did you find that?

1 A. That was the front right passenger door, on the
2 inside.

3 Q. Okay. 1J and 1L. Tell us about those two.

4 A. Again, I think that may have been a duplicate lift.
5 And that was on the rear quarter panel on the driver's side,
6 or the left side. Left rear quarter panel.

7 Q. Then what about 1K?

8 A. The exterior, on the right side, front passenger
9 door, on the top of the door frame.

10 Q. What about 1M?

11 A. The driver door, on the left side of the vehicle, on
12 the interior window.

13 Q. Okay. And then what about 1N? Is that shown here
14 on either one of these two diagrams?

15 A. This is not listed on the diagrams. And I take it
16 because that came from the rear view mirror inside the car.

17 Q. Okay. I'd like to show you what's been marked as
18 State's Exhibit 74, 74A through 74G. What are these,
19 generally? Photographs of what?

20 A. The interior of Mr. Heitholt's vehicle.

21 Q. And photo -- we can also see different items you
22 collected; is that correct?

23 A. Yes.

24 MR. KNIGHT: Your Honor, I'd offer State's Exhibits
25 74, A through G.

1 MR. ROGERS: No objection, Your Honor.

2 THE COURT: State's Exhibits 74, 74A through G, are
3 admitted.

4 - - -

5 State's Exhibits 74, 74A through 74G, admitted into
6 evidence.

7 - - -

8 Q. You processed the inside of the vehicle and
9 collected evidence from there; is that correct?

10 A. I did.

11 Q. All right. State's Exhibit --

12 MR. ROGERS: And Your Honor, for the record, I have
13 no objection to these being laid out here on the rail of the
14 jury box, with the assumption that they're going to be
15 identified and fairly -- sometime fairly soon offered in
16 evidence.

17 MR. KNIGHT: They will be.

18 THE COURT: All right. Since they are right in
19 front of the jury and they're not admitted yet, I appreciate
20 that, Mr. Rogers.

21 Q. What do you see in State's Exhibit 75?

22 A. A pair of wire frame glasses.

23 Q. And do you see those on 74A?

24 A. Yes. In the driver's seat.

25 Q. Okay. What about 76?

1 A. Notepad planner, checkbook, miscellaneous documents,
2 driver's seat of the vehicle.

3 Q. Okay. You collected that also; is that correct?

4 A. Yes.

5 Q. Do you see that in A there?

6 A. Yes.

7 Q. 76.

8 MR. ROGERS: That was 76.

9 Q. I'm sorry. 77.

10 A. Laptop computer case, with miscellaneous papers.
11 Driver's seat of victim's vehicle.

12 Q. Okay. And before we get to the next exhibit, that
13 computer case is shown right here; is that correct?

14 A. Yes.

15 Q. Okay. And looking at this from a different angle,
16 what is this thing that's kind of lifted up, so that people
17 can see back there? What is this?

18 A. Well, that's the cushion that covers the console
19 compartment between the two front seats of the vehicle.

20 Q. Okay. We'll get to this maybe next exhibit, I don't
21 know, but what did you find here inside of this console?

22 A. The victim's wallet.

23 Q. Okay. But was this thing up or was it down when you
24 first saw the car? Did you have to lift this up to get to
25 the wallet?

1 A. We had to open it. It was closed.

2 Q. Okay. And this case right here, from this angle, if
3 you were looking in the car, from the driver's side door
4 area, would this console area have been -- or when you saw
5 the car, was it blocked or obstructed by this computer case?

6 A. Well, certainly you can see that it is in that
7 photograph. You can see part of the cushion, but not the
8 entirety of it.

9 Q. Okay. 78 then, which is what?

10 A. Brown wallet, taken from the console.

11 Q. Right here?

12 A. Yes.

13 Q. And 79.

14 A. Cat food box, found in the front passenger seat.

15 Q. Okay. And did you compare this to the cat food that
16 you found on the wall over there by the Dumpster enclosure?

17 A. I didn't do a -- I didn't take the cat food out of
18 the box and compare it, no, but I'm well familiar with cat
19 food, and it was consistent with cat food.

20 Q. Would that be the same kind that was in this
21 Friskies box here?

22 A. Yes.

23 Q. Okay. 80.

24 A. A dollar thirty-two in change. Assorted change.
25 Taken from the dash coin holder of the vehicle.

1 Q. Where is that?

2 A. I believe that was up in the -- in this area right
3 here. There was a coin -- an assorted coin holder right
4 here.

5 Q. Okay. 81?

6 A. This is a digital -- Radio Shack digital recorder.

7 Q. Where did you find that?

8 A. And that was in the center console area also, along
9 with the wallet.

10 Q. Okay. And then 82.

11 A. This is a name tag, having the name Dewayne on that.
12 And I recovered that from the left rear floorboard of the
13 victim's vehicle.

14 Q. Okay.

15 MR. KNIGHT: Your Honor, at this time I'd offer
16 State's Exhibits 75 through 82.

17 MR. ROGERS: No objection, Your Honor.

18 THE COURT: State's Exhibits 75, 76, 77, 78, 79, 80,
19 81, and 82 are admitted.

20 - - -

21 State's Exhibits 75 through 82 admitted into
22 evidence.

23 - - -

24 Q. Did you attend the autopsy in this case?

25 A. Yes.

1 THE COURT: You want to -- can the witness sit down
2 at this time?

3 MR. KNIGHT: I believe so, yes.

4 THE WITNESS: Thank you.

5 MR. KNIGHT: Yes.

6 Q. Did you attend the autopsy?

7 A. Yes.

8 Q. Okay. And where was that conducted?

9 A. Boone and Callaway County medical examiner's office.

10 Q. All right. And who performed the autopsy?

11 A. Dr. Adelstein.

12 Q. Can I set those right there for you?

13 A. Sure.

14 Q. Okay. State's Exhibit I think it's 86, what is
15 that?

16 A. Tube of the victim's blood.

17 Q. And then do you see State's Exhibit 69 in there?

18 A. Yes. I'll need to remove it from the container --

19 Q. Okay.

20 A. -- if that's okay.

21 This is the ten print card, fingerprint lifts from
22 Mr. Heitholt.

23 Q. All right.

24 MR. KNIGHT: Your Honor, I'd offer State's Exhibits
25 86 and 69.

1 MR. ROGERS: No objection.

2 THE COURT: State's Exhibits 69 and 86 are admitted.

3 MR. KNIGHT: Thank you, Your Honor.

4 - - -

5 State's Exhibits 69 and 86 admitted into evidence.

6 - - -

7 Q. Now, back to the crime scene. You testified about
8 how you put hand bags on Kent's hands; is that correct?

9 A. Yes.

10 Q. All right. And how did you put those on?

11 A. I took a medium-sized brown paper bag, opened it up,
12 put it over his hands, and put tape around the bag.

13 Q. All right. And how many people from the Tribune
14 tried to help Mr. Heitholt at the scene?

15 MR. ROGERS: I believe it calls for hearsay, unless
16 it was --

17 Q. To your knowledge.

18 MR. ROGERS: Still calls for hearsay.

19 MR. KNIGHT: I'll rephrase.

20 Q. To your knowledge?

21 A. I didn't have exact knowledge on the number of
22 individuals that --

23 MR. ROGERS: Okay.

24 A. -- came out to help him at the scene. The only
25 information I received at the scene was --

1 MR. ROGERS: Objection to the information received.
2 That's hearsay.

3 THE COURT: That objection would be sustained,
4 unless it's something he physically looked at or saw.

5 MR. ROGERS: Right.

6 Q. When you got to the scene, how many police officers
7 were there?

8 A. I don't know exactly. There were several.

9 Q. All right. And did you also see other civilians
10 there at the scene? Were there any employees maybe from the
11 Tribune anywhere around the vicinity at any time that you
12 were at the crime scene?

13 A. I can't say that there were, but I will say, my
14 focus was on the scene. I was not taking an inventory of
15 individuals around the scene.

16 Q. Well, do you recall -- did you see any paramedics at
17 least?

18 A. No paramedics. They had already arrived and left.

19 Q. Okay. Who was inside of the crime scene perimeter,
20 processing this area?

21 A. Well, myself, Detective Jim Harmon. I know that my
22 supervisor arrived prior to me. He's the one I made contact
23 with first. He had been inside the scene. The medical
24 examiner -- assistant medical examiner, Dori Burke.
25 Personnel from I believe it was Parker Funeral Home. They

1 usually arrive -- there are usually two individuals that
2 arrive to remove the body.

3 Q. Okay. And did those individuals arrive before or
4 after you put the hand bags on Mr. Heitholt's hands?

5 A. Well, they had already arrived. I placed the hand
6 bags on the hands just prior to the body bag being secured
7 and the body being removed from the scene.

8 Q. Okay. So you had other people that were in the
9 crime scene area before the bags were put on the hands; is
10 that correct?

11 A. Yes.

12 Q. Okay. And of all these people that were in the
13 area, were any of them wearing --

14 MR. ROGERS: Your Honor, may we approach?

15 THE COURT: You may.

16 - - -

17 Counsel approached the bench and the following
18 proceedings were held:

19 MR. ROGERS: I believe we're now getting to the area
20 that is covered by our as-yet-unruled motion in limine
21 concerning the prosecution attempting to adduce evidence that
22 unknown hairs found on the decedent be attributed to some
23 person that they have not bothered to test the DNA of those
24 people. We had a motion in limine, we had hearing, we had
25 arguments, and the Court said that you would defer ruling on

1 that motion. So I'm reasserting it at this time, because I
2 think that's what we are getting at here.

3 MR. CRANE: I'm ready to argue that until the cows
4 come home. Now might be a good time to take lunch.

5 THE COURT: Well, lunch is not here. So we are not
6 having any cows coming home at this point. You may -- I
7 thought you've already argued the matter and take it with the
8 case.

9 MR. CRANE: Judge, I also wanted to point out a
10 letter that I filed with the Court, that reiterated my
11 position to Mr. Rogers, that was verbalized at the motion in
12 limine hearing, wherein I stated --

13 THE COURT: Just a minute. Let me grab the file.
14 Do you have an idea of the date?

15 MR. CRANE: I believe it was dated September 7th,
16 Judge.

17 THE COURT: Okay. Let me -- because there are other
18 letters that come after that date.

19 MR. CRANE: And I have got a copy of it, if for some
20 reason it's not in there. I don't think Mr. Rogers is going
21 to dispute he didn't receive it.

22 THE COURT: Let me see where we are. That's not to
23 say the clerk would have filed it particularly on that date,
24 but.

25 MR. CRANE: You got a copy handy?

1 MR. KNIGHT: Sure. Sure.

2 THE COURT: If you do, that would be helpful.

3 MR. CRANE: I thought maybe -- I thought I saw it.

4 I thought you flipped by it a minute ago.

5 THE COURT: On this side?

6 MR. ROGERS: I think back towards the back.

7 MR. CRANE: If you see it, it's like a one-paragraph
8 (indicating). Judge, I also wanted to say that I asked your
9 court reporter to do a transcript of the portion of the
10 argument for both sides on this particular motion in limine.
11 I believe she has provided that to the defense as well. That
12 motion. That is also my offer to provide the defense an
13 opportunity to do testing on any hairs they wanted pursuant
14 to the discovery they had received. Aside from those offers,
15 though, Judge, there is absolutely no legal basis, nor logic,
16 in precluding the state from adducing evidence that the
17 source of this hair that Mr. Rogers has talked about in his
18 opening statement could be from someone else. The -- what I
19 argued before is that defense wants to have it both ways.
20 They are using evidence-of-other-suspect argument to preclude
21 us from showing other sources. It's completely, with all due
22 respect, a specious argument. This evidence should come in.

23 MR. ROGERS: Your Honor, the analysis of evidence in
24 a criminal case is peculiarly a governmental function. It is
25 also a very expensive function for a private individual to

1 undertake. And for the state to fail or neglect or
2 deliberately abstain from testing evidence which is clearly
3 exculpatory -- for comparing evidence which is clearly not
4 that of the defendant with other people who are, for the main
5 part, state agents, state actors, state employees, does
6 not -- should not be allowed to place the burden on the
7 defense to expend that kind of effort and financial resources
8 in terms of testing all these people.

9 And I think that they are -- the gist of our
10 argument is that if the state wants to claim that this hair
11 was not somehow related to the incident that resulted in
12 Mr. Heitholt's death, or that it was somehow placed there
13 after his death, I think they have the burden of establishing
14 that before they can argue it. It's an argument based upon
15 their failure to analyze and compare the evidence that they
16 have with the evidence that is available to them, and I don't
17 think saying, "Well, we could make it available to you if you
18 want to spend \$50,000" cures that.

19 THE COURT: I'm not going to have any more argument.
20 I heard it before.

21 I'm not going to prohibit the state from asking this
22 witness whom he saw around the body prior to bagging the
23 hands. I am not going to prohibit the defendant from arguing
24 it's not his -- it's not his hair that was discovered on him
25 or no fingerprints from the defendant. That certainly I'm

1 not going to prohibit. I think you're entitled to do that
2 also. We are not talking about argument here. We're
3 talking -- I mean, you don't want him to testify that there
4 were other people that were in the location prior --

5 MR. ROGERS: I've let him testify to that.

6 THE COURT: Pardon?

7 MR. ROGERS: I've allowed him to testify to that
8 without objecting. It's only when he started to go beyond
9 that to whatever he was about to ask, which is, quite
10 frankly --

11 THE COURT: I don't know what he was about to ask.

12 MR. KNIGHT: I was going to ask about protective
13 clothes, if anybody was wearing protective clothes, hair
14 nets.

15 THE COURT: I'll permit you to ask that question.

16 MR. ROGERS: May I have a continuing objection?

17 THE COURT: You may have a continuing objection.

18 MR. CRANE: We can check that later.

19 MR. ROGERS: I don't dispute I got the letter.

20 - - -

21 The following proceedings were held in open court:

22 THE COURT: I understand that the jurors' lunches
23 are here. That was a little note that I got. So they are
24 very prompt in coming. And we will recess now.

25 The Court again reminds you of what you were told at

1 the first recess of the Court. Until you retire to consider
2 your verdict, you must not discuss this case among yourselves
3 or with others, or permit anyone to discuss it in your
4 hearing. You should not form or express any opinion about
5 the case until it is finally given to you to decide. Do not
6 read, view, or listen to any newspaper, radio, or television
7 report of the trial.

8 Ladies and gentlemen, unfortunately counsel does not
9 have the same privileges that you do to have their lunches
10 ready and delivered at a particular time, and they also work
11 during the noon hour. I would love to take a 30-minute break
12 for lunch, but I'm going to accede to their request that they
13 have an hour, so that they might do whatever preparation they
14 need, as well as eat. So we will take an hour break for
15 lunch. But we will come back exactly at 1:00.

16 And I'd ask the witness to return at 1.

17 Thank you.

18 (Recess taken.)

19 - - -

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

22 THE COURT: State ready to proceed?

23 MR. KNIGHT: Yes, Your Honor.

24 THE COURT: And the defendant?

25 MR. ROGERS: Yes, Your Honor.

1 THE COURT: All right. Good enough.

2 Would you have the jury brought in the courtroom?

3 DEPUTY COURT MARSHAL: Yes, Judge.

4 - - -

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

7 THE COURT: You may continue, Mr. Knight.

8 MR. KNIGHT: Thank you, Your Honor.

9 - - -

10 JEFF NICHOLS,

11 resumed the stand and testified further:

12 RESUMED DIRECT EXAMINATION

13 BY MR. KNIGHT:

14 Q. I want to go back and I want to talk to you a little
15 bit more about luminol. After you applied this luminol to
16 this sidewalk, did you do any more tests to confirm that what
17 had luminesced was, in fact, blood?

18 A. No, I did not, other than a visual evaluation of the
19 reaction.

20 Q. Okay. And why didn't you do any further
21 confirmatory tests?

22 A. Well, it's extremely rare, in the cases that I've
23 been involved in, where I've been able to get any kind of
24 positive follow-up test using any type of presumptive blood
25 testing device. Now, the secondary type of testing device I

1 would have used in this case would have been leucomalachite
2 green.

3 MR. ROGERS: Excuse me?

4 THE WITNESS: Leucomalachite green. Commonly
5 referred to as LMG in the laboratory.

6 A. But it typically gives you a 1 part per 250,000,
7 whereas luminol being sensitive up to 1 part per 5 million.
8 So oftentimes when you cannot visually see the blood, it is
9 surpassing the threshold of the 1 part in 250,000. And you
10 simply cannot get any type of reaction with leucomalachite
11 green.

12 Q. And that's the situation that we had here, because
13 you couldn't see any of this blood that was luminescing
14 without the aid of the luminol; correct?

15 A. Correct.

16 Q. All right. And also, what was your -- what was your
17 mission? What were you doing there, I mean on the 3rd, when
18 you started to apply this luminol?

19 A. It was simply a tracking effort. Our interest at
20 that point was to try and confirm that the police canine that
21 was used to track on the night of the incident was, in fact,
22 going in the right direction and whether or not we could find
23 evidence of that. And I found evidence of that going down
24 Fourth Street.

25 Q. So your priority then wasn't to confirm that we had

1 human blood there, was it? By using LMG.

2 A. It was -- correct. We -- my mission there and my
3 purpose there was to confirm that, number one, the dog was
4 going in the right direction. And therefore, I was relying
5 on the luminol to give me that information, based on the
6 nonvisible blood.

7 Q. You testified earlier that luminol will react with
8 human and animal blood, that it will react with rust iron,
9 and also bleach products. Is that correct?

10 A. Yes.

11 Q. Okay. And you also testified earlier that reactions
12 for those three categories of evidence differ; correct?

13 A. Yes.

14 Q. And the luminescence that you observed going on this
15 sidewalk south, how did that compare with the luminescence
16 you've seen in the past for blood?

17 A. It was -- had all the characteristics. And the --
18 the chemiluminescence is what I'm going to refer to this as.
19 More -- some people refer to it as just a luminescence, but
20 technically it's a chemiluminescence, because it's a chemical
21 reaction. And the reaction that I observed was consistent,
22 totally consistent with what I see when I have a blood
23 reaction. So I was confident that what I was observing was,
24 in fact, blood.

25 Q. Is it because blood has a more brilliant reaction

1 than the other two things that we talked about formerly? Is
2 that correct?

3 A. Yes. It gives off more of an intense glow.

4 Q. More of an intense glow?

5 A. Yes.

6 Q. Okay. And this first impression, starting out with
7 placard number 1, that was in the shape of what?

8 A. It was actually in the shape of a shoe. And so that
9 further confirmed, in my own mind, that what I was looking at
10 was blood and it had been placed there by a human foot.

11 Q. And this shoe print, as you testified before, was
12 pointing south; correct?

13 A. Well, the trail that I followed, yes, was heading
14 south down Fourth Street.

15 Q. And these shoe prints that you saw that were
16 luminescing there, was there enough detail for you to make
17 out any type of tread pattern?

18 A. No.

19 Q. Okay. And you testified about this earlier. I want
20 to make this very clear. You testified about seeing two
21 trails.

22 A. Yes.

23 Q. Two luminol trails. Two blood trails. Right?

24 A. Yes.

25 Q. Okay. Back to 41C. What is -- we've got how many

1 different rows of cards here?

2 A. Two.

3 Q. Okay. Point to the first row, please.

4 A. 24, 26, 28, 30, 32, et cetera.

5 Q. Okay. And that indicated to you one set of
6 footprints; is that correct?

7 A. That appeared to be one path of travel, yes.

8 Q. Okay. And then tell the -- show us where the other
9 set of footprints was that you saw.

10 A. Photo marker 23, 25, 27, 29, 31 represented a second
11 path of travel.

12 Q. Okay. And back to this aerial photograph. Can you
13 please point to the jury the area on this sidewalk, on Fourth
14 Street, where you saw two sets of footprints. Or shoe
15 prints.

16 A. In the area right along the sidewalk, south of the
17 northeast corner of the building, just before you reached the
18 intersection of Walnut. So it would be --

19 Q. Why don't you point to where you saw two sets of
20 shoe prints develop. Right there.

21 A. Right here on the photograph would be the area where
22 the two sets became very obvious.

23 Q. Okay. And the first -- you applied luminol two
24 different nights; is that correct?

25 A. Yes.

1 Q. You testified about that before. The first night,
2 we're talking about between -- or going up to Walnut. That
3 was on the 3rd. Is that right?

4 A. Correct.

5 Q. And then you went back on the 4th. And you went
6 between Walnut and Broadway on the 4th; is that correct?

7 A. That's correct.

8 Q. And why is it that you stopped that night?

9 A. Well --

10 Q. That -- I'm talking about the 3rd.

11 A. On the 3rd? Well, I had applied luminol to that
12 area and then in some other areas to try to get a reaction,
13 and simply I ran out of product.

14 Q. Okay. So you just got some more and came back the
15 next night; is that right?

16 A. We got some more the next day and came back and
17 finished up the next evening, yes.

18 Q. And then also, 41E here, you've got these photo
19 markers or placards, whatever you want to call them, going
20 from 46 to 50, and then we're starting again, 1 through
21 whatever; is that right?

22 A. That's right.

23 Q. And why is that? Why did you -- why did you end
24 there at 50 and not continue on with 51 through 70 or
25 something?

1 A. Well, we only have an X number of these markers that
2 we carry with us. So, it's not uncommon to use markers over
3 and over again. I don't think that we really need to get
4 focussed in so much on the numbers, as we use the markers as
5 only a visual tool, to give us a visual reference.

6 Q. Okay. And I'm not going to point this out for you
7 now, but you've got, on the pavement there, you drew
8 arrows --

9 A. Yes.

10 Q. -- pointing to the areas --

11 A. Reactionary.

12 Q. -- is that correct? Okay. Back to the crime scene.
13 We were talking about this a little earlier. But you said
14 that you saw other people there besides you. Other police
15 officers. Is that correct?

16 A. Yes.

17 Q. In the crime scene. Who else did you see in there?
18 When you got there.

19 A. Well, I know my supervisor, Steve Monticelli,
20 Sergeant Monticelli, was there. Specifically I -- I mean, I
21 did not take an inventory and I cannot provide you with
22 individual names of officers that I saw, although I can tell
23 you that there were other officers there. Certainly we had
24 officers protecting the perimeter. There again, I had -- I
25 was assisted by Detective Jim Harmon, who arrived. The

1 medical examiner assistant, Dori Burke, arrived. One,
2 possibly two people from the Parker Funeral Home eventually
3 arrived to take -- remove the body from the scene. I know
4 that Sergeant --

5 Q. And all of these people were there before you placed
6 the hand bags on the hands; is that correct?

7 A. Everyone except for the Parker Funeral Home people.
8 They may have been there as I was placing them on -- the bags
9 on the hands, but we -- I usually do this right before we zip
10 up and seal the body bag. So it's the last thing that I do.

11 Q. So the Parker Funeral Home people got there about
12 the time that you were putting hand bags on. Maybe they were
13 there while you were putting them on. Is that correct?

14 A. They usually help actually get the body, put it in
15 the body bag. So they would have been there around that same
16 time.

17 Q. Who else was there? There was firemen there?

18 A. Well, prior to my arrival there was -- there were
19 medics; there were fire --

20 MR. ROGERS: I'm going to object to this as being
21 hearsay, Your Honor.

22 THE COURT: Sustained.

23 Q. Well, right around Kent's body, what -- what kind of
24 paraphernalia did you notice?

25 A. Well, there was medical paraphernalia there, where

1 he obviously had -- attempts had been made to resuscitate the
2 victim, so -- by medical personnel.

3 Q. Okay. And all the people that you saw at the crime
4 scene, this also includes yourself, how many people were
5 wearing hairnets or other protection or other things on their
6 heads to guard against maybe hairs falling out?

7 MR. ROGERS: Your Honor, for the record, is this
8 subject to my continuing objection?

9 THE COURT: It is subject to your continuing
10 objection.

11 MR. ROGERS: Thank you.

12 Q. What's the answer?

13 A. I had a ball cap on. And I know of no one wearing a
14 head net, per se.

15 Q. Nobody was wearing shower cap type things or
16 anything like that?

17 A. No.

18 Q. Okay. And of all the people, including yourself,
19 who were at the crime scene, how many people did you see
20 clothed in protective suits, to protect against maybe hairs
21 falling off or other evidence falling off into the crime
22 scene?

23 A. There was no one.

24 Q. All right. Now at the crime scene, before you put
25 these bags on the victim's hands, on Kent Heitholt's hands,

1 did you look on his hands to see if there were any hairs at
2 all on there?

3 A. No. I did not do any close examination of his hands
4 at that point.

5 Q. And before you put these hand -- where did you get
6 these hand bags that you put on his hands?

7 A. Out of our stock bag supply.

8 Q. Do you know how many people handled those hand bags
9 before you?

10 A. Detective Harmon may have obtained the bags for me
11 to use. I don't remember specifically how they were obtained
12 from our vehicle. But other than him, it would stem back to
13 the manufacturer.

14 Q. Did you -- before you put these hand bags on, did
15 you check inside the hand bags to see if there were any hairs
16 inside of there?

17 A. No.

18 Q. And then you taped those hand bags onto -- onto
19 Kent's hands; correct?

20 A. Yes. Around the top of the bag, around the wrist.

21 Q. Okay. And then he was transported to -- to
22 Parker -- well, where was the autopsy conducted again?

23 A. At the medical examiner's office.

24 Q. Okay. And at the autopsy you collected those bags
25 again; right?

1 A. Yes.

2 Q. All right. Do you have State's Exhibit 98 there? I
3 think it's a photograph.

4 A. I don't believe.

5 Q. Here we go. Right here.

6 A. Oh.

7 THE COURT: That is not admitted in evidence.

8 MR. KNIGHT: I know.

9 Q. I'd like to show you what's been marked as State's
10 Exhibit 98. What's this a photograph of?

11 A. That's Mr. Heitholt at the medical examiner's
12 office, with his hands still bagged.

13 Q. Okay.

14 MR. KNIGHT: Your Honor, I'd offer State's Exhibit
15 98.

16 MR. ROGERS: No objection.

17 THE COURT: State's Exhibit 98 is admitted.

18 - - -

19 State's Exhibit 98 admitted into evidence.

20 - - -

21 Q. Okay. So that the jury can see here, these are the
22 hand bags you put on the hands at the crime scene; is that
23 correct?

24 A. That's correct.

25 Q. And this right hand bag looks like it's kind of

1 coming off in that photograph; don't you agree?

2 A. It could have slipped down, yes. I mean, it's not
3 uncommon.

4 Q. The left hand bag looks a little bit more secure; is
5 that correct?

6 A. Yes.

7 Q. Okay. Or securely fastened around the left wrist;
8 is that correct?

9 A. Yes.

10 Q. Do you see State's Exhibit 83 in that box?

11 A. Yes.

12 Q. And also 84?

13 A. Yes.

14 Q. Are these the hand bags that are photographed in 98?
15 Pictured in 98?

16 A. Yes.

17 MR. KNIGHT: Your Honor, I'd offer State's Exhibits
18 83 and 84.

19 MR. ROGERS: No objection.

20 THE COURT: State's Exhibits 83 and 84 are admitted.

21 - - -

22 State's Exhibits 83 and 84 admitted into evidence.

23 - - -

24 Q. Okay. Let's start out -- 83, this hand bag right
25 here, this is from the victim's left hand; is that correct?

1 A. Yes.

2 Q. Okay. I'm taking it out of the bag.

3 But when you took these hand bags off of his hands,
4 how did you get them off?

5 A. I'm not sure if I removed those or if the medical
6 examiner did. Typically they're just cut. A pair of
7 scissors is used to cut the seal, and then that bag is
8 automatically placed into its own individual bag, which would
9 be this one right here.

10 Q. We'll get to that. So this bag right here was then
11 cut off his wrist; is that correct?

12 A. It appears to have been --

13 Q. Or ripped off.

14 A. -- possibly -- yeah. Partially cut and then ripped.
15 Torn.

16 Q. And this was done by who? You or somebody else?
17 Who was that?

18 A. Either myself or the medical examiner.

19 Q. Dr. Adelstein?

20 A. Yes.

21 Q. And was he wearing a hairnet at all? Do you recall?
22 Or any type of protection on his hair to protect against
23 hairs falling out?

24 A. No.

25 Q. Okay. But -- so one of you all removed that bag

1 right there. And then State's Exhibit 84, was the same thing
2 done pretty much with that? Talking about this right one
3 that's kind of falling off the wrist; right?

4 A. Correct.

5 Q. All right. Is that kind of where it was ripped
6 right there?

7 A. Yes.

8 Q. And this -- this is, again, the hand bag that came
9 from the right hand; right?

10 A. Yes.

11 Q. All right. And this was done by either you or
12 Dr. Adelstein; correct?

13 A. Correct.

14 Q. Okay. Now you said that you placed both of these
15 bags right here inside of other bags; is that correct?

16 A. Yes.

17 Q. And you placed them in this -- this would have been
18 the right -- bag for the left hand, and the bag for the right
19 hand over here; is that correct?

20 A. Yes.

21 Q. All right. Before you placed the actual hand bags
22 into these other bags, did you check inside of those hand
23 bags to see if there were any hairs in there?

24 A. No.

25 Q. And these bags right here, these bigger bags, did

1 you check to see if there were any hairs in these?

2 A. No.

3 Q. That you put these smaller bags in. You didn't.

4 A. No.

5 Q. Okay. So those hand bags, big one, small one, big
6 one, small one, were both -- they were eventually sent over
7 to the highway patrol; is that correct?

8 A. Correct.

9 Q. You don't know of any hairs being in any of those
10 bags before they were sent; is that right?

11 A. That's right.

12 Q. Okay. Now, also, is State's Exhibit 85 in front of
13 you? Do you see that? It's actually beneath you I think in
14 that big box to the right. Yeah.

15 What is that?

16 A. Fingernail scrapings and hair collected from the
17 victim's hands.

18 Q. Okay. So we've got how many different boxes inside
19 of here?

20 A. Four.

21 Q. Okay. Do you want to hand those to me?

22 MR. KNIGHT: Well, Your Honor, first of all, I'd
23 offer State's Exhibit 85.

24 MR. ROGERS: No objection.

25 THE COURT: State's Exhibit 85 is admitted.

1

- - -

2

State's Exhibit 85 admitted into evidence.

3

- - -

4

Q. Okay. These have been labeled by the highway patrol
5 as 10A through 10D; is that right? Can you see on there?
6 Let me turn them around for you.

7

A. Yes.

8

Q. And 10A and 10B are fingernail scrapings; is that
9 correct? Can you see that?

10

A. Yes.

11

Q. Okay. Let's talk about -- let's talk about 10C and
12 10D. 10C, this -- this would be hairs that were collected
13 from where?

14

A. From the right hand.

15

Q. Okay. And who collected these hairs --

16

A. I did.

17

Q. -- from Kent's right hand?

18

A. I did.

19

Q. Did you count how many hairs you collected from his
20 right hand?

21

A. I didn't note the number of hairs, no.

22

Q. Okay. And once you collected these hairs from
23 Kent's right hand, what did you do with them?

24

A. I put them in the container, being that one, and
25 sealed the container.

1 Q. So right now you don't have any idea how many hairs
2 are in here; is that right? Because it's sealed up.

3 A. That's correct.

4 Q. Okay. And then this box right here, 10D, what's
5 that? What's inside of there?

6 A. Hairs from left hand.

7 Q. Okay. And once again, did you put hairs that you
8 found directly on his hands -- his left hand in this box?

9 A. I did.

10 Q. And do you have any idea how many hairs are in
11 there?

12 A. No.

13 Q. Okay. But these boxes represent hairs that were
14 collected directly from his hands. That you saw on his
15 hands. Correct?

16 A. Yes.

17 Q. Okay. And they were packaged up and sent down to
18 the highway patrol; right?

19 A. Yes.

20 Q. And do you remember -- well, strike that. That's
21 pretty much all I have on that topic.

22 Now, on the 4th of November, what creek did you
23 search?

24 A. The Flat Branch.

25 Q. Okay. And on State's Exhibit 9, where is the Flat

1 Branch Creek?

2 A. It would be just south -- or I'm sorry, just north
3 of number 3, north being the bottom of the photo. You can
4 actually see the stream bed right here in that city block.

5 Q. And on November 4th, when you searched this creek,
6 it had water in it; right?

7 A. It did.

8 Q. Okay. I'd like to show you what's been marked as
9 State's Exhibit 21A -- or 21, 21A through 21C. What are
10 those photographs of?

11 A. Flat Branch Creek.

12 Q. Okay.

13 MR. ROGERS: No objection, Your Honor.

14 MR. KNIGHT: I'd offer State's Exhibits 21, 21A
15 through 21C, Your Honor.

16 MR. ROGERS: Once again, no objection.

17 THE COURT: State's Exhibits 21, 21A through C, are
18 admitted.

19 MR. KNIGHT: Thank you, Your Honor.

20 - - -

21 State's Exhibits 21, 21A through 21C, admitted into
22 evidence.

23 - - -

24 Q. So you searched this creek bed on the 4th; is that
25 right?

1 A. Yes.

2 Q. Right here, this shows we got water in the creek.

3 All three photographs. Correct?

4 A. Yes.

5 Q. Okay. And what did you collect from that creek?

6 A. I believe we recovered a -- like a metal stake. I
7 referred to it as a form stake.

8 Q. Okay. And what did you notice was on that stake?

9 A. Well, the stake had visible algae growth on it.

10 Q. All right. And what did that indicate to you?

11 A. That it had been in the water for some time.

12 Q. Okay. For how long, would you imagine? Long enough
13 to grow algae, obviously.

14 A. Yes. Depending on -- I mean, there's a lot of
15 variables, but long enough for algae to grow on it. More
16 than two weeks, three weeks.

17 Q. Okay. And did you determine that that stake was
18 unconnected to this homicide?

19 A. Yes.

20 MR. ROGERS: I'm going to object to that. That
21 calls for speculation.

22 THE COURT: Sustained.

23 MR. KNIGHT: I'll strike that -- I won't even go
24 into that, Your Honor. That's fine.

25 Q. Now on February 2003, what class did you attend in

1 Quantico, Virginia?

2 A. It was a facial reconstruction, facial imaging
3 class.

4 Q. Okay. What did you learn how to do there?

5 A. Well, several different techniques were instructed.
6 Primarily facial composite drawing, as well as 3D facial
7 reconstruction.

8 Q. Okay. And up to that point -- well, just tell the
9 jury about your artistic background very briefly, if you can.

10 A. I was, early in my college career, an art major. My
11 parents both being artistic, mother being an art teacher,
12 encouraged me to go into that field. So I took undergraduate
13 classes and courses in art. I transferred to the University
14 of Missouri, changed my major, simply because I didn't think
15 I could make a living drawing pictures. And so, with that,
16 I -- when I got more into the law enforcement field, I
17 decided to use that as an opportunity as a secondary source
18 of employment and opened my own custom business in 1993,
19 doing a whole entire variety of different artistic
20 applications. I use graphite to draw pictures of children.
21 Portraits. Animals. I do landscape fine art. Recently been
22 recognized as -- nationally recognized as a watercolor
23 artist. My work's been published. And I use acrylic,
24 watercolor, graphite as a medium to do that.

25 Q. Okay. And when you went to this training in

1 Quantico, Virginia, in 2003, how long did that last?

2 A. That was a three-week course.

3 Q. Okay. And can you briefly describe the training
4 that you got there?

5 A. The first part of the course was geared more toward
6 3D facial reconstruction and sculpture. Actually applying
7 clay to an unidentified human skull to the point of creating
8 a facial image that could aid in the identification of that
9 person. We worked on aging techniques using clay. We also
10 went -- took that one step further into a 2D. Now that would
11 be referred to as a 3D process. But in a 2D process, simple
12 drawing of a human face or composite from someone's memory
13 was focussed on in the second part of the course. Karen T.
14 Taylor, probably one of the leading composite artists in the
15 nation, taught that. And that was an area that we typically
16 now experience more demand for.

17 Q. Okay. March 26, 2003, after you got done with that
18 class, who did you contact?

19 A. Well, I contacted one of the witnesses in this case,
20 Miss Ornt.

21 Q. Okay. First name Shawna?

22 A. Shawna.

23 Q. Okay. And what did you -- what information did you
24 ask her to provide to you?

25 A. Well, we -- I took her to the -- to the scene, the

1 actual scene, and allowed her to walk through the scene the
2 way she did on the night of the incident. And once we did
3 that, we went back to my office. We sat down. I asked her
4 if she could provide me with detailed description -- or
5 descriptions of the individuals that she saw the night of the
6 incident, that she recalled seeing. And she had always
7 complained about the original composite, which was created on
8 a computer software program, not being accurate enough. And
9 specifically the hairstyle.

10 Q. Okay. And did you ask her to provide descriptions
11 to you, head, facial descriptions, of one of the two suspects
12 she saw?

13 A. Yes, because she didn't see the other person well
14 enough to provide detailed information about.

15 Q. And how did she describe this person's head?

16 A. She said that it was rectangular. And I also would
17 have to say that I documented this, and I may need to refer
18 to my report or notes for an accurate overall description,
19 but she said that face -- their head was rectangular. She
20 said the eyes were a little bit closer than most. And keep
21 in mind that this was of a young white Caucasian, late teens,
22 early 20s, I believe. The ears I recall she said were
23 extended out from the head at the top just a little bit
24 further than normal. The ear lobes were in a little bit
25 closer. The hair was combed forward and flipped up in the

1 front, which was a popular hairstyle at that time. The lips
2 were fairly uniform in width. The top and bottom lip. Fair
3 complexion. No facial hair.

4 Q. And after she provided this information to you, you
5 at some point started to sketch this person; is that correct?

6 A. Yes.

7 Q. Before you started to sketch this person, what did
8 you have her look through?

9 A. Well, I was provided in the -- during the training
10 an FBI facial catalog, which is a catalog of faces. It's
11 like -- similar to mug shots, if you will, but they're all
12 different types of faces. Head styles, shapes; eye shapes;
13 nose shapes. So I gave her the catalog to look through, and
14 I asked her, if she would, provide me with the number, and
15 there is a unique number under each photograph, with the
16 number of the photograph, or a photograph, if she found one,
17 that reminded her of a specific or unique feature on the
18 face. So we went through that. And I began to sketch the
19 image. And eventually we were able to sketch an image that
20 she felt closely resembled the person she saw.

21 Q. Okay. And so how -- she said it closely resembled
22 the person that she saw?

23 A. Yes.

24 Q. That's what she told you? Okay. And then you did
25 some more work on it after that; is that correct?

1 A. Right. I added in just some simple shading, to give
2 it more of a three-dimensional look, and then recontacted her
3 and had her evaluate that, and -- because sometimes you need
4 to make some changes. But she was very satisfied with the
5 composite.

6 Q. So that was a number of days later you did the
7 shading; is that correct?

8 A. It was -- yeah. It was afterward. I don't remember
9 how many days later.

10 Q. But then you took that back to her and showed it to
11 her; is that correct?

12 A. Yes.

13 Q. And what did she give it on a scale of one to ten?

14 A. Well, a scale of one to ten, ten being very the
15 best, essentially the best that she can remember and be able
16 to articulate, she rated that on about an eight and a half.

17 Q. Okay. And this is the finished product; is that
18 correct?

19 A. That's correct.

20 Q. All right. State's Exhibit 27.

21 A. Yes.

22 THE COURT: Excuse me. 22?

23 MR. KNIGHT: Seven. And it's in.

24 THE COURT: 27. Okay.

25 You're correct. It is 27.

1 Q. So that composite that I just showed you, that was
2 -- the finished product, you came up with that in April of
3 '03; right?

4 A. That would be the approximate day, yes. I don't
5 recall the exact date.

6 Q. All right. Now, skipping ahead almost a full year,
7 to March 10th, 2004, what did Steve Monticelli ask you to do?
8 And he's your sergeant over there at major crimes; correct?

9 A. Yes.

10 Q. What did he ask you to do with regard to processing
11 a vehicle? Searching a vehicle.

12 A. Okay. He said that the detectives had applied for a
13 search warrant on a vehicle, and he asked me if I would
14 process the car.

15 Q. Okay. And where did you go to do this?

16 A. Police garage. The vehicle had been either towed or
17 it had been driven to the police garage. So it was right
18 across from my office.

19 Q. Okay. And when you got to the vehicle, did it have
20 security seals intact?

21 A. Yes.

22 Q. Okay. And do you see State's Exhibit 87; and I
23 think it's A, B, C, D, E, F, G; A through G up there?

24 A. Yes.

25 Q. What are those photographs of?

1 A. The vehicle which I searched.

2 Q. Okay. And you determined that this was -- this
3 vehicle was owned by who?

4 MR. ROGERS: I'll object to that. That calls for
5 hearsay.

6 THE COURT: Sustained.

7 MR. KNIGHT: Okay.

8 THE COURT: A and B are already admitted,
9 Mr. Knight. I didn't mark it on the exhibit, but I have it
10 in my notes.

11 MR. KNIGHT: Thanks.

12 MR. ROGERS: They are, in fact, exhibit -- are, in
13 fact, admitted, Your Honor. I would object to the rest of
14 the photographs on the grounds that there's no showing of any
15 kind that what he observed was in any way similar to the
16 condition of the vehicle back in November of 2001. It's
17 changed hands. It's been years.

18 MR. KNIGHT: He processed this.

19 MR. ROGERS: So there's no relevance.

20 THE COURT: The objection is that it doesn't have
21 relevancy?

22 MR. ROGERS: Yes.

23 THE COURT: That objection would be overruled, with
24 the understanding that we know this car was processed in
25 April of '04.

1 MR. KNIGHT: So I'd offer these exhibits --

2 MR. ROGERS: With regard to -- if I can maybe make
3 my objection more explicit. There are items depicted in the
4 photograph. There's no ghost of a showing that those items
5 were in any way in that vehicle in 2001. And therefore to
6 show the photographs of those -- of those items now is not
7 relevant to --

8 THE COURT: Let me take a look at what you -- let me
9 look at the photographs, please.

10 Please don't display them to the jury.

11 (Court viewing photographs.)

12 - - -

13 Counsel approached the bench and the following
14 proceedings were held:

15 (Court viewing photographs.)

16 THE COURT: All right. I've looked at the exhibit.

17 MR. ROGERS: My objection is, Your Honor, that the
18 items shown in specifically D, E, F, and G are -- that
19 they're photographs of various things I assume on the
20 interior of the vehicle. There is no showing of any sort
21 that those items were there or that the interior of the
22 vehicle had that appearance back in November of 2001.

23 MR. KNIGHT: Your Honor, I think that would go to
24 the weight and not the admissibility. And by the way, I
25 think we have had witnesses here testifying to --

1 MR. ROGERS: Right.

2 (Counsel talking at the same time.)

3 MR. KNIGHT: The other thing is, as far as this car
4 being in the exact condition that it was maybe in 2001, I
5 don't think the state should be penalized for the fact that
6 the defendant wasn't arrested in this case until March of
7 '04. I think that -- is there a problem?

8 MR. ROGERS: No. I'm choking back laughter.

9 MR. KNIGHT: Oh. Okay.

10 Also, as far as establishing that this is the
11 defendant's car, that we need to lay a foundation for that,
12 that's already been done, via the top two photographs, and C,
13 which shows the registration to William Ferguson -- that
14 shows the registration to William Ferguson, which was also
15 still in the car. And I can establish that through
16 witnesses.

17 THE COURT: Is there going to be any evidence
18 relating to the items pictured in F and G?

19 MR. KNIGHT: Your Honor, the tire tool, to my
20 knowledge, this large tool right here, is already in
21 evidence. And those other items will become relevant later,
22 Your Honor.

23 MR. ROGERS: Your Honor, my understanding is the
24 tire tool is not in evidence. And in fact, my explicit
25 memory is that when something that looked like that, that's

1 in that cardboard box on counsel table, was shown to
2 Mr. Erickson, he said that's not it, and the state
3 represented that they would introduce that evidence through
4 another witness.

5 MR. CRANE: It's been shown.

6 MR. ROGERS: It's been shown to Mr. Erickson, and he
7 said that's not what he was talking about.

8 MR. KNIGHT: Your Honor, it will become relevant.
9 It's relevant right now.

10 THE COURT: I will show that the objection to 87C,
11 D, and E, that objection is overruled, and those are
12 admitted.

13 - - -
14 State's Exhibits 87C, 87D, and 87E admitted into
15 evidence.

16 - - -
17 THE COURT: Somehow you're going to have to connect
18 up this to something that you're doing here today before I
19 will admit 87F and G. Although you may ask the witness about
20 those photographs, I don't want you to display those
21 photographs to this witness at this time. And I don't know
22 that this item, which I'm pointing at, which appears to be in
23 87G, is in any way relevant to this case at this particular
24 time.

25 MR. CRANE: Judge --

1 MR. KNIGHT: Your Honor, yes, it is -- we're not
2 alleging that this was the murder weapon. It's what's not in
3 the trunk that's going to wind up being relevant later on.

4 MR. CRANE: It's relevant now.

5 MR. KNIGHT: And it's relevant now.

6 THE COURT: Well, until you -- until you connect up,
7 and I don't know how you're going to do it, but if there is
8 someone that's going to testify as to what was in it before
9 the incident, and what is no longer in it now, I don't know
10 what you're going to do, but my objection -- the objection at
11 this point to 87F and G is sustained, until you have further
12 foundation to connect it to this case.

13

- - -

14 The following proceedings were held in open court:

15 Q. Showing you again what's been marked as State's
16 Exhibit 87, 87A through 87G, the top two photographs are
17 photographs of a blue Mercedes; is that correct?

18 A. Yes.

19 Q. 87C is a photograph of what?

20 A. A registration. Vehicle registration.

21 Q. To who?

22 A. To a William Ferguson.

23 Q. Okay. 87D depicts what?

24 A. Floor mats.

25 Q. 87E is what?

1 A. The tire storage area in the trunk.

2 Q. Okay. And I'm going to ask you a leading question.

3 MR. KNIGHT: Mr. Rogers, is that all right? With
4 regard to --

5 MR. ROGERS: It depends on what it is.

6 Q. 87F and 87G. I don't want you to testify about what
7 you see in 87F and 87G, but are these photographs accurate
8 representations of what you actually photographed?

9 A. Yes.

10 Q. With respect to this car.

11 A. Yes.

12 Q. And the contents of this car.

13 A. Yes, they are.

14 Q. And more specifically, with regard to the contents
15 of the trunk of this car.

16 A. Yes, they are.

17 Q. Okay.

18 MR. KNIGHT: Your Honor, I'd offer 87, 87A and I'll
19 go ahead and -- all the way up to 87G.

20 THE COURT: Well --

21 MR. ROGERS: I'll renew my objections to 87F and G.
22 And Your Honor, I think the Court has already ruled
23 admissible 87A, B, C, D, and E, over objections at different
24 times.

25 THE COURT: All right. A and B were admitted

1 previously. 87A and B were previously admitted. The
2 objections to 87C, D, and E are overruled. At this time the
3 objection to 87F and G are sustained.

4

- - -

5 State's Exhibits 87C, 87D, and 87E admitted into
6 evidence.

7

- - -

8 Q. State's Exhibit 88, what was that? Can you see it
9 there in the box? To your right. Down.

10 A. Yes. That's an empty pack of Marlboro cigarettes.

11 Q. And where did you find those cigarettes or that
12 pack?

13 A. That was in the vehicle. The Mercedes.
14 Specifically located in a pouch that was directly behind or
15 attached to the back side of the passenger -- front passenger
16 seat.

17 Q. And then State's Exhibit 89, do you see that in
18 there?

19 A. Exhibit 89 is the vehicle registration paper.

20 Q. Okay. And that's what was in photograph I believe
21 C; is that correct?

22 A. Yes.

23 Q. Okay.

24 MR. KNIGHT: Your Honor, I'd offer State's Exhibits
25 88 and 89.

1 MR. ROGERS: I would object to the relevance of 88,
2 Your Honor. With regard to 89, I think I can clear it up on
3 cross-examination. So I have no further objection, other
4 than the one made to the photograph of the same exhibit.

5 THE COURT: And what was your objection to 88?

6 MR. ROGERS: Relevance.

7 THE COURT: How is it relevant?

8 MR. KNIGHT: Your Honor, it's really just -- just
9 one other piece of evidence that was collected from the
10 defendant's vehicle. We were going to show that this
11 evidence was tested by the lab. But we'll withdraw it.
12 That's fine. If we don't want that in, it's really not
13 significant at all.

14 THE COURT: 89 is admitted then.

15 - - -

16 State's Exhibit 89 admitted into evidence.

17 - - -

18 Q. And then also State's Exhibit 91, do you see that in
19 front of you?

20 A. Yes.

21 Q. What is that?

22 A. Trace evidence.

23 Q. Collected from the defendant's vehicle; is that
24 correct?

25 A. Yes.

1 MR. ROGERS: Excuse me. That's, A, a leading
2 question. There's no showing that's the defendant's vehicle.
3 And we all know it's not the defendant's vehicle at the time
4 it's being collected.

5 MR. KNIGHT: Well, I'm sorry.

6 Q. From William Ferguson's vehicle?

7 A. Yes.

8 Q. That's trace evidence that was collected from there;
9 is that correct?

10 A. Yes.

11 Q. Okay. And how did you collect that trace evidence
12 there?

13 A. A fairly simple technique. And that is: I wrap
14 tape around my hand and apply that to the areas I'm taking a
15 sample from. And it picks up trace evidence in the same
16 fashion that you would clean lint off of an article of
17 clothing.

18 Q. And so did you just pick up trace evidence from
19 front seat, back seat of this vehicle?

20 A. Yes.

21 Q. Okay. And put it in four different packages; is
22 that correct?

23 A. Yes.

24 Q. Did you divide the car into quadrants? Is that why
25 you have four packages?

1 A. Yes.

2 Q. So it would it would be left front, right front,
3 left rear, back rear; is that correct?

4 A. Yes.

5 Q. Okay. And what was done with that trace evidence
6 there? State's Exhibit 91.

7 A. Well, I submitted it to our evidence custodian, and
8 I believe it was sent to the Missouri State Highway Patrol
9 lab for further analysis.

10 MR. KNIGHT: Your Honor, I'd offer State's Exhibit
11 91.

12 MR. ROGERS: No objection, Your Honor.

13 THE COURT: State's Exhibit 91 is admitted.

14 - - -

15 State's Exhibit 91 admitted into evidence.

16 - - -

17 Q. On March 10th, 2004, who did you make contact with?
18 Did you make contact with a person by the name of Ryan
19 Ferguson?

20 A. Yes.

21 Q. Do you see him in court today?

22 A. I do.

23 Q. Can you please point him out?

24 A. He's the defendant in this case, sitting at the
25 counsel table, wearing a dark blue jacket and a light --

1 lighter blue shirt and tie.

2 Q. And what did you collect from him?

3 A. A buccal swab, DNA sample from his mouth, as well as
4 hair standards from his head.

5 Q. Do you see State's Exhibit 92 in there?

6 A. Yes.

7 Q. What is that?

8 A. Hair standards and buccal swab from Ryan Ferguson.

9 Q. On that same day did you contact Charles Erickson?

10 A. Yes.

11 Q. For the same reason?

12 A. Yes.

13 Q. And did you also obtain buccal swabs and hair from
14 Charles Erickson?

15 A. Yes.

16 Q. Okay. And that's State's Exhibit what? 93; is that
17 right?

18 A. Yes.

19 Q. And were both State's Exhibits 92 and 93 sent to the
20 Missouri State Highway Patrol crime lab?

21 A. Yes.

22 MR. KNIGHT: Your Honor, I'd offer 92 and 93.

23 MR. ROGERS: No objection.

24 THE COURT: State's Exhibits 92 and 93 are admitted.

25 - - -

1 State's Exhibits 92 and 93 admitted into evidence.

2 - - -

3 MR. KNIGHT: Your Honor, may we approach?

4 THE COURT: You may.

5 - - -

6 Counsel approached the bench and the following

7 proceedings were held:

8 MR. KNIGHT: Can I now publish this to the jury?

9 THE COURT: You've covered up the ones that were not
10 admitted.

11 MR. ROGERS: That seems to be correct.

12 THE COURT: Yes, you may publish that.

13 MR. ROGERS: Subject to our prior objections,
14 obviously.

15 THE COURT: All right. You may publish it.

16 MR. KNIGHT: Thank you, Your Honor.

17 - - -

18 The following proceedings were held in open court:

19 THE COURT: And for the record, those photographs
20 are 87A, B, C, D, and E.

21 MR. KNIGHT: That's correct, Your Honor.

22 THE COURT: You may publish those to the jury.

23 MR. KNIGHT: Thank you, Your Honor.

24 Q. Show you what's been marked again as 87A, 87B.

25 Those two photographs. Those are photographs of the Mercedes

1 that had this registration to William Ferguson that you
2 processed in March of 2004; is that correct?

3 A. Yes.

4 Q. Okay. 87D, what is this a photograph of?

5 A. Floor mats in the trunk.

6 Q. All right. And then when you took away these floor
7 mats and took away this carpet, what did you then wind up
8 with in 87E?

9 A. Well, that's a photograph of what was left in the
10 trunk bed area. It's a cover over the spare tire
11 compartment.

12 Q. Okay. Last set of questions. I'm going to show you
13 what's been marked State's Exhibit 1, 1A and 1B. These are
14 already in evidence. Photograph of Kent Heitholt. During
15 this investigation, did you ever find -- we've got the belt
16 buckle right there, but did you ever find the rest of Kent's
17 belt?

18 A. No.

19 Q. Right here, in 1B, you can see his watch. Did
20 anybody from the Columbia Police Department, including
21 yourself, ever at any time find Kent's watch?

22 A. No.

23 Q. And his car keys. Did anybody ever find car keys?

24 A. No.

25 MR. KNIGHT: We're almost done.

1 THE COURT: All right.

2 MR. KNIGHT: May we approach?

3 THE COURT: Yeah, you may. And it's easy -- you can
4 approach.

5 - - -

6 Counsel approached the bench and the following
7 proceedings were held:

8 MR. KNIGHT: There is a tire tool that was depicted
9 in one of those bottom photographs.

10 THE COURT: Yes. Is it on the right or the left as
11 you're looking at the photograph?

12 MR. KNIGHT: It's on the right, I'm sure. It might
13 be on the left too. But I know -- I know it's on the right.
14 And I would like to just be able to show the witness this --
15 the actual tire tool that's already been testified about.
16 Another witness has already looked at that tire tool earlier.
17 Charles Erickson. And I'd like to just show him that tire
18 tool. He doesn't need to say it's a tire tool. I won't have
19 him do that. I'll lead him through it. He just needs to say
20 that that piece of evidence was collected from the trunk.
21 That's it. That's all I want to do. And I'm not going to
22 talk about what it was. And I'll lead him. I need to lead
23 him on that.

24 MR. ROGERS: I would still object to it, Your Honor.
25 My concern is that if it's identified there, and then they

1 have some witness come in and say, "Well, that has parts off
2 it and it looks similar to wounds on the decedent," or
3 something like that, then they will try and say they
4 established relevance, when they haven't shown any connection
5 between that tool and this defendant.

6 MR. KNIGHT: I don't think we are going to claim
7 that the wounds are consistent with that particular object.
8 I don't think that's -- that's going to happen.

9 THE COURT: What you're approaching about is to see
10 if you can ask him if he took this particular item out of the
11 trunk.

12 MR. KNIGHT: That's it.

13 THE COURT: And you're not going to offer the item.

14 MR. KNIGHT: I won't offer it. That's fine. No.

15 THE COURT: I will permit you just to ask him if he
16 took it out of the trunk.

17 MR. KNIGHT: Okay. Okay.

18 THE COURT: I assume it's marked and identified as
19 an exhibit.

20 MR. KNIGHT: It is. I can't remember what number.

21 MR. ROGERS: Like I said, it was shown to
22 Mr. Erickson before. Please have the record reflect this is
23 over my objection. And I'd like a continuing objection
24 through it.

25 THE COURT: It is over your objection. It is not

1 being offered, nor is it admitted at this time. I'm just
2 permitting him to ask if this was taken out of the trunk.

3 MR. ROGERS: Thank you.

4 THE COURT: You're welcome.

5 - - -

6 The following proceedings were held in open court:

7 Q. This is going to be a yes/no question. Okay? I'd
8 like to show you what's been marked as State's Exhibit 90.
9 Did you take this particular item -- you can open that down
10 here if you need to. Did you take this --

11 THE COURT: And do not display it to the jury.

12 Q. Yeah. That cannot be displayed.

13 Did you take that from the trunk of that blue
14 Mercedes?

15 A. Yes.

16 Q. Okay. Officer Nichols, do you remember what was
17 depicted in State's Exhibits 84F and 84G?

18 THE COURT: Those are 87, I believe.

19 MR. KNIGHT: I'm sorry.

20 Q. 87F and G before those photographs were covered up?

21 A. Yes.

22 Q. Okay. And were all of those items collected and
23 taken into evidence, that were depicted?

24 A. I'm not sure if all the items were. It may have
25 been. I know one item was.

1 Q. Okay.

2 MR. KNIGHT: Nothing further. Thanks.

3 THE COURT: Are you looking at 90?

4 MR. ROGERS: Yes.

5 THE COURT: I will note that was not displayed to
6 the jury. It was retained in a box.

7 MR. ROGERS: And I was looking for the exhibit
8 number, because I didn't hear it.

9 THE COURT: It is 90.

10 MR. ROGERS: Thank you.

11 - - -

12 CROSS-EXAMINATION

13 BY MR. ROGERS:

14 Q. Detective Nichols, you've told us about luminol; is
15 that correct?

16 A. Yes.

17 Q. And the chemiluminescence you have described is not
18 dependent upon the freshness of the blood, is it?

19 A. No.

20 Q. The chemical reaction which creates that
21 luminescence, chemiluminescence, when luminol comes in
22 contact with blood, is with substances in the blood which do
23 not evaporate or degrade; is that correct?

24 A. Correct.

25 Q. And therefore, if a fabric type material, for

1 example, State's Exhibit -- if you were to treat State's
2 Exhibit 36, this bloody T-shirt, with luminol now, you would
3 observe a very strong chemiluminescence, wouldn't you?

4 A. Yes.

5 Q. Assuming those were blood stains. Which we already
6 talked about. Right?

7 A. Yes.

8 Q. Okay. And for that reason, when you looked at the
9 Mercedes in March of 2004 -- by the way, you found a
10 registration paper with Bill Ferguson, William Ferguson's
11 name on it; right?

12 A. Yes.

13 Q. But you knew that that was not his vehicle at the
14 time you examined it, didn't you?

15 A. Yes.

16 Q. That vehicle had been acquired from another
17 individual who had bought it from him the year before.
18 Correct?

19 A. I knew that -- I was told it had been purchased by
20 someone, yes.

21 Q. And -- in any event, when you examined that vehicle,
22 you also performed a luminol test on the vehicle as well,
23 didn't you?

24 A. I did.

25 Q. And what areas of the vehicle did you treat with

1 luminol?

2 A. The interior and -- as well as the trunk.

3 Q. You said "the interior." Meaning the passenger
4 compartment.

5 A. Exactly.

6 Q. And then would you have treated with luminol the
7 place where the front seat passenger would have been sitting?

8 A. Yes.

9 Q. And did you treat with luminol the place where the
10 driver would have been sitting?

11 A. Yes.

12 Q. And were there floor mats in the vehicle in the
13 passenger compartment when you examined it?

14 A. I think there was.

15 Q. And did you also treat them?

16 A. Yes.

17 Q. And did you treat the carpet underneath the floor
18 mats?

19 A. Yes.

20 Q. Okay. And did you treat the floor mats that were in
21 the trunk, underneath the -- or over the spare tire
22 compartment cover?

23 A. Yes.

24 Q. And did you treat with luminol the rest of the
25 interior of the trunk?

1 A. Yes. Once I removed the floor mats, I treated the
2 rest of the trunk.

3 Q. Okay. And at any place in that vehicle did you
4 observe any chemiluminescence, indicative of blood?

5 A. No.

6 Q. With regard to your search of the vehicle, was that
7 done before or after your conversation with Charles Erickson
8 on videotape in the interview room of the police department?

9 A. I think that was after.

10 Q. Okay. So you had already talked to Erickson.

11 A. I believe that's correct.

12 Q. And Erickson had drawn for you a picture of what he
13 said the implement that he used looked like. Correct?

14 A. Yes.

15 Q. And that is the implement depicted on State's
16 Exhibit 22. Is that correct?

17 A. Yes.

18 Q. Okay. And he described that to you during that
19 tape-recorded interview. Videotaped interview.

20 A. Yes, sir.

21 Q. Did you find at anyplace inside the trunk of the
22 Mercedes that you examined on March 10th anything that looked
23 like the picture Erickson had drawn?

24 A. No.

25 Q. You have seen implements which look like that other

1 places, haven't you?

2 A. Of the photograph or the one that I recovered?

3 Q. The one that he drew. Let me ask it in a leading
4 fashion. Have you seen a handle used to turn a screw jack,
5 which looks sort of like he was trying to draw?

6 A. Yes. But it's not -- that -- the drawing is not
7 quite accurate.

8 Q. Okay. But that was what you had in mind when he
9 drew it that he was trying to perceive; isn't that correct?

10 A. It seemed reasonable.

11 Q. Okay. And do you know what kind of jack was in the
12 Mercedes when you got it? When you looked at it.

13 A. I don't recall if it was a screw-up jack or a
14 scissors jack. I'd have to refer to my photographs.

15 Q. Okay. And --

16 MR. CRANE: Judge, can we approach? Or can
17 Mr. Knight approach? I guess I can't do it.

18 THE COURT: If Mr. Knight wishes to approach, he may
19 ask the Court to approach.

20 MR. KNIGHT: Yes, I do.

21 - - -

22 Counsel approached the bench and the following
23 proceedings were held:

24 MR. KNIGHT: Your Honor, I think by that line of
25 questioning, he has now opened the door wide for us to get

1 into the contents of this trunk. He's asked about what was
2 tested with luminol. He's asked this witness to compare what
3 was found in the trunk with a drawing that Charles Erickson
4 did. I think that we're clearly now going to be entitled on
5 redirect to ask about those.

6 THE COURT: Well, I think this is the middle of
7 defense counsel's --

8 MR. ROGERS: I agree.

9 THE COURT: It's the beginning of defense counsel's
10 cross-examination.

11 MR. ROGERS: Early beginning.

12 THE COURT: I was going to say, I think you are --

13 MR. KNIGHT: Premature.

14 THE COURT: -- premature in asking this. I think
15 it's premature at this time to discuss this issue.

16 MR. KNIGHT: Okay.

17 - - -

18 The following proceedings were held in open court:

19 Q. Going back to 2001, you testified I believe on
20 direct examination that you performed the luminol -- what do
21 you call it? Processing? Testing? Examination? What?

22 A. Testing.

23 Q. Testing?

24 A. Processing. Examination.

25 Q. Okay. All of the above. -- to sort of check the

1 work of the canine handled by Officer Todd Albers; is that
2 correct?

3 A. Yes.

4 Q. Alber, singular.

5 A. Alber.

6 Q. And so you knew at that time where that canine had
7 gone.

8 A. Yes.

9 Q. And you wanted to make sure that the trail the
10 canine followed appeared to be somehow related to the
11 offense.

12 A. Yes.

13 Q. And so that's why you did the luminol testing,
14 processing, examination a couple nights later; is that
15 correct?

16 A. Yes.

17 Q. Now, you said that you did that luminol examination
18 at night because it's easier to see the chemiluminescence at
19 night.

20 A. Yes.

21 Q. And it would also be easier to see the
22 chemiluminescence if there were no street lights or other
23 artificial lighting; correct?

24 A. Exactly. Yes.

25 Q. And did you have a structure or device that you

1 would use to shield the area that you were processing with
2 luminol from street light or ambient light while you did the
3 processing and the evaluation?

4 A. I did.

5 Q. Okay. And I assume that you didn't tent the whole
6 street.

7 A. No. It was difficult to do. The downtown ambient
8 light is such that it makes it impossible, even with street
9 lights off, to be able to see the chemiluminescence when
10 you're talking about a small reaction. Therefore, I took a
11 refrigerator box, cardboard box, lined it with black plastic,
12 cut out a hole with a hood so I could put it over my head. I
13 inserted the -- I use a mist bottle. And inserted the bottle
14 to where I could look down inside it, mist the -- an area the
15 size of a refrigerator box, until I could see the reaction.
16 At that point I took a piece of highway chalk and just made
17 an arrow pointer to or at the reactionary site. And then
18 we'd move the box down one more step and then one more step.

19 Q. Okay. And that's how you knew where to put the --
20 Mr. Knight called them cones, but they're photo markers,
21 whatever?

22 A. Photo markers.

23 Q. Kind of A-shaped items?

24 A. Yes.

25 Q. And so you went back, after you were done, what you

1 did in the box, and had the chalk marks, and by the chalk
2 marks you put the photo markers?

3 A. I moved down the street. Detective Lederle, who put
4 the photo markers in place and also did the photography in
5 that particular application, followed behind us.

6 Q. Okay. And let me first of all --

7 MR. ROGERS: Are you going to need the clothes any
8 more?

9 MR. KNIGHT: Probably not.

10 MR. ROGERS: Let's get them out of my way.

11 Q. Mr. Nichols, I'm going to call your attention to
12 what has been marked and admitted in evidence as Defendant's
13 Exhibit B, which I will tell you is a somewhat-out-of-date
14 aerial photograph of a portion of downtown Columbia. And
15 then I will also tell you I've put over the front of it a
16 sheet of acetate, which is marked Defendant's Exhibit B-3.
17 Okay?

18 A. Okay.

19 Q. Now, could you, with the Court's permission, come
20 down here and orient yourself with regard to this aerial
21 photograph?

22 A. (Complying.)

23 Q. Do you see where the Columbia Tribune is?

24 A. Yes.

25 Q. Okay. Do you see where the police station is?

1 It doesn't show it here.

2 A. No. It stops at the post office.

3 Q. Okay. But you now know where we're located;
4 correct?

5 A. Yes.

6 Q. And with regard to the area that you processed with
7 luminol, is that an accurate depiction of the streets that
8 you processed? And like I say, I'm telling you this is out
9 of date.

10 A. Well, there's a lot that's changed on here --

11 Q. Right.

12 A. -- I can see. But as far as Fourth Street still
13 being Fourth Street, Walnut still being Walnut, et cetera,
14 it's still accurate, yes.

15 Q. All right. And does it show the parking lot of the
16 Columbia Tribune building accurately?

17 A. Yes.

18 Q. Okay. Would you then, taking this -- did you tell
19 us that luminol, when it chemiluminesces, is -- it's a blue
20 color?

21 A. A light blue color.

22 Q. We have a dark blue kind of grease pencil. Would
23 you sketch on here the pattern of the luminol trails that you
24 were able to follow on November the 3rd, 2001. That you were
25 able to process with luminol and follow the trail like you

1 described on direct examination?

2 A. Well, I can certainly draw you the direction --

3 Q. Okay.

4 A. -- that we went here. And we ended at Broadway.

5 Q. Okay.

6 (Witness drawing on exhibit.)

7 A. Now we didn't -- I did not search the street.

8 Q. Okay.

9 A. On -- because of traffic. But what we did is: We
10 certainly would have picked up the track and continued on
11 south of Broadway until the track completely ran out.

12 Q. Okay. And let me make this part darker.

13 I believe you testified on direct examination that
14 you started just at the edge of the -- the south edge of the
15 driveway; is that correct?

16 A. Northeast corner of the building, which would be the
17 same location I believe you're describing.

18 Q. Okay. And when you say that you did not process the
19 street because of the traffic, that's not because you were
20 afraid of being run over in your refrigerator box; that's
21 because traffic would have removed any trace evidence.

22 A. Certainly with a refrigerator box, we were trying to
23 be resourceful. But the thing is: The traffic was coming up
24 and down street. That was a hazard. And we did not want to
25 subject any of our detectives to getting run over. So that's

1 why we did not process the center of the street.

2 Q. And just to make -- to memorialize whose testimony
3 this is during, I'm going to put your initials here. Jeffrey
4 Nichols; is that correct?

5 A. Jeff.

6 Q. Same initial.

7 A. J.

8 Q. J?

9 A. Yes.

10 Q. N?

11 A. I-C-H --

12 Q. I just put the N.

13 A. Okay.

14 Q. You're the only "JN" we got. And this is the
15 investigation you did on 11-3-01 and 11-4-01. Now, where did
16 you run out of luminol the first night?

17 A. I want to say that we ended at Walnut. And I was
18 then instructed to go to McDavid Hall, which you can't see on
19 this.

20 Q. Up here someplace?

21 A. It's up there. At Elm and Fifth. And search that
22 area up there. And then I went back to the Flat Branch
23 Brewery area, which would be this building I believe right
24 here, and searched in this area. And I ran --

25 MR. KNIGHT: I'm sorry. I'm sorry. That's Flat

1 Branch Brewery right here? Walnut --

2 THE WITNESS: Let's see. Wait a minute.

3 Q. These are -- I don't know if Flat Branch Brewery was
4 there when this thing was taken.

5 MR. KNIGHT: Wait a minute. Do you even have the
6 Flat Branch --

7 THE COURT: Excuse me, Mr. Knight.

8 MR. KNIGHT: Okay.

9 THE COURT: It's not your examination. If you have
10 an objection to make, I'll hear your objection.

11 MR. KNIGHT: Well, I'll object right now, because it
12 doesn't appear this is a fair and accurate representation of
13 the way this entire crime scene looked on November 1st
14 through 4th, 2001.

15 MR. ROGERS: We've already said that several times.

16 Q. Let me -- and I didn't ask anything about Flat
17 Branch Brewery, did I?

18 A. No.

19 Q. Okay. And I did tell you this was an out-of-date
20 picture; right?

21 A. Yes.

22 Q. Okay. Now, let me show you State's Exhibit --
23 whatever this is. 9. Okay? That's a more contemporaneous
24 picture, also in color. But it's at an angle. Does it show
25 where the Flat Branch Brewery is?

1 A. It does.

2 Q. Where's that?

3 A. This building right here.

4 Q. And that would be at --

5 A. It would be between Fourth Street and Fifth, to the
6 south of Cherry, to the north of Locust.

7 Q. Okay. So between Cherry and Locust and between
8 Fourth and Fifth would be over here someplace.

9 A. Yes.

10 Q. Okay. And do you see where it is -- is it on that
11 picture?

12 A. It looks like this building right in here.

13 Q. Okay. Would you just circle that and put a "FBB"
14 for Flat Branch Brewery? That that at least is the location
15 where it would have been.

16 A. (Complying.)

17 Q. Okay. So -- you can resume your seat if you want.

18 A. Okay.

19 Q. Now, we were -- you didn't tell us on direct
20 examination, but you are now telling us that you didn't just
21 process as far as Walnut Street and then run out of luminol;
22 you had processed as far as Walnut Street and were asked to
23 go process someplace else?

24 A. That's correct.

25 Q. And the first place you were asked to process was

1 McDavid Hall?

2 A. Yes. In the area of McDavid Hall.

3 Q. And that is in the area of Fifth and --

4 A. Elm.

5 Q. -- Elm. So that's -- you're right over here.

6 A. Yes.

7 Q. And that's a residential facility of the University
8 of Missouri.

9 A. Yes.

10 Q. And the reason that you were asked to process there
11 was because that is where --

12 MR. KNIGHT: Your Honor, I'd object on the basis of
13 hearsay. I'm pretty sure that's where he's going with this.

14 MR. ROGERS: It probably is, Your Honor.

15 MR. KNIGHT: May we approach?

16 MR. ROGERS: I think it's already been dealt with
17 before. And we will hopefully have Officer Alber here, if
18 they don't call him.

19 - - -

20 Counsel approached the bench and the following
21 proceedings were held:

22 MR. KNIGHT: I think where he's going with this: He
23 is asking why they went to this location. And that's because
24 Todd Alber's dog had tracked in this area. And the only way
25 that he would have this information is through hearsay. My

1 objection will be hearsay.

2 That's where you're going with that, isn't it? And
3 if you want to call Todd Alber to testify about it, that's
4 fine. But not through this witness.

5 MR. ROGERS: I do intend to call Todd Alber. He is
6 under subpoena and we will call him. And I hadn't intended
7 to ask this witness that until he started volunteering it,
8 and in response to other questions, but.

9 MR. KNIGHT: Then what's the purpose of you talking
10 about the break in the action that night? I think you were
11 pretty much getting into that, weren't you?

12 MR. ROGERS: I think he said on direct examination
13 that he broke and ran out of --

14 MR. KNIGHT: Right.

15 MR. ROGERS: Then I was asking him --

16 MR. KNIGHT: Yeah.

17 MR. ROGERS: -- questions about the map. He said,
18 "Then I was sent to such and such a place and I was sent to
19 such and such a place. And by the time I got back, I had run
20 out of luminol."

21 MR. KNIGHT: So the only reason --

22 MR. ROGERS: I was exploring it, sure.

23 MR. KNIGHT: The only reason --

24 MR. ROGERS: Actually, quite frankly, it's to
25 explain the officer's conduct, and not for the truth of the

1 matters asserted by the dog.

2 THE COURT: It is my recollection that on direct
3 examination he said the whole purpose of his using the
4 luminol was to test whether or not the dog track was accurate
5 or not.

6 MR. KNIGHT: No, he didn't say "dog track."

7 THE COURT: I have to feel that --

8 MR. KNIGHT: Did he say track -- he said he was
9 using this to track the suspect. He never said anything
10 about dog track.

11 THE COURT: Oh, he certainly talked about it.

12 MR. ROGERS: He said the canine officer --

13 THE COURT: He certainly talked about the dog. And
14 he was doing it to verify whatever that is. And I have to
15 feel that he didn't go along with the dog. I don't know. He
16 didn't testify that he did. He is not the handler of the
17 dog. And I assume that he was told where the dog went. And
18 that is why he put the luminol down the street and where he
19 was going. I am going to overrule your objection. I think
20 it was opened up on direct examination.

21 - - -

22 The following proceedings were held in open court:

23 Q. Let me make sure we're on the same page. Did you
24 tell us on direct examination that your purpose in doing the
25 luminol processing, examination, testing, was to verify the

1 route taken by the canine handled by Officer Alber?

2 A. Yes. That was the initial reason for doing that.

3 And then it became obviously a tracking venture at that

4 point.

5 Q. All right. And while you were in the midst of the
6 tracking venture, you were instructed to go to Fifth and Elm.

7 A. Yes.

8 Q. And that was the southeast terminus of the canine
9 tracking that you were there to verify. Correct?

10 A. I believe the dog wound up down in that area.

11 Q. Okay.

12 A. So, yes.

13 Q. All right. And so you went down there to see if you
14 could find evidence of blood at that end. Correct?

15 A. Yes.

16 Q. And that's what you used your luminol for in that
17 area.

18 A. Yes.

19 Q. And you used it on the sidewalk and steps outside of
20 this campus residential facility.

21 A. Yes. And inside.

22 Q. And inside.

23 A. Yes.

24 Q. Okay. And calling your attention to Exhibit 9,
25 State's Exhibit 9, can you see McDavid Hall there?

1 A. I believe that it is -- you can see the rooftop in
2 the front of the building right here, which would be the
3 northwest corner, for the most part, of the university
4 campus, in terms of residential area.

5 Q. Okay. And it is on the photograph Exhibit 9, right
6 above the word "store" --

7 A. Yes.

8 Q. -- right? Okay. And when you observed that
9 building and its environs with the aid of luminol, did you
10 observe any chemiluminescence?

11 A. No.

12 Q. Okay. So that was a negative conclusion.

13 A. Yes.

14 Q. All right. And then from there, where did you go?

15 A. I believe I went up to the Flat Branch area. Flat
16 Branch Brewery.

17 Q. Area. Okay.

18 A. The building I marked on the --

19 Q. And that's the one --

20 A. -- map.

21 Q. -- circled in blue, with "FBB," here on Exhibit B-3.

22 Correct?

23 A. Yes.

24 Q. And were you in the front or the rear or both parts
25 of that building?

1 A. Southwest of the building.

2 Q. Okay. Southwest corner. So that would be the
3 corner closest to Fourth Street and the corner closest to
4 Locust Street.

5 A. That would be -- yeah. Yes. Locust Street being to
6 the south --

7 Q. And --

8 A. -- Fifth Street being to the east, Fourth Street
9 being to the west. I was almost in between Fourth and Fifth,
10 directly north of Locust.

11 Q. Okay. And south of Cherry.

12 A. South of Cherry.

13 Q. Okay. And that, once again, related to what you had
14 been told regarding the path taken by Officer Alber's canine.

15 A. Yes.

16 Q. Okay. And you processed that area with the little
17 bit of luminol you had left?

18 A. Yes.

19 Q. And did you observe any chemiluminescence in that
20 area?

21 A. I did observe a very, very minute reaction at one
22 location that I did not take very seriously. It did not
23 look like a -- it looked more like a false positive reaction
24 of some sort. And I'm talking about a pinhead size reaction.
25 So to be able to confirm that it was any type of blood

1 reaction, it looked -- I ruled it as a false positive.

2 Q. Okay. And that could be accounted for by being a
3 tiny fleck of rust or something?

4 A. It could have been.

5 Q. Or -- it's hard to think that a pinhead size drop of
6 bleach would show up outside someplace, but maybe that --

7 A. Well, sometimes rocks have iron deposits in them.
8 So it's not uncommon, if you get a rock that has some iron
9 that's exposed, to get a reaction.

10 Q. And was this in some kind of gravelly area?

11 A. Yes. It was at the edge of a parking area.

12 Q. Okay. And you could find nothing around that that
13 would be part of a pattern or trail or, I guess pattern's the
14 best word, of chemiluminescence.

15 A. No.

16 Q. All right. And did that end your work with luminol
17 on the night of November 3rd?

18 A. Yes.

19 Q. And then you came back November 4th and resumed
20 where you had been interrupted at --

21 A. Walnut.

22 Q. -- Fourth and Walnut. Correct?

23 A. Yes.

24 Q. And you went down Fourth Street as far as Broadway.

25 A. Yes.

1 Q. And by the time you got to Broadway, was the size of
2 the luminescent particle or luminescent things you were
3 seeing diminishing?

4 A. Yes. To the point that I could no longer get any
5 reaction at all.

6 Q. By the time you got to Broadway.

7 A. Yes.

8 Q. And so there would have been no point to attempt to
9 pick up anything on the other side of Broadway. As far as
10 you were --

11 A. Logically, there would not be, although I did
12 attempt to do that. And I was not successful.

13 Q. Okay. So you even went across Broadway and tried to
14 find something and you couldn't.

15 A. That's correct.

16 Q. Okay. Now, when was it that you went to Flat Branch
17 Creek? Or is this just named Flat Branch?

18 A. Well, it's Flat Branch Creek.

19 Q. Okay.

20 A. I don't recall if that was November 3rd or 4th.
21 Sometime in there, I believe.

22 Q. During the daytime.

23 A. Yes.

24 Q. And that's when you observed and recovered this --
25 you called it a form stake?

1 A. It's a form stake that's commonly used by
2 contractors to form up sidewalks.

3 Q. Sidewalks or curbs.

4 A. Curbs, yes.

5 Q. It's like a long metal spike kind of thing with a
6 hook on the end to hold the form; right?

7 A. Well, no, not exactly. Yes and no. It is a stake
8 that's about this long, but there are holes in the top of it.
9 So you can actually put a nail through that and drive into a
10 form board.

11 Q. Oh, to a wooden form.

12 A. Yes.

13 Q. Okay. And it had a growth of algae on it.

14 A. Yes.

15 Q. Which means either it had been removed with algae on
16 it and then put back in, or that it had been there
17 continuously for some time.

18 A. Yes.

19 Q. Now, when you began your luminol processing by the
20 Tribune building, did you also process the area across the
21 driveway north of the corner of the building?

22 A. North of the corner of the Tribune building?

23 Q. Yeah.

24 A. No.

25 Q. The area -- the driveway itself where it crosses the

1 sidewalk.

2 A. No.

3 Q. And why not?

4 A. Well, my instructions were that witnesses had
5 seen -- I'm sorry, had observed or they had seen two
6 individuals running up to that part of the building, and it
7 appeared that they had turned and gone down Fourth Street.
8 So we went to the point that where we last -- any last known
9 visual contact had been made, and we started at that point
10 and went on.

11 Q. And nobody had told you that someone might have
12 started to go north and turned and went south.

13 A. I didn't have information suggesting that, no.

14 Q. Okay. Now, the first items that you observed there
15 actually revealed a footprint, although not a whole lot of
16 detail; is that correct?

17 A. Yeah. It was in the shape of a shoe.

18 Q. Okay. And did you make any attempt to photograph
19 that footprint?

20 A. No, I did not.

21 Q. And you could have photographed it, photographed the
22 luminescence, the chemiluminescence, inside the box, couldn't
23 you?

24 A. That's a good question, because I've never tried to
25 do that before. And the -- the refrigerator box, I think I'd

1 probably need to get an awful small tripod with someone that
2 could fit inside the refrigerator box. And so, being that it
3 was a tracking mission, I was satisfied with what I saw. And
4 so I decided to go ahead and continue our trek on south,
5 along Fourth Street, with the information we were observing.

6 Q. And did you also see more areas of chemiluminescence
7 which looked like they could be shoe prints?

8 A. Well, if -- as the track continued south, certainly
9 the reaction took on a different shape. And it's much the
10 same as you walking through a puddle of water. And the
11 further you go down the sidewalk, certainly your wet
12 footprint takes on a different shape, as different parts of
13 the shoe tends to dry and -- or all the blood's transferred
14 off and cleansed. So for some distance you could tell that
15 it was a shoe print or partial shoe print; heel. But no
16 specific detail. And the reason being that it -- I think
17 because it had showered the night before. Lightly. We had
18 received a light shower. And it probably distorted the
19 blood.

20 Q. And as you testified earlier, I believe that you saw
21 two parallel tracks of chemiluminescence? Is that a fair
22 statement?

23 A. Yes.

24 Q. And did you observe at any point what could have
25 been footprints on both of those tracks?

1 A. Well, sitting here now thinking back four years ago,
2 I don't recall specifically what I saw in terms of the exact
3 tread design or shoe shape. What I do recall seeing was two
4 separate paths of travel, if you will; the reactions being
5 far enough apart, and at this point in time it appeared as if
6 they were running. And for someone to physically make a
7 pattern like that, if it was one person, I don't see how they
8 would do it. But there were two distinct paths. And it
9 appeared as if both individuals were running at that point.

10 Q. And the point being that if you had photographed at
11 least the initial areas that you had seen, we could look at
12 them or somebody else could look at them and perhaps make a
13 determination in the calm of the office or laboratory as to
14 tread patterns or whether there's two different kinds of
15 shoes or things like that; correct? Is that --

16 A. No.

17 Q. -- a fair statement?

18 A. No, it's not, because there was absolutely no
19 visible tread pattern at all in the reaction. I get very
20 excited when I see tread pattern in a luminol reaction,
21 because there are certain substrates, carpet being one, that
22 retains detail very well. But out on the sidewalk, and
23 after, like I said, it had showered the night before,
24 slightly, we didn't get a downpour, but it had rained enough
25 that I figured the only reason that I could not see a tread

1 pattern was as a result of the rain distorting the blood.
2 But it still had the shape -- the first reactions that I
3 began to get were still in the shape of a shoe. But as far
4 as a tread pattern, there was none.

5 Q. But now what we're relying on is your admittedly
6 less-than-perfect memory of what you saw; right?

7 A. Yes.

8 Q. Instead of photographs of the phenomenon which you
9 actually observed.

10 A. Yes. You'll have to take my word for that.

11 Q. Now, let's talk about the blood spatter. When you
12 got there, about what time was it?

13 A. I was notified around 2:30 a.m. I arrived I would
14 say somewhere around the ballpark of 3.

15 Q. And at that time the scene had already been taped
16 off, had it not?

17 A. Yes, it had.

18 Q. And there were uniformed officers there.

19 A. Yes.

20 Q. And their function was to protect the scene.

21 A. Yes, sir.

22 Q. And that means: Don't let other people come and
23 mess up the clues. Right?

24 A. Yes.

25 Q. And did you see Officer McGeorge there?

1 A. I know that she was there, because I believe she
2 filed a police report. May have been the first officer to
3 arrive.

4 Q. Okay.

5 A. But I don't specifically -- I mean, I can't sit here
6 and tell you exactly, you know, who was there. I can tell
7 you, as I testified earlier, the individuals that I recall
8 being there.

9 Q. Okay. And I don't want to spend all day having you
10 say the same thing over and over again. Based on your
11 training and experience as a police officer, the function of
12 the initial officer to arrive at the crime scene, if there is
13 no hope of aiding the victim, is to -- and there's nobody to
14 promptly pursue, is to protect the crime scene; right?

15 A. That's usually the function of the first officer,
16 yes.

17 Q. Okay. And the way -- one of the ways that's done is
18 by putting up the yellow crime scene tape; right?

19 A. Yes.

20 Q. And then people who don't have any business at the
21 crime scene don't get to come walk through it; right?

22 A. It doesn't always work that way.

23 Q. That's what it's for.

24 A. That's the purpose.

25 Q. Okay.

1 A. But administrators like to see what they're up
2 against as well.

3 Q. And I'm not claiming administrators don't have any
4 purpose to be there. I won't report your conversation to
5 Sergeant Monticelli.

6 A. That's fine.

7 Q. The people that are inside the crime scene, after
8 the emergency medical types leave, are trained police
9 officers.

10 A. Yes.

11 Q. And they are people who have been trained not to
12 disturb the crime scene unnecessarily. Correct?

13 A. Yes.

14 Q. And they're people who are trained to watch what
15 they're doing.

16 A. In most cases, yes.

17 Q. Okay. I mean, they may not be doing it, but they're
18 trained to. Right?

19 A. Yes.

20 Q. Okay. The photographs that you took of footprints,
21 shoe prints, sole patterns, on Exhibits 39E, 39F, and 39G; is
22 that correct?

23 A. Yes.

24 Q. They were away from where the body was, weren't
25 they?

1 A. Away -- I'm having I guess a difficult time with
2 "away," because "away" could mean --

3 Q. I'll be more specific.

4 A. -- two city blocks away. But they were within close
5 proximity, yet they were -- yes. Just to the east of the
6 body.

7 Q. Okay. And calling your attention to Exhibit 39A up
8 here in this corner, this is the chalk outline that shows the
9 leg, the extremity nearest the rear driver's side wheel; is
10 that correct? Can you see that from there?

11 A. That would be the left arm.

12 Q. Left arm. Okay.

13 Okay. That's the left arm. And the legs go
14 underneath the car here? Is that right?

15 A. Yes.

16 Q. And placard number 1 shows what appears to be a shoe
17 pattern; is that correct?

18 A. Yes.

19 Q. And is that up here?

20 A. Yes. I believe -- I can't -- can I approach that?

21 Q. Yes, please. Because I can't see this. Well --
22 there's one.

23 A. This is one.

24 Q. Okay. So that's --

25 A. That's another one.

1 Q. That's a different one.

2 A. That's not a marker I placed there.

3 Q. Okay. So you're saying that the markers on the
4 actual parking blocks or bumpers or whatever they are, have
5 their own numbers. That's parking space number 1, here's
6 parking space number 2.

7 A. Correct.

8 Q. And there is your photo marker number 1, which
9 corresponds to State's Exhibit 39C? Correct?

10 A. Yes.

11 Q. And there's another kind of photo marker, which has
12 a built-in ruler.

13 A. Yes.

14 Q. And that's what you've taken a photograph, looking
15 straight down at that particular shoe impression.

16 A. Yes.

17 Q. And that's up here, so you know that if there's
18 medical personnel working down around here by the head,
19 they're not going to be likely to have made that impression.

20 A. If that's where they're at, I would say that's
21 reasonable.

22 Q. Okay. Now, while I've got you here, marker 2 is
23 another partial shoe impression?

24 A. Yes.

25 Q. And that is right here --

1 A. Yes.

2 Q. -- towards -- towards number 1, from the pool of
3 blood at the base of the driver's side rear tire?

4 A. Yes.

5 Q. And marker number 3 is on the stripe between the
6 parking meters, just to the southeast of marker 2?

7 A. Now you said "parking meters."

8 Q. Parking spaces.

9 A. You're talking parking bumpers or parking spaces?

10 Q. Parking space -- the stripe between the parking
11 space.

12 A. It's on the parking stripe. The space stripe.

13 Q. Okay. And that's shown here.

14 A. Yes.

15 Q. You can see the stripe and you can see where there's
16 a little jog there in the stripe. And that you can see in
17 the picture up there as well.

18 A. Yes.

19 Q. Okay. And number 4 is to the east of number 3 on
20 the same stripe?

21 A. Yes, sir, it would be.

22 Q. And that would be near the front of the vehicle.

23 A. Yes.

24 Q. And that's another shoe impression.

25 A. Yes.

1 Q. And number 5 is near the same stripe or on the same
2 stripe, closer to the large pool of blood.

3 A. Yes.

4 Q. Okay. Thank you. And calling your attention to
5 State's Exhibit 14, just to put things in perspective,
6 State's Exhibit 14 shows this parking space stripe that
7 the -- some of the footprints are on or near; is that
8 correct?

9 A. Yes, sir.

10 Q. And it also shows some debris of medical
11 resuscitation items?

12 A. Yes.

13 Q. And they are removed in area from where the
14 footprints were, aren't they?

15 A. Yes.

16 Q. Now, you stated that you bagged the hands -- bagged
17 Mr. Heitholt's hands; is that correct?

18 A. Yes.

19 Q. And you used the bags that you had brought with you
20 for that purpose.

21 A. Yes.

22 Q. And those bags are maintained in the police supply
23 room, whatever you call it?

24 A. Yes.

25 Q. And you buy them from a company which produces bags

1 for the purpose of collecting evidence.

2 A. Yes. I'm not sure if this batch had been
3 purchased -- sometimes, depending on the low bid, they'll get
4 those from another manufacturer, but same type.

5 Q. The point being: That the reason that you bag the
6 hands is to preserve trace evidence; right?

7 A. Yes.

8 Q. And it wouldn't make a whole lot of sense to tape
9 dirty, old, used bags full of hair to bag hands with, would
10 it?

11 A. Well, no, it would not.

12 Q. And you don't do that. You're a professional.
13 Right?

14 A. Yes.

15 Q. Okay. And so you did what you do in every case, to
16 attempt to preserve the evidence; right?

17 A. Yes.

18 Q. And the people who were there at the scene before
19 you bagged the hands, I'm not talking about the medical
20 personnel who were there before you got there and gone by the
21 time you got there, but the other people who were there at
22 the scene, who were inside the security perimeter, were
23 people who were helping process the scene; right?

24 A. Yes.

25 Q. And they were trying to collect evidence; right?

1 A. Yes.

2 Q. They weren't trying to deposit evidence.

3 A. Correct.

4 Q. And when you bagged the hands, you were not trying
5 to deposit any of your own hair there, were you?

6 A. No.

7 Q. Okay. And when -- the other officer who helped
8 process the scene? I forgot his name.

9 A. Detective Harmon.

10 Q. Hermon?

11 A. Harmon. H-a-r-m-o-n.

12 Q. When Detective Harmon was doing his part of
13 processing the scene, he wasn't depositing hairs on
14 Mr. Heitholt's hand, was he?

15 MR. KNIGHT: Your Honor, that calls -- that calls
16 for speculation, Your Honor.

17 THE COURT: Sustained.

18 Q. Was he acting in accordance with proper evidentiary
19 preservation procedures?

20 A. As far as I knew.

21 Q. Okay. And you've never known him not to on purpose,
22 have you?

23 A. No. Not on purpose.

24 Q. Okay. And you were not on purpose disregarding
25 procedures either.

1 A. No.

2 Q. And the whole idea of the procedure is to make sure
3 that the crime scene is not tainted; correct?

4 A. That's correct.

5 Q. And it would taint a crime scene to have trace
6 evidence which was not there at the time of the offense show
7 up there later on, wouldn't it?

8 A. It happens. And it does make things confusing.
9 Evidence is deposited. It's not on purpose. But it's not
10 uncommon to get an officer leaving a fingerprint behind at a
11 scene, and it turns out when we get the evidence back we've
12 got an officer's fingerprint.

13 Q. Okay. We'll talk about that in a while, but let me
14 ask you this. Does the police department maintain DNA
15 profiles of its officers?

16 A. I want to say -- well, we don't. The Missouri State
17 Highway Patrol lab I believe does. And I know that all the
18 officers' fingerprints are on file.

19 Q. All right. Now you started to talk about blood
20 stain. I'm looking for their diagram of the scene. The one
21 that's taken from the drawing that you made. Lo and behold.
22 Calling your attention to State's Exhibit 12 --

23 MR. ROGERS: Can you see that back there too?

24 JUROR: (Nodding head up and down.)

25 Q. Is that a blow-up of a drawing you made?

1 A. Yes, sir.

2 Q. Okay. So that does demonstrate your artistic
3 talent.

4 A. To some degree, yes.

5 Q. Okay. I'm not claiming it's the kind of work that
6 you would attempt to sell on some artistic merit or to have
7 it published, but it is -- certainly depicts the relationship
8 of items to each other and shows the stone retaining wall,
9 shows shrubbery at the top, things like that; right?

10 A. Yes.

11 Q. Okay. Now, you observed two main areas of pooled
12 blood; is that correct?

13 A. Yes.

14 Q. And they would be, on State's Exhibit 14B, they
15 would be: One by the rear wheel, on the driver's side?

16 A. Yes.

17 Q. And then another by where Mr. Heitholt's head came
18 to rest.

19 A. Yes.

20 Q. So that would be one here and one over here sort of.
21 Is that a fair statement?

22 A. Fairly close.

23 Q. Okay. Now, you also indicated that you observed
24 blood spatter. By the way, is spatter a particular kind of
25 blood stain?

1 A. Blood spatter is blood set into motion, that creates
2 a stain pattern.

3 Q. So the blood in motion impacts a surface, and then
4 there is a stain which reflects the pattern from which the
5 direction and perhaps velocity of the motion may be inferred?

6 A. Yes.

7 Q. Okay. And you -- let's first of all talk about
8 State's Exhibit 34A. There's spatter on the inside of the
9 window?

10 A. Yes.

11 Q. And 34B is a blow-up of that spatter?

12 A. Yes.

13 Q. And there's somebody's holding up a white surface,
14 piece of paper, cardboard or something outside?

15 A. It's a plain print backing card. It's white. On
16 the back side --

17 Q. Okay.

18 A. -- of the window.

19 Q. And that's to provide contrast for the red spots.

20 A. Yes.

21 Q. And this is towards the bottom of the driver's side,
22 left door, front door window.

23 A. Yes.

24 Q. Okay. And how would you characterize that
25 particular spatter?

1 A. Medium velocity.

2 Q. Medium velocity? And how would you characterize it
3 in terms of the direction with reference to the door? Or the
4 window. Surface.

5 A. Can I approach?

6 Q. Yes, please.

7 A. There, on this particular stain right here, and you
8 can see several stains on there as well, on the window as
9 well, but on one stain, if you -- and there again, it's
10 fairly difficult. There's not a lot of information here from
11 these -- these stains aren't providing a lot of information
12 in terms of directionality.

13 There's one stain that, if you look at, in and of
14 itself, and I typically do not do that, but if -- to try to
15 answer your question, this, what looks like a partial tail
16 starting come off of this stain right here. And that tail is
17 going in that direction.

18 Q. It's going from rear to front?

19 A. So it would be going from -- if you're looking at
20 the inside of the door, and you're -- and the back part of
21 the door would be on the left and the front part of the door
22 would be on the right, it appears as if it is travelling from
23 left to right, and I'm not sure if it's directly horizontal
24 or maybe at a little bit of an upward angle.

25 Q. Okay. That answers -- and that is not inconsistent

1 with what you see on the other stains. They're just not as,
2 A, not as big, and B, don't display any of those
3 characteristics?

4 A. Yeah. It is certainly more difficult to make any
5 kind of --

6 Q. Okay.

7 A. -- opinion, or draw an opinion from those other
8 stains.

9 Q. Now, with regard to the other stains on the inside
10 of the door, those were all lower than the ones in the
11 window; is that correct?

12 A. Yes.

13 Q. Okay. So there's nothing about the stains on the
14 window which would indicate that the source of those stains
15 was three to four feet above the window when the blood began
16 to travel.

17 A. Now you're asking me to make an opinion based on
18 this limited information?

19 Q. I'm just saying: There's nothing there to conclude
20 that the source of the stains was two, three feet higher than
21 the window at the time the blood left the source and headed
22 towards the window.

23 A. I will say that based on such a very small amount of
24 blood information, it's difficult to make any kind of
25 determination.

1 Q. Right.

2 A. Now if you want me to look at just one stain, or two
3 stains, there are three, which is -- it's impossible to say.
4 And the reason I say that is because we know the door was
5 open when blood was flying. Blood doesn't get deposited on
6 the inside of the door if the door's closed and the assault's
7 occurring outside the car. So -- that's just reasonable.

8 Q. Uh-huh.

9 A. So we've got blood stains here on the inside of the
10 car. Now, when blood's set in motion, if I strike you here,
11 I'm setting blood into motion that may, depending on the
12 impact, strike that wall over there.

13 Q. Right.

14 A. So it's tough to say, and I can't say, exactly where
15 the victim was when he was struck, based on this limited
16 information.

17 Q. And based on any of the blood stains on the inside
18 of the door.

19 A. No, that's not quite true. Because the stains at
20 the bottom of the door are interesting. And the reason I say
21 that is because the stains are circular. Can you see this?
22 Right here? We have circular stains here. There's one right
23 there. Circular. It's -- this one's probably deformed just
24 a little bit because wet blood came in contact with an
25 irregular surface. So -- but these stains -- and there's a

1 number of stains here. This is -- this is tough right here.
2 But this -- this information back here, back by the back part
3 of the door -- so we've got one, two, three, four, five, six,
4 seven, eight, nine. That one may be -- this one here. We
5 have a number of stains back here by the back door that could
6 easily suggest -- there, because that blood's dropping
7 straight down -- that the victim was in this area, bleeding,
8 and blood was coming off of their -- of his person and was
9 falling straight down. Now to tell you exactly where his
10 head was in height, I don't know.

11 Q. Okay. And that was the point. Thank you. You've
12 been instructional and saved some time too. And as a matter
13 of fact, he could have been falling down or he could have
14 been bending down when he was first hit, and then that blood
15 would have dropped straight down, although there could have
16 been other spatter going out towards the window. There's no
17 way to really tell from this limited information; is that
18 correct?

19 A. Well, I know he was next to the car here. In an
20 upright position. And when I say "an upright position," that
21 may be hard to define. Because upright could mean standing
22 upright; it could mean just slightly bent over. Now, he was
23 next to the vehicle. And keep in mind, we talked about
24 this -- I think I explained this to you in deposition. That,
25 when you first struck, that's the blood-causing event. What

1 position you're in the first time I strike you is impossible
2 to be able to tell, based on the blood information.

3 Q. All right.

4 A. Because --

5 Q. Let me ask the questions here.

6 A. I just wanted to elaborate.

7 Q. I understand. And I was going to get there. But
8 basically -- and you can sit back down if you want to --

9 A. Sure.

10 Q. -- or you can stay here.

11 A. Thank you.

12 THE COURT: Mr. Rogers, it's over two hours since we
13 returned from lunch. I don't know if the jury needs to take
14 a short break now, but it seems like it might be a reasonable
15 time to do that.

16 MR. ROGERS: It's a good time. Yes, Your Honor.

17 THE COURT: If it's at a time when you've concluded
18 your line of questions or can break in your questioning. Is
19 that agreeable?

20 MR. ROGERS: That's fine.

21 THE COURT: All right.

22 Ladies and gentlemen, the Court again reminds you of
23 what you were told at the first recess of the Court. Until
24 you retire to consider your verdict, you must not discuss
25 this case among yourselves or with others, or permit anyone

1 to discuss it in your hearing. You should not form or
2 express any opinion about the case until it is finally given
3 to you to decide. Do not read, view, or listen to any
4 newspaper, radio, or television report of the trial.

5 If our marshal will let us know when the jury is
6 ready to come back, 10 or 15 minutes, we'll be back.

7 We'll be in recess.

8 (Recess taken.)

9 - - -

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

12 THE COURT: State ready to proceed, Mr. Knight?

13 MR. KNIGHT: Yes, Your Honor.

14 THE COURT: And the defendant?

15 MR. ROGERS: Yes, Your Honor.

16 THE COURT: All right.

17 You may return the jury to the courtroom.

18 - - -

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

21 THE COURT: You may proceed.

22 - - -

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JEFF NICHOLS,

resumed the stand and testified further:

RESUMED CROSS-EXAMINATION

BY MR. ROGERS:

Q. I'm going to switch pictures, Mr. Nichols. You told us a little bit about a belt buckle, which I believe is contained in State's Exhibit 47; is that correct?

A. Yes.

Q. And you recall observing that buckle at the scene, and in fact, you observed it there with some blood spatter on that buckle when you saw it at the scene.

A. Yes.

Q. I'm going to call your attention to State's Exhibit 44. And in particular, 44C. And coincidentally or otherwise, 44C also has a photo marker C; right?

A. Yes.

Q. And does that show the buckle?

A. Yes.

Q. And can you see that well enough to tell us whether or not that shows spatter?

A. Not from here.

Q. All right. Bring Mohammed to the mountain. Okay. Let me give you a laser pointer, in case you need it.

A. Yes, there certainly appears to be some blood on the brass portion of the buckle. Right here, some spatter.

1 Right there. Maybe a little on the edge.

2 Q. Okay. And does that spatter seem to be
3 directionally related to this spatter here?

4 A. Well, it's sort of difficult right here to tell a
5 lot of -- there's not a lot of spatter that's giving you
6 directional information, but there does appear to be some
7 elongated stains.

8 Q. Okay.

9 A. And the only thing I can tell is that one small
10 stain on the outer edge of the buckle does appear to have a
11 small tail, which would indicate that blood was travelling in
12 that direction.

13 Q. And do we have a different picture that could show
14 us where that was in relation to the rest of these events?
15 Let me see. I'm sure we do. The question is: Can I find
16 it? And the answer is yes.

17 Calling your attention to Exhibit 59A, does that
18 show photo marker C?

19 A. It does.

20 Q. And does that show the buckle right there by photo
21 marker C?

22 A. Yes.

23 Q. Okay. And that shows that that is near where
24 Mr. Heitholt's head is resting.

25 A. Yes.

1 Q. Can you conclude from that, with any sort of
2 professional certainty, whether or not that spatter may have
3 been deposited there when Mr. Heitholt was turned over?

4 A. Well, I can't tell you if that event -- at what
5 point in time that event occurred. And the reason I say that
6 is because there's -- there is certainly some pooling right
7 in this area, and there's -- there's blood that is radiating
8 outward from that area. And I can't say, I mean, if there
9 were multiple events occurring at that location or if this
10 was a single event that caused that blood to disperse out in
11 a random pattern.

12 Q. Okay. So you can't say whether or not that blood
13 got on the buckle as a result of Mr. Heitholt being hit while
14 his head was close to where he ended up or whether it got
15 there as a result of him being rolled over by coworkers after
16 the assault was over.

17 A. That's correct.

18 Q. Okay. And I believe before the recess you were
19 telling us that the initial blow doesn't cause the blood
20 spatter. And that would be because the spatter is not, with
21 the exception of a severed artery or something, blood leaving
22 the body. Spatter is blood which leaves the body and soaks
23 into the hair or clothing or pools on the skin or something
24 and is then impacted again. Is that a fair statement?

25 A. Well, certainly the first impact is what is referred

1 to as a blood-causing event --

2 Q. Right.

3 A. -- which would then lead up to, if multiple events
4 occurred of striking the victim, then blood being dispersed,
5 creating the spatter patterns.

6 Q. Of course, we're now talking about medium-velocity
7 spatter. Obviously high-velocity spatter caused by gunshot
8 wounds, it may be more than one event, from a blood spatter
9 point of view, but it's one bullet -- gunshot perhaps.
10 Right?

11 A. Well, high velocity is characteristic of gunshot.
12 And there again, like I testified earlier, you get a misting
13 pattern.

14 Q. Right.

15 A. And so based on the totality of the stains here,
16 they are all certainly consistent with this type of assault.

17 Q. Okay. Now, you also processed Mr. Heitholt's
18 vehicle for fingerprints.

19 A. Yes.

20 Q. And you recovered all those cards of latent prints;
21 correct?

22 A. Yes, sir.

23 Q. Now, when we say "a latent print," that doesn't
24 refer to whether or not you know whose print it is, does it?

25 A. A latent print has more to do with actually not

1 being able to see the print. Visually see the print. So it
2 doesn't have anything to do with the identification of that
3 print in and of itself.

4 Q. So if I touch this surface, I may have left
5 fingerprints there; right?

6 A. You may have.

7 Q. You can't see whether or not I did; right?

8 A. That's correct.

9 Q. If I did, then they would be latent prints.

10 A. Yes.

11 Q. And then if you develop the latent prints, by
12 putting powder on them, or by using some chemical method, or
13 however that's done, then you can see that there's a print
14 there. Correct?

15 A. Yes.

16 Q. And then you lift the print.

17 A. Yes, sir.

18 Q. With the tape or, if it's done chemically, you
19 photograph it or whatever.

20 A. Yes, sir.

21 Q. And then you use it to compare with known prints.

22 A. Yes.

23 Q. And known prints are the inked fingerprints which
24 are used by law enforcement and other agencies for
25 identification.

1 A. Yes.

2 Q. And that's -- when you talk about all the police
3 officers in Columbia having their prints on file, that meant
4 known inked prints.

5 A. Yes.

6 Q. And you obtained known ink prints of Mr. Heitholt at
7 the autopsy.

8 A. Yes.

9 Q. Okay. Now when you were at the autopsy and you
10 removed the bags from Mr. Heitholt's hands, you did that in a
11 way that would preserve anything which was inside the bag;
12 right?

13 A. Well --

14 Q. That was the purpose.

15 A. Yes. The bags were removed and then immediately
16 placed into a separate, individual bag.

17 Q. And when the bags were removed, they were not torn
18 off the bottom; they were cut open and torn open along the
19 top.

20 A. Yes.

21 Q. So that gravity would draw things down onto the bag.

22 A. Yes.

23 Q. Right? And then you lifted the limb and slid the
24 bag out so that it wouldn't tip over and lose anything;
25 right?

1 A. I don't recall exactly how we did that. We cut it
2 off, put it in the bag. The hand was -- typically the hands
3 are down, and so the bag is slid off and then put into
4 another bag.

5 Q. After you cut it.

6 A. After you cut it.

7 Q. But you're not going to try and deposit anything
8 there on the sheet or the gurney. You're trying to keep
9 things in the bag; right?

10 A. Doing the best we can.

11 Q. Okay. And that's the way you've been trained to do
12 it. And the whole idea is to preserve evidence that might be
13 on the hands; right?

14 A. Yes.

15 Q. And you also do it in a manner so that if you were
16 to somehow drop a hair of your own head onto the bag,
17 wouldn't you see that happening? Because you're watching
18 what you're doing. Right?

19 A. We're trying not to drop a hair off of our own head,
20 yes.

21 Q. Okay. Because your primary job there at the police
22 department is that of a crime scenes investigator who's
23 responsible for identifying, recovering, and preserving
24 evidence; right?

25 A. Yes, sir.

1 Q. And so you don't want your head hairs in the crime
2 scene evidence; right?

3 A. That's correct.

4 Q. Okay. Now, when you bagged Mr. Heitholt's hands and
5 put the tape on them, did you make a notation on the evidence
6 tape which secured the bags to indicate that you're the one
7 who did the bagging?

8 A. Yes.

9 Q. And did you, in fact, note the time of that?

10 A. I believe I did.

11 Q. Would you take a look and see?

12 A. (Witness complying.) It's dated November 1st.
13 Looks like 5:18 a.m.

14 Q. And then what exhibit number is that? It's got a
15 red sticker with an exhibit number. It's on the back here.

16 A. Well, they've kind of gotten out of order here. 84.

17 Q. State's Exhibit 84. And did you make that notation?
18 Does that look like what you wrote?

19 A. That appears to be my writing, yes.

20 Q. Okay. And that was 5:18 a.m.

21 A. Yes.

22 Q. And that was done as sort of the last step before
23 the body was put into the white bag.

24 A. Yes.

25 Q. So before 5:00 in the morning, the body would not

1 have been in the white bag. Correct?

2 A. That's correct.

3 Q. Okay. Now, from where you were working the crime
4 scene and where the body was at the rear of the car, is it
5 possible to have an unobstructed view down this alley, all
6 the way to Providence Road?

7 A. Well, I think that would depend on the time, because
8 as I remember, when I got there, there were police cars that
9 were in those alleyways. And I want to say that they were
10 put there -- or there was -- they had blocked entry for
11 protection of the scene. So to Providence Road, I'm not sure
12 if you could have made a clear view shot up through there.

13 Q. And in fact, this Dumpster enclosure was quite high,
14 wasn't it? Seven or eight feet?

15 A. It was -- it was tall, yes. And I would say that --
16 that six to seven feet, that range is probably accurate.

17 Q. And it would also tend to obstruct the view
18 between -- I mean, you could see straight up the alley from
19 Providence, but you couldn't see over here where the car was,
20 could you?

21 A. Well, there again, I would say if you -- you know,
22 if the patrol cars were still in the alley, it depends on
23 what time. And if there were police cars there, certainly
24 you wouldn't be able to see up to that location. If the
25 police cars were not there, it would be -- you may be able

1 to, but you'd have to look at a -- you'd -- I mean, just an
2 exact angle. I don't think --

3 Q. Okay.

4 A. I mean, it would be difficult.

5 Q. And do you know whether or not, when the body was
6 removed, whether there were TV news crews videotaping that?

7 A. I just don't remember.

8 Q. You testified earlier that there was water in Flat
9 Branch Creek when you saw it a couple of days later? Or
10 later that same day, or whenever it was.

11 A. Yes.

12 Q. Do you know how deep that water was?

13 A. It's a shallow creek. Below knee-deep. I'd say
14 maybe ten inches deep. Eight to ten.

15 Q. Would it vary from place to place?

16 A. Well, as certainly most streams do, yes. But
17 overall it's a fairly shallow creek.

18 Q. Now, calling your attention to State's Exhibit 27,
19 that is the composite that you drew in April of 2003; is that
20 correct?

21 A. March, I thought, but it was, yes, following
22 February.

23 Q. Okay.

24 A. And I thought March.

25 Q. And you were -- February is when you went to the

1 class.

2 A. Yes.

3 Q. And then sometime after you got back from the class,
4 and not too long, you got with Miss Ornt to apply what you'd
5 learned in the class.

6 A. Yes.

7 Q. As well as your innate artistic talent and your
8 training.

9 A. Yes.

10 Q. Okay. And that was the best that you could do,
11 having consulted with her, done this in her presence, worked
12 on it again to sort of polish it off, polish it up, I should
13 say, and then bringing it back to her.

14 A. Well, that certainly -- in doing composite work, we
15 like to say that really that's the best that the witness
16 could do. Because we are just a tool for the witness. But
17 that was the best that she said that she was able to do in
18 terms of her memory capability.

19 Q. Okay. And in particular, I'm noting the appearance
20 of the hair. And that -- was it fair to describe that as
21 what would be quite light blond hair, and you're showing the
22 flipped up in front, with the shading there?

23 A. Yes. A lighter hair color; the hair flipped up in
24 front.

25 Q. Now, you also participated in questioning, I guess

1 is the term, of Charles Erickson on March the 10th, didn't
2 you?

3 A. Yes.

4 Q. And you did that twice.

5 A. Yes.

6 Q. And the first time you rode in a police car driven
7 by another officer?

8 A. Yes.

9 Q. And there was also a third officer who was operating
10 a video camera.

11 A. Yes.

12 Q. And you drove around the downtown area; right?

13 A. We -- well, I refer -- I think of downtown as being
14 downtown Broadway. But in terms of the area which we
15 traveled, was from By George nightclub down to the Tribune
16 building.

17 Q. Okay. And you don't consider By George's as being
18 downtown.

19 A. It's close to downtown.

20 Q. Okay.

21 A. But --

22 Q. Fair enough. I'm not --

23 A. -- it's not really downtown.

24 Q. -- from here.

25 And the purpose of that trip was to learn from

1 Mr. Erickson where he believed or thought he remembered or
2 might think he remembered going on the night of November 1st,
3 2001; is that correct?

4 A. Yes.

5 Q. And he told you that he remembered -- or thought he
6 remembered leaving By George's and going north on First
7 Street to Ash; correct? To the vicinity of Ash.

8 A. Yes. As I recall, he was trying to remember
9 exactly. And it was in that block. I noted in my report
10 that he mentioned that he could see the victim. And I wasn't
11 real clear if it was where he was at parked, because if you
12 look down the alleyway, that particular alley ended right at
13 the Tribune parking lot. So there was a clear visual all the
14 way to the Tribune.

15 Q. Okay. So you're --

16 A. So we were trying to figure out exactly where the
17 car was parked.

18 Q. Where --

19 A. Where Mr. Ferguson had his car parked.

20 Q. Okay. But are you saying that during the video --
21 or during the drive-around -- well, I think it's called on
22 the label the "vehicular interview."

23 A. Yes.

24 Q. That up here at the intersection of Ash and the
25 alley -- or excuse me, First Street and the alley between Ash

1 and Walnut, Mr. Erickson said, "I may have seen him from
2 here"?

3 A. Well, he did -- he did state that he recalls seeing
4 the victim, because we were going to the area of where the
5 car was parked. But we were -- I think that conversation
6 took place on the trip over there. And that is noted -- I
7 don't believe it was on the video, because the video wasn't
8 running at that point. But I did note that in my report. So
9 you would be able to see that statement.

10 And so the best that I could tell from what he was
11 trying to explain is that they -- they were parked there on
12 First Street, someplace between Walnut and Ash. And it just
13 made sense to me, Well, if he thought he saw the victim from
14 that location, they may have been next to that -- or close to
15 that alley.

16 Q. But you're telling us now, even though that that --
17 that that particular part of the interview is not on
18 videotape.

19 A. No, it's not. It's just documented in my report.

20 Q. But that he indicated that from way over here on
21 First Street, at the time that he went there, he could -- he
22 believed he could see Mr. Heitholt up here in the alley
23 behind the Tribune.

24 A. Well, let me clarify that a little bit more, because
25 he said he recalled -- and I don't remember asking him a

1 specific question, but he recalled -- he just mentioned to me
2 that he recalled, while we were in route over to that area,
3 that he recalled seeing the victim. So I'm thinking, Well,
4 the only place that he could have been to have been able to
5 have seen the victim would have been somewhere in the
6 vicinity of that alleyway. If he was looking down the alley,
7 you can see all the way to the Tribune building.

8 Q. Right. And if he had done that on the way to the
9 car which was parked up by Ash, then he couldn't have sat
10 outside the car for 15 or 20 minutes making cell phone calls,
11 could he?

12 A. Mr. Erickson making cell phone calls?

13 Q. Yes. Or anybody.

14 A. Well, I don't know. I did not do a time line --

15 Q. Okay.

16 A. -- so I'm not clear on the times, but.

17 Q. Fair enough. Anyway, when you started the video, it
18 was up here at First and Ash?

19 A. Well, it was in front of By George. I believe that
20 would be represented by number 1.

21 Q. Right.

22 A. That's where the video was started.

23 Q. Okay. So he had, before that, had told you about
24 having seen Heitholt, and then once you started the video and
25 drove by there, you were able to look up the alley yourself.

1 A. Yes.

2 Q. That's what you're telling us.

3 A. Yes.

4 Q. Okay. I'm clear now. And then you went down Ash to
5 Providence; correct?

6 A. Yes.

7 Q. And he called or you -- somebody called somebody's
8 attention to the Break Time Convenience Store there?

9 A. I -- I believe there was mention of that. He may
10 have mentioned it. But I know there was a discussion about
11 where he had observed a fellow by the name of Dallas Mallory.
12 And he wasn't sure which intersection. I mean, there's a
13 number of intersections down Broadway. And they -- I mean,
14 they do look somewhat similar. But he thought that it was
15 possibly at Ash and Providence. And then he said, "Well, no,
16 it may have been down at that other intersection of Walnut
17 and Providence."

18 Q. Okay. Now Ash and Providence is here where the
19 Break Time is. Right?

20 A. Yes. Yes.

21 Q. And Walnut and Providence is a block down.

22 A. Yes. There's a Jiffy Lube right there. With the
23 red top.

24 Q. But a Jiffy Lube is not a service station open in
25 the middle of the night.

1 A. I don't believe they are. I don't think you can get
2 service there at 2 or 3.

3 Q. Okay. And both Ash and Providence and Walnut and
4 Providence are intersections controlled by traffic signals.

5 A. Yes.

6 Q. Okay. When you're driving with Mr. Erickson, you
7 stopped and went south on Providence, halfway down the block;
8 correct?

9 A. No.

10 Q. Okay. You're right. Mr. Erickson told you that's
11 what he'd done.

12 A. Well, Mr. Erickson was explaining to me that he
13 observed Dallas Mallory at the intersection. And this was --
14 there again, this was on his way back.

15 Q. Right. I'm talking --

16 A. He had already crossed apparently Providence. And
17 this was on his way back. But he said that he -- he brought
18 that up. He said, "I remember seeing Dallas at that
19 intersection." Then he said, "No, no." He said, "I think"
20 -- and he pointed down Providence Road. So that may be where
21 the confusion is coming in. He pointed down Providence Road
22 to the next intersection down and said, "No. That may be the
23 intersection I saw Dallas at."

24 Q. Talking the intersection of Walnut and Providence.

25 A. Yes.

1 Q. All right. Then you drove around Fourth Street and
2 then back up Walnut?

3 A. Yes.

4 Q. To that intersection.

5 A. Yes.

6 Q. And did he at that point say, "This is the
7 intersection" or anything like that?

8 A. I don't -- I don't believe he did.

9 Q. But then you drove north on Providence, to the
10 alley.

11 A. Yes.

12 Q. And east into the alley.

13 A. Yes.

14 Q. At that point Mr. Erickson did not tell you where
15 the crime occurred; he asked you where the crime occurred,
16 didn't he?

17 A. Yes, he did. He -- well, specifically. It was -- I
18 was under the impression that it was a given that we knew
19 exactly what location, being the parking lot. But then he
20 did ask me specifically on the parking lot.

21 Q. There's no question you knew what location. You had
22 been there two and a half years before processing the scene;
23 right?

24 A. Yes.

25 Q. There's no question in your mind where the crime

1 occurred.

2 A. Correct.

3 Q. But Mr. Erickson did not appear to know that, did
4 he?

5 A. Well, he didn't know -- or didn't seem to know
6 specifically where it occurred, and so I did show him. I did
7 tell him. I pointed out the specific location.

8 Q. By that light-colored jeep with the black flat top.

9 A. Yes.

10 Q. Which was parked actually in the same parking space
11 as Mr. Heitholt's car had been on the night in question.

12 A. Well, and that actually changed, because I think a
13 parking spot had been added.

14 Q. Okay. Then Mr. Erickson told you that he left the
15 scene, going straight back towards By George's; correct?

16 A. Well, he was having a hard time. Even -- even with
17 me telling him about the parking space, he never -- it wasn't
18 like he said, "Oh, yeah. That -- you're right. That's where
19 it happened." He was really -- he was having a hard time
20 recalling exactly where this location was. And he was having
21 a hard time or seemed to be having a hard time figuring out
22 exactly what his route of travel was from the parking lot.
23 He did mention that -- and I believe it was more of a, "Well,
24 it seems reasonable that I went in this direction," because
25 that is back in the direction of the club.

1 Q. Did he tell you that Mallory saw them leaving the
2 Tribune parking lot?

3 A. I don't recall that ever being mentioned.

4 Q. That wasn't one of your evidence.

5 A. No.

6 Q. Okay. Did he -- did you tell him, "Well, hey, the
7 luminol trail went south. Did you maybe go around the
8 building and go back there?" Do you remember telling him
9 that?

10 A. Well, I asked him if it was possible, because he
11 was, there again, seemed to be somewhat confused about what
12 direction of travel they may have taken. I asked him if it
13 was possible if they traveled south on Fourth Street, because
14 I -- I may have mentioned that we had found a trail or
15 because the dog went that way or whatever. But he said,
16 "Well, you know," he said, "that's possible."

17 Q. But he didn't say he had a memory of that.

18 A. Pardon me?

19 Q. He didn't say he had any memory of that.

20 A. Specifically did he say, "Oh, yeah, I remember I
21 went down that sidewalk"? No.

22 Q. Okay. And you then drove with him -- and I'm using
23 "you" in the plural. Y'all. Y'all then drove with him --

24 A. That's acceptable here.

25 Q. It's probably mandatory. I got in trouble

1 yesterday. -- south on Fourth Street. Correct?

2 A. Yes.

3 Q. Across Broadway. Correct?

4 A. Yes.

5 Q. And past Flat Branch Park?

6 A. Yes.

7 Q. Over to Fifth Street?

8 A. Yes.

9 Q. What street did you take over to Fifth? Locust?

10 Cherry?

11 A. I'm not sure. We may have driven through the

12 parking lot of Flat Branch. You can access Fifth Street from

13 Fourth that way.

14 Q. Okay.

15 A. I just don't remember. But I do -- I do remember

16 going down to Elm.

17 Q. This would be the Flat Branch there?

18 A. Yes.

19 Q. And that's a microbrewery kind of place?

20 A. It is. And you can drive through their parking lot.

21 Q. Okay. And then you went over to Fifth and down to

22 Elm to this dormitory place.

23 A. Well, Elm would be at the -- Fifth and Elm would be

24 right at that intersection of where the dormitory is located.

25 Q. It would be kind of under the "R" in store?

1 A. Yes.

2 Q. And during this time you're asking him, "Does this
3 look familiar?" And --

4 A. Yes.

5 Q. Referring to the night of Mr. Heitholt's death.
6 Right?

7 A. Yes. And there again --

8 Q. And he's saying, "No."

9 A. Right. And it was daylight too, so.

10 Q. He's saying, "No, this doesn't look familiar." And
11 you said, "Not at all?" And he says, "Not at all." Right?

12 A. I don't remember him saying "Not at all," but I'm
13 sure at some point maybe he did.

14 Q. Okay.

15 A. But he did say it did not look familiar.

16 Q. Then you drove up here to Providence and Locust;
17 correct?

18 A. Yes.

19 Q. And there is where there is a filling station called
20 Phillips 66 Express Lane; correct?

21 A. It -- I think that Phillips 66 is up at the next
22 intersection. Possibly at Elm.

23 Q. I thought --

24 A. It -- I'm sorry. Lo -- you said Locust?

25 Q. I said Locust.

1 A. I'm sorry. Yes. You're right.

2 Q. Fifth and Locust. Did you drive all the way out Elm
3 or did you --

4 A. Yes. As I recall, we went down Elm Street to
5 Providence Road.

6 Q. And then turned right?

7 A. And then turned north, which would have been a right
8 turn, and traveled north on Providence Road.

9 Q. To the Phillips 66 -- or passed the Phillips 66.

10 A. Oh, we would have passed the Phillips 66 station.

11 Q. And you would also pass the Osco parking lot.

12 A. I'm sorry?

13 Q. The Osco parking lot across the street?

14 A. Osco, yes.

15 Q. Was Osco open back then?

16 A. Yes.

17 Q. Is it open now?

18 A. No.

19 Q. When did it close?

20 A. Within the past year. I believe.

21 Q. Okay. And he saw those locations. And once again,
22 he did not say that anything looked familiar to him from the
23 night of Mr. Heitholt's death; isn't that correct?

24 A. Well, we certainly passed through those
25 intersections. There again, they are controlled by traffic

1 lights. And there again, you know, it's one right after
2 another. But the entire trip, up through -- all the way back
3 up to Ash, you know, he really never mentioned anything about
4 any specific intersection.

5 Q. By the way, you don't work regular nine-to-five
6 hours much as a detective, do you? You spend a lot of time
7 out in the middle of the night.

8 A. Well, I -- yes, I do spend time out at night.

9 Q. And the police station is not that far from the
10 Tribune building and -- is that downtown Columbia?

11 A. It's getting close.

12 Q. Okay. And you drive up and down Providence Road at
13 night, don't you?

14 A. I have.

15 Q. And after a certain period at night, and certainly
16 before midnight, the traffic signals on Providence and Ash,
17 Providence and Walnut, Providence and Locust, for example,
18 are no longer red/green alternating stop-and-go signals, are
19 they?

20 A. Well, there are some that turn to a flash.

21 Q. Right.

22 A. But --

23 Q. Flashing --

24 A. -- I don't know which intersection lights do that
25 and at what time.

1 Q. Okay.

2 A. So I can't tell you for sure.

3 Q. All right. You do know that the one at Broadway and
4 Providence always stays stop/go.

5 A. On a normal rotation cycle?

6 Q. Right. Right.

7 A. There again, I -- I really don't know. And to kind
8 of go back on your question about being out at night a lot,
9 no, I'm not out at night to the point that I can tell you the
10 intersection lights. The folks on third shift patrol can,
11 but I can't.

12 Q. Okay. We'll have some records. Don't worry about
13 it.

14 Mr. Erickson was very explicit with you about a
15 wooden retaining wall between Providence and First Street and
16 between Ash and Walnut, wasn't he?

17 A. Well, there was, there again, a little bit of
18 confusion, because there's a wooden fence of sort that's to
19 the west of an insurance company located at the intersection
20 of Ash and Providence. And just to the south of that is a
21 Boone County motor bank. And just due west of the motor
22 bank, along the western edge of the parking lot, is also a
23 wooden structure. It's a wooden retaining wall built out of
24 railroad ties.

25 Q. And on the videotape, Mr. Erickson refers to the

1 wooden fence at first and says, "I think I climbed that."
2 But then when he sees the retaining wall, he says, "No, no,
3 that's where I climbed." And you asked him, "Did you climb
4 up that?" And he says, "Oh, yes, I remember climbing up
5 that. I had to struggle to get up that." And you had the
6 videotape take a picture of the brush at the top of it, to
7 show it would be difficult to get up and through the brush.
8 Right?

9 A. Well, he was -- seemed to be more satisfied with the
10 retaining wall next to the bank. I think at that point he
11 felt that that probably looked more like the structure that
12 he remembered going up and over, versus the upright fence.

13 Q. Okay. And that would be kind of on a line between
14 the Break Time and By George's; right? Break Time
15 (indicating). By George's (indicating).

16 A. Yes, it would be.

17 Q. Now, Erickson never during that trip made any claim
18 to have crossed a stream, did he?

19 A. Not to me.

20 Q. Okay. And you were there for the whole trip.

21 A. During this trip, yes.

22 Q. Okay. Fair enough. Now, after returning to the
23 police station, you did some further interrogation of
24 Mr. Erickson; is that correct?

25 A. Yes.

1 Q. And at that time -- excuse me.

2 MR. ROGERS: Can you get this queued up?

3 Q. At that time the interrogation took place in an
4 interrogation room there at the police station.

5 A. Yes.

6 Q. And that room was equipped with a video camera.

7 A. Yes.

8 Q. And that interrogation was videotaped.

9 A. Yes.

10 Q. And you knew it was being videotaped.

11 A. I did.

12 Q. And Mr. Erickson knew it was being videotaped.

13 A. I assume he did.

14 Q. Okay. He could see the camera there; right?

15 A. Well, it's much like the camera behind you. It
16 certainly isn't right in your face, but it's present. If you
17 look, you can see it.

18 Q. I had to smile for it.

19 During that videotaped interview, Mr. Erickson
20 attempted to tell you that he was not sure that he had been
21 involved in Mr. Heitholt's homicide, didn't he?

22 A. He -- I don't recall exact verbiage.

23 Q. We got the videotape.

24 A. Yeah. Certainly -- I mean, that would be the way to
25 review it, because -- because I know that he had -- he seemed

1 like he had a hard time recalling details. And it came to a
2 point where I felt like it was time, Let's just get -- get
3 down to business, and we need to talk about this. And --

4 Q. We'll show you that in a minute.

5 A. -- that seemed to help him a bit.

6 Q. I'm before that.

7 A. Oh. Okay.

8 Q. Before that, very early on in the interview, like
9 about seven minutes, he told you, "I don't know. I mean, I
10 don't even -- it's just so foggy. Like, I could just be
11 sitting here and fabricating all of it and not know. Like, I
12 don't know. I don't." Do you remember him saying that?

13 A. If it's on the tape, yes, I'm sure he said that.

14 Q. Okay. And that was fairly early on in the
15 interview. And then --

16 THE COURT: You need to speak verbally.

17 THE WITNESS: Well, I didn't get a chance, Your
18 Honor.

19 Q. I'm sorry.

20 A. Yes, it was.

21 Q. And then later, a minute or two later, he told you,
22 "And this is" -- he told you, "This is -- all right. This is
23 after reading the newspaper article in October." Do you
24 remember that?

25 A. I recall him saying something to that effect, yes.

1 Q. Okay. And he's talking about a newspaper article
2 that was published in October of 2003, which was the
3 anniversary of Mr. Heitholt's death; correct?

4 A. Well, there again, I'm not sure which article you're
5 referring to. And I don't recall questioning him about
6 that --

7 Q. Okay.

8 A. -- so --

9 Q. He says -- you say, "Uh-uh," in response to that
10 comment by Mr. Erickson. And he says, "And this is kind of
11 put together with -- I mean, I don't know if I'm just
12 flipping out or whatever. But, I mean, this is kind of what
13 I put together with what could have happened. I remember we
14 were at the club, we ran out of money. Like, he had been
15 asking his sister to borrow money. And from there on, I'm
16 just kind of presuming what happened. I'm making
17 presumptions based on what I read in the newspaper." Do you
18 remember him saying that?

19 A. That sounds accurate.

20 Q. And your response to that was: You were -- "Well,
21 you're making accurate presumptions that, like I said, you
22 would only know if you were there." Do you remember that?

23 A. Yes.

24 Q. And he asked you, "Like what? The lady, the
25 cleaning lady?" And your answer was, "That's one."

1 A. Yes.

2 Q. And he says to you, "That was in the newspaper."

3 A. Yes.

4 Q. And then your response to him was, "Well, no. About
5 what was specifically said to the lady"? Correct?

6 A. I'm sorry again.

7 Q. Your response to him was, "Well, no, about what was
8 specifically said to the lady."

9 A. Yes.

10 MR. KNIGHT: Your Honor, I'd object at this point.
11 He's just -- he hasn't asked the witness a question. He
12 hasn't asked the witness if he denies statements were said.
13 He's just merely reading from this transcript. I mean,
14 there's really not even a question out there.

15 MR. ROGERS: I'm getting there. And the question
16 each time is: Do you remember saying that?

17 MR. KNIGHT: Well, maybe he should be asked if you
18 remember saying something, and then if he doesn't, then the
19 transcript could be read. I think that would be the proper
20 way to maybe impeach him.

21 THE COURT: You'll need to ask -- I'm going to
22 sustain an objection to the form of the question. You may
23 ask him a question, as opposed to just reading.

24 Q. Let me ask you this question. When you were talking
25 to Mr. Erickson in the interview room, you knew that he had

1 been interviewed once by Detective Short in an interview
2 which was not videotaped; is that correct?

3 A. Well, I had not been aware of a lot of the work that
4 had been done regarding Mr. Erickson. And the reason I say
5 that is because my focus usually is more on handling
6 evidence. So, I had been asked to interview him. And I had
7 been told by my supervisor that he possessed information that
8 no one else would know if they hadn't been at the scene.

9 Q. But -- and you don't know where your supervisor
10 Monticelli got that notion?

11 A. Monticelli?

12 Q. Monticelli. I'm sorry.

13 A. He -- he was privy to all of the --

14 MR. KNIGHT: Your Honor, I'd object to this. This
15 is just speculation. It's also hearsay.

16 Q. My question was: Did you know that Mr. Erickson had
17 previously been interviewed by Detective Short in a
18 nonvideotaped interview?

19 A. Well, I knew that he had been interviewed by
20 Detective Short. Now as far as the video recording of that
21 interview, I did not have knowledge of, one way or the other.

22 Q. Okay. Did you know that -- you may have already
23 answered this, but I want to be explicit. Did you know that
24 there had been a second interview with Detective Short, which
25 had been videotaped?

1 A. There again, in terms of videotaping of interviews,
2 being that I was not a part of that, I didn't -- did not know
3 which interviews were being taped.

4 Q. Is it fair to say that --

5 A. I think --

6 Q. Excuse me. I didn't want to interrupt you, but I
7 think you've answered my question. Is it fair to say that
8 you were not sure at that time how many times Detective Short
9 had interviewed Mr. Erickson?

10 A. I did not know the number of times that he had
11 visited with him, interviewed him, interrogated, whatever you
12 want to -- however you want to say it.

13 Q. And you don't know which of those interviews,
14 assuming there were more than one, had been videotaped.

15 A. I had no knowledge of the videotaping.

16 Q. And you had not seen any reports of those
17 interviews.

18 A. No.

19 Q. And you had not seen any videotapes of those
20 interviews.

21 A. No.

22 Q. And so at that time, when you say, "You know stuff
23 only somebody who was there could know," you're basically
24 repeating the assertion you heard from Mr. Monticelli.

25 A. Yes.

1 Q. And then when he came up with the specific of the
2 cleaning lady, and you said, "That's one," and he said, "That
3 was in the newspaper," your response was, "Well, no. About
4 what was specifically said to that lady." Correct"?

5 A. Right.

6 Q. Is that something that Monticelli had told you?

7 A. I want to say that he -- he articulated to me before
8 the interview that he had made statements regarding a
9 conversation that he had with a cleaning lady that was never
10 put in the newspaper. And that -- that only he would know --
11 or someone would know if they were there.

12 Q. And at that time you did not know that, in fact,
13 Detective Short told him that, in the first interview, which
14 was not videotaped, and that, again, Detective Short told
15 him, Erickson, that in the second videotaped interview, did
16 you?

17 MR. KNIGHT: Your Honor, I'd object. I believe he's
18 misstating the evidence about what Detective Short said.

19 THE COURT: The objection is sustained.

20 MR. ROGERS: Your Honor, we've heard the second
21 videotape -- the videotape of Detective Short. So that is in
22 evidence.

23 THE COURT: That certainly is in evidence. And the
24 sequence of the statements is not as it was on the tape. So
25 if you will rephrase your question, you may ask it.

1 MR. ROGERS: Well, I think we may have to replay the
2 tape, because I think I asked it right. And I don't want to
3 replay the tape now with this witness.

4 Q. I'm just saying -- you didn't know anything about
5 that statement having been made by Detective Short once,
6 twice, however many times, did you?

7 A. No.

8 Q. Okay.

9 MR. ROGERS: How's that? We'll get to Detective
10 Short later.

11 Q. It was shortly after that that you decided that
12 Mr. Erickson was not giving you the information you were sent
13 in there to get; correct?

14 A. That's -- that's right. Yes.

15 Q. And Mr. Erickson was being very equivocal about
16 whether he was really involved or whether it was something
17 that was dreamed up in his mind, wasn't he?

18 A. Well, I needed to check with my boss to find out if
19 he thought there was any need for me to continue the
20 interview. Was there information that was being developed
21 that was new, or was this just a rehashing of information
22 that he had already provided. And so he said, "No." He
23 said, "I think that this is the same information."

24 Q. But you didn't stop and go talk to your boss then,
25 did you?

1 A. Well, once I -- when I concluded my interview with
2 Mr. Erickson, I went and talked to my supervisor.

3 Q. Right. But I'm talking about during the interview,
4 when Mr. Erickson was not giving you the information you
5 think you're there to get, your first reaction was not, "Oh,
6 let me go see if I need to get this information." Your first
7 reaction was to take control of the interview, wasn't it?

8 A. Oh. Yes. I felt like it was time for Mr. Erickson
9 to essentially get control of his thoughts and explain those
10 to me in a very clear, precise manner. The best he could.

11 Q. And it wasn't a matter of him getting control of his
12 thoughts; it was a matter of you getting control of his
13 thoughts and making sure he did not explain to you his
14 ambivalence, his uncertainty, his ambiguity. Isn't that
15 true?

16 A. Well, we don't -- understand, we don't have people
17 that walk in off the street and say, "I can't live with
18 myself any more. I want to tell you about a crime that I
19 committed." That just doesn't really happen. In my 18 years
20 of experience anyway.

21 Q. Well --

22 A. And so --

23 Q. Let me stop you there, first of all.

24 MR. KNIGHT: Your Honor, I'd object. He gets to
25 answer the question.

1 MR. ROGERS: I don't think he's answering the
2 question, first of all. But if that was responsive, the
3 responsive part is way over. I didn't ask why he wanted to
4 take control of the interview. I asked him: Didn't he?

5 THE COURT: And is there an objection?

6 MR. KNIGHT: My objection is: He wasn't allowed to
7 finish his answer. He got cut off.

8 THE COURT: He may answer the question that's been
9 asked. How's that?

10 Q. Have you answered the question that was asked?

11 A. I don't believe so. Although I'm a little foggy on
12 what I was trying to say. The --

13 Q. Do you know what the question was?

14 A. Restate your question, please.

15 Q. I was afraid you'd say that. The question is: You
16 did not want to help Mr. Erickson express his thoughts. You
17 wanted him to -- you wanted to keep him from expressing his
18 ambivalence, his ambiguity, and his certainty about the
19 things he was telling you concerning Mr. Heitholt's death;
20 isn't that true?

21 A. That is true, because -- and to the end of my
22 statement --

23 Q. Did I ask a "because"?

24 A. Well, you didn't ask a "because" --

25 Q. Okay. You've answered the question.

1 A. -- but I just thought -- figured I could get you
2 one.

3 Q. I didn't ask for a volunteered "because" either.

4 A. Okay. That would be fine.

5 Q. As a matter of fact, what you told Mr. Erickson was,
6 "No, no, no, no. Wait. Wait. Wait. Wait. Wait. Now,
7 listen. I'm going to start talking." Mr. Erickson: "I'm
8 sorry." "And you're going to start listening. Okay? All
9 right?" Isn't that what you told him?

10 A. Well, I don't remember saying, "Wait, wait, whoa,
11 whoa, whoa" or whatever that many times. But I'm sure I did.
12 Because I stopped him right there in his tracks and I told
13 him, "It's time for you to start telling me what you
14 remember. And let's get" -- just much the same as me kind of
15 direct questioning. So, that's what I did.

16 Q. And you also did a very, very direct, pointed
17 questioning of him after you moved your chair right up and
18 got in his face; right?

19 A. You bet.

20 Q. On purpose.

21 A. You bet.

22 Q. As a tactic.

23 A. You bet.

24 Q. And you're a big guy. Compared to Chuck Erickson.

25 A. I'm getting bigger by the day, but it's not because

1 of lifting weights.

2 Q. And you have been trained on how to be forceful in
3 interrogations if you feel the situation calls for it.

4 A. I've been trained in interview and interrogation,
5 yes. And that is certainly a tactic we use every day to try
6 to get at the truth, when we're trying to interview someone,
7 because people don't like to tell you the truth.

8 Q. But if the truth was that Mr. Erickson was
9 uncertain, you weren't trying to get at that truth, were you?

10 A. Well, to answer that question completely, you take a
11 fella that has been doing drugs and drinking alcohol, and
12 then who goes out and kills someone, which is not a routine
13 action on their part, I would totally suspect that they
14 wouldn't remember exactly what they did. I couldn't tell you
15 what I did, I am sure, if I was in their place. So I needed
16 to try to pick out facts that they could -- he could
17 remember. And that's the way I went about doing it.

18 Q. If the truth was that Mr. Erickson was uncertain and
19 didn't know whether or not he dreamed this up or whether he
20 was really there, you were not interested in getting that
21 truth, were you?

22 A. I was interested in documenting whatever he told me.
23 And it was documented. It was videotaped.

24 Q. And you were not interested in hearing from him
25 about his ambiguities, because you didn't want that

1 documented and videotaped, did you?

2 A. I was interested in finding out if there was more
3 information specifically about the defendant and his actions
4 that occurred the night of this murder. And so therefore I
5 had to get up and consult my supervisor, because he knew what
6 information had been obtained.

7 Q. We haven't left to consult your supervisor yet.
8 We're talking about your interactions with Erickson. And
9 we're talking about your assertion that you were after the
10 truth. And you still haven't answered my question, which is:
11 If the truth was Chuck Erickson wasn't even there and he
12 dreamed it all up and it was a fantasy, which is why he
13 doesn't know the details, you weren't interested in hearing
14 that truth, were you?

15 A. I, again, told you, we documented everything. And,
16 you know, I'll also remind you, it is not every day that you
17 have someone coming into the office saying, "I committed a
18 murder, I can't live with myself now, and I need to tell you
19 about it. And I understand that I might get arrested and go
20 to prison." So, you know, when somebody comes in telling me
21 that, I'm going to assume up front they're crazy or they're
22 lying. But it has to come out. And we did the best we could
23 to get to the truth of the matter. And it's all documented.
24 So I don't know how to better answer your question.

25 Q. And your search for the truth, whatever it might be,

1 including the possibility that it was made up by Erickson,
2 out of some dream and things he's read in the newspaper,
3 stuff like that, that's why you told him: "And I don't want
4 to hear, 'Oh, all of a sudden I just think I maybe fabricated
5 all this." Do you remember telling him that?

6 A. Yes, I do.

7 Q. And that's not part of the search for the truth, is
8 it? That's a part of keeping that part out of it, isn't it?

9 A. Well, you could say that that is a part of trying to
10 keep information out. I mean, that -- from the direction
11 you're coming at. But from the direction I'm coming at is
12 that we'd already heard that, and we already had that
13 information documented. Now, if there was truth to be known,
14 I wanted to get to the bottom of that. And there again, I
15 was searching for truth, not so much relating to him, as
16 relating to Ryan Ferguson.

17 Q. And so that's why you told him, "Look, Ryan says he
18 didn't do it. You're the only guy who said he did. And if
19 you don't tell us things about Ryan, you're the one hanging
20 out there. You've got your head on the chopping block."

21 A. This was a tactic, exactly. And I wanted to let him
22 know that, "You know, now's the time to get to the bottom of
23 it. Now's the time you need to tell us what you know. And I
24 understand" --

25 Q. And you didn't --

1 A. -- "and I understand that part of this is probably
2 foggy. I mean, there's -- you know, that's reasonable to
3 believe and assume. But now we need to know the facts of
4 this, and you need to start telling me what those facts are."

5 Q. And you didn't tell him, "Look, we've got
6 fingerprints. We'll check yours. Look, we've got DNA.
7 We'll check yours." Did you?

8 A. Well, I think we did tell him, "We -- we need your
9 DNA," because we collected his DNA. I didn't tell him
10 specifically that, so no.

11 Q. You didn't tell him, "We want to find out what you
12 know." You told him, "You know this; you know this. Tell us
13 about Ryan; tell us about Ryan. Your ass is on the chopping
14 block." Right?

15 A. Sure.

16 Q. "And don't tell us if you're not sure. Don't tell
17 us if you dreamed it up. Don't tell us if you read it in the
18 paper." Correct?

19 A. I went at that line of questioning. And I will not
20 deny that. And it's -- like I said, it's all on videotape
21 for all to see.

22 Q. All right.

23 A. And I did not keep badgering him. I directly asked
24 him: "We need to know what you know. And now's the time to
25 tell us." And so that was -- that was my line of

1 questioning. And once that was concluded, I got up and there
2 again made contact with my boss.

3 Q. Then did you go back and look at the Short report or
4 the Short videotape?

5 A. No.

6 Q. So you didn't know to this day whether Short told
7 Erickson exactly what the cleaning lady said was said to her?

8 A. To this day --

9 Q. Or whether Erickson told Short.

10 A. To this day, my knowledge is that Chuck Erickson
11 possesses information that only someone at the scene would
12 know and be familiar with. And that's my understanding of
13 it.

14 Q. And it's your understanding that he knew that
15 information and possessed that information and disclosed that
16 information on March the 10th, 2004.

17 A. Yes. That -- apparently he did.

18 Q. And what information are you talking about? Do you
19 know? Or just in general.

20 A. Well, the information being that he made comments --
21 I'm telling you what my boss told me. So, there again --

22 Q. Your boss told you --

23 A. Yes.

24 Q. -- that he said --

25 MR. KNIGHT: Your Honor, I have to object at this

1 point. Hearsay.

2 THE COURT: That objection is sustained.

3 MR. ROGERS: That's all. Thank you.

4 THE COURT: Redirect?

5 MR. KNIGHT: Yes.

6 - - -

7 REDIRECT EXAMINATION

8 BY MR. KNIGHT:

9 Q. The crime occurred November 1st, 2001. You took
10 Chuck Erickson around in this vehicle on March 10th, 2004; is
11 that correct?

12 A. Yes.

13 Q. The parking lot, when you -- when you went -- you've
14 already testified about the crime scene obviously, but you
15 testified earlier that at the crime scene on the 1st of
16 November, 2001, there was a Dumpster enclosure. And I'm
17 going to show you what's marked as State's Exhibit 14B. Do
18 you see the Dumpster enclosure there?

19 A. Yes.

20 Q. Okay. And when we get to -- when we get to March
21 10th, 2004, when you took Chuck Erickson up that alley and
22 into the parking lot, was there a Dumpster enclosure there?

23 A. I believe the Dumpster enclosure had been removed.
24 They were preparing to do some reconstruction on the area.

25 Q. So this is gone. Right?

1 A. I believe that's right.

2 Q. Okay. And also, looking at 14B again, you can see
3 that we've got these parking spaces. And Kent's car was
4 parked in number 1. And here's number 2 right here; is that
5 correct?

6 A. Yes.

7 Q. Okay. Let's keep this. I'd like to show you what's
8 been marked as State's Exhibit 100. And --

9 THE COURT: Do you want to see that? Have you seen
10 100?

11 MR. ROGERS: I don't know what it is. I can't see
12 that far.

13 (Mr. Knight showing a photograph to Mr. Rogers.)

14 Q. And this is a photograph that was taken in 2004;
15 correct?

16 A. Well, I'm not sure when that photograph was taken,
17 but that is an accurate representation of the parking lot I
18 believe as the way it is -- looks now, except for the
19 construction that's taken place out there.

20 Q. Okay. And if you can look here, you can see parking
21 block number 2. You can see that pictured in State's Exhibit
22 100; is that correct?

23 A. Yes.

24 Q. And then how many spots do you see south of number
25 2?

1 A. Well, there are actually two, because they added
2 another space.

3 Q. Okay. That's what I was going to ask you. When you
4 showed -- or when you went back to the crime scene with Chuck
5 Erickson March 2004, how had the crime scene differed with
6 regard to parking spaces?

7 A. Well, one additional.

8 Q. Okay.

9 MR. KNIGHT: Your Honor, I'd offer State's Exhibit
10 100.

11 MR. ROGERS: No objection.

12 THE COURT: State's Exhibit 100 is admitted.

13 - - -

14 State's Exhibit 100 admitted into evidence.

15 - - -

16 Q. And real quickly, if you can hold that. This is the
17 additional spot right here; is that correct?

18 A. Yes.

19 Q. That was added after the homicide?

20 A. Yes.

21 Q. Okay.

22 MR. KNIGHT: Your Honor, may we approach?

23 THE COURT: Yes.

24 MR. KNIGHT: One brief issue.

25 - - -

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

3 MR. KNIGHT: I'm going to now ask him to admit the
4 tire tool that was found in the trunk and also the two
5 photographs at the bottom of that photo layout there, 87F and
6 87J. The tire tool, for the record, again, is Number 90.

7 Is there going to be an objection at this point?

8 MR. ROGERS: Yes. I renew my objections.

9 MR. KNIGHT: I believe we should be able to get this
10 in for a couple of different reasons. On cross-examination,
11 defense attorney asked Mr. Nichols if he tested everything in
12 the trunk with luminol. So now we've gotten into this. He's
13 asking everything that was tested, and I believe I should be
14 able to ask him about these items, because these would
15 encompass everything that was in the trunk. But, more
16 importantly than that, my best point here is that the defense
17 attorney asked if Jeff Nichols ever showed Charles Erickson
18 the tire tool. If he was ever shown the tire tool. And he
19 said he was.

20 THE COURT: Pardon?

21 MR. KNIGHT: He said he was. He said he was shown
22 the tire tool from the trunk, is my understanding.

23 MR. ROGERS: Did I ask him that? I didn't ask him
24 that.

25 MR. KNIGHT: And then -- and then -- and then he was

1 asking --

2 MR. CRANE: You didn't say that.

3 MR. ROGERS: No.

4 MR. CRANE: You asked him on cross, and he showed

5 you -- you showed him the tire tool, and he said yes.

6 MR. KNIGHT: Okay.

7 MR. ROGERS: I have --

8 THE COURT: The statement was made at the bench,

9 that Erickson was shown the tire tool, here in the courtroom.

10 MR. ROGERS: In the courtroom.

11 THE COURT: In the courtroom. And was said that

12 that wasn't the one.

13 MR. CRANE: He asked him.

14 THE COURT: I don't know who asked him. But the

15 witness was asked. Not this witness.

16 MR. KNIGHT: But this is my most important --

17 THE COURT: All right.

18 MR. KNIGHT: He asked if anything in the trunk. He

19 asked -- I know he asked if anything in the trunk looked like

20 the tire tool that Charles Erickson drew.

21 MR. ROGERS: That I did ask.

22 MR. KNIGHT: And now I should be able to ask him

23 questions about these photographs.

24 MR. CRANE: Here's --

25 THE COURT: Mr. Crane, only one attorney per side,

1 please. I'm not allowing multiple attorneys on each side to
2 argue.

3 MR. KNIGHT: At this point now, because the door's
4 been opened up, I think I should be able to ask Detective
5 Nichols about the tire tool taken from the trunk, the
6 photographs of the trunk certainly. He asked specifically,
7 he asked this witness if anything in the trunk looked like
8 the tire tool Chuck Erickson drew. And I'm going to show
9 this witness photographs. I'd like to show him some
10 photographs of items that were in this trunk and have
11 those -- those photographs come into evidence.

12 THE COURT: Well, you may certainly show him the
13 photographs. I'm not going to prohibit you from showing him
14 the photographs. And you certainly may ask him, in reference
15 to the luminol testing, whether any of the items were tested,
16 because that was gone into on cross-examination. I can't say
17 what he's going to say or whether something might become
18 admissible because of the statements, but I am -- I
19 appreciate that defense counsel is objecting to these being
20 admitted.

21 MR. ROGERS: And for the record, Your Honor, with
22 regard to the items being tested for luminol, this witness
23 has already testified at the very outset of his direct
24 examination that iron and -- iron products, which includes
25 steel, react with luminol by themselves, so you can't test

1 State's Exhibit 101. What is this a photograph of?

2 A. That's a photograph of the tools that was in the
3 trunk of his vehicle, the Mercedes, that I did the search
4 warrant on. Those were the tire tools.

5 MR. ROGERS: Objection to further descriptions, Your
6 Honor. He's identified it sufficiently I believe.

7 THE COURT: He may -- he may identify them as tools.

8 MR. KNIGHT: Okay.

9 Q. And if you can lean up here a little closer.

10 MR. ROGERS: And I'd also ask that that be not
11 displayed where the jury could see it.

12 MR. KNIGHT: I don't think they can see it from
13 there.

14 Q. This is what you collected; is that correct?

15 A. Yes.

16 Q. This right here is also -- I'd like to show you
17 what's been marked as State's Exhibit 102 -- is also pictured
18 in 102; is that correct?

19 A. Yes.

20 Q. Okay.

21 THE COURT: There is a mic that's live there that
22 you're -- when you put those things on -- it's the small
23 black one that's flat. That one is loud if you hit things
24 against it.

25 Q. So, of these tools that you have, that you found in

1 the back of the trunk, you only collected this one tire tool;
2 is that correct?

3 A. Yes.

4 Q. This other tire tool right here that's in 101 and
5 102, meaning this, do you see that? Do you see this right
6 here I'm pointing to?

7 A. Yes.

8 Q. You did not collect that, did you?

9 A. No.

10 Q. Okay. How does that compare with the drawing that
11 Chuck Erickson did for you when he was describing the tire
12 tool?

13 A. Well, it's small. It would be smaller than the tool
14 that he described. And it does not curve up on the end.

15 There's a pair of hand pliers here. And it's -- you
16 can see, compared to the size of the hand pliers, that's not
17 a very big tool.

18 Q. Did he tell you anything about this -- this tool
19 having an attachment and taking the attachment off before he
20 went over with the defendant and committed this murder?

21 A. I don't have knowledge of that.

22 Q. Okay. Well, what do you see on -- in 101, what do
23 you see at the head of this tool?

24 MR. ROGERS: I'm going to object, Your Honor. It is
25 certainly improper to have this witness describe in detail

1 items which have not been offered in evidence. Or received
2 in evidence. I believe the Court's last ruling is he could
3 describe them as tools.

4 THE COURT: That is correct.

5 Please don't display that to the jury.

6 MR. KNIGHT: Okay. I won't.

7 Well, Your Honor, at this time I'm going to offer
8 State's Exhibits 101, 102, so that the jury can take a look
9 at this and determine how these -- these things in the back
10 of the trunk compare with the drawing that Chuck Erickson
11 did. I think this is up -- this is -- this is something that
12 the jury should decide.

13 MR. ROGERS: Your Honor --

14 MR. KNIGHT: This is a jury issue.

15 MR. ROGERS: Excuse me.

16 First of all, I renew my objections. Secondly, I
17 thought the Court clearly instructed us that if an offer were
18 to be made, it be made at the bench, rather than a speech for
19 the jury. I think that's totally improper. I think it's
20 prosecutorial misconduct. And I would ask that the Court
21 reprimand the assistant prosecuting attorney.

22 THE COURT: Would you please approach. And you may
23 bring the -- you may bring 101 and 102.

24 - - -

25 Counsel approached the bench and the following

1 proceedings were held:

2 MR. KNIGHT: Would you like to look at these?

3 THE COURT: Sure. And you're offering 101 and 102?

4 MR. KNIGHT: Yes, Your Honor.

5 (Court looking at the exhibits.)

6 MR. KNIGHT: And 87F and 87G.

7 THE COURT: And they are the same as -- is 87 --
8 don't point that at the jury. 87F and G, are they the same
9 as these two, or are these two additional?

10 MR. CRANE: Those are additional photographs.

11 THE COURT: Well, this one looks like G.

12 MR. CRANE: I can't see it from here.

13 THE COURT: 102 looks like F to me.

14 MR. CRANE: Yeah, it's a little bit different, but
15 okay, fine. For simplicity's sake, forget 102.

16 MR. KNIGHT: We'll take 102 out.

17 THE COURT: And on what basis were you wanting to
18 offer these exhibits?

19 MR. KNIGHT: Because, first of all, I believe that
20 it was opened up by the defense on cross-examination by
21 asking if there was anything in the trunk that looked similar
22 to what Charles Erickson drew. Number one. Number two, I
23 think it should be up to the jury to decide also whether or
24 not any of these tools back here, this one that was collected
25 or the other ones, look like the tool that Charles Erickson

1 drew. I think that should go to the weight and not the
2 admissibility.

3 THE COURT: Well, I would agree that if this witness
4 said, you know, "This looks pretty much like the one that he
5 drew," I would certainly let that come in. But he said none
6 of these look like the ones that he drew for him. And these
7 are tools that were found in a vehicle, what, two and a half
8 years later? Some --

9 MR. KNIGHT: Yes.

10 THE COURT: Some years after this. After the car
11 had changed -- a year after the car had changed ownership.

12 MR. KNIGHT: That's correct, Your Honor.

13 THE COURT: I mean, if there is -- there is
14 absolutely no evidence to show that these tools were actually
15 in the car at the time Erickson was driving it. I mean --
16 yeah, at the time Ferguson was driving this vehicle.

17 MR. KNIGHT: Well, I believe that Charles Erickson
18 testified that they got a tool out of the trunk.

19 THE COURT: That's true.

20 MR. KNIGHT: This vehicle. I mean, I don't know how
21 common it is for people to constantly take tools out, put
22 them back in, even if they change hands. It just seems -- it
23 isn't like a piece of luggage or something. It seems like
24 that's something that usually kind of just stays in the car.
25 And no, I can't say with any certainty and we can't establish

1 that that -- that this trunk condition is in the same
2 condition it was back in 2001 when the crime was committed.
3 No, I can't do that. But I think it should go to the weight
4 and not to the admissibility.

5 MR. ROGERS: Your Honor --

6 THE COURT: You may be heard.

7 MR. ROGERS: I don't think -- and I'll talk about
8 first this proffered exhibit. Nothing I said opened that up.
9 There is an item there which was taken by the witness which
10 did not resemble the tool -- or the drawing by Mr. Erickson.
11 By all accounts. And which Mr. Erickson already said does
12 not look like the thing he was talking about. It's mere
13 prejudice. It's got nothing to do with the case. It's
14 irrelevant. There certainly has been no questioning about
15 luminol like we heard before. But certainly hasn't been
16 opened up on grounds -- at least not through the further
17 redirect examination. And he reasserted his
18 cross-examination testimony that nothing that he saw in the
19 trunk resembled the drawing by Mr. Erickson, including those
20 items. So I don't see where it's in any way, shape, or form
21 admissible.

22 MR. KNIGHT: I think it should be -- once again, I
23 think this goes to the weight and not the admissibility. I
24 think the jury should be able to decide whether or not that
25 looks like the tire tool or not.

1 THE COURT: Well, I think relevance is a legal issue
2 for the Court to decide. It's not for the jury to decide.
3 If someone said, "This tool looks like the one you -- looks
4 like the one he described," or even Erickson on the stand had
5 said, "This appears to be," Exhibit 90, if this particular
6 tool, Exhibit 90, "looked like the one that was there, but I
7 unscrewed this thing off the end of it," I would certainly
8 allow you to offer these -- have these admitted in evidence.
9 I'm sustaining the objection at this time.

10 MR. ROGERS: Now, Your Honor, I would like to take
11 up my request that the assistant state's attorney be
12 reprimanded for making the speaking proffer to the jury after
13 the Court had clearly instructed counsel to approach the
14 bench before this evidence was offered.

15 THE COURT: And I would ask you, Mr. Knight, and so
16 that you understand clearly, that if I ask you to approach
17 the bench, and this applies to both sides of the table,
18 before you offer something and before you make a speaking
19 objection, that you come to the bench before you do it.

20 MR. KNIGHT: I sure will.

21 THE COURT: All right.

22 - - -

23 The following proceedings were held in open court:

24 MR. KNIGHT: Nothing further, Your Honor.

25 THE COURT: Recross?

1 MR. ROGERS: None, Your Honor. Thank you.

2 THE COURT: May Detective Nichols be excused at this
3 time? For the state?

4 MR. KNIGHT: Not finally.

5 MR. CRANE: Not finally, Judge.

6 THE COURT: All right. You -- may he be excused
7 this evening?

8 MR. CRANE: Not by -- yes.

9 THE COURT: This evening?

10 MR. CRANE: Yeah, for this evening, yes.

11 THE COURT: Would ask you not to discuss your
12 testimony with anyone who's to be called as a witness.
13 You're free to do whatever you need to do. And you're
14 subject to recall.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: And I'm sure the prosecutor probably has
17 a number to reach you.

18 THE WITNESS: Yes.

19 THE COURT: All right. You may step down.

20 Do you have a witness that is not terribly lengthy
21 before -- because I'm intending, because this jury has asked
22 to work hard, go until 7:30. And we've been here since,
23 what, about 3:30. So it's not quite an hour and a half. I'd
24 be willing to go on, if you have someone you can do a direct
25 exam on, and then take a recess, so that they wouldn't have

1 to go from 3:30 to 7:30. Four hours is a long time to sit.

2 MR. KNIGHT: Your Honor, if we could, if we could
3 take a five-minute break, we'd be ready to go after that.
4 We've got to get a couple of exhibits in order. I think it
5 will be more efficient if we did that. And then we'll go
6 pretty quickly, hopefully, with this witness. But I can't
7 assure you that she'd be done within an hour.

8 THE COURT: Yeah, I have a --

9 JUROR: Can we just stay here for five minutes and
10 just wait?

11 THE COURT: If you choose to stay here for five
12 minutes, you may.

13 But you think your direct will be lengthy?

14 MR. KNIGHT: Hopefully pretty short, pretty short
15 direct, I hope.

16 THE COURT: Well, we might take a longer recess
17 after, if the jurors need to take a break.

18 But if you want to stand up and stretch, you can do
19 that.

20 We'll take a brief recess.

21 (Recess taken.)

22 - - -

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

25 (Mr. Rogers and Mr. Weis not present.)

1 THE COURT: With the understanding that after direct
2 of the next witness, we'll take a little longer break, ladies
3 and gentlemen.

4 Do we have defense counsel? We have one attorney
5 here.

6 MS. BENSON: I can go check on them real quick.

7 THE COURT: Don't leave. We don't want to have
8 people -- you have someone else check who's here.

9 At least we can get the witness up that you intend
10 to call.

11 You want to let us know -- is a witness coming,
12 Mr. Knight?

13 MR. KNIGHT: Should be, yes.

14 THE COURT: Okay.

15 MR. KNIGHT: Dawn Kliethermes.

16 (Mr. Rogers and Mr. Weis now present.)

17 THE COURT: Would you come forward and be sworn,
18 please.

19 - - -

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DAWN KLIETHERMES,

being first duly sworn by the Court, testified as follows:

THE COURT: Would you take the witness stand,
please.

- - -

DIRECT EXAMINATION

BY MR. KNIGHT:

Q. Please state your name.

A. Dawn Kliethermes.

Q. All right. And where are you employed?

A. I'm employed with the Missouri State Highway Patrol
Crime Laboratory.

Q. Okay. And how long have you been employed there?

A. Approximately nine years.

Q. And what do you do there?

A. I'm a Criminalist III, latent print examiner.

Q. All right. So what are your official duties?

A. I process, examine, and conduct comparisons of
evidence for latent prints.

Q. And how long have you been performing latent print
examinations in conjunction with your job?

A. Approximately nine years.

Q. What is your educational background?

A. I have a Bachelor's in science and criminal justice.

Q. Okay. And what specialized training do you have?

1 A. I have attended numerous ridgeology comparison
2 techniques and fingerprints and palm prints. I have also
3 attended several International Association for Identification
4 educational conferences to further my training and knowledge
5 in the area of latent prints. I've also each year
6 successfully passed a proficiency test in the area of latent
7 prints.

8 Q. And what professional organizations are you a member
9 of?

10 A. I am a member of the Missouri division of the
11 International Association for Identification, as well as the
12 International Association for Identification, and the
13 Midwestern Association of Forensic Scientists.

14 Q. What is a friction ridge?

15 A. Friction ridge skin are the raised portions of skin
16 located on your hands and the soles of your feet.

17 Q. What is a latent fingerprint?

18 A. A latent print is a recording of these friction
19 ridges that are left on an item or an object that has been
20 touched by an individual.

21 Q. Okay. And what's a known fingerprint?

22 A. A known fingerprint is a recording of these friction
23 ridges of a known individual. It is usually taken for record
24 purposes, and is taken by either live scan or rolling the
25 hands or palms in black printer's ink.

1 Q. Okay. And how are latent fingerprints and known
2 fingerprints compared to each other?

3 A. Latent prints are compared by first examining the
4 ridge detail within the print. And this is done -- we look
5 at levels of detail. We look at the ridge flow or pattern.
6 Within the ridge flow and pattern, we look at ridge
7 characteristics. We also look at the edges and pores of
8 these ridges. And we determine then whether -- if there is a
9 sufficient amount of this ridge detail present in the unknown
10 latent print, then we will conduct a side-by-side comparison
11 of the unknown latent print to the known inked print.

12 Q. Okay. And so what are the basic factors then used
13 in fingerprints as a means of identification?

14 A. Fingerprints are permanent and unique. Fingerprints
15 are permanent, in that they are formed before birth, and they
16 do not change throughout one's life, except for scarring or
17 growing larger in size. And fingerprints are unique, in that
18 no two fingerprints have ever been found to be the same, not
19 even in identical twins.

20 Q. Okay. And explain how fingerprints are left on a
21 surface, please.

22 A. There are certain factors that have to exist in
23 order to leave a latent fingerprint, such as the person must
24 have sweat, oil, grease, something on their hands in order to
25 transfer onto that surface. It also depends on the surface;

1 whether the surface is clean or dirty, smooth or rough. The
2 surface could be flat or curved. The environment is also a
3 factor; if it's hot or cold; whether the person is sweating.

4 Q. All right. Okay. So can a positive identification
5 be made where you have just a partial fingerprint?

6 A. Yes.

7 Q. Okay. How can that be done?

8 A. Basically we look at the levels of detail within the
9 print, and then do our side-by-side comparison.

10 Q. All right. What is smudging?

11 A. Smudging basically is: If somebody would take their
12 fingerprint and drag it or rub it, or it could -- it could
13 actually be rubbed by, you know, something that comes in
14 contact with the latent print, because they're very fragile.

15 Q. Okay. And so how can smudging affect whether or not
16 a useable fingerprint is left behind?

17 A. Because if it's -- if it's smudged, it may be very
18 difficult to look at the ridge detail within that print and
19 make that comparison.

20 Q. What is streaking?

21 A. Streaking basically would be somewhat the same --
22 same thing as smudging --

23 Q. Well --

24 A. -- where your ridges would be just dragged. I mean,
25 you may see one or two ridges, but not a sufficient amount.

1 Q. And so that would mean, if we have too much
2 streaking, we're not going to have enough ridge detail to
3 have a -- for a useable fingerprint; is that correct?

4 A. That could be, yes.

5 Q. Okay. What is overlap?

6 A. Overlap, that is just whenever the ridges are -- a
7 person may, you know, leave their recording of their ridges,
8 and then basically touch over the ridges again in a certain
9 way.

10 Q. And so how can overlap affect whether a useable
11 fingerprint is left behind?

12 A. Basically with the ridges being on top of each
13 other, it would make it very difficult to make a comparison.

14 Q. And earlier you talked a little bit about things
15 that must be on fingers or surfaces in order to leave a
16 fingerprint behind; is that right?

17 A. That's correct.

18 Q. Explain that again. What are you talking about
19 there? What must either be on fingers or on the surface in
20 order to leave a finger -- a useable fingerprint behind?

21 A. Sweat, grease, oil, dirt. There must be -- or there
22 could possibly be something on the surface, such as dust. If
23 a person touches the dust on the surface, it would leave a
24 recording of your -- of friction ridges. Could be blood on
25 the surface; could be grease, oil; anything.

1 Q. Okay. And why are some surfaces less conducive than
2 other surfaces to leaving fingerprints behind?

3 A. If the surface is rough, then the texture of the
4 roughness would make it difficult to leave a print. If
5 the -- and some examples of a rough surface would be like
6 concrete or basically human skin, a vinyl dashboard in the
7 car, carpet. And then if a surface is smooth, such as glass,
8 plastic bags, cans, then it's much easier to leave a latent
9 print on that surface.

10 Q. How can the width of a surface affect whether or not
11 a useable fingerprint can be left behind?

12 A. The smaller the surface, the more difficult it would
13 be to leave a print behind. Therefore -- you know, you may
14 have -- you know, you may not have a sufficient amount of
15 ridge detail on -- the smaller the surface.

16 Q. Is that because all the ridges might not fit on a
17 surface that is too narrow; is that correct?

18 A. That could be.

19 Q. Okay. And generally how conducive is clothing to
20 leaving a useable fingerprint behind?

21 A. It's one of the more difficult things to develop a
22 print on.

23 Q. Okay. What about maybe vinyl, such as maybe a
24 dashboard? How conducive is that surface to leaving a
25 useable fingerprint behind?

1 A. That's a, yeah, more difficult surface, again.

2 Q. What about maybe upholstery?

3 A. That would be a difficult surface as well.

4 Q. Carpet?

5 A. Carpet as well.

6 Q. What about concrete?

7 A. Yes.

8 Q. Okay. What about maybe leather items? Are those --

9 are leather items generally conducive to leaving behind

10 useable fingerprints?

11 A. Yeah. I mean, it depends on how textured the

12 leather would be, but it's more difficult.

13 Q. What about coins? Are those types of items,

14 American penny, nickle, dime, those types of things, are they

15 generally conducive to leaving useable fingerprints behind?

16 A. No, not generally.

17 Q. Okay. And in the nine years that you've been

18 employed at the Missouri State Highway Patrol as a latent

19 fingerprint examiner, how many times have you testified with

20 regard -- testified as an expert witness with regard to

21 fingerprint testing?

22 A. Approximately 20 times.

23 Q. That's in nine years. Right?

24 A. Correct.

25 Q. Testified only 20 times; correct?

1 A. That's correct. Approximately.

2 Q. And in those 20 times that you've testified, about
3 how many times have you testified where there was a positive
4 identification of a fingerprint?

5 A. Approximately 8 times.

6 Q. So you testified -- in those other 11, 12 times,
7 what have you testified about in those cases?

8 A. Whether -- it could have been the comparison was
9 negative or there were no prints developed at all. Or no
10 value -- prints that could not be used as well.

11 Q. You were testifying about why useable fingerprints
12 were not left behind; is that correct?

13 A. Yes.

14 Q. At a crime scene.

15 A. Yes.

16 Q. Or at crime scenes.

17 A. Right.

18 Q. All right. You performed testing in this case; is
19 that correct?

20 A. Yes, I did.

21 Q. And I think you were going to bring this with you,
22 but do you have Chuck Erickson's fingerprint card?

23 A. Yes, I do.

24 Q. And do you also have the defendant's fingerprint
25 card with you?

1 A. Yes.

2 Q. Okay. And 69 has already been admitted into
3 evidence. That's -- those are the fingerprints from Kent
4 Heitholt. Let me lay this up here for you. I'd like to show
5 you what's been marked as State's Exhibit 70. What is this?

6 A. This is a ten print card bearing the name of Kali
7 Heitholt.

8 Q. Okay. And did you use this to make fingerprint
9 comparisons in this case?

10 A. Yes, I did.

11 Q. Okay.

12 MR. KNIGHT: Your Honor, I'd offer State's Exhibit
13 70.

14 MR. ROGERS: No objection.

15 THE COURT: State's Exhibit 70 is admitted.

16 - - -

17 State's Exhibit 70 admitted into evidence.

18 - - -

19 Q. So you had some known fingerprints that you used for
20 comparison purposes; is that correct?

21 A. Yes, that is correct.

22 Q. Chuck Erickson's fingerprints, the defendant's
23 fingerprints, Kent Heitholt's fingerprints, and also Kali
24 Heitholt's fingerprints; is that correct?

25 A. That's correct.

1 Q. Okay. And before we get into the results of your
2 tests, let's talk about four different types of results you
3 might have in -- when you're making comparisons. First of
4 all, you have a match. You could have a match. Is that
5 correct?

6 A. That's correct.

7 Q. Pretty self-explanatory. What is that?

8 A. When an identification is effected with the latent
9 print and the known print.

10 Q. Second of all, what are -- the second category,
11 useable and unknown fingerprints, what are those?

12 A. Useable is the term that we would also use, would be
13 an unknown latent print that does not -- that we have not
14 made an identification with, or the comparisons would be
15 negative.

16 Q. Okay. So -- but the fingerprint itself would be
17 useable. You could use that for comparison if you found
18 other prints to compare it to; is that correct?

19 A. That is correct.

20 Q. Third category: Unuseable. What does that mean?
21 Pretty self-explanatory. What is it?

22 A. Un -- well, yeah, it would be: Not able to use it
23 for comparison purposes.

24 Q. And what are negative fingerprints? The fourth
25 category.

1 A. No ridge detail detected on the item or evidence at
2 all.

3 Q. Do you see State's Exhibit 66 in front of you?
4 Fingerprints that were taken from Kent Heitholt's car?

5 A. Yes.

6 Q. Okay. Those have already been admitted into
7 evidence. Did you perform certain comparisons on those
8 fingerprints in 66?

9 A. Yes.

10 Q. All right. And I'd like to show you what's been
11 marked as State's Exhibit 73.

12 MR. KNIGHT: And I showed this to defense counsel
13 yesterday.

14 MR. ROGERS: That's correct.

15 MR. KNIGHT: The results of the fingerprint testing.

16 Q. What is this?

17 A. This is the -- your exhibit of the fingerprints on
18 the victim's car and basically the results.

19 Q. Okay. And you've had a chance to look this over
20 before coming to court today; is that correct?

21 A. Yes.

22 Q. Okay.

23 MR. KNIGHT: Your Honor, I'd offer State's Exhibit
24 73.

25 MR. ROGERS: No objection.

1 THE COURT: State's Exhibit 73 is admitted.

2 - - -

3 State's Exhibit 73 admitted into evidence.

4 - - -

5 Q. Okay. Dawn, please come down off the witness stand.

6 We also need to keep our voices up if we can.

7 Okay. 1A, do you see this up here? We got the
8 results of the fingerprint testing. 1A. You looked at these
9 cards in here; is that correct?

10 A. Yes.

11 Q. And one of those is actually labeled 1A; right?

12 A. That's correct.

13 Q. Okay. And what were your results of your
14 fingerprint comparisons when you looked at 1A?

15 A. There was four identifications made with Kent
16 Heitholt.

17 Q. Okay. And once again, 1A is on this location on the
18 outside of the car; is that correct?

19 MR. ROGERS: I'm sorry. I can't see through you.

20 A. That's correct.

21 MR. ROGERS: Thank you.

22 Q. Fingerprint -- the fingerprint card itself indicates
23 that the fingerprint was lifted from this area of the car; is
24 that correct?

25 A. Yeah. It's indicated on the card, on the back of

1 the card. Yes.

2 THE COURT: You're not -- the reporter is not able
3 to hear.

4 THE WITNESS: Okay.

5 THE COURT: So you're either going to have to talk
6 from a mic and put the board over there so she can see it,
7 or --

8 THE WITNESS: I can speak up.

9 THE COURT: -- in some way that the reporter can
10 hear.

11 THE WITNESS: Okay.

12 THE COURT: Thank you.

13 THE COURT REPORTER: Could you repeat your answer?

14 THE COURT: You need to repeat your question.

15 MR. KNIGHT: Well, I'll tell you what, I'll withdraw
16 that question. It's all right.

17 Q. Now, testing 1B -- and for the record, that is the
18 fingerprint that was located close to 1A, on the outside
19 driver's side door frame. What were your results of your
20 tests on 1B?

21 A. The report indicates that there was one
22 identification effected with Kent Heitholt and then one
23 unuseable fingerprint.

24 Q. Okay. And 1A and 1B, compare those to each other.
25 Are these different prints or not? 1A and 1B.

1 A. Yes.

2 Q. They're different? Do you want to look at those
3 cards?

4 A. Where they were lifted from?

5 MR. ROGERS: I'm going to object to this.
6 Obviously -- he's attempting to impeach his own witness.

7 MR. KNIGHT: No, I'm not. I'm just going to ask her
8 another question. I'm going to ask her to look at these
9 cards, 1A and 1B.

10 THE COURT: The objection's overruled, if that is an
11 objection.

12 A. Okay. The back of the card indicates that it's from
13 the driver's door.

14 Q. Okay. That's 1A --

15 A. Correct.

16 Q. -- down here. And 1B right there; is that correct?

17 A. Right.

18 Q. When you turn these over and you actually look at
19 these lists, 1A has three tape lifts; is that correct?

20 A. Right.

21 Q. And 1B has one tape lift; is that right?

22 A. That's right.

23 Q. Okay. How does this one tape lift on B compare with
24 the middle tape lift on 1A?

25 A. It appears to be the same lift.

1 Q. Okay. So in your opinion, how -- how -- well, in
2 your opinion, do we have the same lift then? 1A and the
3 middle of 1 -- the middle of 1A and 1B? Is that right?

4 A. Yeah -- that's what it appears to be to me.

5 Q. Okay. But whatever the case, 1A and 1B, you
6 effected identification with Kent Heitholt; is that correct?

7 A. That's correct.

8 Q. Okay. 1C, which, for the record, was a print taken
9 from the passenger side -- rear passenger inside window of
10 this vehicle. Inside the vehicle. What were your results on
11 1C?

12 A. Two identifications were effected from Kali Heitholt
13 and one useable and unknown fingerprint.

14 Q. 1D, which was passenger side front door, the window,
15 on the inside. What are the results there? 1D.

16 A. One identification with Kali Heitholt and one
17 useable and unknown fingerprint and unuseable fingerprints.

18 Q. 1E, which would be a print on the outside of the
19 vehicle, on the passenger side, passenger side door window,
20 what were the results of 1E?

21 A. Two identifications with Kali Heitholt and unuseable
22 fingerprints.

23 Q. Then coming back to 1F, which was on the driver's
24 side of the vehicle, back seats, back -- back rear door
25 window, inside, 1F, what are the results?

1 A. Three useable and unknown fingerprints and unuseable
2 fingerprints.

3 Q. Okay. Three useable and unknown fingerprints and
4 unuseable fingerprints on the inside. And then 1G, which was
5 pretty much the same location, just a little bit above 1F,
6 what are the results there?

7 A. Unuseable fingerprints.

8 Q. Okay. 1H, which was prints on the outside of the
9 vehicle, right around the gas cap area, what's the result of
10 that?

11 A. One unuseable palm print.

12 Q. Okay. And 1J and 1L, prints in that same area as
13 1H, on the outside of the vehicle. What are the results with
14 1J and 1L?

15 A. Unuseable palm print. One unuseable. Excuse me.

16 Q. 1K, prints on the outside of the passenger --
17 passenger side door frame, top, what was the result there?
18 1-K.

19 A. One unuseable palm print.

20 Q. All right. And then 1M, driver's side, driver's
21 side door, inside driver's side door window, what was the
22 result with 1M?

23 A. Unuseable fingerprints.

24 Q. Okay. And then 1N was the rear view mirror; is that
25 correct?

1 A. Yes. I'd have to refer to the back of the card.

2 (Pause.)

3 Q. You know what, we've had a witness that's already
4 testified about the location of 1N. What was the result of
5 the tests done on 1N?

6 A. One useable and unknown fingerprint and one
7 unuseable fingerprint.

8 Q. Okay. Take the stand again.

9 Real quickly, without showing you these exhibits,
10 I'd like to ask what the results were with regard to
11 different evidence that was collected in this case. And our
12 State's Exhibit 38 -- well, actually it wasn't admitted, but
13 the rear tire, you did tests on the driver's side rear tire;
14 is that correct?

15 A. That's correct.

16 Q. Okay. And what were the results of your tests on
17 that item?

18 A. Negative.

19 Q. Okay. The belt buckle, our State's Exhibit 47,
20 highway patrol number 48, what were your results?

21 A. The results on the belt buckle was -- it was either
22 negative or no value.

23 Q. Okay. Well, do you want to look at your notes on
24 that?

25 A. I will look.

1 Yeah. Derese's notes mean there's no prints.

2 Q. Okay. Well, talking about Derese, who's Derese?

3 A. She was the previous examiner that had started the

4 case.

5 Q. Okay. And did she do testing back in 2001?

6 A. Yes, she did.

7 Q. And did you basically start doing testing I think

8 2004?

9 A. After that.

10 Q. All right. You've had the opportunity to review her

11 notes and review what she did with respect to her testing in

12 this case; is that correct?

13 A. I've reviewed her notes, yes.

14 Q. Okay. And to your knowledge, her -- the methods

15 that she used to arrive at her conclusions were all

16 satisfactory?

17 A. That's correct.

18 Q. Okay. But she tested this belt buckle; correct?

19 A. That's correct.

20 Q. And you said that the result was negative; right?

21 A. That's correct.

22 Q. Meaning -- again, what does a negative mean?

23 A. No ridge detail detected.

24 Q. No ridge detail at all.

25 A. Yes.

1 Q. So it's negative. I mean, can we even tell if there
2 is a fingerprint at all?

3 A. No.

4 Q. Okay. As opposed to this other -- other category
5 that we have here, that we can see on State's Exhibit 73,
6 "unuseable." Well, when we've got an unuseable print, we can
7 tell that there's fingerprints maybe there, but it's so
8 small, it's such a partial -- it's such a small fraction --

9 MR. ROGERS: Object. This is leading, Your Honor.
10 Plus it's asked and answered I think.

11 THE COURT: It appears to be a leading question. I
12 don't know what he's going to end up asking. You may
13 rephrase, Mr. Knight.

14 MR. KNIGHT: That's fine, Your Honor. I'll just
15 move on.

16 Q. But with regard to that belt buckle, Derese's
17 finding was negative; right?

18 A. That's correct.

19 Q. Like to show you what's been marked as State's
20 Exhibit 47. Okay. Can you handle that? When you're done,
21 can you put it back in here for me, please.

22 That particular item, just focusing right now on the
23 leather part of that item, would that be conducive to leaving
24 a fingerprint behind?

25 A. Yes.

1 Q. You think so?

2 A. (Nodding head up and down.)

3 Q. Okay.

4 A. It's a smooth surface.

5 Q. The entire -- this entire belt buckle area on the
6 back you think would be conducive or --

7 A. Well, the actual metal piece. I would say this very
8 small area. The leather piece is a larger, smoother area.

9 Q. Okay. But metal itself would not be conducive,
10 would it?

11 A. Yes. It would be difficult to leave a print --

12 Q. Okay.

13 A. -- on the metal piece.

14 Q. And then certainly the front part of this leather
15 would not be conducive, would it, to leaving a fingerprint
16 behind?

17 A. It would be more difficult as well.

18 Q. Okay. But, once again, as you testified before,
19 it's very rare that you testify in other cases where you have
20 positive --

21 MR. ROGERS: I'm going to object to this, Your
22 Honor. First of all, it's been asked and answered.

23 THE COURT: The objection is sustained. It is asked
24 and answered.

25 MR. KNIGHT: Okay.

1 Q. Number 48, which was the lens underneath Kent's car,
2 which is your number 60, what were the results of the tests
3 on that item?

4 A. Okay. No value. Or unuseable.

5 Q. Missouri State Highway Patrol number 59, which is
6 our number 49. State's Exhibit 49. Miscellaneous documents
7 under the vehicle. What were the results of the tests on
8 those documents?

9 A. Did you say 59?

10 Q. Yes.

11 A. One of the pieces of paper, I developed latent
12 prints on that, and then the other papers were no value.

13 Q. Okay. And 59A, Missouri State Highway Patrol number
14 59A, what were the results of the tests on that item?

15 A. That was the particular piece of paper I did develop
16 a latent print on.

17 Q. Okay. And what the results of those tests, when you
18 did the comparisons?

19 A. Two identifications were effected with the left
20 thumbprint from that piece of paper, it's specimen 59A, with
21 Kent Heitholt.

22 Q. Okay. Your number 56, which was the cell phone
23 underneath the victim's car, tell us about the tests on that.

24 A. That was negative.

25 Q. The Snickers wrapper, number 47, your number 47, our

1 51.

2 A. That was negative as well.

3 Q. Okay. The Jiffy Lube receipt, number 73, the
4 results on that?

5 A. Negative.

6 Q. Your number 64, which is a paper bag located just
7 west of Kent. The results?

8 A. Negative.

9 Q. There was some Styrofoam, which is your number 65,
10 our number 54. The results on that?

11 A. Negative.

12 Q. And then we had a Columbia College folder that was
13 underneath Kent's car. It's your number 67, state's number
14 55.

15 A. No value.

16 Q. Okay. Then we had a Hickman High School basketball
17 schedule, which was located a little bit south of Kent's car.
18 That's your number 68. Our number 57.

19 A. No value.

20 Q. We had a dime, which was located pretty close to the
21 victim. Your number 63. Our number 60.

22 A. Negative.

23 Q. Four dimes and a penny located underneath -- pretty
24 close to Kent's body. Your number 66; our number 61.

25 A. Negative.

1 Q. There were some glasses with a missing lens, located
2 in the driver's seat. Your number 69; our number 75.

3 A. Negative.

4 Q. There was a yellow notepad on the driver's seat.
5 Your number 57A; our number 76.

6 A. Latent prints of value were developed on the yellow
7 notebook.

8 Q. And what were the results?

9 A. The results with the yellow notepad was one
10 identification, with the right ring finger, bearing the name
11 of Kent Heitholt.

12 Q. Okay. Green checkbook, your number 57B, our number
13 67.

14 A. Negative.

15 Q. Miscellaneous papers in the driver's seat, your
16 number 57C, our number 76, what did you find?

17 A. One latent print of value.

18 Q. Okay. And that was unknown; is that correct?

19 A. It's unknown.

20 Q. All right. So it's a useable and unknown
21 fingerprint; is that right?

22 A. That is correct.

23 Q. Okay. Then we've got, moving along, almost done
24 here, the computer case, which was on the driver's seat, your
25 number 58, our number 77. The results?

1 A. No value with the folder.

2 Q. Then we've got highway patrol number 62, which was a
3 wallet, quarters, coin roll from the center console, all
4 together, and that's our number 78. What were the results?

5 A. There was one latent print of value developed on a
6 business card in 62A. The remaining receipts, quarters -- or
7 excuse me, the paper wrapper rolled with quarters, as well as
8 the quarters, were negative.

9 Q. Okay. Your number 61, which is a cat food box
10 located on the front passenger seat. Our number 79. What
11 were your results there?

12 A. What specimen number did you say? I'm sorry.

13 Q. It was 61. The cat food box.

14 A. 61?

15 Negative. I'm sorry.

16 Q. Then your number 70, which was the digital recorder
17 from the center console area of the vehicle. Our number 81.

18 A. No value.

19 Q. One more. It's your number 71, which was the name
20 tag with the name Dewayne on it. It's our number 82. What
21 were your results with regard to that piece of evidence?

22 A. No value.

23 Q. Okay.

24 MR. KNIGHT: Nothing further.

25 THE COURT: Let me ask you if you're going to have a

1 lengthy cross on this witness.

2 MR. ROGERS: Not lengthy. Certainly not by my
3 standard, and I don't think by anybody else's.

4 THE COURT: Well, are you going -- is it going to be
5 more than five or ten minutes?

6 MR. ROGERS: Shouldn't be.

7 THE COURT: Because otherwise I'll let the jury take
8 its break and then come back and finish with your cross.

9 MR. ROGERS: I think I'll be done in five or ten
10 minutes.

11 THE COURT: All right.

12 - - -

13 CROSS-EXAMINATION

14 BY MR. ROGERS:

15 Q. I'm just a little bit confused about terminology,
16 because we started off I think with four terms for latent
17 fingerprints which you examined. Positive or a match, that
18 means the same thing; right?

19 A. That's the same thing, correct.

20 Q. Okay. And -- or --

21 A. Or identification as well.

22 Q. And that's one category. You look at it and you
23 compare it and effect an identification; right?

24 A. That's right.

25 Q. Okay. And then the next one was useable? Is that

1 correct?

2 A. That's correct.

3 Q. And useable means there's enough detail to make a
4 comparison and determine whether or not a match could be
5 effected.

6 A. That's correct.

7 Q. Is that also what's called a print of value?

8 A. Yes.

9 Q. Okay. So useable equals print of value.

10 A. That's right.

11 Q. All right.

12 A. That's what my notes reflect, so.

13 Q. Okay. Some examiners use one term, some use the
14 other, some use them both?

15 A. Yes.

16 Q. And you're a both person?

17 A. Basically we use no value, negative.

18 Q. Okay.

19 A. But it means the same thing.

20 Q. All right. Well, let's go back -- that's -- and I
21 guess to another category. When a print is a print of no
22 value, that means there's something there that looks like
23 it's a print, but you can't discern enough detail to make a
24 comparison? Is that accurate?

25 A. That's correct.

1 Q. Okay. And that could be because it gets smudged or
2 it's streaked or there's insufficient size.

3 A. A variety of reasons, yes.

4 Q. A variety of reasons. And that you say is no value.
5 Is that the same as negative?

6 A. Negative basically -- that's when we indicate that
7 we do not see any ridge detail at all.

8 Q. But you're still seeing something that might be a
9 print.

10 A. No. I mean, basically no ridges at all. We would
11 not see anything.

12 Q. Okay. So, if you see what looks like it might be a
13 print, but there's not enough ridge detail to make an
14 identification, that's a print of no value.

15 A. Right.

16 Q. And if there's no prints at all, or if what are
17 there can't be discerned to be prints, that's negative.

18 A. Right.

19 Q. Okay. I think I'm straight now.

20 And you indicated that there were useable and
21 unknown. And once you have a useable print, then you can
22 divide it into identifications and unknown; right?

23 A. Right.

24 Q. Because until you make the identifications, it's
25 unknown. And there might be some which are question, which

1 look like they may well match up with somebody, but there's
2 just not quite enough there? Is that a fair statement?

3 A. That would basically -- we would actually refer to
4 that as a no value print. It cannot be used for comparison.
5 If -- there wouldn't be enough there to effect that.

6 Q. Well, what if there are enough -- we don't need to
7 go there. You don't have anything in that category in this
8 case, do we?

9 A. Right. No.

10 Q. All right. So useable and unknown is one where
11 there's enough detail to compare, but it hasn't matched with
12 anything you compared it with.

13 A. That's correct.

14 Q. And you found one of those at location 1C, one of
15 those at location 1D. Those are -- speaking of the latent
16 lift cards --

17 A. Yes.

18 Q. -- that you got from the Columbia Police Department;
19 right?

20 A. That's right.

21 Q. Okay. One of those on -- three of those on card 1F.
22 Right?

23 A. That's correct.

24 Q. That's a total of five so far. And one on card 1N.
25 Correct?

1 A. That is correct.

2 Q. So we have a total of six from the vehicle.

3 A. That's correct.

4 Q. Of prints of value, useable, unknown. Correct?

5 A. That is correct.

6 Q. And that means they were not Ryan Ferguson's.

7 Right?

8 A. That is correct.

9 Q. And they're not Charles Erickson's.

10 A. That is correct.

11 Q. And they're not Kent Heitholt's.

12 A. That is correct.

13 Q. And they're not Kali Heitholt's.

14 A. That is correct.

15 Q. And they're not anybody else's whose prints you've

16 been given in connection with this case.

17 A. That is correct.

18 Q. And you've been given other prints in this case,

19 over the years.

20 A. Yes.

21 Q. Several. Maybe even many. Is that a fair

22 statement?

23 A. Yes.

24 Q. Okay. You've also compared -- or processed these

25 prints through an automated fingerprint identification

1 system.

2 A. Yes.

3 Q. AFIS? Is that its name?

4 A. AFIS.

5 Q. AFIS.

6 A. That is correct.

7 Q. Okay. And AFIS would be an acronym for Automated
8 Fingerprint Identification System.

9 A. That's right.

10 Q. Okay. And those prints have not been identified
11 through that system as well.

12 A. That's correct.

13 Q. And those -- that system has in it the fingerprints
14 of every law enforcement in the State of Missouri, for
15 example.

16 A. Yes.

17 Q. It also has everybody who's ever been arrested for a
18 felony in the State of Missouri.

19 A. Correct.

20 Q. And in the United States in general, if the cards
21 made it to the FBI.

22 A. That is correct.

23 Q. Okay. You also found an unuse -- or you found a
24 print of value someplace. An unknown print of value on the
25 papers of the seat, the driver's seat of the car.

1 A. That's correct.

2 Q. And you developed that yourself through a chemical

3 process?

4 A. Right.

5 Q. And did you try and compare it?

6 A. Yes, I did.

7 Q. And it is?

8 A. It was negative. No match.

9 Q. No match. Useable and unknown?

10 A. That's correct.

11 Q. Okay. And you also developed a print of value on a

12 business card in the lot.

13 A. That's correct.

14 Q. And what was the result on it?

15 A. There was no match.

16 Q. Useable, but unknown.

17 A. That's correct.

18 Q. Okay. Now, the only other thing I want to ask you

19 about is the notion that one of the fingerprint lifts on card

20 1A is the same lift as the card on 1B?

21 A. I said it appears to be. I did not make the lift.

22 Q. Okay. When you say "appears to be," you mean it

23 looks like it might be the same -- a print from the same

24 finger, like when I do that (indicating)?

25 A. Yes.

1 Q. Okay. You don't mean it's the same object lifted
2 from the car. In other words, take this print, lift it, lift
3 it again?

4 A. Oh, yeah. No.

5 Q. That couldn't be happening, could it?

6 A. (Shaking head from side to side.)

7 Q. There's no way to do that.

8 A. You can -- you could actually make two lifts, which
9 is what I'm indicating, yes. That there was possibly two
10 lifts made from that same area.

11 Q. From that same area, but not from the same latent
12 print. Can the same latent print be lifted twice?

13 A. Yes.

14 Q. How?

15 A. Because if there's still residue left on the
16 vehicle, fingerprint residue or whatever it might be, that
17 the print was left in, then it will lift twice.

18 Q. And why would you do that? If it lifts once --

19 A. Because basically the first time maybe you may not
20 get a print that is as dark as what you might like it to be,
21 and then so you might try and make another lift, to see if
22 maybe you could get a little bit darker or maybe it was too
23 light the first time.

24 Q. So you put the powder on the surface, you develop
25 the latent print, you put on the tape, it takes off the

1 powder, you put that on the card, and then the latent print's
2 still there to be developed again perhaps?

3 A. It could be.

4 Q. Okay. That's what I didn't understand.

5 MR. ROGERS: Thank you.

6 THE COURT: Is there anything further for this
7 witness, or may she be excused, Mr. Knight?

8 MR. KNIGHT: Oh, I didn't know he was done. I will
9 redirect. Just two questions.

10 THE COURT: I'm counting. Two?

11 MR. KNIGHT: I think so. Hopefully. Try to. If I
12 can make them really long.

13 - - -

14 REDIRECT EXAMINATION

15 BY MR. KNIGHT:

16 Q. Do you have Charles Erickson's fingerprint card in
17 front of you?

18 A. Yes.

19 Q. Okay. Do you mind if I put an exhibit sticker on
20 there? Can I see -- can I see the defendant's fingerprint
21 card also?

22 So -- show you what's been marked as State's Exhibit
23 67. That's Chuck Erickson's fingerprint card; correct?

24 A. That's correct.

25 Q. And State's Exhibit 68 is the defendant's

1 fingerprint card; is that correct?

2 A. That's correct.

3 MR. KNIGHT: Your Honor, I'd offer State's Exhibits
4 67 and 68.

5 MR. ROGERS: No objection.

6 THE COURT: State's Exhibits 67 and 68 are admitted.

7 - - -

8 State's Exhibits 67 and 68 admitted into evidence.

9 - - -

10 MR. KNIGHT: Nothing further, Your Honor.

11 THE COURT: Anything further --

12 MR. ROGERS: No redirect -- no recross.

13 THE COURT: May we release Miss Kliethermes?

14 MR. KNIGHT: Yes, Your Honor.

15 THE COURT: May I release her?

16 MR. ROGERS: Yes, Your Honor.

17 THE COURT: Thank you so much for coming. You may
18 be excused. Do not take any of the Court's exhibits, but you
19 may take your paperwork along with you.

20 THE WITNESS: Okay.

21 THE COURT: Do not discuss your testimony with
22 anyone who's yet to be called as a witness.

23 THE WITNESS: Okay.

24 THE COURT: You may step down.

25 Ladies and gentlemen, the Court again reminds you of

1 what you were told at the first recess of the Court. Until
2 you retire to consider your verdict, you must not discuss
3 this case among yourselves or with others, or permit anyone
4 to discuss it in your hearing. You should not form or
5 express any opinion about the case until it is finally given
6 to you to decide. Do not read, view, or listen to any
7 newspaper, radio, or television report of the trial.

8 Take a 10- or 15-minute break. If you'll let me
9 know when the jurors are ready to come back. I will be in
10 chambers over here. I need to take up another matter, not
11 related to this case. And so you'll let me know in there.

12 We'll be in recess.

13 (Recess taken.)

14 - - -

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

17 THE COURT: Have you had your witness coming -- is
18 the state ready to go?

19 MR. KNIGHT: Bill, can you get Cary, please?

20 THE COURT: You've instructed a witness to come
21 upstairs?

22 MR. KNIGHT: It should have been done.

23 THE COURT: All right. What is the name of the
24 witness, so that we can have Mr. Hawes get the witness if --

25 MR. KNIGHT: It's Cary Maloney.

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CARY MALONEY,

being first duly sworn by the Court, testified as follows:

THE COURT: Would you take the witness stand. And there is a microphone that is live, which is a little small black -- no. On -- yeah. On the bench. If you just sit relatively close to it, we'd appreciate that. Thank you.

You may inquire.

MR. KNIGHT: Thank you, Your Honor.

- - -

DIRECT EXAMINATION

BY MR. KNIGHT:

Q. Please state your name.

A. My name is Cary Maloney.

Q. And how are you employed?

A. I'm employed as the DNA technical leader at the Missouri State Highway Patrol Crime Laboratory in Jefferson City.

Q. Okay. How long total have you been employed there?

A. I've been employed there for over 20 years.

Q. Okay. And what's your title again?

A. I'm the DNA technical leader.

Q. Okay. And how many criminalists do you supervise in your unit?

A. There are I believe seven criminalists in the case-working section and four criminalists in our data-basing

1 section, that all do DNA analysis.

2 Q. Okay. And what are your duties there?

3 A. My duties now have a lot to do with administration.
4 I administer the two sections of the laboratory, and I'm
5 responsible for quality assurance of the procedures, and
6 validation, safety, and training. I also continue with my
7 duties as a criminalist and will actually work cases myself.

8 Q. What is your educational background?

9 A. I have a Bachelor of Science degree in biology from
10 Missouri Southern State University. And I've also taken
11 various science courses in biology and chemistry from such
12 institutions as Lincoln University, University of Virginia,
13 and University of Missouri in Columbia.

14 Q. And what professional training do you have?

15 A. I have attended -- first of all, I'm a member of the
16 Midwestern Academy of Forensic Scientists and the American
17 Association of Forensic Science. And I have attended various
18 schools, workshops, and seminars put on both by those
19 organizations and by organizations such as the FBI.

20 Q. What professional or scientific organizations are
21 you a member of?

22 A. The ones I mentioned before: The Midwestern
23 Association of Forensic Scientists and the American Academy
24 of Forensic Science.

25 Q. Okay. And you also do training there; is that

1 right?

2 A. Yes. Training that they put on.

3 Q. So how many times have you testified as an expert
4 witness with regard to DNA evidence?

5 A. Strictly DNA, I'm not sure. In my field, I've
6 testified approximately a hundred times.

7 Q. Okay. And your field would be serology; is that
8 correct?

9 A. Yes. Serology, stain identification, DNA.

10 Q. Okay. What does serology mean?

11 A. Serology is a brand of science that we previously
12 did in the laboratory, where we would identify and type and
13 compare polymorphic enzymes that were present in the stain
14 material that we look at.

15 Q. And then you moved on to DNA, in addition to
16 serology, from there; is that correct?

17 A. Yes. DNA had -- were further enhancements of the
18 typing techniques that we used and are much more
19 discriminating and sensitive.

20 Q. What is DNA?

21 A. DNA is a molecule that's found in all nucleated
22 cells of the body. And that molecule generally codes for the
23 characteristic of the individual. But there are parts of
24 that molecule that we like to look at in order to
25 discriminate between individuals in our work.

1 Q. What is DNA PCR-STR?

2 A. PCR is a general technique of amplifying certain
3 parts of the DNA for testing. And STR is the specific sites
4 that are amplified by PCR that we use currently in the
5 laboratory to do our testing.

6 Q. And how long has the Missouri State Highway Patrol
7 crime lab been doing or conducting DNA analysis? Or
8 analyses.

9 A. We've been conducting DNA analysis in some form
10 since 1990.

11 Q. Okay. And how long have you all been doing DNA
12 PCR-STR?

13 A. We have been using the STR technique of DNA typing
14 since about 1999.

15 Q. Okay. And is DNA PCR-STR a generally accepted
16 technique in the forensic scientific community and medical
17 community?

18 A. Yes, it is.

19 Q. Okay. Were you present or did you participate in
20 the validation of STR analysis at the Missouri State Highway
21 Patrol crime lab?

22 A. Yes, I was present and I did participate in that.

23 Q. Okay. And briefly, what is validation?

24 A. Validation is simply testing a procedure in your
25 laboratory to make sure that it gives you reliable data, so

1 that you can use it on case work reliably and competent.

2 Q. And does the Missouri State Highway Patrol crime lab
3 have protocols which are used to ensure the accuracy of its
4 testing?

5 A. Yes. We have a standard protocol that we use in all
6 of our case work.

7 Q. And is the Missouri State Highway Patrol crime lab
8 an accredited lab?

9 A. Yes, we are.

10 Q. Okay. And what does that mean?

11 A. The forensic laboratories throughout the country
12 have the option of obtaining accreditation through the
13 American Society of Crime Lab Directors' lab accreditation
14 board. And our laboratory has been accredited by that agency
15 since 1984.

16 Q. What is proficiency testing?

17 A. Proficiency testing is regular testing that each
18 criminalist undergoes to test or measure the proficiency of
19 that individual using the techniques that we use in the
20 laboratory.

21 Q. And is proficiency testing a part of your
22 accreditation?

23 A. Proficiency testing is required by accreditation,
24 yes. It's part of our quality assurance program at the
25 laboratory.

1 Q. Okay. And once again, what is serology, very
2 briefly?

3 A. Serology is, in the strict sense, by accreditation
4 standards, is the typing of polymorphic enzymes, but it also
5 included the location, identification, and subsequent typing
6 of body fluid stains that are found on any evidence that's
7 sent to the laboratory.

8 Q. How can a person's DNA be deposited on a piece of
9 evidence?

10 A. The most common ways that we deal with is through
11 body fluids. Most of the evidence that we test in the
12 laboratory has blood or semen stains on it. However, DNA can
13 also be transferred through other body fluids, such as nasal
14 mucus or sweat. It can come along with sweat or it can come
15 along with saliva.

16 Q. Okay. And what happens with regard to DNA when skin
17 touches something?

18 A. Skin itself is cellular material of the body. And
19 skin does have DNA in it. Any skin that is rubbed off or
20 sloughed off from contact with an object has potential to
21 give a DNA type.

22 Q. So what are the two main difficulties you encounter
23 when you're looking for DNA on a piece of evidence?

24 A. Well, the first thing we have to do is locate the
25 DNA. If we are zeroing in on a stain material, then we know

1 that that's the area that we want to test. If we see an
2 obvious blood stain or a semen stain, that's the area that we
3 want to examine for the presence of DNA.

4 The second problem that we have is: There has to be
5 a sufficient amount of DNA to be able to get a conclusive
6 type that we can use for comparisons. And generally in the
7 case of stain material, that's not a problem. But when we're
8 talking about just the transfer of skin material, that can be
9 a problem, because there's usually a limited amount of
10 transfer under those circumstances.

11 Q. And when you have a limited amount of transfer, does
12 that mean that you, even if you went directly to the area
13 where maybe DNA skin cells rubbed off on an item, went
14 directly to that area and tested that area, are you saying
15 that you would not have enough for a useable profile? DNA
16 profile.

17 A. Yes, that's very possible that, even if DNA is
18 present on that item, it may be at a level that is below our
19 threshold of detectability, with the current technology that
20 we use.

21 Q. Okay. So let's -- I want to break this down a
22 little bit more. You're talking about the two problems that
23 you encounter when you're trying to find DNA on a piece of
24 evidence; correct?

25 A. Okay.

1 Q. When you're looking for DNA.

2 A. Okay. Yes.

3 Q. Right? And the first thing -- the first problem you
4 talked about was finding DNA. When you get a piece of
5 evidence in a case, how do you decide what areas on a given
6 piece of evidence to test?

7 A. Generally we will use information that we may know
8 about the test. If -- or excuse me. About the case. If
9 it's an assault case where an individual's been stabbed or
10 shot, we may look for blood stains. That may be the most
11 probative evidence in that case. If it's a sexual assault
12 case, we're obviously looking for semen stains. And/or blood
13 stains. It just depends on the information we have as to
14 whether the victim or suspect was injured in the act of the
15 crime.

16 Q. Okay. Well, let's just take an assault case for
17 instance. If you're looking for blood on a piece of
18 evidence, it could be probative in the case, connecting
19 either defendant to victim or victim to defendant. If you're
20 looking for blood under those circumstances, wouldn't you --
21 let's just talk about maybe a shirt. If you see that shirt,
22 are you going to examine the entire surface area of a
23 particular shirt, assuming you don't see maybe blood on it,
24 for the recovery of DNA?

25 A. No. We would most likely zero in on the stained

1 material, where we're more likely to find the DNA that we're
2 looking for. Without any further direction, we simply just
3 don't know where to look for the DNA --

4 Q. Well --

5 A. -- that may be present on an item.

6 Q. I didn't mean to cut you off there, but why wouldn't
7 you just go ahead and examine the entire surface area of a
8 shirt that was presented to you for DNA? Why couldn't you
9 just go ahead and, every square millimeter on a shirt, for
10 instance, examine that and try to recover DNA? Why wouldn't
11 you do that?

12 A. Well, two reasons mainly. The first is resources.
13 Time and funding. We simply don't have the time or the
14 funding to do that type of testing. More importantly, the --
15 and the second problem is that, unless we know that there is
16 a particular area that we want to look at, that may be
17 involved in this particular crime, we may be picking up DNA
18 from any individual that has had contact with that shirt.
19 And it may not have anything to do with the crime. And by
20 doing that, we may actually cloud the issue, rather than shed
21 more light on what's going on.

22 Q. The second problem that you encounter is actually
23 finding enough DNA, you testified about this, to develop a
24 useable DNA profile; is that correct?

25 A. Yes.

1 Q. And when we're talking about profiles, we're talking
2 about electropherograms? Do you still use those? With DNA
3 PCR-STR?

4 A. Yes.

5 Q. Okay. And we're talking about the alleles and all
6 these things that you have to do to make comparisons between
7 maybe a known substance and an unknown substance; is that
8 correct?

9 A. Correct.

10 Q. Okay. But this second problem of finding enough DNA
11 to develop a useable profile -- let me give you an example.
12 If you know exactly where somebody touches -- let's just use
13 a shirt example. You know that I'm touching my shirt right
14 here, and you go to this exact spot, and with all the
15 resources available to you at the highway patrol, you try to
16 collect my skin cells which are maybe rubbed off on my shirt.
17 What is the likelihood that you will find enough of my skin
18 cells under those circumstances, this is a first time
19 touching, for instance, that you would be able to develop a
20 profile that would be useable for comparative analysis?

21 A. Under the circumstances that you've described and
22 demonstrated, I would think it would be very unlikely that I
23 would be able to obtain enough DNA, there would be enough DNA
24 transfer for me to obtain a profile for comparison.

25 Q. And what would your answer be if I told you that I

1 maybe grabbed my shirt, for the first time, never touched my
2 shirt, I guess maybe that's not the best example, but I
3 grabbed an article of clothing, hard, and you tried your best
4 to collect enough of my skin cells from that area that I had
5 grasped, do you think that you'd be able to find enough of my
6 skin cells to develop a useable DNA profile under those
7 circumstances?

8 A. Well, I definitely think that there would be more
9 DNA transfer under those circumstances than the first.
10 However, with a single touch like that, again, I think that
11 the transfer would be minimal. And there's a very good
12 likelihood that we would not obtain a profile from that type
13 of situation.

14 Q. What about if I grabbed something, a substance like
15 carpet? Would your answer be the same?

16 A. Yes.

17 Q. And if I maybe touched concrete, would your answer
18 be the same?

19 A. Yes.

20 Q. And your answer would still be that, if you knew
21 exactly where I touched, assuming this is concrete, under the
22 methods that you have available to you, the technology that
23 you have available to you at the highway patrol, you would
24 not be able to develop a useable DNA profile; is that
25 correct?

1 A. I would think that, no, we wouldn't be able to under
2 most circumstances.

3 Q. How about if I grabbed a piece of leather?

4 A. I would think the same thing. The leather even
5 itself generally has a smoother surface and may not even pick
6 up as much cells as, say, a piece of cloth.

7 Q. And what about maybe coins?

8 A. Coins, again, similar thing. The surface of the
9 coin is smooth. Possibly the edge could be a little rougher.
10 May pick up some more cellular material. However, on that
11 surface, I would think it would be unlikely that I would be
12 able to get a profile from a single contact like that.

13 Q. You performed DNA testing in this case; is that
14 correct?

15 A. Yes.

16 Q. I'd like to show you what's been marked as State's
17 Exhibits 86, 92, and 93. I believe that these are already in
18 evidence. Can you take those, please?

19 MR. ROGERS: What are the numbers again?

20 MR. KNIGHT: 86, 92, and 93.

21 Q. 86, that's the victim's blood standard; is that
22 correct?

23 A. Yes. That's correct.

24 Q. 92 is labeled as Ryan Ferguson's saliva; is that
25 right?

1 A. Yes. That's correct.

2 Q. 93 is labeled as Chuck Erickson's saliva; is that
3 right?

4 A. Yes.

5 Q. Okay. I'd like to pretty quickly go through your
6 tests that you did on some of these items that were submitted
7 to you. Your number -- Missouri State Highway Patrol number
8 13A, which is State's Exhibit 35, did you test the victim's
9 pants?

10 A. Yes.

11 Q. Okay. And what were the results of your tests on
12 Kent's pants?

13 A. I detected blood on those pants, and upon further
14 DNA analysis obtained a profile for comparison.

15 Q. Okay. And what were the results of the comparisons,
16 or the profiles in this case?

17 A. The profile that I obtained from that particular
18 piece of evidence was consistent with the profile from the
19 victim, Kent Heitholt.

20 Q. You also tested 15A, the victim's T-shirt, which is
21 State's Exhibit 36. And what were the results of the tests
22 on that item?

23 A. I also obtained a DNA profile from that piece of
24 evidence that was -- could be used for comparisons. And once
25 again, the comparisons were consistent with the victim from

1 Kent -- the blood from the victim, Kent Heitholt.

2 Q. Now are you maybe looking right now at 15B by any
3 chance?

4 A. Oh, I'm sorry.

5 Q. And that would have been Kent Heitholt's sweater; is
6 that correct?

7 A. That's correct.

8 Q. Okay. And you found that the victim's blood -- or
9 the profile of the blood that you found there was consistent
10 with Kent Heitholt's DNA profile; is that right?

11 A. Yes, that's correct.

12 Q. Okay. Let's back up then to number 3 -- our number
13 36, your number 15A.

14 A. Okay.

15 Q. T-shirt. What were the results of those tests?

16 A. The T-shirt, I did a preliminary test for blood that
17 was positive. And took that no further at that point.

18 Q. Didn't see any need to; right?

19 A. No. At that point it was clothing that was an
20 undergarment basically. We assumed that the sweater was on
21 top. And I was looking for transfer between the victim and
22 his assailant.

23 Q. Your number 72, State's Exhibit 38, which was the
24 left rear tire and wheel, you did an exam on that; is that
25 correct?

1 A. Yes, I did.

2 Q. What were the results? Or what was the results?

3 A. On number 72?

4 Q. I'm sorry to mislead you on that one. You didn't do
5 any DNA tests on that, did you?

6 A. No, I didn't.

7 Q. Okay. Number 40, our State's Exhibit 40, your
8 Number 14. Kent's shoes. Did you do tests on those items?

9 A. Yes, I did.

10 Q. Okay. What were the results?

11 A. I detected blood on those shoes and extracted and
12 typed DNA from that sample.

13 Q. Okay. And what was the results?

14 A. That sample -- the profile was also consistent with
15 the profile from Kent Heitholt.

16 Q. Moving on to the belt buckle, which is State's
17 Exhibit 47, your number 48, you did tests on that item;
18 correct?

19 A. Yes.

20 Q. And did you find that -- did you -- were you able to
21 get a DNA type from that item?

22 A. Yes. I obtained a DNA type from that.

23 Q. Okay.

24 A. And upon comparisons, it was consistent with the
25 victim's blood.

1 Q. And you did serology on that item also? That was
2 the victim's blood, is what you said; is that correct?

3 A. Consistent with, yes.

4 Q. Okay.

5 A. And I -- what you mentioned before, I detected human
6 blood on that item, before I went to DNA.

7 Q. State's Exhibit 56, which is your number 26, four
8 cigarette butts and one plastic cigar tip, you did tests on
9 those items; is that correct?

10 A. Yes.

11 Q. And 26A through 26D, is it true that no conclusive
12 DNA profile was developed?

13 A. Yes. That's correct.

14 Q. But the tan cigarette butt, which is 26E, what was
15 the result of your tests -- your tests on that?

16 A. I was able to obtain a DNA type that, when compared
17 with the blood standards that I had, did not match any of
18 them.

19 Q. Then number -- your number 66, State's Exhibit 61,
20 four dimes and a penny that were found under Kent's body, or
21 close proximity to his body, did you do tests on that? Or
22 those items?

23 A. No. I didn't test those items.

24 Q. Okay. State's Exhibit 85, which was your number 10.
25 Fingernail scrapings from Kent?

1 A. Yes.

2 Q. You did tests on that; is that correct? Or those?

3 A. Yes, I did.

4 Q. And what were the results?

5 A. I obtained a full DNA profile from one of the
6 fingernail scrapings and a partial from the other, but both
7 profiles, when compared with the standards I had, were
8 consistent with the blood of Kent Heitholt.

9 MR. KNIGHT: Nothing further, Your Honor.

10 THE COURT: You may inquire.

11 MR. ROGERS: Thank you, Your Honor.

12 - - -

13 CROSS-EXAMINATION

14 BY MR. ROGERS:

15 Q. Good evening, Mr. Maloney.

16 A. Good evening.

17 Q. You told us a little bit about PCR and STR in the
18 context of DNA testing. Is there also something called RFLP?

19 A. Yes.

20 Q. What does that stand for?

21 A. It stands for restriction fragment length
22 polymorphism. And it is the initial type of DNA testing that
23 we started with in our laboratory in 1990.

24 Q. So that was what they were doing to start with. You
25 were already there.

1 A. Pardon me?

2 Q. You were there doing serology when the highway
3 patrol lab started doing RFLP in the lab?

4 A. That's correct. Yes.

5 Q. And then PCR techniques were developed. And PCR
6 stands for polymerase chain reaction? Is that right?

7 A. Yes.

8 Q. And that is not a way of examining DNA; it's a
9 manner of replicating DNA to facilitate examination, isn't
10 it?

11 A. Yes. Correct.

12 Q. And it's sort of like making a bunch of copies on
13 the Xerox machine.

14 A. Yes, it's been compared to that, and favorably, yes.

15 Q. Unfavorably?

16 A. No. Favorably.

17 Q. Favorably.

18 A. It's a favorable comparison, I should say.

19 Q. And what that does, they can take a very small
20 amount of DNA, one that was too minute to be reliably tested
21 under the RFLP technique, and make it susceptible to testing.

22 A. Correct. It increased the sensitivity of our
23 ability to test DNA.

24 Q. And it basically, if you had, I don't know about
25 nanograms and stuff, but if you had a little tiny bit of DNA

1 that you couldn't test before, you can sort of replicate it
2 and get hopefully enough to test.

3 A. Yes, that's the idea, with PCR, correct.

4 Q. And the limitation, of course, is that, like even a
5 Xerox machine, if you make a copy of a copy of a copy of a
6 copy of a copy of a copy, it's going to be blurry; right?

7 A. The -- in the techniques that are used, generally
8 they've been optimized for the type of work that we do, so
9 that, as long as you start out with a pristine sample and
10 there's no problems as far as inhibitors, you can reliably
11 type or copy those fragments of DNA we're most interested in
12 accurately.

13 Q. Okay. And when you say "those fragments we're most
14 interested in," that brings us to the STR thing, doesn't it?

15 A. Yes. The STR are the actual locations of the DNA
16 molecule that we are interested in amplifying.

17 Q. And STR stands for short tandem repeat.

18 A. Correct.

19 Q. And that means that -- I don't want to get into all
20 the molecular stuff, but there are different molecules that
21 occur in sequence, and the short tandem repeat are a sequence
22 of these recurrences? Is that a fair description?

23 A. Yes. I would say so.

24 Q. And if there has been technology developed, that's
25 commercially available to laboratories such as yours, that

1 can look for particular identifying things which can be
2 reliably put together to make a profile which would be pretty
3 unique for a given individual's DNA.

4 A. Yes. The profiles that we develop in STR testing
5 are very discriminating. In other words, we can tell with a
6 high degree of accuracy the differences between individuals.

7 Q. And you, of course, keep up with the literature in
8 DNA testing and how it's being used forensically, don't you?

9 A. As best I can. There is a lot of literature out
10 there. But I do try to maintain currency on that.

11 Q. Now, you have heard then of what are called DNA
12 exonerations.

13 A. Yes.

14 Q. Where somebody is in jail based upon an eyewitness's
15 identification or some jailhouse snitch or something, for
16 years, and then DNA, which was available, but not -- the
17 technology wasn't available perhaps at the time of the trial,
18 is tested, and it turns out it wasn't them; right?

19 A. Correct.

20 Q. Okay. And some of those exonerations refer to DNA
21 that is from what are called latent fingerprints. Correct?

22 A. That's possible. I'm not sure of the exact cases
23 that you're talking about.

24 Q. Okay. And I'm not talking about exact cases --

25 A. Okay.

1 Q. -- but --

2 MR. KNIGHT: Your Honor, at this point I'm going to
3 object to this line of questioning. I don't see how it's
4 relevant to our case at all.

5 MR. ROGERS: Well, I think it's certainly relevant
6 to the direct examination. Let me put it that way.

7 MR. KNIGHT: We're talking about exonerations, which
8 are determinations by some other board or --

9 MR. ROGERS: That part's already asked and answered.

10 MR. KNIGHT: -- some other group. I mean, how can
11 that possibly be relevant?

12 THE COURT: Only one person at a time can talk. I
13 don't think the reporter can take you down while Mr. Knight
14 is making his objection. I'll let him --

15 MR. ROGERS: Sorry.

16 THE COURT: -- speak, and then you may respond.

17 MR. KNIGHT: I mean, we're talking about
18 determinations that boards -- you know, I don't even know
19 what the composition of any of these boards out there might
20 be, under different circumstances, maybe arrive at results
21 that -- I mean, they're just so convoluted. There's no way
22 we can get into all those things right now. I don't see how
23 this line of questioning is relevant to this case. If he
24 wants to talk to him about negative evidence, that's fine.
25 If he wants to talk to him about things that I -- areas that

1 I examined the witness on, that's fine. But as far as
2 exonerations, I don't think we need to go down that path at
3 all. It's just not relevant to this case.

4 MR. ROGERS: I think my question regarding
5 exonerations has been asked and answered two questions ago.
6 Without objection. I'm not planning to ask another. The one
7 I'm asking now doesn't have to do with exonerations.

8 THE COURT: Well --

9 MR. ROGERS: It has to do with fingerprints.

10 MR. KNIGHT: Well -- and also, I think that's beyond
11 the scope of this witness's expertise anyway. He's a
12 forensic --

13 THE COURT: Well, if it is beyond his expertise, I
14 assume the witness will let us know that, since he -- because
15 of his experience that you've put in the record.

16 MR. KNIGHT: If you want me to, can I voir dire him?
17 I don't mean to cut you off. Sorry.

18 THE COURT: If you wish to voir dire him for the
19 purpose of making an objection as to his competency in the
20 area of fingerprint DNA analysis, you may. If that's what I
21 understand you're saying, that he's not competent to testify
22 in that area?

23 MR. KNIGHT: That's correct.

24 - - -

25

VOIR DIRE EXAMINATION

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BY MR. KNIGHT:

Q. Mr. Maloney, do you do fingerprint analysis?

A. Fingerprint analysis? No.

Q. Okay.

A. I don't perform fingerprint analysis.

MR. KNIGHT: Now were you talking about DNA fingerprints? Or are you talking about latent fingerprints that are left behind at crime scenes?

MR. ROGERS: Well, if I could ask the question, you would know what I was talking about.

MR. KNIGHT: It sounds to me like you were talking about latent fingerprint analysis.

MR. ROGERS: I'm not talking about what Miss Kliethermes just told us about. No. I'm not talking about latent fingerprint comparison. I'm --

MR. KNIGHT: Well, are you talking about fingerprint exoneration? What are you talking?

MR. ROGERS: May I ask the question? And then if you want to object, object.

MR. KNIGHT: I guess so.

THE COURT: Is there an objection?

MR. KNIGHT: I'll let him ask the question.

- - -

1 RESUMED CROSS-EXAMINATION

2 BY MR. ROGERS:

3 Q. Let me put it this way. And don't answer the
4 question until Mr. Knight has a chance to object.

5 A. Okay.

6 Q. And I'll do a series of questions. You testified on
7 direct examination that skin cells, like many other cells in
8 the body, have nuclei. Right? There's a nucleus in each
9 cell. Is that correct?

10 A. Yes.

11 Q. Okay. And when a fingerprint is left on a surface,
12 sometimes that fingerprint consists of skin oils, which
13 contain skin cells. Correct?

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

15 Q. And if there are sufficient skin cells deposited in
16 the fingerprint, they will contain DNA. Correct?

17 A. If -- if any cells are deposited in a fingerprint, I
18 would expect them to contain DNA.

19 Q. Okay. And it would be unusual for a fingerprint to
20 be left on a surface, unless it's like a fingerprinted ink,
21 which would not contain skin cells; correct?

22 A. Well, I can testify to skin being left by touch, but
23 I can't specifically testify to fingerprint ridge patterns
24 and how -- what DNA would be available in that.

25 Q. And I'm not talking about whether there were ridge

1 patterns or not. The skin cells would be there, whether it
2 was smudged or streaked or whatever, without regard to the
3 ridge pattern, because the cells don't have to be arranged in
4 a pattern for the DNA to be discernable; correct?

5 A. Well, in a rubbing or scraping manner, I would
6 expect more cells to be abraded off.

7 Q. Okay.

8 A. In a fingerprint, I'm thinking, in my mind, that
9 it's a touch -- a single touch down and back up again.

10 Q. In any event, there may be skin cells there.

11 A. That's possible, yes.

12 Q. And if the skin cell were -- if the fingerprint were
13 developed by police techniques in terms of dusting with
14 powder and then lifting it off with tape and putting it on a
15 card, some of those skin cells could easily be put on the
16 card, couldn't they?

17 A. That's possible, yes.

18 Q. And it's possible for, even years later, for those
19 skin cells to be extracted from that fingerprint card and
20 tested for DNA.

21 A. An attempt could be made on that material, yes.

22 Q. And aren't you familiar in the literature of
23 situations where DNA material from fingerprint cards
24 containing latent fingerprint lifts have been tested?

25 A. I don't know specifically about latent print cards

1 lifts, but I have read literature where some people have been
2 successful at times of obtaining DNA types from fingerprints.

3 Q. Okay. And if there were a larger friction ridge
4 impression, such as a palm print, would it be fair to assume
5 there's more likelihood of having more DNA?

6 A. I would think, just by common sense, that's a
7 possibility.

8 Q. Okay. And with regard to this particular case, you
9 have not been asked to nor have you tested any unidentifiable
10 friction ridge prints for DNA, have you?

11 A. No.

12 Q. Okay. Now, with regard to the materials you tested,
13 has anything other than the known buccal swab or the saliva
14 swab or whatever you call it. Both, I guess. Is that right?

15 A. Buccal or buccal swab is what we like to call it.

16 Q. Okay. Aside from that, from Ryan Ferguson, has any
17 of the other DNA that you have tested been in any way
18 consistent with that of Ryan Ferguson?

19 A. No. None of the DNA that I've tested has compared
20 consistently with that profile.

21 Q. Okay. And has any of the DNA you've tested, other
22 than the known swab of Charles Erickson, been consistent with
23 that of Charles Erickson?

24 A. No. None of the other profiles I've developed have
25 been consistent with Charles Erickson's profile.

1 Q. And when you tested the DNA on the buckle, State's
2 Exhibit 47 -- and I don't know what your laboratory number
3 is.

4 A. That I don't know. What is that sample?

5 Q. It's a belt buckle.

6 A. I believe it's our number 48, if I remember right.

7 Q. Maybe item number 53?

8 A. 53?

9 Q. Well, I'm not sure whose number that is. It looks
10 like the Columbia police report -- department's number. I'll
11 show you the --

12 A. I don't have that as 53.

13 Q. See if you can figure out what that is on your list.

14 A. Yeah. I believe that's our number 48.

15 Q. Okay. That's the only belt buckle you got there?

16 A. Yes.

17 Q. Okay. You tested it and found DNA consistent with
18 the decedent, Mr. Heitholt; correct?

19 A. I believe that's correct. And let me -- yes. That
20 is correct.

21 Q. And was that, in fact, the blood spatter that was
22 present on that that you tested for DNA?

23 A. I can't testify as to whether it was spatter or not.
24 I just know that there was a stain that identified as human
25 blood, that I tested.

1 Q. Okay. And that's where you got the DNA from.

2 A. Correct.

3 Q. You didn't try and swab the leather part for other
4 DNA.

5 A. No, I didn't.

6 Q. Okay. Thank you.

7 MR. ROGERS: That's all the questions I have.

8 THE COURT: Redirect?

9 MR. KNIGHT: Thank you, Your Honor. Just a few more
10 questions.

11 - - -

12 REDIRECT EXAMINATION

13 BY MR. KNIGHT:

14 Q. Where's that belt buckle?

15 Now, you -- you tested this and found that we had
16 blood on it, and you got DNA from the blood; is that correct?

17 A. Yes.

18 Q. And that DNA profile wound up being consistent with
19 Kent Heitholt; is that correct?

20 A. That's correct.

21 Q. Okay. Now opening this belt buckle up, where did
22 you obtain this sample for testing? From that buckle.

23 A. There's a small part on the back side here that has
24 my initials on it. And you can kind of see outlines of the
25 stain that I used for my testing.

1 Q. Can you kind of hold that up a little bit so that
2 all the jurors can see? Are you talking about just one
3 little area on this -- on the actual buckle part of the belt?

4 A. Yes.

5 Q. Okay. On the metal part; right?

6 A. Correct.

7 Q. So did you even attempt on any other part of this
8 belt buckle and partial belt to obtain -- to obtain a
9 substance that you could maybe use for comparative purposes?
10 For DNA analysis.

11 A. No. For my testing, I concentrated on the blood
12 stain, or the stained area that ended up being human blood,
13 and went further with my tests on that.

14 Q. Because, as you testified about before, what you
15 have to do is: The first thing you do is you eyeball a piece
16 of evidence, and you have to determine what of that evidence
17 might have some probative value. And that's why you tested
18 it right there; is that correct?

19 A. Correct.

20 Q. Okay. And not the entire surface area of the belt.

21 A. Correct.

22 Q. Okay. The belt buckle and the belt that are still
23 intact.

24 A. Yes.

25 Q. Now, you were asked some questions on

1 cross-examination about DNA that might be found. There may
2 be fingerprints or palm prints. Correct?

3 A. Yes.

4 Q. Okay. And you and I discussed this issue a week or
5 two ago; isn't that correct?

6 A. Yes.

7 Q. Okay. And in your judgment, let's just say that I
8 touch this wood right here and I leave behind a useable
9 fingerprint. Or maybe I touch a piece of glass and I leave
10 behind a useable thumbprint. Under the technology that you
11 have at the Missouri State Highway Patrol, what would be --
12 what would you -- do you think that you would be able to
13 obtain a useable DNA profile from just touching either wood
14 or a piece of glass?

15 A. I think that, even though it is possible and has
16 been done occasionally, I think it would be very unlikely
17 that I would get a DNA profile from that contact.

18 Q. And if I maybe touched my palm up to wood or touched
19 my palm up to a piece of glass, would you predict the same
20 thing? That it would be unlikely that you'd be able to
21 obtain a DNA profile, despite the fact there might be more
22 surface area from my hand on either one of those two items.

23 A. I would, as you say, expect there to be more
24 cellular material to test. However, I still think that it
25 would most likely be under the threshold of our testing

1 ability to detect that DNA in a profile.

2 Q. Okay.

3 MR. KNIGHT: Nothing further.

4 THE COURT: Recross?

5 MR. ROGERS: Yes. Just a little bit.

6 - - -

7 RE-CROSS-EXAMINATION

8 BY MR. ROGERS:

9 Q. Calling your attention, sir, to this -- I was having
10 trouble seeing what you were indicating on the buckle. So
11 I'm going to call your attention to a photograph which is in
12 evidence as Defendant -- or excuse me, State's Exhibit 44C,
13 which is a photograph of the buckle. And we see some blood
14 stains there. And there appear to be a smaller one towards
15 the top of the picture and a larger one towards the bottom of
16 the picture, right at the end of the tongue of the buckle?

17 A. I see those, yes.

18 Q. Is one of those the ones that you tested?

19 A. I suspect that it is.

20 Q. And which one do you think it was?

21 A. Well, I'm not sure. I mean, I know for sure on the
22 buckle, because I've labeled that as such, but I -- just
23 looking at the photograph, I'm not sure which one that might
24 be.

25 Q. Okay. You mentioned I think on direct examination

1 that you're a member of the American Academy of Forensic
2 Sciences? Is that correct?

3 A. Yes.

4 Q. Is there a difference between being a member and
5 being a fellow, or is that the same thing?

6 A. A fellow is actually another membership designation.
7 And normally a fellow is someone that has been in the
8 organization for quite a while, maybe has been -- has
9 published papers or things of that nature.

10 Q. Okay. And in 2004, 2005, who was the president of
11 that organization?

12 A. I'm not exactly sure who that -- who the president
13 is offhand.

14 Q. Do you know a man named Ron Singer? Ronald L.
15 Singer?

16 A. I've heard that name, yeah.

17 Q. In fact, wasn't he the president? Or isn't he the
18 outgoing? I don't know when they change the terms.

19 A. I don't know. It's possible that it could be. I've
20 never met Ron Singer, but I have heard his name.

21 MR. ROGERS: Okay. Thank you.

22 THE COURT: Redirect?

23 MR. KNIGHT: No. That's fine. None.

24 THE COURT: May this witness be finally excused for
25 the state?

1 MR. KNIGHT: Not finally, but for tonight certainly.

2 THE COURT: All right. Would ask you to step down.
3 You are subject to being recalled, but you're free to leave
4 this evening.

5 THE WITNESS: Thank you.

6 THE COURT: Would ask you not to discuss your
7 testimony with any other witness who's yet to be called. But
8 you may step down and be excused.

9 THE WITNESS: Okay. Thank you.

10 THE COURT: State may call its next witness.

11 MR. CRANE: Dr. Eddie Adelstein.

12 THE COURT: Would you raise your right hand, sir.

13 - - -

14 EDWARD ADELSTEIN,
15 being first duly sworn by the Court, testified as follows:

16 THE COURT: Would you take the witness stand,
17 please.

18 - - -

19 DIRECT EXAMINATION

20 BY MR. CRANE:

21 Q. Good evening. Give us your name, sir.

22 A. Edward Adelstein.

23 Q. And what's your occupation?

24 A. I'm a pathologist and physician.

25 Q. Specifically, what's your -- one of the positions

1 you function in here in Boone County?

2 A. I'm the deputy medical examiner of Boone and
3 Callaway County. I'm also a chief pathologist at the VA
4 hospital and work for the university.

5 Q. You said over at the VA?

6 A. Right.

7 Q. And over at MU?

8 A. That's correct.

9 Q. And you're the deputy medical examiner.

10 A. That's correct.

11 Q. And how long have you -- can you go over -- and I'm
12 not looking for something that goes on too awful long, but in
13 terms of your tenure with the medical examiner's office,
14 could you tell the jury a little bit about how long you've
15 been there?

16 A. Yes. Since 1988 until the present I have served
17 often as the deputy medical examiner, and during that time,
18 for about four and a half years, I was the chief medical
19 examiner of Boone and Callaway County.

20 Q. What's your post high school education?

21 A. Post high school education, I have a veterinary
22 degree, a medical degree, a Master's in comparative
23 pathology, graduated from medical school, and am board
24 certified in clinical and anatomical pathology.

25 Q. Are you licensed to practice medicine in the State

1 of Missouri?

2 A. That's correct.

3 Q. Are you an MD?

4 A. Yes, I am.

5 Q. Specifically, what is your specialty, Doctor?

6 A. My specialty actually would be considered more like
7 immunology. And I'm a general pathologist. More of a
8 general pathologist.

9 Q. Pathologist?

10 A. Pathologist, yes, sir.

11 Q. Could you tell the jurors what is meant by the term
12 "pathology."

13 A. Sure. A question asked me by my children all the
14 time.

15 Pathologists basically do two things. One part of
16 our life is what we would call anatomical pathology. This is
17 where we're trained to do autopsies and determine the cause
18 of death. We also look at tissues that are taken from people
19 during surgery, examine them under microscopes, and attempt
20 to tell what we see. The other part of our life is what we
21 would call clinical pathology. And this is the area where we
22 actually look at fluids, to measure; we look at hematology;
23 we run the blood bank. And we cover those other services
24 that do not directly involve examination of tissues.

25 Q. What -- what is forensic pathology?

1 A. Forensic pathology would be a separate branch of
2 pathology where, if you are board certified in forensic
3 pathology, you do an additional year of training, and then
4 pass your boards in forensic pathology. That's an experience
5 which I have not had.

6 Q. What does the medical examiner do?

7 A. The medical examiner is involved in the
8 determination of the cause of death under certain
9 circumstances: Where the person who died has not seen a
10 physician for 24 to 36 hours; in all children under 15
11 months; and any suspicious death that occurs in this county;
12 and any death that might involve public health information.

13 Q. Doctor, how many autopsies have you performed?

14 A. Probably over about 600.

15 Q. I want to direct your attention to one of those that
16 you performed on November 1st, 2001. What was your position
17 with the medical examiner's office on that day?

18 A. I was the deputy medical examiner at that time.

19 Q. Okay. And who did you perform an autopsy on
20 November 1, 2001, in the early afternoon? I think it was
21 about 1:30.

22 A. Right. On Mr. Heitholt.

23 Q. Where was that conducted?

24 A. That was conducted at the medical examiner's
25 facility on St. Charles Road.

1 Q. And do you recall who else was present besides
2 yourself when you conducted the autopsy?

3 A. There was Dori Burke. And I'm reading this. There
4 was Jeff Nichols, who I remember, and Jeff Harmon, and Ruby
5 Marsden, who is an investigator from the prosecuting, was
6 there at the time we did the autopsy.

7 Q. When the body was first presented to you, some basic
8 questions for you. What did you determine Kent Heitholt's
9 height and weight to be?

10 A. Six foot four and 315 pounds.

11 Q. And when you -- hang on a minute now. 75 inches in
12 length, looking at your autopsy.

13 A. We'll back up a little to six foot three.

14 Q. Yeah. I did -- did I do the math wrong on that?

15 A. I think you did -- you're correct.

16 Q. Divided by 12?

17 A. Right. You're right.

18 Q. Well, Mr. Rogers is only five foot six. That makes
19 me five two. Kent was six three; is that right?

20 A. That's correct.

21 Q. Okay. And how much did you say he weighed?

22 A. We estimated his weight at 315 pounds.

23 Q. When you first viewed the body, can you tell us what
24 he was wearing?

25 A. Yeah. When we first viewed the body, one of the

1 first things we do to document these autopsies, he was
2 wearing tennis shoes, brown socks, gray underwear, tan pants,
3 a white T-shirt, and a green sweater.

4 Q. During the course of your examination, what did you
5 do as you progressed through the steps that you took with
6 those clothing items and various other items that were on the
7 body?

8 A. The clothes were removed and bagged individually, to
9 be examined later by the investigator or by the police
10 laboratory.

11 Q. So the detectives that were present that you've
12 already mentioned took custody of the items as you performed
13 the autopsy?

14 A. That's correct.

15 Q. Can you tell us also some initial observations?
16 What signs did you observe with respect to any emergency
17 measures, life-saving efforts with respect to Mr. Heitholt?

18 A. The signs that there was resuscitation attempts:
19 There was a tube that had been placed into his trachea;
20 attempt to breathe. He had EKG patches for EKG readings. He
21 had defibrillation pads that been placed on him. So there
22 was an attempt probably to start his heart. He had an
23 oximeter on his finger, to determine what his oxygen
24 saturation was. And we noticed that he had a needle puncture
25 in his right antecubital fossa, where someone attempted to

1 probably -- probably to get some blood.

2 Q. Okay. Now we don't know what antecubital fossa is.

3 A. Antecubital is this little area right here.

4 Q. Okay. Inside your elbow.

5 A. That's correct.

6 Q. Okay. That was the right elbow?

7 A. Right.

8 Q. That was a needle puncture?

9 A. Right.

10 Q. Also consistent with life-saving measures?

11 A. That's correct.

12 Q. Okay. Doctor, I want to first ask you, in terms of
13 injuries, what generally did you observe with respect to the
14 victim's head?

15 A. We observed multiple injuries on the victim's head.
16 Initially, of course, there was a great deal of blood, which,
17 when that was all removed so we would get a better idea, we
18 were able to document the kinds of injuries, the location of
19 injuries.

20 Q. Okay. So when he first came to you -- we didn't
21 realize it was raining out there. When the body was first
22 presented to you, he was as he had been found at the scene.

23 A. That's correct.

24 Q. Okay. And so one of the things that you did after
25 making initial observations was to wash, clean up?

1 A. That's correct. We first, of course, document
2 photographically what he looked like originally. And then,
3 in order to get a better idea of the lesions and the
4 injuries, we then, of course, have to wash him, so we can see
5 where they are.

6 Q. Okay. Doctor, I'm going to show you what's marked
7 as State's Exhibit 94, 94A through 94F, and generally ask you
8 if these are fair and accurate depictions of Mr. Heitholt, at
9 various angles, as you saw him during your autopsy.

10 A. That is correct.

11 Q. Okay.

12 MR. CRANE: Judge, I would offer State's Exhibit 94,
13 after defense counsel's had a chance to look at it.

14 MR. ROGERS: No objection.

15 THE COURT: State's Exhibit 94, 94A through F, are
16 admitted.

17 - - -

18 State's Exhibits 94, 94A through 94F, admitted into
19 evidence.

20 - - -

21 Q. Doctor, I'm going to ask you to step down, if you
22 would, with the Court's leave.

23 THE COURT: You may step down.

24 MR. CRANE: Ladies and gentlemen, I'm going to try
25 and angle this a little bit this way. Okay? If you can't

1 see it, just let us know.

2 Q. Doctor, let's just -- and remember, you got people
3 that got to see.

4 A. Okay.

5 Q. Again, just getting oriented, the top two
6 photographs, without getting into specifics at this point,
7 indicate the top right side, in 94A, of the victim's head?
8 Is that correct?

9 A. That's correct.

10 Q. And then over here we've got a shot to the top of
11 the head?

12 A. That's correct.

13 Q. Okay. And then this is both sides.

14 A. Right. This is the left. Right.

15 Q. You're referring to 94C.

16 A. Right.

17 Q. 94D.

18 A. Right.

19 Q. Left side?

20 A. That's correct.

21 Q. Right?

22 A. Yes.

23 Q. And down here are photographs of the body, the
24 entire view there. If you look down here at the bottom of
25 94F, you mentioned, when the body was first presented to you,

1 Mr. Heitholt had not been -- the blood hadn't been washed
2 off?

3 A. Right.

4 Q. Is that fair and accurate with respect to that?

5 A. That's correct.

6 Q. When he initially came in?

7 A. Yes.

8 Q. And it's after obviously some of the clothing items
9 you had mentioned had been removed.

10 A. That's correct.

11 Q. Okay. Now, Doctor, I'd like to talk to you first of
12 all about the, as you got in your autopsy, your observations
13 with respect to injuries. Before we do that, and as we do
14 that, referencing the top four photographs, would -- would a
15 mannequin head that you've already marked on facilitate
16 explaining the injuries to the jury?

17 A. I believe it would, more schematically than these
18 pictures.

19 MR. CRANE: Charlie, would you like to look there?
20 That's what I'm talking about. I can't really hold that up
21 without the jurors seeing it.

22 MR. ROGERS: Are you offering it now?

23 MR. CRANE: Yeah.

24 MR. ROGERS: What's its number?

25 MR. CRANE: With your approval. It's Number 95 for

1 identification.

2 MR. ROGERS: No objection, Your Honor. I'm assuming
3 that, since the doctor prepared it, he'll be able to verify
4 the marks on it.

5 THE WITNESS: That's correct.

6 THE COURT: 95 is admitted.

7 - - -

8 State's Exhibit 95 admitted into evidence.

9 - - -

10 Q. Okay. Doctor, in conjunction with the photographs
11 here, and obviously I'm referring to the top four, and
12 State's Exhibit 95, so using 94 and 95, I want to ask you
13 some questions. Is that fair?

14 A. Fair.

15 Q. Okay. First of all, can you just discuss for us,
16 and remaining with the head area at this point, the injuries
17 that you observed.

18 A. There were multiple injuries, which we'll divide
19 them into really two kinds: Abrasions, which we think of as
20 a scraping, and contusions or bruises; and lacerations,
21 which, by the word laceration, we mean that the skin has
22 actually separated. So that the skin has come apart and
23 reveal underlying subcutaneous tissue or tissue underneath
24 where the skin was, and sometimes actually the bone. And so
25 an example of a laceration, which you might be able to see

1 something like that.

2 What I've done on this -- on this -- on this
3 facsimile of a human head is to make the lacerations in solid
4 red and to make the abrasions and the contusions in dots. So
5 you can get some idea of the position of these without
6 necessarily referring to the pictures.

7 So what we see here are three abrasions on the right
8 side of the cheek, such as you see here. And again,
9 abrasions are linear, superficial, gliding-like injuries.
10 The kind that you would just like rub your hand on a rough
11 surface, you can get an abrasion. Doesn't involve deep
12 tissue usually. And then we see there are these three
13 abrasions. Then there were these three really more like
14 abrasions, like contusions, that did not break the skin. And
15 they were round. About a centimeter. And they formed sort
16 of a pattern of a round-like injury. And then there was one
17 that was actually a laceration that was round. And in this
18 case, the skin was actually broken.

19 Q. Let me stop you right there. Those contusions to
20 the front of the head there -- and I'm referring to the ones
21 you got -- those circles --

22 A. Right.

23 Q. -- is that what you're talking about?

24 A. Yes.

25 Q. What are those consistent with?

1 A. Well, those are consistent with being hit with an
2 object that's of about that size, that's fairly focused,
3 where the energy -- I mean, an example might be if you used a
4 hammer. Could produce that kind of an injury on a head.

5 Q. Okay. Now, those other injuries that you've
6 indicated with more linear marks on them --

7 A. Right.

8 Q. -- and also, for instance, this, looking at State's
9 Exhibit 95, this line here --

10 A. Right.

11 Q. -- is that consistent with anything we see here in
12 94A?

13 A. Could be consistent with that.

14 Q. Okay. That was the one you were --

15 A. Right.

16 Q. -- marking here?

17 A. Right.

18 Q. Okay. That appears in various locations on the
19 victim's head. What would that be consistent with? That
20 linear --

21 A. These are usually consistent with being hit by some
22 kind of a very substantial object. It could be a pipe. It
23 could be a piece of metal. It could even be a board. You
24 know, it's -- it's usually a linear object. And it doesn't
25 have be linear, but it's usually some object that does not

1 bend.

2 When the skin is hit, on the head, it actually is a
3 logical thing that the skin is different on the head than the
4 rest of your body, that it comes apart. And it takes a
5 substantial force to make the skin come apart. In fact, it
6 -- it is -- if you can strike a blow hard enough to split the
7 skin, you often can induce a situation of physical -- of
8 confusion, disorientation, and unconsciousness.

9 Q. Well, we'll talk about that in a minute. Okay?

10 A. Sure.

11 Q. The -- I wanted you to go ahead and talk about any
12 other head injuries you haven't already mentioned.

13 A. Okay. Well, we -- to note, there is a head injury
14 on the posterior aspect of the head.

15 Q. Is that the back?

16 A. That's the back.

17 Q. Okay.

18 A. That would be analogous to perhaps this injury here.

19 Q. 94B?

20 A. 94B.

21 Q. Well, when you say "perhaps," now when you're doing
22 that, is that off your autopsy and also off --

23 A. Off my autopsy, off of my drawing, and off of these
24 pictures.

25 Q. Okay. And again, that injury to the back of the

1 head there would be consistent with what?

2 A. Being hit by an object that's very dense, and often
3 a linear object. But not necessarily. But often a linear
4 object.

5 Q. So there's lacerations. There's -- oh. I forgot to
6 ask you this. What about the eye area? And you may need to
7 refer down here to 94C and 94D.

8 A. He has some bruising around the eye, that may have
9 come about from -- these are really more like a small
10 collection of blood, that are not really extensive as far as
11 injuries go. What we did notice in the eye -- I didn't know
12 if you wanted me -- we did notice, when we looked in the eye,
13 the white part of the eye, we do see hemorrhages.

14 Q. Right. And I was going to ask you that. I promise.

15 A. Okay.

16 Q. Let me ask you this. Have you been able to
17 determine the number of times the victim was struck with the
18 item that produced these injuries? Now I'm talking about the
19 injuries that you defined as something that was blunt trauma.

20 A. The injuries, minus the three abrasions on the
21 cheek, would represent 11 strikes to the head.

22 Q. Is there any way to determine, with respect to those
23 injuries, if one injury, depending on the object, may look
24 like two?

25 A. These were all separate. These were all separate.

1 They didn't run together. They were separate strikes.

2 Q. So you believe that there were seven separate blows
3 struck.

4 MR. ROGERS: Excuse me. 11.

5 Q. I'm sorry. 11 separate blows struck. And you're
6 taking out the scrapes.

7 A. I'm taking out the scrapes, yes, which probably are
8 just an abrasion, maybe; not blows. But I'm counting the
9 other ones.

10 Q. Now, during the autopsy, did you also conduct a
11 subscapular examination? And tell us what that means.

12 A. One of the things we do when we -- after we make
13 these observations, we then make an incision and we peel back
14 the skin. We look underneath the skin. And what we saw was
15 diffuse subscapular hemorrhage. Just like if you would have
16 bumped your head many, many times. Only there was diffuse
17 hemorrhage. Because every one of those strikes would cause
18 some bleeding under the skin.

19 Q. Yeah. That's what I was going to say. Hemorrhage
20 means what?

21 A. Hemorrhage means blood.

22 Q. Okay. So there was bleeding under the skin.

23 A. Yes.

24 Q. Okay. Now, what about the skull, though?

25 A. There were no fractures of the skull.

1 Q. All right. So Mr. Heitholt, between his skin and
2 his skull, there was hemorrhaging, subscapular, under the
3 skin.

4 A. That's correct.

5 Q. However, his skull was not fractured.

6 A. That is correct.

7 Q. In your opinion, Doctor, were the injuries inflicted
8 by the blunt trauma fatal to the victim?

9 A. That is not actually an easy question to answer.
10 More than likely they were not fatal at the time to cause
11 immediate death. As I said before, a single injury to the
12 head can produce unconsciousness, and sometimes later on the
13 brain can swell up and produce death. But at this time when
14 I examined him, there was no evidence of injury to his brain.
15 So, it may have been that later, if he -- if this was the
16 extent of his injuries, the total extent of his injuries, it
17 would have been difficult to determine if he would have lived
18 or died.

19 Q. Okay. And also, probably another difficult
20 question: What is your opinion as to the effect these
21 injuries being inflicted on him -- and I'm just talking about
22 the head injuries at this point.

23 A. Right.

24 Q. -- would have had to Mr. Heitholt from the time they
25 started, through their duration.

1 A. These injuries would have rendered him initially
2 disoriented, confused. And eventually he would have been
3 unconscious. In other words, the word we can understand, if
4 you were struck like this, you would become stunned, which
5 could lead to unconsciousness.

6 Q. Okay. Doctor, regarding -- we've got the actual
7 pants over there. I wanted to show you, in State's Exhibit
8 94E, on the victim's right leg, when his pants are still on,
9 there is bleeding around the knee area?

10 A. Right.

11 Q. Okay. And did you also look at the victim's knee
12 without the pants covering it?

13 A. That's true.

14 Q. Okay. Let me ask you for identification here if you
15 recognize State's Exhibit 96, 96A, B, and C.

16 A. That's his right arm. Right hand.

17 Q. Okay. Well, 96 -- you don't have -- are these --

18 A. Right. These are the marks on his hand.

19 Q. Right and left hands, 96A and 96B?

20 A. Right.

21 Q. And then at 96C, do you recognize what's in that
22 photograph?

23 A. Yeah. That's his -- that is his -- that's his leg.
24 I recognize his kneecap. And there is a big abrasion there
25 and some blood there.

1 Q. Okay. Actually I may have the --

2 MR. CRANE: Well, Judge, I'll offer State's Exhibit
3 96, 96A, 96B, 96C.

4 MR. ROGERS: No objection.

5 THE COURT: State's Exhibit 96, 96A through C, are
6 admitted.

7 - - -

8 State's Exhibits 96, 96A through 96C, admitted into
9 evidence.

10 - - -

11 Q. Now, why don't we start, since we left off with the
12 knee, Doctor, 96C. And I don't know -- this is a picture
13 that I found from autopsy regarding the leg injuries. It
14 appears that that would be one -- that may be the left.
15 You've talked about the right, with the blood there.

16 A. Right.

17 Q. In any event, you noted in your autopsy some
18 injuries to the knee --

19 A. Right. An abrasion on the knee.

20 Q. Okay.

21 A. It's not terribly well depicted there, as a matter
22 of fact.

23 Q. Okay. Well, I guess what I'm getting at is: First
24 of all, did you note -- what injuries did you note to his
25 knee or knees?

1 A. I have to -- I'll have to review my report.

2 Q. Okay.

3 A. I think it was to his right knee.

4 (Witness referring to report.)

5 A. You know, I don't actually see that in this report
6 at this time.

7 Oh, okay. No, I don't see that in my report.

8 Q. Okay. Well, looking at the photographs and looking
9 at the -- looking at the pants and the photograph we have
10 here in 96C, does that refresh your recollection as to any
11 injuries --

12 A. It looks like there's an abrasion here and blood
13 here. And there's also -- this looks like an abrasion. It's
14 very difficult to tell where this blood's coming from, since
15 his body was covered with a great deal of blood.

16 Q. Okay. Well, what do you recall -- strike that. The
17 bleeding that we see on the pants and also the -- what did
18 you say? Contusion? Laceration?

19 A. Contusion.

20 Q. -- to the knee in 96C, what would that -- what would
21 be a consistent cause?

22 A. It would be a consistent cause if he fell on his
23 knee.

24 Q. Okay. That does not appear to be consistent with
25 somebody striking him on his knee.

1 A. No.

2 Q. With a blunt object.

3 A. It was a -- it was a -- it was a -- it was a
4 contusion or a bruise, and it wasn't -- there was no
5 laceration of the skin.

6 Q. Okay. Moving to the top two photographs, 96A and B.

7 A. That's right.

8 Q. Okay? Which hand is this?

9 A. This is the dorsum of the right hand.

10 Q. Okay. And dorsum just means top?

11 A. Right.

12 Q. Okay. And 96B is the left hand?

13 A. That's correct.

14 Q. Can you tell us about the injuries you observed to
15 the victim's hands.

16 A. There are multiple injuries on the tops of both
17 hands.

18 Q. And --

19 A. These are bruising. Some -- some abrasions here.

20 Q. Okay. What are the darker injuries to the top of
21 the hands?

22 A. These are abrasions.

23 Q. And what would those be consistent with?

24 A. Those could be consistent with a lot of things.

25 They could be consistent with dragging of your hand along the

1 ground, where you run into something like gravel, will
2 produce those kind of linear abrasions. They could also be
3 self-defense wounds. If you hold up your hand in front of
4 you. Although they look more like the kind of abrasion that
5 you would get if your hand was dragging on the ground.

6 These injuries are -- and these -- some of these
7 injuries are maybe a little more consistent with being --
8 with being injuries directly to the hand. They would be
9 self-defense, such as when you put your hands up to protect
10 yourself from being injured.

11 Q. Well, it sounds like you're breaking up types of
12 injuries here. Could you point again to what the distinction
13 between --

14 A. These are fairly linear bruises like this. Like you
15 could be struck by an object, that could produce this.

16 Q. Okay. Wait a minute. Slow down. Is this one of
17 the ones -- this one here on 96A, this dark spot --

18 A. Right, is a bruise.

19 Q. -- is a bruise.

20 A. Right.

21 Q. Okay. Consistent with maybe slamming your hand down
22 on pavement?

23 A. Right. Or being hit on the hand, yes.

24 Q. Okay. And then these other marks on the hands, that
25 are separate, if you will, what are those consistent with?

1 A. Those are more consistent to me of abrasions of
2 someone who's taking -- whose arm is moving fast along an
3 irregular surface, such as concrete or some sort of surface
4 material.

5 Q. Okay. Which are the injuries that are consistent
6 with putting your hand up, being struck, as you mentioned a
7 minute ago?

8 A. Some of these injuries -- you really can't say for
9 certain, but some of these injuries like that, that look
10 pretty linear. An injury like this, you might think he was
11 striking someone, but no one really hits people on their
12 knuckles. So injuries like this could be induced by holding
13 your hand in front of you and being struck. I mean, we would
14 look at these as possible self-defense wounds.

15 Q. Doctor, what did you observe at the victim's neck
16 area? And I believe you've also utilized State's Exhibit 95
17 in that connection?

18 A. That's correct.

19 Q. And let me also show you what's marked for
20 identification as State's Exhibit Number 97.

21 MR. CRANE: Charlie.

22 (Mr. Crane showing exhibit to Mr. Rogers.)

23 Q. Show you what's marked for identification as 97A,
24 97B, and 97C, and ask if you recognize -- are those fair and
25 accurate depictions of the victim's neck area when you

1 conducted your autopsy November 1, 2001?

2 A. That's true.

3 MR. CRANE: Judge, I'd offer State's Exhibit 97, A,
4 B, and C.

5 MR. ROGERS: No objection.

6 THE COURT: State's Exhibit 97, A through C, are
7 admitted.

8

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9 State's Exhibits 97, 97A through 97C, admitted into
10 evidence.

11

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12 Q. Could you talk a little bit about the injuries,
13 utilizing, first of all, State's Exhibit 97A, to the victim's
14 neck that you observed?

15 A. We saw along the neck this abrasion, which you can
16 appreciate some linear, in that it looks like a line, that
17 occurs around his neck. Then it extends on the left side and
18 makes a fairly strong linear mark. And then when it extends
19 up to the right side, you see there's much more defined marks
20 here. And then on the third drawing we see that these marks
21 actually match the loop of a belt buckle. And this area,
22 this isn't much of an abrasion, because this would be an area
23 where the strap probably wouldn't make --

24 THE COURT REPORTER: I'm sorry? The strap probably
25 wouldn't what?

1 THE WITNESS: The strap would not make close
2 contact.

3 THE COURT: Our court reporter has laryngitis now --

4 THE WITNESS: And I will start --

5 THE COURT: -- so you need to speak just a little
6 bit louder, if you don't mind.

7 Q. Looking at 95, have you depicted the injuries there
8 for the jury to consider?

9 A. Right. You can see the abrasions that went around
10 the neck here. There was an outline here of a fairly solid
11 object here, which is depicted I think in this picture, which
12 matches identically to a fragment of a belt that was found at
13 the scene.

14 Q. What did you note underneath the skin of the
15 victim's neck?

16 A. In this area, there is a profuse hemorrhage under
17 this area. That is, blood cells that leak out.

18 Q. What about any fractures at the neck?

19 A. We actually, to examine this, and we actually remove
20 the entire air box or the larynx, so we're able to look at
21 the larynx itself, which is what we would call like our
22 throat box. And we noted there was some broken cartilages
23 that extend out from this larynx, which make contact with the
24 hyoid bone, which allows us to eat and breathe and separate
25 the air from the fluid. And we noted that the hyoid bone was

1 broken. And that the arytenoid cartilages, which are fairly
2 delicate extensions that make contact with the hyoid bone,
3 were also broken.

4 Q. What's all that mean? You've got the abrasions to
5 the neck. Oh. Let me real quick, before you answer that,
6 let me show you State's Exhibit 47 and ask if this was the
7 item --

8 A. That is.

9 Q. -- that you compared to the victim's injury on the
10 neck.

11 A. That's correct.

12 Q. Okay. And did you find that item to be consistent
13 with that horseshoe-shaped injury?

14 A. I did.

15 MR. CRANE: And I'm showing the jury and
16 Dr. Adelstein State's Exhibit 47.

17 Q. Okay. Now, what -- let me ask you now, what are the
18 neck injuries consistent with?

19 A. The neck injuries are consistent with the kind of
20 pressure that will cause someone to die from asphyxiation.
21 That is, these kind of pressure around the neck does a couple
22 of things. It compresses the artery and vein that goes up to
23 the head, which is life giving. And when you compress --
24 initially when you put a ligature around someone's neck, when
25 you first put it around, it compresses the veins, the large

1 jugular veins that go to the head. But the arteries keep
2 pumping blood in. And because of the increased pressure you
3 see in the eyes, you often see hemorrhages in the eyes.
4 Little blood spots in the eyes. And when we see that, we
5 have fairly substantial evidence of two things: One, they
6 were alive when this ligature was placed around their neck,
7 and that was the initial sequence, that originally the veins
8 were cut off and the arteries were not.

9 Q. And did you observe -- what are those hemorrhages
10 called?

11 A. Petechiae hemorrhages.

12 Q. And did you see those in the eyes of Mr. Heitholt?

13 A. He had more diffuse hemorrhages and small petechiae.
14 He had extensive hemorrhages in his eyes.

15 Q. Okay. And that's indicative?

16 A. It's indicative of what we see in people who die of
17 asphyxiation because a ligature has been placed around their
18 neck.

19 Q. Asphyxiation is not able to breathe.

20 A. Lack of oxygen.

21 Q. All right. Now, the injuries to the front of the
22 neck as we see here in 97A, and also as you've diagramed, are
23 consistent with -- strike that. Are they consistent with the
24 victim being strangled with the pressure being applied from
25 the front or from the back of the victim?

1 A. Most likely from the back of the victim. At least
2 the best way I could understand would be that someone would
3 be pulling up this way, as this area had no ligature marks on
4 it.

5 Q. What area?

6 A. This area here, right adjacent.

7 Q. Well, what's that?

8 A. Well, very small -- this is --

9 Q. I'm just trying to get you to say for the record
10 what area didn't have marks.

11 A. This is the right side of his neck. And this area
12 right under here has minimal ligatures, where on the other
13 side there is more extensive impressions of the leather belt.

14 Q. And there weren't any impressions on the back of the
15 neck.

16 A. No, there weren't.

17 Q. Okay. So pressure you believe was applied with the
18 victim being turned away from the pressure point.

19 A. That's correct.

20 Q. Okay. And Doctor, do you have an opinion -- can you
21 give us a range of time that somebody's air can be cut off in
22 this fashion, that they would survive?

23 A. Generally speaking, when you take away the
24 oxygenated blood from the brain, you get irreparable damage
25 as early as 30 to 40 seconds, where there would be

1 significant brain injury, where it may affect their ability
2 to breathe on their own. This injury, of course, would
3 depend a great deal on the size and the force that was placed
4 around the neck and how consistent that energy was placed on
5 the neck. But it doesn't take a long time before the brain
6 is damaged to where respiration no longer occurs.

7 Q. What about, then, the length of time -- you're
8 talking about breathing stopped?

9 A. Right.

10 Q. Okay. What about the length of time that the heart
11 can continue to beat?

12 A. The heart can continue to beat for as long as ten
13 minutes. In most cases, depending on how much stress is
14 placed on the person at this time, it can go from anywhere
15 from two minutes to ten minutes before the heart actually
16 stops beating.

17 Q. And as long as the heart's beating, blood is
18 pumping.

19 A. That's correct.

20 Q. And if you had injuries, that blood is pumping out
21 of the body.

22 A. Right. That's correct.

23 Q. What about -- do you have an estimate, a range you
24 can give us, of some idea of consciousness,
25 semiconsciousness, unconsciousness, under these

1 circumstances?

2 A. Well, as early as 30 to 40 seconds of having
3 actually the blood not getting to the brain, you will become
4 unconscious. Those of you who are trained in martial arts
5 realize that if people compress your carotid arteries, you
6 can become unconscious in 15 to 20 seconds, or less.

7 Q. Doctor, if -- if you, and I hope you don't do it, if
8 you tried to strangle me with my belt around my neck, and
9 you're standing there, and you pull, and I'm standing here,
10 what would you expect me to do?

11 A. Well, I would expect you to fall toward me.

12 Q. I'd come falling to you?

13 A. Close enough.

14 Q. Okay. My breath's probably not real good. If I'm
15 like this, and I'm upright, and you pull on me...

16 A. I would expect you to probably fall backwards.

17 Q. Okay. And if I'm face up, on the ground, and you
18 try to strangle me, standing over me...

19 A. I would lift you up.

20 Q. If I'm down, face down, and you have the ligature
21 around my neck, what would you expect?

22 A. If you were face down and I tried to lift you, I
23 would lift you.

24 Q. Okay.

25 A. I mean, I would lift the body.

1 Q. So the scenario here with respect to these injuries,
2 what's a consistent location for the killer, if you will, to
3 have been in?

4 A. In order to really -- it's fairly unusual to break
5 the hyoid bone. In the classic hanging of the Old West, when
6 they hung people, and they knew how to do it, they could
7 break the hyoid bone. It's almost rare now that we see
8 anybody who hangs themselves who actually breaks their hyoid
9 bone. So it takes a great deal of pressure. Or at least a
10 rapid generation of force. And in order to do that, the body
11 would need to be fixed in a position so that it couldn't move
12 when that force was applied. An example would be if someone
13 was holding someone down. An example would be if you were
14 sitting on somebody. All those could be reasons that would
15 allow you to put that much force on that you could break
16 those bones without actually lifting up the body off the
17 ground. At least in my opinion, that would be how I would
18 perceive that.

19 Q. Put some pressure on their back?

20 A. Some pressure on the back. Someone holding you
21 down. Or in a position where they couldn't move. You know,
22 if they were trapped in a position where they couldn't move.

23 Q. But these injuries here to the neck are consistent
24 with the victim being down, down, face down.

25 A. They are.

1 Q. Doctor, based on your observations at autopsy, the
2 injuries that you observed, the presence of petechiae, what
3 is your opinion to a reasonable degree of medical certainty
4 as to the cause of Kent Heitholt's death?

5 A. Basically -- and I'll read from my opinion. The
6 cause of death of Kent Heitholt is asphyxia, due to
7 compression of his neck by strangulation.

8 Q. Okay. And is the belt, that we don't have, the
9 strap, and you've already indicated the belt buckle is a
10 consistent cause of the injury to the right side of the neck.
11 Specifically the ligature.

12 A. Consistent with that ligature.

13 Q. And you specifically stated in the autopsy report
14 you just read that it was asphyxia due to compression of the
15 neck by strangulation?

16 A. Right.

17 Q. Mr. Heitholt then, in your opinion, did not die as a
18 result of the blunt trauma to his head.

19 A. No. Not -- not -- no. The thing that actually took
20 his life away was actually strangulation.

21 Q. And you ruled that as the cause of death. What did
22 you rule as the manner of Kent Heitholt's death?

23 A. I ruled the manner of death was a homicide.

24 MR. CRANE: I don't think I have any other questions
25 of this witness.

1 THE COURT: May the witness resume the stand? Or do
2 you want him to be here on cross?

3 MR. ROGERS: That's fine if he resumes the stand,
4 Your Honor.

5 I would tell the Court it's 7:30, and I'm willing to
6 continue with cross-examination, or I'm ready to start
7 tomorrow, whatever the Court --

8 THE COURT: Well, how long -- please be seated. You
9 can sit down, Doctor.

10 Do you think it will be a very lengthy cross?

11 MR. ROGERS: It will not be a very lengthy cross,
12 but it will be more than the ten minutes I took with the
13 other --

14 THE COURT: Well, how long are we talking about?

15 MR. ROGERS: Maybe 20 minutes. Maybe 25.

16 THE COURT: Can I ask the jurors, do you wish to be
17 excused to go home and have dinner and --

18 JUROR: Go on.

19 THE COURT: All right.

20 MR. ROGERS: Your Honor, would the record reflect
21 I'm more entertaining than the Cardinals game?

22 THE COURT: I hope that you're not. I have no idea.
23 I think they started two minutes ago.

24 - - -

25

CROSS-EXAMINATION

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BY MR. ROGERS:

Q. Doctor, I will try to be as brief as I can, since I don't think I'm more entertaining than the Cardinals game. Not that I'm going to get much of a chance to watch it, but.

Let's talk first about these strikes to the head that you've described. Calling your attention to the strikes to the head or the injuries to the head caused by the 11 separate strikes that you've described.

A. Right.

Q. And I have the advantage of getting to ask leading questions, so I can stand here and use the laser pointer, and you can sit in comfort.

Calling your attention to Exhibit 97A, I note this one laceration that has like a right angle to it?

A. Right.

Q. I don't see the right angle here on the --

A. I doubt that that is -- those were really placed on there to give them some sense of where they were and some relative length. Not to try and actually duplicate what was seen.

Q. Okay. Fair enough. So looking at this one, could you tell us whether that right angle is an indication of the shape of the object that inflicted that wound?

A. I wouldn't be confident -- I couldn't tell that. I

1 couldn't tell that.

2 Q. Whether or not it was.

3 A. Right. I couldn't tell that. Because the skin
4 doesn't always -- isn't always perfectly separated, as in --
5 as you might expect. And it can tear -- there can be --
6 there can be underlying structures that would make it not
7 tear perfectly straight in every case.

8 Q. Could that be, in fact, two separate blows that just
9 happened to intersect?

10 A. It's -- it's possible, but a little more
11 coincidental than I usually expect to see.

12 Q. Okay.

13 A. In other words, it's -- generally when you have a
14 laceration, it can be irregular. It isn't always linear.
15 And it's not uncommon for them to be, you know, irregular.

16 Q. Would it be fair to say that that wound may or may
17 not have been caused by the same implement which caused this
18 wound? And I'm referring to the very linear laceration to
19 the back of --

20 A. Or that was on the top --

21 Q. -- towards the back -- on the top of the head,
22 towards the back --

23 A. Right.

24 Q. -- from the first --

25 A. That's correct. And yes, it could be --

1 THE COURT: Excuse me. If you will -- when there's
2 a question being asked, Doctor, if you'll just pause. I know
3 in normal conversation we both talk at the same time, but the
4 reporter can't write you down at the same time. And she
5 can't even tell you right now that she's unable to. So she's
6 waiving her arms a little bit. If you'd just wait until
7 Mr. Rogers finishes his question.

8 THE WITNESS: I will.

9 MR. ROGERS: Maybe we should give her something to
10 throw at me.

11 Q. Okay. Let me start again and then do that.

12 This very linear laceration, which is on the top of
13 the head, behind the right-angled laceration on the top of
14 the head, could those have been caused by the same implement?

15 A. They could be.

16 Q. Do you have an opinion as to the degree of
17 likelihood that they were?

18 A. I can't -- I can't say, with the exception of the
19 fact that since these blows apparently were delivered in a
20 close interval, it would seem logical to assume that it was
21 the same implement, but I can't say there were more than one
22 implement there, based on these injuries.

23 Q. And is it fair to say that the implement which
24 caused the round laceration and three round contusions above
25 the eye -- right eye?

1 A. Correct. Yes, sir.

2 Q. -- were caused by some other blunt force object than
3 the one which caused the linear laceration on the top of the
4 head?

5 A. They could be caused by a different object or they
6 could be caused by a blunt force object that had one end of
7 it different than the other.

8 Q. So somebody could use one end and then turn it
9 around and use the other.

10 A. Or, you know, for example, if you had -- if you
11 had -- if you had a weapon that was, say, a tire tool that
12 was -- had an angle and one end had the socket by which you
13 would change a tire, you might expect that on occasion you
14 would get linear and another occasion you might get a
15 circular injury.

16 Q. Or if you had a hammer, like you said before?

17 A. Or if you had a hammer, yes.

18 Q. And one time you hit with the head of the hammer and
19 the other time with the handle end.

20 A. That's possible, yes, sir.

21 Q. It's also equally possible that there are two
22 different implements being wielded by two or more different
23 people.

24 A. That's possible, yes.

25 Q. Maybe two or more different implements.

1 A. Right.

2 Q. Okay. Some of those wounds appear to have been
3 inflicted from behind the decedent? Is that a fair
4 statement?

5 A. I think that's a fair statement, yes. Especially
6 the posterior one. The most posterior one.

7 Q. The most posterior one? And that would be the one
8 represented by this --

9 A. That's correct.

10 Q. -- mark on the mannequin? And that would be this
11 one here?

12 A. Looks like it. On the other -- I'm sorry. Or if I
13 could point. That one. Yes, sir.

14 Q. And that's another little kind of right-angle
15 shaped --

16 A. Right.

17 Q. -- thing, isn't it?

18 A. Yes.

19 Q. It's almost like the corner of a board?

20 A. Could be.

21 Q. Okay. Or maybe the end of a -- the
22 prying-up-the-nail end of a crowbar?

23 A. It's possible, yes, sir.

24 Q. Now, moving along to the wounds to the hand and
25 whatever has gone on with the knee, you're indicating the

1 pattern of bruising on the left knuckles of the little
2 finger, ring finger, and middle finger of the left hand --

3 A. Right.

4 Q. -- would sort of line up next to each other?

5 A. That's correct.

6 Q. And so that's consistent with something like the
7 board or the crowbar or whatever hitting --

8 MR. CRANE: Or the tire tool, I think he said.

9 MR. ROGERS: Excuse me. I'm asking the questions.
10 Are you making an objection?

11 MR. CRANE: Yeah. I'm going to object to the
12 characterization of his testimony with respect to only the
13 implements that you've referenced.

14 MR. ROGERS: Your Honor --

15 MR. CRANE: Certainly didn't mean to upset you.

16 MR. ROGERS: That is not an objection to my
17 question. That's an attempt by this prosecutor to try and
18 interfere with my cross-examination of the witness. It's
19 totally improper.

20 THE COURT: The objection --

21 MR. ROGERS: I'm trying to move through this thing
22 quickly, and I don't want to be interfered with with cheap
23 theatrics.

24 THE COURT: The objection is overruled, Mr. Crane.
25 You will have a right to redirect.

1 MR. ROGERS: Thank you.

2 Q. I forgot what I was asking you.

3 A. You were asking about the linearity of the --

4 Q. I got confused and disoriented there.

5 A. And it didn't even take a small blow to the head,
6 so.

7 It's a -- it's a linear-like lesion, which, as you
8 say, could be caused by a great variety of instruments.

9 Q. Okay. Including a board or a crowbar or a tire tool
10 or a baseball bat.

11 A. Maybe not a baseball bat.

12 Q. Have to be real skinny.

13 A. It would have to be the skinny end of the baseball
14 bat.

15 Q. Okay. Fair enough. But it's also consistent with
16 the individual hitting the ground with a great deal of force,
17 with his hand out, trying to instinctively stop the fall.

18 A. It's possible, yes, sir.

19 Q. Okay. And you were talking about these abrasions on
20 both the left hand and on the right hand as being more
21 consistent with being dragged across a rough surface?

22 A. That's true.

23 Q. Would that include an asphalt parking lot?

24 A. Yes, it would.

25 Q. Okay. And there were also, I think you said, some

1 linear wounds on the right hand --

2 A. Right.

3 Q. -- which is the top picture, that were consistent
4 with being struck with a linear blunt object.

5 A. Or -- or he striking something.

6 Q. Or either -- either one? I'm just trying to see
7 which ones those were.

8 A. Right. Those -- the ones that are bruising, that
9 you can see. Those. Yes. Yes, sir.

10 Q. Across the upper -- the upper knuckles. Okay.

11 And on the bottom picture, the picture of the knee,
12 you can't tell us whether this is actually an abrasion, or is
13 that just some blood left over, or is that an abrasion?

14 A. That's -- I cannot tell.

15 Q. Okay. And you didn't note an abrasion in your
16 report.

17 A. I do not, no. It may be in there, but I can't
18 recall it. I may have -- but I don't recall seeing it.

19 Q. Okay. I didn't see it in the typewritten report and
20 I didn't see it in the handwritten notes.

21 A. Right. And I don't either.

22 Q. Okay. Now turning to the wounds -- or lesions, I
23 guess is a better term, to the neck?

24 A. Yes, sir.

25 Q. Is lesion like a general term that encompasses

1 abrasions and contusions and almost anything else you can
2 think of?

3 A. Could be called a lesion, yes, sir.

4 Q. Okay. On the left side of the neck, are these more
5 linear lesions going around the front of the throat?

6 A. That's correct.

7 Q. And then on the right side you can see some of the
8 diffuse bruising through the skin?

9 A. That's correct.

10 Q. And then you see the very much darker part that you
11 have lined up with the buckle here; is that correct?

12 A. That's correct, sir.

13 Q. And these are not just straight around the neck, are
14 they?

15 A. Well, they're -- they run toward the back, upwards.

16 Q. Upwards and towards the back.

17 A. That's correct.

18 Q. And so if this person were standing up -- somehow
19 standing in an upright position and somehow being held to the
20 ground, then it would have to be a force that's up and back?

21 A. Could you repeat that again?

22 Q. If the person were standing up and were prevented
23 from moving in response to the force of the ligature, would
24 the force have to be coming from an up and back direction?

25 A. Yes, it would.

1 Q. Okay. And of course you can't tell, except relative
2 to the rest of the body, what direction these were coming
3 from, because you don't know what position the body was
4 probably in.

5 A. That's correct.

6 Q. Okay. But you can tell, with respect to the body,
7 that the force is coming towards -- from a direction which is
8 towards the top of the head and towards the back of the body.

9 A. That's correct.

10 Q. Okay. Can you tell whether this ligature wound was
11 inflicted before, during, or after the head injuries that
12 we've talked about?

13 A. You can't really determine that. Not on the basis
14 of simply what we see here.

15 Q. Okay. On the basis of what you had in the autopsy.

16 A. Right. You can't say that.

17 Q. And if, in fact, all 11 of the strikes to the head
18 occurred before the ligature was attached, then the question
19 of how soon would the ligature cause loss of consciousness
20 would be a fairly moot question, because I think you
21 testified earlier loss of consciousness would have already
22 occurred.

23 A. That's correct.

24 Q. By the way, did you detect any bleeding under the
25 skull, subdural, or whatever?

1 A. There was a great deal of subscapular. That is,
2 right under the skin. Such as if you were to bump your head.
3 Only it was diffuse and covered the entire area. But
4 actually when you looked at the brain, there was no
5 hemorrhage around the brain or under the brain.

6 Q. Okay. And so you don't know if the blows that had
7 been struck before the ligature was applied, whether, had the
8 ligature not been applied, such -- the blows to the head
9 would have caused some brain injury?

10 A. You can't predict that, because of the great
11 variability about how people respond to head injuries. Some
12 people respond to head injuries and would be fine. Other
13 people, hours later, I'm not talking about immediately, but
14 maybe hours later would have actually developed cerebral
15 edema that's very difficult to treat and could have resulted
16 in his death. Nobody can say that.

17 Q. All right. And --

18 A. Let me give you an example. That when boxers are
19 hit many times, as you know, they're unconscious, they take
20 them into hospitals, and some live and some die.

21 Q. And sometimes they get up and want to continue
22 fighting, and then they take them to the hospital and they
23 die.

24 A. That's correct. So it's unpredictable as to how
25 those injuries would have affected him in the long run.

1 Q. Now in terms of what would it take to immobilize
2 somebody to apply sufficient force to fracture the hyoid
3 bone -- first of all, you mentioned hanging, like in the days
4 of the Old West. You're not talking about throwing a noose
5 over a tree branch and kicking the horse, are you?

6 A. No. I'm talking about when they had professional
7 hangmen, that really considered and actually were able to
8 induce other fractures, but actually they could induce hyoid
9 fractures, but most of the people that we find, who've died
10 by asphyxiation, do not have fractures of their hyoid bone or
11 fractures of their cartilages of their voice box either.

12 Q. So you were talking about a hanging with a
13 gallows --

14 A. That's correct.

15 Q. -- and a drop through a trap?

16 A. That's correct.

17 Q. And that's -- even then, that would not always
18 fracture the hyoid bone.

19 A. That's correct.

20 Q. Did you -- obviously you had access to this belt,
21 because you used it for the picture.

22 A. That's correct.

23 Q. And did you look at the separation on the belt
24 buckle?

25 A. I did. I did extensively look at that separation.

1 Q. And I'm now handing you a buckle, State's Exhibit
2 47. What did you think?

3 A. Well, you can -- to show the jury, you can see this
4 is a suture line where the belt came together. And at this
5 line, this is a -- seems like a common construction of
6 leather belts, that the leather actually shredded at this
7 point.

8 Q. Is it within the realm of your expertise how much
9 force that would take?

10 A. It is not.

11 Q. But fair to say it might take about as much force as
12 it would take to break the hyoid bone?

13 A. I think -- I think the difficulty in determining the
14 amount of force would be to recognize that Mr. Heitholt was a
15 large man, with an abundant waist, and there may have been
16 constant pressure on his belt. I don't know how old the belt
17 was, so it may be weakened. But it still -- it still would
18 take, by what I would call more common sense than special
19 knowledge I have, a fair amount of energy to have a belt
20 separate like that. But I have no scientific data to base
21 that on.

22 Q. And if someone were standing over a prone
23 Mr. Heitholt, with his foot in Mr. Heitholt's back, pulling
24 back on the belt, that would not cause the same pattern of
25 the ligatures as we see in State's Exhibit 47, because that

1 would pull down, not up, relative to the head. Correct?

2 A. It would depend on the position of his head. I
3 mean, actually if his head could be moved up and his body was
4 stable, you could pull his head up and produce that injury.

5 Q. You could, but isn't it more likely that the angle
6 would be down like this?

7 A. It would be, if, as a matter of fact, the head was
8 absolutely flat down. But even then, it's difficult. And I
9 don't believe I could say what angle would occur. I mean, I
10 could tell you, from looking at that, that the strap was
11 pulled upwards, and that it would be hard to have induced
12 those injuries if his body or head wasn't fixed in some
13 position.

14 Q. And if someone were standing or kneeling over
15 Mr. Heitholt and holding him down, and somebody else were
16 above his head, pulling on the belt, would that account for a
17 mark like we see?

18 A. I believe you could pull in any direction,
19 seriously, from the position of him being down.

20 Q. And you'll agree that it probably takes more force
21 to lift a 300-pound person than it would to lift Mr. Crane.

22 A. That's correct.

23 Q. Now when you first observed -- did the autopsy and
24 observed these injuries to Mr. Heitholt, did you think this
25 was an opportunistic kind of homicide?

1 MR. CRANE: Judge, I'm going to object,
2 respectfully, that that's --

3 MR. ROGERS: I don't mind you objecting.

4 MR. CRANE: That type of question, "opportunistic
5 type homicide," is, A, vague, and, if it isn't vague, it's
6 outside this witness's area of expertise to speculate on such
7 a question.

8 THE COURT: The objection is sustained.

9 Q. Have you examined -- you said you've done 600
10 autopsies. Have some of those been autopsies involving blunt
11 force trauma and/or strangulation?

12 A. Yes. Yes, sir.

13 Q. And by the way, when you say "asphyxiation from the
14 ligature," is strangulation kind of a short way of saying
15 that?

16 A. That's correct.

17 Q. Okay. And have some of those autopsies involved
18 what were determined to be professional hits?

19 A. None that I know of, actually, that were
20 professional.

21 Q. Have you had any autopsies which would include both
22 blunt force trauma to the extent of this one and
23 strangulation like this?

24 A. Yes. Probably have had, say, anywhere from five to
25 seven cases where people are, you know, basically

1 incapacitated by injury, and then, as a final common pathway,
2 they were strangled.

3 Q. And did those occur in the course of a street
4 robbery?

5 MR. CRANE: Judge, I'll object there to relevance.

6 THE COURT: That objection's overruled.

7 A. Most of those occurred during, as I recall, really
8 during fights.

9 Q. Knock-down, drag-out, to the finish, literally
10 speaking.

11 A. Fights like that. I mean, often those were -- yes.
12 Often those were fights.

13 Q. Thank you.

14 MR. ROGERS: I believe those are all the questions I
15 have.

16 THE COURT: Recross? I mean redirect? Excuse me.

17 - - -

18 REDIRECT EXAMINATION

19 BY MR. CRANE:

20 Q. You've seen hammer injuries to the skull, haven't
21 you?

22 A. I have.

23 Q. In fact, you were -- you are familiar -- I don't
24 think you -- I think you were the assisting medical examiner
25 on the Casey's triple homicide.

1 A. That is correct.

2 Q. And in that homicide, the three victims were each
3 dealt multiple blows to the head with a regular claw hammer.

4 A. That's correct.

5 Q. Okay. Now, the injuries to -- that you viewed to
6 Mr. Heitholt would not be consistent with hammer blows
7 delivered with force enough to break the skull.

8 A. In that case and in most cases when you're hit with
9 a hammer, it quite often does destroy the bone or cause
10 fractures.

11 Q. In fact, in that very dramatic case, granted, the
12 hammer used, that claw hammer, with every blow it delivered,
13 at a minimum, there was some fracturing to each of the three
14 victims' skulls; is that correct?

15 A. That's correct.

16 Q. In fact, in that case, each of the victims sustained
17 actual puncture injuries from the head of the hammer
18 penetrating their skull.

19 A. I don't recall that, but I think -- I know that they
20 died as a result of those direct injuries.

21 Q. Do you doubt that?

22 A. No, I don't doubt it.

23 Q. These injuries to the front of the head here --

24 A. Those circular abrasions, yes.

25 Q. Okay. Yeah. The ones you've got in dots you refer

1 to as what?

2 A. Sort of abrasion contusions.

3 Q. Okay.

4 A. In other words, there is a round outline there,
5 there was a little hemorrhage under there, but it didn't
6 actually penetrate the skin.

7 Q. Okay. And then you've got another darker circle --

8 A. Right.

9 Q. -- here; correct?

10 A. And that's -- and that's one that the skin was
11 broken, in a circular fashion.

12 Q. Okay. Now, could the ones you've got in dots, that
13 you referred to as -- what?

14 A. Abrasions or contusions.

15 Q. -- be also consistent and under the umbrella here of
16 blunt trauma, with the victim's head impacting the pavement?

17 A. Not likely produce that.

18 Q. You think those are striking injuries?

19 A. Yes, I do.

20 Q. Why do you say that?

21 A. Because you have -- you have to sort of judge
22 injuries by the friends you have. And the friend you have is
23 one where there was extensive breakdown of skin. That is, a
24 laceration. And you have other injuries of the same size.
25 So you would assume it comes from the same instrument that

1 produced those. And it's very unusual, when you strike your
2 head on a surface, that you do -- that you would produce what
3 I would call a defined lesion like that. You generally
4 produce an irregular laceration.

5 Q. And you indicated that -- I believe your words on
6 cross-examination were that it seems logical that the
7 injuries to the victim were caused by the same instrument.

8 A. Seems logical, yes, sir.

9 Q. Mr. Rogers mentioned a crowbar as a possible
10 instrument.

11 A. (Nodding head up and down.)

12 Q. And you had previously, on direct, or maybe it was a
13 portion of your cross-examination, indicated a tire tool
14 would also be a consistent instrument.

15 A. That's true. It would be.

16 MR. CRANE: I think that's all I have.

17 THE COURT: Recross.

18 MR. ROGERS: Thank you.

19 - - -

20 RE-CROSS-EXAMINATION

21 BY MR. ROGERS:

22 Q. With regard to the circular injuries, they appear to
23 be sort of clustered in the same general area.

24 A. They do.

25 Q. And in fact, there's this little semicircle that

1 looks like it's coming from the same direction, but doesn't
2 go all the way.

3 A. That's correct.

4 Q. And they are not at the same area as many of the
5 more linear injuries.

6 A. That is correct.

7 Q. Or as either of the right-angle injuries.

8 A. That's correct.

9 Q. And so it's equally logical to assume that these are
10 happening with two different implements, being wielded by two
11 different people at the same time, isn't it?

12 A. You could make that observation.

13 MR. ROGERS: Thank you.

14 THE COURT: Redirect.

15 - - -

16 FURTHER REDIRECT EXAMINATION

17 BY MR. CRANE:

18 Q. And Doctor, you could also make a consistent finding
19 that the injuries, the head injuries, were delivered with the
20 same instrument in the hands of one or two different people.

21 A. I could.

22 MR. CRANE: No further questions.

23 THE COURT: Recross?

24 - - -

25

1 FURTHER RE-CROSS-EXAMINATION

2 BY MR. ROGERS:

3 Q. Or three or four or five or six or seven or eight or
4 nine or ten or a total of eleven; right?

5 A. That's correct.

6 MR. ROGERS: Thank you.

7 THE COURT: Anything further?

8 MR. CRANE: No.

9 THE COURT: May Dr. Adelstein be finally excused?

10 MR. CRANE: He may.

11 THE COURT: For the defense?

12 MR. ROGERS: Yes, Your Honor.

13 THE COURT: Thank you, Doctor, for waiting so long.
14 I'm sure you were here much longer than you've been on the
15 stand.

16 THE WITNESS: Many days.

17 THE COURT: Appreciate it. Would ask you not to
18 discuss your testimony with any other person who's to be
19 called as a witness. You're finally excused.

20 THE WITNESS: Thank you very much.

21 THE COURT: Ladies and gentlemen, the Court again
22 reminds you of what you were told at the first recess of the
23 Court. Until you retire to consider your verdict, you must
24 not discuss this case among yourselves or with others, or
25 permit anyone to discuss it in your hearing. You should not

1 form or express any opinion about the case until it is
2 finally given to you to decide. Do not read, view, or listen
3 to any newspaper, radio, or television report of the trial.

4 Hopefully the game will be over with in eight and a
5 half innings and you'll get a good night's rest.

6 I would like to start at 8:30, but I don't usually
7 have 12-hour days in court, unless it's the last day of the
8 trial. And I really want to finish this case, and insist
9 that we do by Saturday. Why don't we try to our best to be
10 here at 8:30 to start court in the morning, if you would.

11 The jury may be excused. If counsel will remain.

12 - - -

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

15 THE COURT: Mr. Crane, how many more witnesses do
16 you intend to call tomorrow?

17 MR. CRANE: I don't think we're going to be very
18 much longer in the morning. One thing I would like to do, if
19 I could at some point, is pass exhibits.

20 THE COURT: If you have duplicates of things that
21 are not photographs, you can pass them. I should say not
22 duplicates. Quad -- fourteen of them. If there are pictures
23 you want to pass, or if you want --

24 MR. CRANE: Well, I mean physical items, Judge. I'm
25 talking about --

1 THE COURT: I understand.

2 MR. CRANE: What I would do is lay the items out,
3 that there's no objection to publishing, give the jury an
4 opportunity to look more closely at them.

5 THE COURT: You may do that. We always allow that,
6 on both sides. What I'm trying to say is: If there's a
7 document, you have to have 14, rather than have one document
8 and have 14 people read it.

9 MR. CRANE: That's understood. And we may have -- I
10 don't think we'll be very long in the morning.

11 THE COURT: Are you calling another witness
12 tomorrow, do you anticipate?

13 MR. CRANE: We may, Judge. Yeah, I don't -- again,
14 I think it's -- I don't think it's going to be that long.

15 THE COURT: And so you will have someone ready first
16 thing in the morning.

17 MR. ROGERS: I certainly will.

18 And I realize you probably don't have to tell me,
19 but can you give us a clue as to who you may be calling, so
20 we don't have to waste a whole lot of time getting ready for
21 everybody else on the list? We've gone through, like, what,
22 ten, out of 253 or something.

23 MR. CRANE: Well, you going to tell me who you're
24 calling?

25 MR. ROGERS: I can tell you at least one we will be

1 calling tomorrow. That will be Mr. Singer.

2 MR. CRANE: Well, I don't know if I'm in a position
3 to negotiate on that at this point. I'll consult
4 with Mr. Knight.

5 MR. KNIGHT: You're going to call just one witness?

6 MR. ROGERS: I said I could tell you at least one.
7 This is the first time you've told us who you're going to be
8 calling before we see them walk through the door.

9 THE COURT: All right. Well, if you're not
10 disclosing witnesses, all I'm telling you is if we have an
11 expert that's going to take all day tomorrow, Mr. Crane,
12 we're going to work until quite late tomorrow evening. Very
13 late.

14 MR. CRANE: Well, Judge, I'm all for it.

15 THE COURT: Good. I'm glad you are. I just want
16 you to be prepared.

17 MR. ROGERS: I assume the jury would be advised of
18 why we're going that late.

19 MR. KNIGHT: Hopefully we'll have a game tomorrow
20 night.

21 THE COURT: Well, don't count on being able to see
22 it then, unless --

23 MR. KNIGHT: I don't care.

24 THE COURT: -- because I really do not want to argue
25 this case Saturday. I want it, if at all possible, to be

1 argued on and submitted on Friday. It may have to go over
2 until Saturday, but I don't want to start then.

3 MR. ROGERS: My view of it, depending on when they
4 start, is that if we were to start at 10:00 tomorrow morning
5 with the defense case, we should be able to argue Friday
6 afternoon.

7 THE COURT: Okay.

8 MR. ROGERS: Long before now. Let me put it that
9 way.

10 THE COURT: Well, we'll have to plan to have an
11 instruction conference also.

12 MR. ROGERS: All right.

13 THE COURT: And I definitely -- I don't know whether
14 or not you're planning to call the defendant, but I
15 definitely need to make a record, whether or not you are.

16 MR. ROGERS: Okay.

17 THE COURT: We will be in recess then.

18 MR. ROGERS: Thank you.

19 MR. CRANE: Thank you, Judge.

20 (Recess taken.)

21 - - -

22

23

24

25