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P R O C E E D I N G S

October 20, 2005

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

THE COURT: Case Number 165368-01, State of Missouri versus Ryan William Ferguson. What says the state?

MR. CRANE: Ready with a couple of preliminary issues.

THE COURT: And what says the defendant?

MR. ROGERS: Ready, Your Honor.

THE COURT: All right. What are the preliminary matters for the state?

MR. CRANE: Well, I guess the first one is: I just got a motion to endorse. By the defense. Additional witnesses.

THE COURT: Yes.

MR. CRANE: I don't know -- I may have forgotten, and maybe my memory will be refreshed, but Kris Canada and Melissa Griggs have been endorsed this morning, about --

MR. KNIGHT: One second ago. A minute ago.

MR. CRANE: 30 seconds ago. We'd object. Late notice. And I -- I mean, you may remind me who they are. I don't know who they are.

MR. ROGERS: Your Honor, Kris Canada, we have

1 learned during investigation done this week during the trial,
2 was the bartender who worked at By George's on Halloween
3 night, October 31st, and into the early morning of November
4 1st, 2001. And as soon as we were able to learn who he was
5 and talk to him, we disclosed that to the state this morning.

6 Melissa Griggs was mentioned in the testimony of
7 Charles Erickson as being a person that he had seen at By
8 George's that night. A person that he knew. We have been
9 able to track down Miss Griggs. Miss Griggs was mentioned in
10 I think one police report that we had been given by the state
11 some time ago.

12 When we located Miss Griggs and interviewed her, we
13 learned that Miss Griggs was interviewed sometime in 2004, I
14 believe. Some time ago. Let me put it that way. I'm not
15 clear. And I'm not the one who talked to her directly. Was
16 interviewed some time ago by agents of the prosecutor's
17 office. That she told those people that she was at By
18 George's on Halloween night, 2001; that she stayed there
19 until closing time; and that the bar closed at 1:30 p.m.

20 Our position, Your Honor, is --

21 THE COURT: P.m?

22 MR. ROGERS: A.m. I'm sorry. Thank you. I
23 misspoke. 1:30 a.m., in the morning, of November 1st.

24 She told us that she had conveyed that information
25 to investigators from the prosecution some time ago. We have

1 never been given that information. That information is, in
2 my view, clearly exculpatory of Mr. Ferguson and clearly
3 impeaching of Mr. Erickson. Therefore, even if no report was
4 ever prepared, we would be entitled to that information under
5 Brady versus Maryland and under Giglio versus United States.
6 And that wasn't disclosed to us. And I think it's a little
7 disingenuous for the government to claim surprise that we
8 have found a witness, a very significant witness, who they
9 have not disclosed, when they had a constitutional obligation
10 to disclose.

11 THE COURT: Do you know who interviewed her for the
12 state?

13 MR. ROGERS: I believe it was Mr. Hawes, Your Honor.
14 Is what we were told.

15 MR. CRANE: Hey, Bill. They're saying that an agent
16 of the prosecutor's office talked to her.

17 MR. HAWES: I don't recall talking to her.

18 MR. CRANE: Judge, I guess -- I know we're trying to
19 litigate this case, and Mr. Rogers is a professional, but to
20 throw down two names on a Thursday, when we started on a
21 Monday, and then turn around and call me disingenuous, is a
22 little bit beyond the pale.

23 The state -- I don't know -- the name doesn't ring a
24 bell to me. If Mr. -- maybe it was in a report. Maybe her
25 name was mentioned in a report. That's -- that's possible.

1 I'm not denying that. And if Mr. Erickson mentioned her as
2 one of the people he'd seen at George's in testimony, I'm not
3 going to dispute that. My -- the investigator, if it's from
4 the prosecutor's office, I think it would only be Bill or
5 Ben. And I don't -- I mean --

6 MR. HAWES: I don't recall talking to her.

7 MR. CRANE: He doesn't recall. And, you know, I
8 don't have a report. We -- I've certainly never talked to
9 her. Had we ample -- appropriate notice, and, you know --
10 and the defense had an opportunity -- was she mentioned in
11 the defense -- your deposition of Chuck Erickson?

12 MR. ROGERS: I don't know. She was mentioned at
13 discovery page 2277, which is the report of the proffer
14 session on October 1st, 2004.

15 MR. CRANE: Okay. And how long have you had that
16 report, sir?

17 MR. ROGERS: We have had that report since February,
18 I believe.

19 MR. CRANE: Since you got in the case?

20 MR. ROGERS: But she was just mentioned as somebody
21 who was there. She wasn't -- there was no indication in that
22 report that she had been questioned and had given information
23 about when By George's closed.

24 Anyway, those are who those witnesses are, Your
25 Honor. We would ask leave to endorse them.

1 MR. CRANE: Well, wait. I didn't get -- the other
2 one's the bartender?

3 MR. ROGERS: The other's the bartender.

4 MR. CRANE: I wanted to respond to that, if you're
5 done.

6 MR. ROGERS: Let me explain the bartender, why it
7 took us so long to get him. What we did, when Mr. Erickson
8 mentioned people that he claimed to have known at the --
9 being at By George's during his -- I don't know whether
10 direct or cross-examination now, during his examination,
11 during his testimony in this case, one of the people we were
12 able to locate, who didn't have a recollection of that night,
13 but who was able to give us to some -- lead us to somebody
14 who was able to lead us to the person who was the bartender
15 that night. And that's why we found out -- that's why we
16 learned the name of Mr. Canada and talked to him and
17 confirmed his memory.

18 MR. CRANE: Judge, I mean, I guess I've already made
19 my objection and the bases. I mean, the defense has had
20 ample opportunity to notice the state up of witnesses. I
21 realize Mr. Rogers has not been in the case during the entire
22 time of its pendency. However, I do -- I think this is
23 right, I'll stand corrected, that an investigator that worked
24 for the original attorney, Mr. McBride, has continued to be
25 retained by the defendant's current defense team. So he

1 would have had knowledge of the reports and had done
2 investigation on the case back when these reports were first
3 given to the defense, gosh, I guess there we'd be going back
4 to mid-2004.

5 So, Judge, it's not fair to be throwing these
6 witnesses down on me at this late juncture. The state
7 wouldn't be able to do that. And we object.

8 MR. ROGERS: If I may respond, Your Honor. The rule
9 requires us to disclose the identity of witnesses we intend
10 to call. And we have done that faithfully and as timely as
11 we could throughout. And as soon as we learned of the
12 significance of these witnesses and their testimony and
13 formed the intent to call them, we have disclosed it.

14 THE COURT: It would seem to me that if Melissa
15 Griggs was previously -- the microphone's not on.

16 If Melissa Griggs was previously mentioned in a
17 document disclosed to the defense, and the defense did not
18 pursue investigating this particular witness, and I'm
19 referring to Griggs right now, and then -- actually it's
20 almost a week into the trial since we began jury selection a
21 week ago tomorrow, I certainly wouldn't, and Mr. Crane is
22 right, I would not permit the state to suddenly come up and
23 find someone that would tell us that the bar was open 'til
24 3:00 on that morning. I think it is unfair at this point in
25 the trial, as to her and to Mr. Kennedy. Assuming that the

1 state did not know of Kennedy --

2 MR. CRANE: I think it's Canada, isn't it?

3 MR. ROGERS: Canada.

4 THE COURT: Canada? Did not know of Canada, I
5 mean -- and -- I mean, if the state knew that he worked as
6 the bartender, had that information, and interviewed him and
7 failed to provide his name or provide a report that -- of
8 that, I think you certainly would be entitled at this point.
9 But I don't see that there's a failure to disclose these
10 witnesses to you. And if the significance of their testimony
11 has become apparent because of further investigation that
12 took place during the trial, I think it's unfair to the state
13 to call these witnesses.

14 MR. ROGERS: Your Honor, with regard to Miss Griggs
15 especially, I want to make sure the Court understands our
16 position, which I don't think has been refuted by Mr. Hawes,
17 which is: That sometime after her name was, one of literally
18 hundreds of names listed in police reports, disclosed to us,
19 she will testify that she was interviewed by Mr. Hawes. That
20 she told Mr. Hawes explicitly that the bar closed at 1:30. I
21 will represent to the Court that that information is not in
22 any report whatsoever. And for the Court to permit the state
23 to hide that exculpatory information and preclude us from
24 calling a witness who could provide that significant
25 information, because the state was successful in hiding it

1 from us, would violate Mr. Ferguson's rights under the Fifth
2 and Fourteenth Amendments to the United States Constitution
3 and his right to a fair trial and his right to due process of
4 law and his right to effective assistance of counsel under
5 the Sixth Amendment. So that is our argument with regard to
6 Miss Griggs.

7 THE COURT: Well, I will reserve ruling on Griggs
8 until, out of the hearing of the jury, I can hear her and I
9 can hear Mr. Hawes, if the state chooses to call him. If
10 there is documents relating to her testimony that might be
11 exculpatory that is in the hands of the state and has been
12 and not been disclosed, I will take that issue up.

13 As to Kris Canada, I don't think that -- you're not
14 making that claim with respect to him. You just suddenly,
15 through your investigation, discovered his name. Is
16 that what you're telling me?

17 MR. ROGERS: Discovered who he was and that he was
18 the bartender.

19 THE COURT: Yes. The motion to endorse Kris Canada
20 is denied at this time. I'll reserve ruling on Miss Griggs
21 until I can hear from her. And if the state cares to present
22 information relating to an interview and a report that was
23 not disclosed to the defense, I would be more than happy to
24 consider that.

25 Now, the jury's been waiting 15 minutes or more.

1 This is a matter that would be taken up in the state's -- in
2 the case of the defense. Not the state's case. The state
3 has not rested at this point.

4 MR. CRANE: No. What I'd like to do, Judge, before,
5 is: Can I reoffer, just for housekeeping purposes, I'm not
6 going to go through passing the exhibits at this point, for
7 expedience sake. I did want to go over the exhibits that we
8 believe have been offered and admitted.

9 THE COURT: Just a moment.

10 Very quickly, I will tell you that I show 1 through
11 21A through C have been admitted, 22 through 37, 39 through
12 44 --

13 MR. CRANE: I don't think 43.

14 THE COURT: I have 44A through J has been admitted.

15 MR. CRANE: What about -- you said 39 through 44.

16 THE COURT: I'm sorry. 43 has not been admitted and
17 38 has not been admitted.

18 MR. CRANE: Okay.

19 THE COURT: 45 through 61, 66, 69, 70, 72 through
20 86, 87A, B, C, D, and E, 89, 91 through 100.

21 MR. CRANE: Yeah, there was that State's E-1.

22 THE COURT: And E-1, which was the --

23 MR. CRANE: Excerpt, jail conversation.

24 THE COURT: That's correct. Which was Defendant's
25 E, and you -- you offered the entire conversation to be

1 played to the jury. Is that what --

2 MR. CRANE: Or a bigger -- the bigger excerpt, yeah.

3 THE COURT: Yes.

4 MR. CRANE: That's what my records show. Thank you.

5 THE COURT: Okay.

6 Please -- ah. Before you bring the jury in, will
7 you swear the marshals, the additional marshals, please?

8 (Deputy Court Marshals Joe Horton, Harold Calvin,
9 and Scott Kuntz sworn by Eileen Moore, Deputy Clerk, to take
10 charge of the jury.)

11 THE COURT: You may bring the jurors in.

12 Mr. Rogers, this motion to endorse, I don't see that
13 it's been filed with the Court. You may have courtesy
14 provided a copy to Mr. Crane. I don't --

15 MR. ROGERS: I don't believe I have. I'm sorry,
16 Judge. Let me do that.

17 THE COURT: If you'll come over here. They entrust
18 me with the filing stamp, for whatever that means.

19 MR. ROGERS: And Your Honor, may that filing relate
20 back to our earlier discussion?

21 THE COURT: Oh, certainly.

22 MR. ROGERS: Thank you.

23 - - -

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

1 THE COURT: Good morning, ladies and gentlemen. Sad
2 morning for the Cardinals, I'm afraid.

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

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

6 THE COURT: Thank you. You may be excused.

7 (Clerk excused.)

8 THE COURT: The state may call its next witness.

9 MR. CRANE: Your Honor, we have no further witnesses
10 at this time. The state rests its case.

11 THE COURT: At one point you had indicated you would
12 want the jurors to look at the exhibits that have been
13 offered. Are you wanting to do that now or at some later
14 time?

15 MR. CRANE: We would welcome the jurors to take all
16 of the evidence back with them when they deliberate, but for
17 expedience sake, we're assuming that the jurors would
18 observe -- examine the exhibits during their deliberations.

19 THE COURT: With that understanding, that is fine.

20 - - -

21 STATE RESTS

22 - - -

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

24 THE COURT: You certainly may.

25 - - -

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

3 THE COURT: Do you have a written motion?

4 MR. ROGERS: That's what I was going to tell the
5 Court. Your Honor, at this time we would move for judgment
6 of acquittal at the close of the state's evidence. We will
7 supplement that with a written motion, which Miss Benson went
8 to get when we realized that the state was not calling
9 another witness. So she should be back with one or have her
10 office bring one over this morning.

11 THE COURT: You want to elaborate on your oral
12 motion?

13 MR. ROGERS: I don't think so, Your Honor. I think
14 it will be pretty much --

15 THE COURT: Standard?

16 MR. ROGERS: -- the standard motion. I'm sure you
17 have seen many of them.

18 MR. CRANE: And this would be, the oral motion,
19 would be followed up with a written?

20 MR. ROGERS: That's correct.

21 THE COURT: Okay. Motion for judgment of acquittal
22 at the close of the state's evidence is overruled.

23 MR. ROGERS: Thank you.

24 THE COURT: And Mr. Rogers, at some time, not now,
25 but at some time I want to make a record with Mr. Ferguson.

1 MR. ROGERS: Okay.

2 THE COURT: So, I mean, I'm not going to --

3 MR. ROGERS: Probably be sometime today.

4 THE COURT: Yeah. I would want to do that sometime
5 today.

6 MR. ROGERS: Right. Okay. Thank you.

7 THE COURT: Thank you.

8 - - -

9 The following proceedings were held in open court:

10 MR. ROGERS: Your Honor, at this time the defense
11 calls Kelly Ferguson.

12 THE COURT: Do you have someone to get her?

13 MR. WEIS: Yes. Her mom went to get her.

14 THE COURT: And I assume that she would not be
15 out -- none of your witnesses will be out in the hall?

16 MR. WEIS: No, Your Honor.

17 MR. ROGERS: Well, at least not by the media place.

18 THE COURT: Well, yes. I was going to say, I can't
19 control how loud the feed might be on the media. If she
20 would come forward and be sworn as soon as you locate her,
21 please.

22 Would you come forward and be sworn, please. Raise
23 your right hand.

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KELLY FERGUSON,

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

THE COURT: Take the witness chair, please. And the small mic sitting on that bench is one that will amplify your voice. The others do not. So if you'll just direct your voice in that area --

THE WITNESS: Okay.

THE COURT: -- you can be heard better.

- - -

DIRECT EXAMINATION

BY MR. WEIS:

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

A. Kelly Ferguson.

Q. And Miss Ferguson, how old are you?

A. Twenty-six.

Q. October 21st -- or excuse me, October 31st, 2001, how old were you at that time?

A. I was 22.

Q. Where do you live now?

A. I live in Florida.

Q. Okay. Do you know this gentleman?

A. Yes.

Q. And what's his name?

A. Ryan Ferguson.

Q. And are you related to him?

1 A. Yes. I'm his sister.

2 Q. How are you related?

3 A. I'm his sister.

4 Q. October 31st, 2001, I'm going to direct your
5 attention mostly to that time period.

6 A. Uh-huh.

7 Q. Where were you living on October 31st, 2001?

8 A. I was living in town here, in Columbia, at College
9 Park Apartments.

10 Q. And were you a student at that time?

11 A. Yes, I was.

12 Q. And where were you a student?

13 A. University of Missouri.

14 Q. What was your area of study?

15 A. Social work. I wanted to help people.

16 Q. And what year of school were you in in 2001?

17 A. I believe I was a junior.

18 Q. And did you graduate from Mizzou?

19 A. Yes.

20 Q. Do you recall the day of October 31st, 2001?

21 A. Some of it. I mean, it was a long time ago. I
22 don't remember everything.

23 Q. On that particular day, was there anything
24 significant about it to you on -- in 2001?

25 A. Not specifically.

1 Q. Other than it being Halloween?

2 A. Right. It was Halloween. Uh-huh.

3 Q. And can you tell me -- let's sort of start off in
4 the morning. What did you do that day?

5 A. I went to class. And then afterwards I just
6 remember I was really stressed out because I had a paper due
7 the next day, and I ended up going to my parents' house to
8 use their computer to work on my paper.

9 Q. You said you had a class. Do you remember what
10 class you had that day?

11 A. I don't remember the name of it. It was a social
12 work course.

13 Q. Okay. You said you had a paper due the next day?

14 A. Yes.

15 Q. And what -- do you know what class that would have
16 been?

17 A. I don't remember.

18 Q. And did you have a computer at your apartment?

19 A. I'm sorry?

20 Q. Did you have a computer at your apartment?

21 A. No, I did not.

22 Q. Okay. So you went to your parents'?

23 A. Yes.

24 Q. And where did your parents live at that time?

25 A. They lived on Lloyd Drive, which is south of town.

1 Q. Do they still live there?

2 A. My dad lives there.

3 Q. Okay. And that's -- was Ryan living at that house,
4 on Lloyd Drive, at that time?

5 A. Yes.

6 Q. And what time of the day did you go to your folks'
7 house to work on your paper?

8 A. It was after my class. So either late afternoon to
9 evening, early evening.

10 Q. And how long were you at your house -- at your
11 folks' house working on the paper?

12 A. I mean, it seems like two to three hours maybe. I
13 can't really say for sure.

14 Q. And was Ryan there at that time?

15 A. Yes, he was.

16 Q. Was there anybody else, any friends that he had,
17 there?

18 A. No.

19 Q. Were your parents at home?

20 A. No. Not at that time.

21 Q. And were you just working on your paper? Or did you
22 talk to Ryan?

23 A. Yes, I was working on my paper, and we started
24 talking about the fact that it was Halloween.

25 Q. And is there more than one computer located at your

1 folks' house?

2 A. No. There's just one.

3 Q. And where is that located?

4 A. No. I'm sorry. There's -- there was two. There
5 was one upstairs and there was one downstairs.

6 Q. Which one were you working on?

7 A. The one downstairs.

8 Q. Okay. And where's Ryan's room located?

9 A. Downstairs as well.

10 Q. Is that where you ran into him?

11 A. I believe so.

12 Q. Okay. And had you made any plans that day for any
13 Halloween celebrations?

14 A. Yes. My roommates and I were planning on going to
15 the By George's bar to celebrate Halloween.

16 Q. Had you been to By George's before?

17 A. Yes.

18 Q. Okay. And why were you going to By George's, as
19 opposed to --

20 A. They always --

21 Q. -- somewhere else?

22 A. They're known for having a big Halloween party, with
23 costumes.

24 Q. And did you dress up that night?

25 A. Yes.

1 Q. What did you dress up as?

2 A. A cat.

3 Q. A cat?

4 A. Uh-huh.

5 Q. And did you already have your costume on that day?

6 A. No.

7 Q. Okay. Where did you get your costume?

8 A. Gotcha. It's a costume store downtown.

9 Q. And did anybody go with you to get your costume?

10 A. Ryan. My brother.

11 Q. Did you normally hang out with your brother?

12 A. Not normally. Back then I guess it was kind of a

13 special occasion. We just started talking and hanging out.

14 Q. How much older is he -- are you than him?

15 A. I'm five and a half years older than him.

16 Q. So you didn't want to hang out with your little

17 brother or he didn't want to hang out with his older sister?

18 A. I guess so.

19 Q. But on that day you hung out. How did that -- how

20 did that come about?

21 A. Well, I was there at my parents' house, and he

22 happened to be there, and we just started talking about

23 Halloween and what we were going to do. And I think --

24 Q. He asked you what you were going to do?

25 MR. CRANE: Well, Judge, I'm going to object to

1 statements that the defendant may have made as hearsay.

2 THE COURT: That objection is sustained.

3 MR. WEIS: Okay. I think she's already answered the
4 question, but that's fine. I won't ask any more about that.

5 Q. Did you invite him to go along with you to Gotcha?

6 A. Yes.

7 Q. And he did go along with you?

8 A. Yes, he did.

9 Q. Okay. But do you know approximately what time you
10 went there that day?

11 A. Maybe around 6 or so. I -- honestly, I don't recall
12 the exact time.

13 Q. Do you remember if it was still light or anything?

14 A. It was still light out when we left.

15 Q. And that's roughly around the same time as it is
16 now. I mean in terms of time of year.

17 A. Yes.

18 Q. Okay. How long were you gone at the Gotcha store?

19 A. I'm not sure. Maybe an hour or so. I'm not sure.

20 Q. Did you drive?

21 A. No. Ryan drove. I'm pretty sure.

22 Q. What car was he driving then?

23 A. His old Mercedes.

24 Q. Where did you go from the store? After.

25 A. I believe we came back to my parents' house.

1 Q. And did you change? Did you get in your costume
2 there at the house?

3 A. No.

4 Q. So how long -- you went back to that house. How
5 long were you there?

6 A. Not too long. I just remember it was just starting
7 to get dark, and I thought, Well, I better get home and
8 change and meet up with my roommate so we can go.

9 Q. Had you made any specific plans with Ryan that
10 night?

11 A. Not at this time. Not at that time I don't think.
12 Not yet.

13 Q. Had you told him what you were going to do that
14 night?

15 A. Yes.

16 Q. Did you invite him along?

17 A. Yes.

18 Q. And how old was he at that time?

19 A. He had just turned 17.

20 Q. And was he allowed to get into By George's at 17
21 years old?

22 A. No.

23 Q. You're going to have to speak up a little bit.

24 A. No, he was not. Sorry.

25 Q. Had you ever done that before? Had you ever gotten

1 him into a bar?

2 A. Never.

3 Q. What -- why did you decide to do it that night?

4 A. I don't know. Maybe we were just getting along. I

5 thought it would be fun to invite him. I thought maybe he'd

6 think that would be kind of cool.

7 Q. Did you think you'd be able to get him in?

8 A. Yes, I was pretty certain that we could.

9 Q. Okay. Why's that?

10 A. My friend knew the bouncer, one of the bouncers, and

11 she thought that we could definitely get him in.

12 Q. Okay. And who was your friend?

13 A. Christine Lo.

14 Q. And was that someone you lived with at the time?

15 A. Yes. She was my roommate.

16 Q. So you're at parents' house. You get your costume.

17 Sometime you leave the house?

18 A. Yes.

19 Q. Okay. Where did you go?

20 A. I went back to my apart -- my place of residence.

21 Where Christine and I live.

22 Q. And that's, in relation to where this courthouse is,

23 it's down Providence? South on Providence?

24 A. Yes. Uh-huh.

25 Q. It's not too far from here.

1 A. No. Maybe ten minutes.

2 Q. Okay. You go back to your apartment. Do you know
3 roughly what time that was in the evening?

4 A. It had to have been just after it had gotten dark.

5 Q. And how long were you at your apartment before you
6 went to the -- to By George's?

7 A. Several hours. We took a long time to get ready.

8 Q. Who else was there with you?

9 A. I believe it was just Christine and I. I think
10 Angie had already left. Our other roommate.

11 Q. Had you -- had you talked with Ryan between -- while
12 you were getting ready?

13 A. I may have. I don't recall.

14 Q. You don't remember if you -- if you called him or if
15 he called you?

16 A. I don't remember.

17 Q. Okay. You went to By George's that -- did you go
18 anywhere else before -- after leaving your apartment, before
19 you got to By George's?

20 A. It seems like I went to Dillard's to pick up my
21 shirt that I was going to wear inside of my costume. But
22 that's the only...

23 Q. Do you know what time you got to the bar?

24 A. To the bar?

25 Q. Yeah.

1 A. It was about 11:30, quarter to 12.

2 Q. And at that time had you made any arrangements with
3 Ryan as to when he was supposed to be there?

4 A. Yes. We had talked before that. I know -- I
5 probably called him, like, on the way to the door, saying,
6 "Are you going to meet us here at this time?" Making sure
7 that he was there, so we could walk in together.

8 Q. And did Ryan show up at the bar?

9 A. Yes.

10 Q. Okay. Where did you meet him?

11 A. Right at the front door of the bar.

12 Q. Did he have anybody with him?

13 A. Yes.

14 Q. Who did he have with him?

15 A. Chuck Erickson.

16 Q. Had you met Chuck before that?

17 A. Yes.

18 Q. Okay. And how did you know Chuck?

19 A. I think I had only met him like twice before. He
20 had brought Ryan over to my parents' house. And -- hadn't
21 really talked to him much before that.

22 Q. And he's roughly the same age as your brother?

23 A. Yes.

24 Q. Okay. So you're at least five years -- around five
25 years older than Chuck as well.

1 A. Right.

2 Q. Okay. So you guys meet outside. Who did -- is
3 there anybody else with you at the bar?

4 A. Well, Christine and I walk in with Chuck and Ryan,
5 but inside the bar was our other roommate and her boyfriends
6 and one of Christine's good friends and his friends.

7 Q. Did you have to pay a cover charge to get in?

8 A. I don't remember paying a cover charge.

9 Q. Could have happened and you don't know?

10 A. It could have, but I don't recall.

11 Q. Were you able to come and go from the bar as you
12 wanted?

13 A. Not that I know of. We never left the bar until it
14 was time to leave.

15 Q. You never left. You --

16 A. No.

17 Q. -- never went outside or went to another bar and
18 came back?

19 A. No.

20 Q. Okay. Ryan and Chuck go in with you and Christine.
21 Then what do you do?

22 A. Well, we went in and we pretty much immediately
23 split ways, because, you know, I guess, they probably didn't
24 want to hang out with us. And that's -- I only saw him one
25 other time.

1 Q. And you probably didn't really want to hang out with
2 a 17-year-old?

3 A. Well, I guess not.

4 Q. Okay. You were dressed up?

5 A. Yes.

6 Q. Was Christine dressed up?

7 A. Yes.

8 Q. What was she dressed up as?

9 A. A lady of the night.

10 Q. Okay. And your brother, was he dressed in a
11 costume?

12 A. No.

13 Q. How about Chuck?

14 A. No.

15 Q. Do you remember what they were wearing? Well, let
16 me ask you this. Do you remember what Ryan was wearing that
17 night?

18 A. Not specifically. Probably jeans, but I don't know
19 for sure.

20 Q. Okay. Nothing that you -- stands out in your mind
21 that he was wearing?

22 A. No.

23 Q. How about Chuck? Do you recall what Chuck was
24 wearing?

25 A. I have no idea.

1 Q. Again, nothing stands out in your mind?

2 A. No.

3 Q. Were you drinking that night?

4 A. Yes.

5 Q. And when did you start drinking?

6 A. Pretty much right after we got inside the club.

7 Q. Okay. Had you been drinking before that?

8 A. No.

9 Q. And just for clarification, were you over 21 at that

10 time?

11 A. Yes.

12 Q. On October 31st, 2001?

13 A. Yes, I was.

14 Q. Okay. So you had legal -- had at least the legal

15 right to be in the bar.

16 A. Correct.

17 Q. Okay. Were you buying drinks?

18 A. I don't remember personally purchasing drinks. I

19 normally don't carry money with me to the bars.

20 Q. How are you supposed to drink?

21 A. Well, usually guys buy us drinks.

22 Q. So you go there with the expectation that you're not

23 going to be having to purchase very many drinks yourself.

24 A. Yes.

25 Q. And you were a college student at the time?

1 A. Yes, I was.

2 Q. Living on your own?

3 A. Well, no, not really. I mean, my parents were
4 supporting me as well. And I lived with a roommate.

5 Q. And did you work?

6 A. Yes. I had a full-time -- well, part-time job I
7 guess.

8 Q. Okay. While you were in the bar, at By George's, on
9 October 31st, 2001, how many times did you come in contact

10 with your brother Ryan?

11 A. I --

12 Q. And what I mean by "contact," how many conversations
13 did you have with him?

14 A. While I'm in the bar?

15 Q. Sure.

16 A. Only one.

17 Q. Was that something you initiated or something that
18 he initiated?

19 A. Yes. I found him.

20 Q. You found him? Why did you find him?

21 A. I don't remember if I just spotted him and went up
22 to him or if I was, like, trying to figure out where he was.

23 Q. Do you recall roughly in the evening when that was?

24 A. No, I don't really know. Maybe -- maybe a half an
25 hour after we got there.

1 Q. So you guys had separated?

2 A. Yes.

3 Q. Was Chuck still with him?

4 A. I believe Chuck was standing right by him, but I
5 can't say for sure.

6 Q. Did you see -- did you just keep an eye on your
7 brother throughout the night?

8 A. No. I just saw him that once.

9 Q. Describe By George's for me. What -- what's the bar
10 look like? From the outside. Or I guess the inside.

11 A. Yeah. Well, you walk in, and the bar is like maybe
12 ten feet back, and then there's some stairs, and it's like
13 the whole dance floor area.

14 Q. Is this a big bar?

15 A. Yeah. It's a pretty good size.

16 Q. And on this particular night, was there music going?

17 A. Yes.

18 Q. What was the lighting like? Was it bright? dark?

19 A. Dim.

20 Q. Dim. Did they have strobe lights or anything like
21 that going?

22 A. Yes, I believe so.

23 Q. Okay. Was it loud?

24 A. Yes. Very. It was packed.

25 Q. It was packed. Did you have trouble moving around?

1 A. Yes.

2 Q. How long were you at the bar that night?

3 A. Let's see. Less than two hours, at the most.

4 Q. When did you leave?

5 A. When the lights came on and they started pushing us
6 out. Maybe 1:15, 1:30.

7 Q. Why do you recall that?

8 A. Well, it's like the same, you know, with every bar,
9 you know. The lights go on; you get pushed out. It's always
10 the same time. I said -- I remember the lights coming on
11 specifically because there was a girl that was wearing almost
12 nothing, and I remember thinking, Okay, the lights are coming
13 on now and she must be running for cover or something.

14 Q. All right. What outfit was she wearing that night?

15 A. She was wearing nothing but an apron and like a
16 board that covered her back side that said, "The Perfect
17 Housewife."

18 Q. Okay. And you recall seeing that at By George's
19 that night?

20 A. Yes.

21 Q. Okay. Did you see your brother once the lights came
22 on?

23 A. No.

24 Q. Where were you in the bar when you remember the
25 lights coming on?

1 A. To the side, by the tables. Right off the dance
2 floor.

3 Q. In the front or the back of the bar?

4 A. In the middle.

5 Q. Is there -- how do you get out of the bar itself?

6 A. You have to go out through the front, the same way
7 you came in basically.

8 Q. Is that -- does that exit onto Broadway?

9 A. Yes.

10 Q. I'm going to show you State's Exhibit 9. Can you
11 step down here for a second?

12 A. Okay.

13 Q. State's Exhibit 9 has got By George's marked as
14 number 1. Is that -- is that your recollection?

15 A. Yeah, it looks like it.

16 Q. Okay. And this being Broadway Street that's been
17 marked on State's Exhibit 9?

18 A. Uh-huh.

19 Q. You have answer yes or no.

20 A. Yes.

21 Q. Okay. And show me on here where you'd exit out.

22 A. At the front here.

23 Q. Okay.

24 A. Oh. Is this the front door there? Yeah.

25 Q. This is Broadway and this is First.

1 A. Okay. So yeah, it was right here.

2 Q. Okay. Into the parking lot?

3 A. Right.

4 Q. Okay. Did you exit with other people?

5 A. Yes.

6 Q. Okay. Who did you leave with?

7 A. Christine, and I don't remember if there were other

8 people with us.

9 Q. Were you driving that night?

10 A. No, I was not.

11 Q. Who was driving?

12 A. Christine was driving.

13 Q. Did you see your brother arrive? I mean, what --

14 where he parked?

15 A. No, I don't know where they parked.

16 Q. Did you see him when you left?

17 A. No.

18 Q. Did you try and find him?

19 A. I probably was wondering where he was. I may have

20 even called his cell phone. But I didn't catch up with him.

21 Q. Okay. Did you see him the rest of the evening?

22 A. No.

23 Q. Talk to him?

24 A. No.

25 Q. Okay. Where did you go from By George's?

1 A. We went home, to College Park Apartment.

2 Q. Did you stay up or --

3 A. No. I wanted to get to bed because I had my paper

4 due the next day.

5 Q. Okay. Let's talk about the next day. Did you --

6 did you see your brother on -- that would be November 1st,

7 2001?

8 A. Not that I recall. I could have seen him.

9 Q. Were you at your parents' house?

10 A. Yes.

11 Q. And what were you doing at your parents' house?

12 A. Working on my paper again.

13 Q. Did you finish it?

14 A. Yes.

15 Q. Okay. And it was due that day?

16 A. It was.

17 Q. What time of the day did you go and work on your

18 paper at your folks' house?

19 A. It was after I woke up. So maybe late morning,

20 early afternoon.

21 Q. And was anybody else at your parents' house that

22 day, that you recall seeing?

23 A. Not that I remember. I think everyone was at work.

24 Q. Okay. While you were at the bar, speaking of By

25 George's, did you loan any money to your brother to get

1 drinks?

2 MR. CRANE: Judge, I'm going to object to the
3 leading nature of this question.

4 THE COURT: Sustained as to the form of the
5 question.

6 Q. Did you loan any money to anyone that night?

7 MR. CRANE: Judge, the same objection.

8 THE COURT: Sustained.

9 Q. You said you only spoke with your brother once?

10 A. Inside the club, yes.

11 Q. Okay. Did you buy any drinks yourself?

12 A. No.

13 Q. Okay. You said that drinks were purchased for you?

14 MR. CRANE: Judge, I'm going to object again.
15 Leading.

16 THE COURT: Sustained.

17 Q. Did your brother buy you any drinks?

18 MR. CRANE: Same objection. Form --

19 THE COURT: Sustained.

20 MR. CRANE: -- of the question.

21 Q. Can you tell us whether or not -- can you tell us
22 how you were obtaining drinks that night?

23 A. I believe either Christine knew the bartender and
24 was getting them for free or she was getting them -- buying
25 them herself.

1 Q. Did you see who she was getting drinks from?

2 A. Yes, but I don't remember. I don't know if I knew
3 them or I don't remember their name or anything.

4 Q. Did you see whether she was paying for them or not?

5 A. No.

6 Q. Did you see whether she gave --

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

8 Q. -- drinks to anyone else?

9 MR. CRANE: I'm sorry. I respectfully object to the
10 form of the question again. It's a leading question.

11 THE COURT: I don't know what the question is before
12 the attorney asks the question.

13 If you will pause before answering, Miss Ferguson,
14 so I can hear the question.

15 MR. WEIS: I merely asked whether she observed
16 Christine provide drinks to anyone else.

17 MR. CRANE: That's a different start than what he
18 had before.

19 THE COURT: Are you objecting to that?

20 MR. CRANE: I won't object to that one. The other
21 one was, "Did you?" But I won't object to that one.

22 THE COURT: You may answer the question,
23 Miss Ferguson, if you --

24 A. I'm sorry. What was the question?

25 Q. Did you observe Christine provide drinks to anyone

1 else?

2 MR. CRANE: Objection --

3 A. No.

4 MR. CRANE: -- leading. He switched it up from
5 "whether" to "did."

6 THE COURT: Well, the question has been asked and
7 answered, and the objection is overruled, although well
8 taken. It is a leading question.

9 Q. Do you know whether or not Christine was getting
10 drinks for anyone else?

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

12 Q. Do you know whether Christine was buying drinks for
13 Chuck Erickson?

14 A. I don't think she was.

15 Q. Do you know whether she was buying drinks for your
16 brother Ryan?

17 MR. CRANE: Judge, again I'm going to object to the
18 form of the question.

19 THE COURT: Sustained.

20 Q. Did you see the person -- or did you see -- did you
21 know the person that Christine was getting drinks from?

22 MR. CRANE: Asked and answered. Form of the
23 question.

24 THE COURT: Sustained as to asked and answered. And
25 it is a leading question as well. But it's been asked and

1 answered.

2 Q. Could you tell us whether or not you provided any
3 money --

4 A. I did not provide --

5 Q. -- to anyone?

6 A. No. I did not provide any money to anyone.

7 Q. And when I speak of that, I'm referring to October
8 31st of 2001 at By George's.

9 A. That's correct.

10 MR. WEIS: I think that's all I have, Your Honor.

11 THE COURT: State may inquire.

12 MR. CRANE: Thank you.

13 - - -

14 CROSS-EXAMINATION

15 BY MR. CRANE:

16 Q. Ma'am, do you remember on October 31st, 2001, what
17 time you got up that morning?

18 A. Not specifically.

19 Q. And do you remember what you wore to class that
20 morning?

21 A. No.

22 Q. Do you remember what your first class was that
23 morning?

24 A. It was a social work course, but I don't remember
25 the name.

1 Q. Well, now, your major was social work; correct?

2 A. Correct.

3 Q. So all of your classes were primarily social work

4 classes.

5 A. True. They primarily were.

6 Q. Okay. Do you remember the specific class that you

7 went to that morning?

8 A. Well, the social work classes are numbers. They're

9 like social work 331, social work 228. I don't remember the

10 name.

11 Q. Well, what -- you don't remember what building you

12 went to that morning?

13 A. I do, but I don't remember the name of the building.

14 I remember where I parked.

15 Q. You do remember where you parked --

16 A. Yes.

17 Q. -- that morning?

18 A. It's at a parking meter right outside of that

19 building.

20 Q. Okay. And --

21 A. Middlebush Hall. That's it.

22 Q. Okay. Did you remember where you parked and what

23 building you went into when we talked before about this case?

24 A. No. I just now recalled the name of the building.

25 Q. Okay. But you didn't remember it when we talked,

1 when was that, back in July of this year?

2 A. Did I remember it or did I not remember it?

3 Q. You didn't remember --

4 A. Correct.

5 Q. -- where you parked. And you still don't remember

6 the specific class.

7 A. Right.

8 Q. Okay. Don't think you remembered the instructor.

9 A. Yes. John Hodges was the instructor.

10 Q. Did you remember the instructor back when we

11 talked --

12 A. Yes. It is in my deposition.

13 Q. Okay. So you remember the instructor.

14 A. Yes.

15 Q. Do you remember what car you were driving?

16 A. Yes.

17 Q. Okay. Where did you get that vehicle?

18 A. My dad leased it for me.

19 Q. Okay.

20 A. And I --

21 Q. After class, what did you do that day?

22 A. After class, I went to my parents' house to work on

23 my paper.

24 Q. Okay. Do you remember the time that you got to your

25 parents' house?

1 A. Not specifically.

2 Q. What other classes did you have that day?

3 A. I don't remember.

4 Q. Okay. So you remember there was other classes, but
5 you don't remember or -- what they were or you don't remember
6 if you had other classes?

7 A. There may have been other classes, but I don't
8 remember if there were one or two.

9 Q. You don't remember one way or the other.

10 A. Right.

11 Q. Okay. And you don't remember what time you got to
12 your parents' house, but you indicated you worked on your
13 paper for a couple hours?

14 A. Yes. But I don't know if that's completely
15 accurate. I don't know how many hours I worked.

16 Q. I understand. It is difficult to remember things
17 that far back; correct?

18 A. Correct.

19 Q. And ma'am, you didn't think that this date, October
20 31st, 2001, was significant, soon after it had passed, did
21 you? I mean, like, the next day, you didn't think it was a
22 big deal. You went to a Halloween thing at George's.

23 A. Right. It didn't become a big deal until March the
24 10th, 2004.

25 Q. Right. So many of the details about October 31st,

1 2001, had been forgotten by you. And understandably so. Is
2 that true?

3 A. Yes.

4 Q. Were you aware that this murder had occurred on the
5 early morning hours of November 1st, 2001?

6 A. No.

7 Q. Okay. You didn't even hear about it.

8 A. No. I don't remember hearing about that.

9 Q. Okay. So the first time you were told about it was
10 when you were called by a, and understandably, again, you'd
11 be called by a relative and --

12 A. Yes.

13 Q. Okay. That's the first you were made aware of it.

14 A. Yes.

15 Q. And that would have been March -- do you remember
16 the date --

17 A. Yes, I do.

18 Q. -- when you were told? What was that?

19 A. March the 10th, 2004.

20 Q. Okay. Had you driven the Mercedes -- let me show
21 you what we've got marked here as State's Exhibit 87A. Can
22 you see that from where you are?

23 A. Yes.

24 Q. Up here. 87A, 87B?

25 A. Yes.

1 Q. Is that the Mercedes that your brother was using?
2 A. I think so.
3 Q. Okay.
4 A. It looks like it.
5 Q. And you drove that vehicle?
6 A. I have driven it before.
7 Q. And in fact, you got into the trunk of that vehicle;
8 correct?
9 A. Yeah. I believe I have.
10 Q. Did you ever change a tire?
11 A. No.
12 Q. Okay. Did you ever -- well, strike that. Let me --
13 you, on occasion, would put groceries in the back -- in the
14 trunk area of this vehicle; correct?
15 A. Correct.
16 Q. And there was room to put groceries in the trunk.
17 A. I believe so.
18 Q. Okay. You indicated you did not remember what Ryan
19 Ferguson, your brother, was wearing when you saw him on
20 October 31st, 2001?
21 A. Right.
22 Q. You do not remember.
23 A. I do not remember.
24 Q. You are sure, though, that it wasn't some kind of a
25 costume; is that correct?

1 A. Right.

2 Q. And that would be for the entire night. Day, night.

3 Regular clothes.

4 A. Yes. Regular clothes.

5 Q. But you can't remember what they were.

6 A. Correct.

7 Q. You mentioned that you had met Charles Erickson

8 prior to October 31st, 2001?

9 A. Yes.

10 Q. During those encounters -- and it sounds like they

11 were fairly brief.

12 A. Yes.

13 Q. Is that true?

14 A. Yes, that's true.

15 Q. But Mr. Erickson would be over at your parents'

16 residence?

17 A. Yes.

18 Q. Visiting your brother.

19 A. Correct.

20 Q. Did you ever observe -- I'm not asking for what

21 anybody may have said, but did you ever observe any type of

22 conflict between the two of these young men?

23 A. Not that I recall.

24 Q. Okay. Seemed to be getting along fine.

25 A. Yes.

1 Q. Okay. And you don't know what time you left to go
2 to the -- what was the name of the costume place?

3 A. Gotcha.

4 Q. Gotcha? What time did you go there?

5 A. It was in the evening. I can't say specifically.
6 Maybe 6.

7 Q. Okay. But you're guessing; right?

8 A. I'm just guessing.

9 Q. You don't remember what time you went to Gotcha.

10 A. Correct.

11 Q. Okay. Ma'am, have you -- strike that. When you
12 were first notified in March of 2004 about your brother's
13 arrest in connection with the Heitholt homicide, did you
14 remember some of the details that you told us this morning?

15 A. Some.

16 Q. Okay. What helped you remember some details?

17 A. I kept a diary.

18 Q. Okay. Now, before you looked at your diary, you had
19 forgotten some things about that night; is that correct?

20 A. That is correct.

21 Q. And then you look at the diary, and you're reminded
22 of things about that night that you now believe actually
23 occurred; correct?

24 A. About the day and the night.

25 Q. Some of the things. I mean, it's not every little

1 detail you've talked about today, but --

2 A. Right.

3 Q. But there were things that you had forgotten.

4 A. Yes.

5 Q. And when you read your diary, you remembered them
6 again.

7 A. Correct.

8 Q. Ma'am, I'm going to show you State's Exhibit 4. Do
9 you recognize who's in that photograph?

10 A. Yes.

11 Q. And who's that?

12 A. Christine Lo.

13 Q. And that's the young lady that you went to the bar
14 with?

15 A. Yes.

16 Q. Okay. And it's -- I believe you've confirmed, it's
17 accurate that you met your brother and Charles Erickson out
18 in the parking lot?

19 A. Yes.

20 Q. And that was after some cell phone contact with your
21 brother?

22 A. Yes.

23 Q. And you and Christine assisted your brother and
24 Mr. Erickson in getting into the bar?

25 A. Yes.

1 Q. And that was because your brother and Mr. Erickson
2 were both well under age; isn't that correct?

3 A. Correct.

4 Q. And inside the bar, am I correct that you didn't
5 necessarily keep track of both of them the whole time; is
6 that true?

7 A. True.

8 Q. But to your knowledge, they were together that
9 night.

10 A. I think so.

11 Q. Ma'am, you don't know what your brother and Charles
12 Erickson did after you left the bar, do you?

13 A. No.

14 Q. And you don't know what time it was that you left
15 the bar, do you?

16 A. Well, I don't know specifically, but I have a pretty
17 good estimation.

18 Q. You testified on direct examination that the bars
19 close at 1:30.

20 A. Right.

21 Q. And that is based on your -- and I'm not trying to
22 be disrespectful to you, but that's based on your having been
23 to bars on several occasions.

24 A. Yes.

25 Q. And that's okay. I mean, you know, you've been to a

1 lot of bars in Columbia. Correct?

2 A. A fair amount.

3 Q. Okay. There's a number of bars. It's a college
4 town. Right?

5 A. Yes.

6 Q. Had you -- had you also been to George's, By
7 George's bar, prior to this night?

8 A. Yes.

9 Q. Okay. Several times; correct?

10 A. Yes.

11 Q. And you'd been to By George's several times after
12 October 31st, 2001; correct?

13 A. Yes.

14 Q. You don't know where your brother parked that night,
15 do you?

16 A. No.

17 Q. You don't know where he parked the Mercedes when he
18 and Chuck arrived at George's, do you?

19 A. No, I don't know.

20 Q. Do you even remember where your vehicle was parked
21 that night?

22 A. I didn't drive, but I don't remember Christine --

23 Q. Well, I -- your -- let me rephrase it. You don't
24 remember where Christine parked that night, do you?

25 A. No.

1 Q. Okay. How many drinks, alcoholic beverages, did you
2 consume that night?

3 A. Two or three.

4 Q. Okay. And these -- you -- I believe you testified
5 you don't remember how you obtained those. Is that correct?

6 A. Correct.

7 Q. Okay. Did you say you didn't know if there was a
8 cover charge or not?

9 A. Right. I don't recall having to pay one. I
10 normally --

11 Q. Okay.

12 A. -- don't worry about cover charge.

13 Q. But there could have been; you don't remember?

14 A. There may have been.

15 Q. Okay. And you don't remember whether there was any
16 kind of a stamp or arm bracelet after you got inside?

17 A. I don't recall that.

18 Q. Could have been, but you don't remember?

19 A. Maybe.

20 Q. And ma'am, isn't it true that you never saw your
21 brother or Charles Erickson leave the bar that night.

22 A. Correct.

23 Q. You lost track of them prior to the time you left?

24 A. Yes.

25 Q. You didn't read the newspaper the next day?

1 A. I don't think so.

2 Q. Did your brother regularly read the newspaper?

3 A. No. Not that I know of.

4 Q. Did your brother regularly keep up with current
5 events?

6 A. I don't think so, but I could be wrong.

7 Q. Did you ever see your brother watching the news on
8 TV?

9 A. Seldomly.

10 Q. Okay.

11 MR. WEIS: May we approach, Your Honor?

12 - - -

13 Counsel approached the bench and the following
14 proceedings were held:

15 MR. WEIS: I don't know if you want to ask the
16 question first.

17 MR. CRANE: Well, yeah. Judge, this just came from
18 the defense. And actually I'm only talking about the first
19 page. This is -- defense sent me just the diary from October
20 31st, '01. And I want to ask her some questions about that.
21 That's my highlighting. I want to ask her -- I'm not asking
22 her what the defendant said. I'm just asking her to read
23 that portion of her diary.

24 MR. WEIS: He --

25 MR. CRANE: I mean, I guess and any other portions

1 she wants to.

2 (Court reading the exhibit.)

3 MR. WEIS: My response, Your Honor --

4 THE COURT: Just a minute. I'm having trouble
5 reading the entire -- right where my pen is pointing.

6 MR. CRANE: "Credit card."

7 THE COURT: "The whole"?

8 MR. CRANE: "The whole credit card dilemma. He had
9 lost his c/c for a week now. I told him he needed to cancel
10 it ASAP and call dad. We ended up going downtown to get my
11 costume, Bad Kitty."

12 THE COURT: Now, this document, which is State's
13 Exhibit 103, is a page from her diary that she has testified
14 that she kept and that she refreshed her recollection --

15 MR. CRANE: Right.

16 THE COURT: -- I assume of what happened --

17 MR. CRANE: Right.

18 THE COURT: -- that night.

19 MR. WEIS: For the deposition, that's correct. I
20 mean, I don't think she's testified that she did it for
21 today. She hasn't said --

22 MR. CRANE: She said her memory's been refreshed by
23 the thing she's testified to, in the diary.

24 MR. WEIS: But not as preparation for her testimony
25 today.

1 MR. CRANE: Well, so --

2 MR. WEIS: In addition, she hasn't said anything
3 inconsistent with this, so I think it's improper impeachment
4 for him to be questioning her about something that she has
5 never said anything inconsistent about.

6 THE COURT: Well, she has testified she didn't
7 remember many of the events, and that she remembered them by
8 reading this document. I don't think it necessarily has to
9 be inconsistent. I think you can ask her about anything here
10 that might be relevant to this case. Now, if she said she
11 went to the gynecologist and arranged for -- that would not
12 be admissible. I mean, I'm just saying, there's a "for
13 instance" of something that could be inadmissible.

14 MR. WEIS: There is a reference in there to her not
15 taking her birth control pill, about her getting sick the
16 next day.

17 MR. CRANE: Where?

18 MR. WEIS: It's on the bottom of that.

19 THE COURT: If there is something of that nature, of
20 a personal nature, I would strongly suggest that you not
21 ask --

22 MR. CRANE: We can have her redact it.

23 THE COURT: That's -- that's certainly not --

24 MR. CRANE: And we can take that page off, if you
25 want to.

1 MR. WEIS: That's fine.

2 MR. CRANE: For now.

3 THE COURT: If you'll give it to Mr. Crane.

4 MR. WEIS: Okay.

5 - - -

6 The following proceedings were held in open court:

7 MR. CRANE: May I approach the witness, Judge?

8 THE COURT: You may.

9 Q. Miss Ferguson, I'd like to show you what's marked as
10 State's Exhibit 103 and ask if -- and that's a copy of a
11 document; is that correct?

12 A. Uh-huh. Yes.

13 Q. And that's your -- a portion of your diary that you
14 provided to your attorney -- strike that, to your brother's
15 attorney, who gave that to me; is that right?

16 A. Yes.

17 Q. And that's just -- we didn't get the whole diary,
18 but you gave your attorney that page and I believe the day
19 after.

20 A. Yes.

21 Q. Now, when you first heard about Ryan's arrest in
22 March of 2004, you went and found your diary?

23 A. Yes.

24 Q. Okay. And where was that?

25 A. It was at my mom's house, I think under my bed.

1 Q. Okay. Had you been keeping up with -- so you
2 weren't even living in town.

3 A. No.

4 Q. So you hadn't been keeping up with your diary.

5 A. No.

6 Q. Okay. Now, ma'am, is it your testimony that all of
7 the things that are written on that page, for October 31,
8 2001, were written on October 31, 2001, by you?

9 A. No. I didn't write it the same night. I wrote it,
10 like, maybe the next day or something.

11 Q. So you believe you wrote those entries the day
12 after, on 2001, November 1st?

13 A. Or November 2nd.

14 Q. Okay. Because there's another page with November 1.

15 A. Right.

16 Q. And you may have written that November 2nd?

17 A. Well, sometimes a week would go by, and I would try
18 to remember everything and catch up.

19 Q. Okay.

20 A. It wasn't like every single day I wrote something.

21 Q. Right.

22 A. I would try to remember everything.

23 Q. So would there also be times when different dates
24 flowed over, when you'd write onto another day? Or would you
25 try to jam it all into one page?

1 A. Probably both. A little bit of both.

2 Q. Okay. Was anything written in the diary there after
3 2004, in March?

4 A. No.

5 Q. Okay. So this is all written the day after October
6 31st, 2001, or maybe two days after?

7 A. Right. Yeah.

8 Q. Okay. It looks like you do mention it's Halloween.
9 You mentioned you got up and went to class?

10 A. Uh-huh.

11 Q. You mentioned you went to your parents' house.
12 Those were things that, when you first were asked what you
13 remembered about that night, you did not remember.

14 A. Right.

15 Q. And when you looked at your diary, you remembered
16 those facts again.

17 A. Yes.

18 Q. And you remembered them as accurate.

19 A. Yes.

20 Q. And then you wrote -- about the middle of the page,
21 starting there. And then the highlighted portion I've got,
22 what does that say?

23 MR. WEIS: Your Honor, I would just object to the
24 initial portion of it as being irrelevant to this case.

25 THE COURT: That objection is overruled, if you're

1 referring to the highlighted area? Is that what you're
2 referring to?

3 MR. CRANE: Well, the part that says, "Before Ryan
4 came home."

5 MR. WEIS: That's what I'm referring to.

6 THE COURT: The objection's overruled. It's
7 cross-examination.

8 Q. We --

9 MR. CRANE: May I proceed, Judge?

10 THE COURT: Yes.

11 Q. We covered the -- I'm sorry. I'm trying to look at
12 it. I don't mean to crowd you here. You indicate -- the top
13 part I'd summarized. You -- you remembered -- you wrote it
14 down and then you remembered it later that you went to class.
15 And then down here it says, in the middle, you -- this is all
16 your writing; correct?

17 A. Yes.

18 Q. "Ryan came home." Right?

19 A. Yes.

20 Q. And then what's that highlighted part say?

21 A. I wrote: "The whole credit card dilemma. He had
22 lost his credit card for a while -- or for a week now. I
23 told him he needed to cancel it and call dad as soon as
24 possible. We ended up going downtown to get my costume at
25 Gotcha and his new backpack."

1 Q. Okay. Now, I'm not asking you to testify as to what
2 your brother said. Okay?

3 A. Right.

4 Q. But you wrote "the whole credit card dilemma.
5 He" -- who were you referring to there?

6 A. My brother.

7 Q. -- "had lost his credit card for a week now. I told
8 him he needed to cancel it ASAP." As soon as possible.

9 A. Uh-huh.

10 Q. "And call dad."

11 A. Yeah.

12 Q. That would be your father -- your and Ryan's father,
13 Bill Ferguson.

14 A. Yes.

15 Q. And then you talk about going downtown and getting
16 your Bad Kitty? Is that what it is? Your cat outfit?

17 A. Yeah.

18 Q. And you had not remembered the cat outfit until you
19 read your diary?

20 A. No. I remembered that I --

21 Q. That was something that you did remember?

22 A. Yes.

23 Q. Okay.

24 MR. CRANE: Judge, I offer State's Exhibit 103.

25 THE COURT: Do you have an objection?

1 MR. WEIS: No, Your Honor.

2 THE COURT: State's Exhibit 103 is admitted.

3 - - -

4 State's Exhibit 103 admitted into evidence.

5 - - -

6 Q. The next day, do you remember what time you got up?
7 November -- now we're on November 1. I know we're talking
8 about you left, November 1, 2001, you went home. But then
9 the next day, you know, when you -- after you went to sleep
10 and got up.

11 A. Right.

12 Q. You got up in the morning?

13 A. Yes -- I don't remember if it was late morning or
14 early afternoon.

15 Q. You think you got up in the early afternoon?

16 A. Well, yeah, because I believe in the diary I said I
17 skipped my first class, because --

18 Q. Okay.

19 A. -- basically my paper --

20 Q. What time's your first class?

21 A. I don't remember. But my paper was due that
22 afternoon. And I probably slept in and then woke up and
23 worked on it -- went to work on it.

24 Q. Well, I thought you said you just might have slept
25 'til the early afternoon.

1 A. Yeah. It may have been like noon.

2 Q. And then worked on your paper?

3 A. Right. My paper wasn't due 'til 4, I believe it
4 says in the diary.

5 Q. So do you remember when you would have gotten in bed
6 and gone to sleep that night?

7 A. Maybe around 2.

8 Q. Okay.

9 A. I sleep a lot.

10 Q. Ten hours?

11 A. Yeah.

12 Q. And then jumped up and got on that paper.

13 A. Oh, yeah.

14 Q. Okay. Do you have a -- you worked on the paper when
15 you got up?

16 A. Yes, I did. I went to my parents' house and worked
17 on it again.

18 Q. Okay. And was that a memory that you had in
19 October -- strike that, March of 2004?

20 A. No.

21 Q. You'd forgotten that.

22 A. Yes.

23 Q. And your memory's back now because you read your
24 diary?

25 A. Yes.

1 Q. And it's also back on some of these things that
2 happened on October 31st, 2001, because you talked to
3 Christine Lo, and she's helped you remember some things as
4 you've talked about it; correct?

5 A. Yes, like --

6 Q. And also have you spoken with your brother?

7 A. Yes, but --

8 Q. About this case?

9 A. Not really. Every time I try to talk to him, he's
10 like, "No, let's not talk about it."

11 Q. Okay. And I'm not asking you for anything he
12 said --

13 A. Okay.

14 Q. -- okay? The next day, you indicated you got up --
15 I believe on direct examination you said you got up at some
16 point. And where did you go?

17 A. My parents' house.

18 Q. Back over there.

19 A. Yes.

20 Q. And what did you -- you say this is sometime between
21 10 and 1? 10 a.m. and 1? Something like that?

22 A. Yeah. That sounds -- yeah, that time frame
23 anywhere.

24 Q. And you testified you did not see your brother.

25 A. I don't remember seeing him. I may have seen him,

1 but I don't remember.

2 Q. Okay. You don't remember seeing him that morning.

3 A. Correct.

4 Q. Okay. Did you again work on the computer
5 downstairs?

6 A. Yes.

7 Q. And is that where your brother's room is located?
8 Downstairs?

9 A. Well, the computer's at one end, and his room's back
10 at the other end. It's like really -- it's a long --

11 Q. Big house? Big long stretch across the rec. area?
12 Is that what it is?

13 A. It's just a long stretch, yeah.

14 Q. Okay. Well, so what does that mean? You might not
15 have known he was there?

16 A. Maybe. I don't know if he was home or not. I don't
17 remember seeing him.

18 Q. Well, it was a school day.

19 A. Right. Yeah, he may have been at school. I
20 don't -- I don't know.

21 Q. Okay. But you didn't see him.

22 A. Correct.

23 Q. How long were you at your parents' residence on
24 November 1, 2001?

25 A. Two or three hours. Just enough time to finish my

1 paper.

2 Q. During the entire two- to three-hour period that you
3 were at your parents' residence on the morning of 2001,
4 sometime starting between 10 and 1 in the afternoon, is it
5 your testimony you never once saw your brother at the
6 residence?

7 A. Correct.

8 Q. Never saw him come out of his room to go get
9 something to eat, go to the bathroom, nothing.

10 A. No.

11 Q. I'm sorry. I'm going to wrap it up here, ma'am.
12 I'm sorry to keep dragging it out.

13 MR. CRANE: Judge, I -- I don't think I have any
14 other questions of this witness.

15 THE COURT: Redirect?

16 - - -

17 REDIRECT EXAMINATION

18 BY MR. WEIS:

19 Q. Miss Ferguson, I'm going to refer you back to
20 State's Exhibit 103. Again, what -- what is State's Exhibit
21 103?

22 A. My diary -- my journal entry of October 31st.

23 Q. Okay. And when did you draft that notation?

24 A. It was either --

25 Q. If you recall.

1 A. -- the next day or two days later.

2 Q. So you had to recall what you did the next day?

3 A. Yeah. Yes.

4 Q. All right. I think -- did you -- what was the
5 purpose of you keeping a diary?

6 A. I don't -- I don't know. Just -- I guess when I can
7 look back in the future and look back on my life.

8 Q. Did you note everything that you did during a
9 particular day?

10 A. Not every single thing, but most things.

11 Q. How did you choose what you put in and what you
12 didn't?

13 A. I'm not quite sure. I just -- I would just write,
14 start writing out what, you know, the first thing I did that
15 day and then kind of if anything exciting happened.

16 Q. Things that are important?

17 A. Yeah.

18 Q. Significant to you?

19 A. Sure.

20 Q. Okay. I'll take that back.

21 Had you ever been to By George's before October
22 31st, 2001?

23 A. Yes.

24 Q. Do you know how many times?

25 A. No.

1 Q. Had you ever been at By George's after 2 in the
2 morning?

3 A. Never.

4 Q. Did you have a cell phone --

5 A. Yes.

6 Q. -- in Oct -- let me ask -- did you have a cell phone
7 on October 31st of 2001?

8 A. Yes, I did.

9 Q. Okay. Do you remember what your cell phone number
10 was?

11 A. No.

12 Q. And were you living here, in town, in Columbia?

13 A. Yes.

14 Q. Okay. I'm going to show you what's been previously
15 marked as Defendant's Exhibit H. Don't show that to the
16 jury. Do you recognize that document?

17 A. Oh. Oh, okay. Yes.

18 Q. And what is that?

19 A. It's my credit card -- I'm sorry. My cell phone
20 bill; right?

21 Q. Now what is it?

22 A. It's, like, my cell phone bill, the calls I made.

23 Q. Okay. And that's all I'm asking. Was that the cell
24 phone that you had October 31st, 2001, November 1st, 2001?

25 A. Yes, it is. I recognize the number now.

1 Q. Okay. And did you receive that bill?

2 A. I guess I probably did, but I don't recall.

3 Q. Okay. I mean -- but that was your cell phone at the
4 time?

5 A. Yes.

6 Q. Okay.

7 MR. WEIS: At this time we'd move to admit
8 Defendant's Exhibit H. Minus --

9 MR. CRANE: Well, I'm going to -- yeah. Before that
10 document is admitted, there's going to have to be some
11 agreements made as to what all dates come in. I don't think
12 I'm going to have any objection, but I think that's the whole
13 record we gave you.

14 MR. WEIS: It's for the month.

15 MR. CRANE: Yeah.

16 MR. WEIS: And we would agree to redact and just --

17 THE COURT: What part of the Exhibit H are you
18 offering?

19 MR. WEIS: The date of November 1st, 2001, and
20 October 31st of 2001.

21 THE COURT: With that understanding, Mr. Crane, do
22 you have an objection to the admission of Exhibit H?

23 MR. CRANE: I would at this time object, until we've
24 had an opportunity to review the document. But I agree that
25 he has established a foundation with this witness.

1 MR. WEIS: In terms of reviewing it, these are
2 documents provided by the state.

3 MR. CRANE: Yeah, they are. Provided duly in
4 discovery to the defense by the state. There are some issues
5 that I want to cover with the document. I agree he's laid a
6 foundation for them. And if he wants to ask her some
7 questions about specific calls on October 31st, 2001, now, I
8 have no objection, but I will -- would ask that the Court and
9 defense counsel and I look at that document one more time
10 before it's admitted finally, particularly for publishing to
11 the jury.

12 MR. WEIS: And that --

13 THE COURT: Is that --

14 MR. WEIS: Yeah. And I don't intend to publish it
15 to the jury at this point.

16 THE COURT: Mr. Crane, are you wanting to look at
17 the document now?

18 MR. CRANE: No. Not now. I don't have any
19 objection to him asking questions about specific phone calls
20 if he wishes to do so.

21 MR. WEIS: And that's what I intend to do, Your
22 Honor.

23 THE COURT: You may inquire.

24 MR. WEIS: Okay.

25 Q. I'm going to hand you back what's been marked as

1 Defendant's Exhibit H. Do you -- what was your telephone
2 number on October 31st, 2001?

3 A. With the area code?

4 Q. Yes.

5 A. It was 573-228-0652.

6 Q. Did you have any other cell phones? At that time?

7 A. No.

8 Q. Do you recall what your -- from your memory, what
9 your brother's -- did your brother have a cell phone?

10 A. Yes.

11 Q. Did you see him use it?

12 A. Yes.

13 Q. Okay. Did he carry it with him?

14 A. Yes.

15 Q. Do you recall what his telephone number was at the
16 time?

17 A. No.

18 Q. I'm going to refer you to -- I've got two tabbed
19 pages there. And when I ask you questions, I'm going to
20 limit it specifically to just the dates of October 31st of
21 2001 and November 1st of 2001; okay?

22 A. Okay.

23 Q. I'm going to have you look at Defendant's Exhibit H.

24 MR. CRANE: Now these are her cell phone records?

25 MR. WEIS: Yeah. These are just her cell phone

1 records. I'm not going to have her look at anybody else's.

2 Q. Do you recognize, from October 31st -- let me
3 specifically ask you that. Do you recognize any of the
4 numbers on October 31st, 2001, as being from your brother,
5 Ryan Ferguson?

6 A. Yeah. I believe his was the 356 number.

7 Q. Okay. And did you receive a call from the 356 --
8 and what is the 356 number? Can you tell me what that is?

9 A. The whole number?

10 Q. Yes.

11 A. It's 573-356-6625. I think that was Ryan's cell
12 phone number.

13 Q. Was that number called -- did that number come in to
14 you on that particular day, on October 31st, 2001?

15 A. Well, let me see.

16 Q. And I'm just specifically saying the 31st.

17 A. It looks like I called him. And I called him again.

18 Q. When did you call? Let's go through it one by one.

19 A. Okay. Let's see. I called him at 10:14 p.m.

20 Q. On October 31st, 2001?

21 A. Yes. And I called him at 11:02 p.m.

22 Q. Again on October 31st?

23 A. Yes.

24 Q. Were there any other calls made to or from that cell
25 phone number on October 31st of 2001?

1 A. It doesn't look like it.

2 Q. Okay. Could you look and see -- are there records
3 indicating whether, for October -- excuse me, November 1st,
4 2001, in Defendant's Exhibit H?

5 A. I'm sorry?

6 Q. Are there records for cell phone calls made and
7 received on November 1st, 2001, in the document you're
8 holding?

9 A. Yes.

10 Q. Okay. From the number that you've indicated that
11 was Ryan's at the time, did you receive or make any phone
12 calls to that particular cell phone number? On November 1st
13 of 2001.

14 A. It doesn't look like it.

15 Q. May I see that? On November 1?

16 A. Right.

17 Q. Do you know who the number 228-0652 is?

18 A. That's my phone number.

19 Q. That's your phone number?

20 A. Yes. Are you talking about the underlined one?

21 MR. WEIS: Just a second.

22 Q. I hand you back what's marked as Defendant's Exhibit
23 H. Was there a call made at 1:19 in the morning?

24 MR. CRANE: Judge, I'll -- well, forget it. Never
25 mind.

1 A. Yes.

2 Q. Okay. And what number does that go to?

3 A. My voice mail.

4 Q. Okay. Mr. Crane asked you on cross-examination,
5 referring to November 1st, 2001: Did you remember seeing
6 your brother at your parents' house?

7 A. I don't remember seeing him or not seeing him.

8 Q. You don't recall either way?

9 A. Right.

10 Q. Okay.

11 MR. WEIS: I think that's all the questions I have.

12 THE COURT: Recross?

13 - - -

14 RE-CROSS-EXAMINATION

15 BY MR. CRANE:

16 Q. Miss Ferguson, before you saw the phone records --
17 you probably saw those phone records before today, or
18 somebody talked to you about them before today. The phone
19 records you were just looking at?

20 A. I don't -- I don't think I've seen them before.

21 Q. Okay. Well, then let me ask you, before you saw
22 them today, did you remember how many phone calls there may
23 have been between you and Ryan?

24 A. No.

25 Q. Okay. Did you remember the duration of those calls?

1 A. No.

2 Q. Did you remember the time of those calls?

3 A. No.

4 Q. I mean, those were details that you've long since
5 forgotten; isn't that correct?

6 A. Yes.

7 Q. And, in fact, you may have never even known he
8 called you on November 1, 2001, at -- what was that? 1:19?
9 1:19 a.m.? Because it was a voice mail and you might have
10 missed it or deleted it. You don't remember.

11 A. No. It showed my number, which means I was calling
12 myself. My voice mail.

13 Q. Oh. That's what that -- okay. I'm sorry. I didn't
14 understand. I thought that was somebody leaving you a voice
15 mail. So --

16 A. I could be wrong.

17 Q. Okay. You're thinking -- all right. Well, I
18 screwed that up. But you're thinking the 1:19 a.m. on
19 November 1, 2001, is you calling yourself and going, "Hey,
20 don't forget to work on paper."

21 A. No. No. No. Like I would call my cell phone and
22 check my messages.

23 Q. Okay. All right. I was confused. I thought that
24 was from -- a call potentially from Ryan. Okay. It wasn't.
25 So the -- then that means -- am I correct then, based on that

1 record, that there was a phone call between you and Ryan at
2 10:49 -- let's see, at approximately 10:14 p.m.? Isn't that
3 what you were telling him?

4 A. I think that's what I read off.

5 Q. And that was a short call; right?

6 A. I didn't look at the duration.

7 Q. Well, would you argue that it's two minutes?

8 MR. CRANE: Is that right?

9 MR. WEIS: Yeah.

10 Q. And then there's another call, I believe you said at
11 10:49 p.m. on October 30th, 2001. Does that sound like the
12 one you were just talking about a minute ago?

13 A. Right.

14 MR. WEIS: Actually, I think that misstates the
15 record.

16 MR. CRANE: What's it say?

17 MR. WEIS: 11:02.

18 MR. CRANE: 11:02 p.m.? And that -- that shows a
19 one minute in duration? Is that correct, Mr. Weis?

20 MR. WEIS: Yes.

21 MR. CRANE: Okay.

22 Q. And then there was another call at 11:07 p.m. I
23 believe you talked about? That was it?

24 A. I think.

25 Q. Does that sound right? Another short call?

1 A. I think so.

2 Q. And if the record shows it was one minute in
3 duration, you wouldn't argue with that.

4 A. Okay.

5 Q. Okay. And you guys did talk on the cell phone that
6 night about, "Hey, you know, we're going to George's. I can
7 get you in. You know, meet at the parking lot." What have
8 you.

9 A. Yes.

10 MR. WEIS: Objection. That actually calls for a
11 hearsay response.

12 MR. CRANE: Well, that's -- okay.

13 THE COURT: I beg your pardon. That objection is
14 overruled. It would not be hearsay, considering the maker of
15 the statement.

16 MR. CRANE: Well, I -- I can ask it -- I don't even
17 need to ask that.

18 THE COURT: Do you have any further questions,
19 Mr. Crane?

20 MR. CRANE: I don't think I've got anything else of
21 this witness.

22 THE COURT: Redirect.

23 MR. WEIS: Nothing further, Your Honor.

24 THE COURT: Is the witness finally excused for the
25 defendant?

1 MR. WEIS: She is, Your Honor.

2 THE COURT: For the state?

3 MR. CRANE: Judge, I will not have any objection to
4 her being finally released, subject to a quick thing I'd like
5 to talk to defense counsel about.

6 THE COURT: If you'll hold on just a minute.

7 - - -

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

10 MR. CRANE: Would it be all right with you that we
11 agree -- I know she wants to be in here with the family.
12 That if she is -- if your client testifies, and
13 understandably Mr. Rogers has declined to tell me whether or
14 not his client's going to testify. That's fine. But if he
15 does testify, that during that juncture the rule be invoked
16 with respect to Kelly.

17 MR. ROGERS: In other words, you're saying you want
18 to recall her for rebuttal?

19 MR. CRANE: Yeah. Who knows. Yeah. Who knows
20 what's going to occur. Yeah. So if he testifies, I would
21 ask that the rule be invoked as to her, when he's in the
22 room. And he's not telling me either way.

23 MR. ROGERS: Obviously we're ready to release her.
24 I guess --

25 THE COURT: I think she has been endorsed by the

1 state.

2 MR. ROGERS: She has been endorsed by -- the state I
3 think has paid -- they subpoenaed her and they paid for her
4 travel expenses getting here, so I don't have a problem with
5 that arrangement.

6 MR. CRANE: I mean, she can be in the room.

7 THE COURT: State is not willing to release her, but
8 consents that she may remain in the room, unless the
9 defendant takes the stand. Is that the understanding?

10 MR. CRANE: Is that okay with you?

11 MR. ROGERS: For Mr. Ferguson's testimony. That's
12 fine.

13 THE COURT: You agree with that?

14 MR. ROGERS: Yep.

15 THE COURT: All right.

16 - - -

17 The following proceedings were held in open court:

18 MR. CRANE: Thank you, ma'am.

19 THE COURT: Miss Ferguson, you are not finally
20 released. The Court would instruct you not to discuss your
21 testimony with any other witness. However, at this time, if
22 you choose to remain in the courtroom, you may do so, until
23 further instructions from the Court. Okay?

24 THE WITNESS: Thank you.

25 THE COURT: You may step down.

1 State may call its next witness.

2 MR. ROGERS: Defense.

3 THE COURT: Oh, I'm sorry. That is correct. I beg
4 your pardon. Defense may call the next witness.

5 MR. ROGERS: Your Honor, the defense calls Ron
6 Singer.

7 THE COURT: After this witness, we'll take our
8 mid-morning recess.

9 Raise your right hand, sir.

10 - - -

11 RONALD SINGER,

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

13 THE COURT: Would you take the witness stand,
14 please. And the small black metal piece on the -- there is a
15 live mic. The others are not -- will not amplify your voice.
16 So if you have any trouble in speaking, that will amplify
17 your voice.

18 THE WITNESS: It's never been a problem before.

19 THE COURT: Well, it is not for many people. Some
20 people it is.

21 You may inquire.

22 - - -

23 DIRECT EXAMINATION

24 BY MR. ROGERS:

25 Q. Would you please state your name for the record,

1 sir.

2 A. My name is Ronald, R-o-n-a-l-d, Singer, S-i-n-g-e-r.

3 Q. Mr. Singer, what is your profession?

4 A. I'm a forensic scientist. I am currently the crime
5 laboratory director for the Tarrant County, Texas, medical
6 examiner's office crime laboratory. In addition, I am a
7 consultant in forensic science. And that is the capacity in
8 which I'm here today.

9 Q. Where is Tarrant County, Texas?

10 A. I'm sorry. That's Fort Worth, Texas.

11 Q. Noplace close to Houston.

12 A. No.

13 Q. Okay. Thank you. Sir, I'm going to show you what's
14 been marked for identification as Defendant's Exhibit G. And
15 I will ask you if that is a copy of your resume or curriculum
16 vitae.

17 A. Yes. This is the most current copy of my resume
18 that I have.

19 Q. And that summarizes your education, experience,
20 publications, professional organizations, and other
21 information, touching on your qualifications as an expert in
22 the field of forensic sciences?

23 A. Yes, sir, that's correct.

24 Q. And I'm going to ask you some specific things, but
25 obviously a fairly lengthy document.

1 degrees?

2 A. Yes, sir, I do. I have a Bachelor of Science degree
3 which I received from Tulane University in New Orleans,
4 Louisiana, and a Master of Science degree in biological
5 sciences which I received from Loyola University of New
6 Orleans.

7 Q. And when did you receive those degrees?

8 A. I received my Bachelor's degree in 1967 and my
9 Master's degree in 1978.

10 Q. And how long have you worked in the field of
11 forensic science?

12 A. In about a week it will be 33 years.

13 Q. And have you also attended numerous training
14 seminars dealing with your work in forensic science?

15 A. Yes, sir, I have. Over the course of my employment
16 with first the sheriff's office in Metairie, Louisiana, which
17 is a suburb of New Orleans, and then with the Tarrant County
18 medical examiner's office, I've had an opportunity to attend
19 many workshops, seminars, courses, and professional meetings
20 that cover the areas of my expertise.

21 Q. And have you, in fact, given lectures, other
22 presentations, at training seminars for forensic scientists?

23 A. Yes, I have. And also, I was a member of the
24 faculty at Loyola University in New Orleans for about ten
25 years, where I taught crime scene investigation, among other

1 courses. I was a faculty member at Texas Christian
2 University for about the same length of time, I think it was
3 about ten years, where I also taught crime scene
4 investigation. I've had an opportunity to lecture on blood
5 spatter analysis and crime scene reconstruction in numerous
6 venues throughout the United States. I've also been invited
7 and have participated in courses where I taught blood spatter
8 analysis and crime scene investigation in England, Bosnia,
9 Hungary, the Maldiv Islands, and just recently Sri Lanka.

10 Q. I know I know where England is. I have some idea
11 about Bosnia and Hungary. Where are the Maldiv Islands?

12 A. The Maldives are a series of islands -- actually a
13 series of atolls made of about 1,200 islands that are off of
14 the southwest coast of India. It is an independent nation.
15 It was once British protected.

16 Q. So that would be between India and the Arabian
17 peninsula maybe?

18 A. It's between India and Africa, yes.

19 Q. Okay. And Sri Lanka is what used to be called
20 Ceylon?

21 A. Ceylon, yes.

22 Q. Okay. Now have some of those classes you have
23 taught dealt with the issue of blood stain pattern analysis?

24 A. Yes, they have.

25 Q. And have some of the classes that you have taught

1 dealt with luminol testing?

2 A. Yes. That's included in most crime scene
3 investigation courses as well as the -- any specialized
4 courses in blood spatter analysis. Generally luminol is
5 covered.

6 Q. And have some of those classes you've taught also
7 dealt with the area of shoe tread analysis and comparison?

8 A. Yes, they have. One of the things that I have done
9 in the laboratory, and still continue to do, although not
10 very often any more, is actually to do shoe print analysis
11 and comparisons.

12 Q. And when you say you don't do it that often any
13 more, is that because you have more administrative
14 responsibilities?

15 A. I have administrative responsibilities. Also my --
16 the major areas that I'm utilized in the laboratory these
17 days are in crime scene reconstruction, which includes blood
18 spatter analysis for the laboratory. And my general area of
19 expertise is firearms and tool mark examination. And I
20 generally do as much of that as I am able. So the shoe print
21 -- impression type evidence, such as shoe prints and tire
22 tracks, has been given over to the trace analysis unit.

23 Q. Okay. But they do that under your supervision.

24 A. Yes. I supervise the unit and approve -- in fact,
25 do a lot of the peer review. The technical peer review.

1 Q. And is your laboratory an accredited laboratory?

2 A. Yes, sir, it is. It's ASCLD lab accredited. And
3 has been since 1999.

4 Q. And how -- what does that mean?

5 A. The American Society of Crime Laboratory Directors
6 laboratory accreditation board is an independent organization
7 that comes in and inspects laboratories to determine whether
8 or not proper quality control measures are in place, whether
9 or not the people who are working in the laboratories have
10 the basic requirements that are necessary to be doing the
11 work, whether or not the supervision that is in place is
12 adequate to make sure that the work is being done properly,
13 and that a whole series of quality measures are in place in
14 the laboratory.

15 Q. Do they also do what's called proficiency testing?

16 A. Well, proficiency testing is considered to be part
17 of the process that's required for accreditation. They don't
18 do proficiency testing. ASCLD lab has a subcommittee that
19 reviews proficiency tests that are taken in the laboratory.
20 They have to be provided by an external vendor or internal
21 proficiency testing.

22 Q. And in fact, have you served on that subcommittee,
23 the proficiency advisory committee of the American Society of
24 Crime Laboratory Directors?

25 A. Well, actually, yes. I served on a committee that

1 was the forerunner of what is in place today. The American
2 Society of Crime Laboratory Directors is actually a separate
3 organization made up of laboratory managers. And for a
4 period of time what we were doing was: We were providing
5 technical assistance to proficiency test manufacturers who
6 wanted to provide proficiency tests for the forensic field.
7 And I was a member of that committee for a number of years
8 and actually served as chairman of that committee for I think
9 about eight or nine years.

10 Q. And we've also heard mention of the American Academy
11 of Forensic Sciences. What is that?

12 A. The American Academy of Forensic Sciences is an
13 international organization of forensic sciences -- scientists
14 and attorneys. It represents about 6,000 members, spread out
15 over 58 or 59 countries. The bulk of them, of course -- the
16 bulk of the membership comes from the United States and
17 Canada, but it's the -- I would consider it to be the premier
18 forensic -- professional forensic science organization,
19 learned society in forensic science.

20 Q. And are -- does it have different degrees of
21 membership?

22 A. Yes, it does. First of all, membership is not
23 simply by writing a check and joining. You have to -- you
24 fill out an application. You have to have recommendations.
25 Your application then is investigated to make sure that what

1 you've put on there is authentic and verifiable. And once
2 you are elected to membership, you are elected as a
3 provisional, or now an associate member, for a minimum of, in
4 most sections, two years, after which you can apply for
5 regular membership. Regular membership is based primarily on
6 meeting attendance and participation. And then there is a
7 level above that, which is fellow. And you are promoted to
8 fellow or elected fellow in the academy based on service to
9 the field as well as service to the academy.

10 Q. And are you, in fact, a fellow of the American
11 Academy of Forensic Sciences?

12 A. Yes, sir, I am.

13 Q. How long have you been a fellow?

14 A. At least 25 years. I'm not sure.

15 Q. And have you ever held any offices in that
16 organization?

17 A. Yes. I've held numerous offices.

18 Q. What's the most recent?

19 A. The most recent, I completed -- just completed a
20 term as president of the American Academy of Forensic
21 Sciences. That ended in February.

22 Q. Of 2005?

23 A. Of -- yes. Of this year. February of this year.

24 Q. Are you also affiliated with the International
25 Association of Forensic Sciences?

1 A. Yes. I am currently the president of the
2 International Association of Forensic Sciences. I just was
3 elected to that position in August of this year.

4 Q. Well, all this other stuff you've done is probably
5 here in the exhibit; is that correct?

6 A. Yes.

7 Q. Okay. Have you testified in courts concerning crime
8 scene reconstruction, blood stain pattern analysis, shoe
9 print comparisons, and tool mark analysis --

10 A. Yes, I have.

11 Q. -- as an expert?

12 A. I have testified in federal, state, and local courts
13 in Texas, Louisiana, Oklahoma, Colorado, Missouri, Kansas,
14 Georgia, and Mississippi, in one or more of those fields.

15 Q. Now, in connection with the homicide of Kent
16 Heitholt, did you receive a number of materials from my
17 office, which we in turn had received from the prosecution?

18 A. Yes, sir, I have.

19 Q. And were those -- did those materials include some
20 compact disks which contained digital photographs?

21 A. Yes, sir.

22 Q. Do you have those with you?

23 A. Yes, I think I do, as a matter of fact.

24 Q. Preliminarily, sir, I notice there's a disk here
25 entitled "Crime Scene 2." Was there another disk called

1 "Crime Scene 1"?

2 A. No, sir, I didn't receive one that was specifically
3 labeled as "Crime Scene 1," but I did have a set of Xerox
4 color copies of -- that were listed under a tab that was
5 marked "Crime Scene 1."

6 Q. And did you have a disk that also had those
7 photographs or not?

8 A. I don't think so.

9 Q. Let me see if I can find them over here.

10 MR. ROGERS: Don't worry about it. Don't worry
11 about it.

12 MR. KNIGHT: I'm going to object right now to any of
13 these photographs being offered or shown to the jury.

14 THE COURT: Mr. Knight, they're being marked.
15 They're not -- they're not being offered at this point. And
16 before they're shown to the jury, they will have to be
17 admitted into evidence.

18 MR. KNIGHT: Okay. I'm sorry. I thought I'd just
19 save a little time there and object beforehand.

20 THE COURT: If you'll let the reporter mark them.
21 And then I will caution counsel that we will not play them
22 for the jury until in some other way they've been identified
23 and become relevant.

24 MR. ROGERS: Correct.

25 THE COURT: Thank you.

1 Would you mind showing those to opposing counsel, if
2 you're going to refer to them, just before you go?

3 (Mr. Rogers showing exhibits to Mr. Knight.)

4 Q. Mr. Singer, I'm going to just hand you for
5 identification what have been marked Defendant's Exhibit K.
6 And is that one of the CDs that we sent to you, that we got
7 from the prosecutor's office, that you looked at in
8 connection with this case?

9 A. Assuming that you didn't switch anything over in the
10 table there, yes, that's -- that is.

11 Q. Okay. Fair enough. And Defendant's Exhibit L, is
12 that labeled "Luminol Trail 1"?

13 A. Yes, that's correct.

14 Q. And Defendant's Exhibit M, "Luminol Trail 2"?

15 A. Yes.

16 Q. And Defendant's Exhibit N, another showing the
17 photographs of the search of the Ferguson vehicle and other
18 photographs relating to the downtown Columbia area?

19 A. Yes, that's correct.

20 Q. Defendant's Exhibit O, autopsy photos?

21 A. Yes.

22 Q. Defendant's Exhibit P, photos of the diner and the
23 victim's car?

24 A. Yes, that's correct.

25 Q. Now, I want to show you some still photos which have

1 been introduced into evidence, starting with State's Exhibit
2 15, which contains eight photographs. I'm not going to have
3 you look at these in detail now, but do you see what those
4 are?

5 A. Yes.

6 Q. Are those some of the photographs which you viewed
7 in digital form on one of the compact disks I just showed
8 you?

9 A. Yes, they are, both in digital form, and I also had
10 color Xerox copies of those photographs.

11 Q. Okay. And the photographs that are marked on
12 State's Exhibit 59, also photographs which you have viewed in
13 digital form on one or more of the compact disks?

14 A. Yes, they are.

15 Q. And also of which you had color copies.

16 A. Yes. They are at least similar. I -- you know.
17 There's a lot of photographs. And I've seen photographs that
18 look like that.

19 Q. Okay. And State's Exhibit 87, also photographs that
20 you've seen on one of those compact disks?

21 A. Yes, sir.

22 Q. State's Exhibit 94?

23 A. Yes.

24 Q. Once again, photos that you have seen on one or more
25 of those compact disks?

1 A. That's correct, yes.

2 Q. Same for State's Exhibits 96 and 97?

3 A. Yes.

4 Q. State's Exhibit 14?

5 A. Yes.

6 Q. State's Exhibit 41?

7 A. Yes. Oh, yes.

8 Q. State's Exhibit 33?

9 A. Yes.

10 Q. You were not given a videotape to review, were you,
11 or a CD of a videotape?

12 A. I had a DVD of a crime scene video, yes.

13 Q. Do you have that with you as well?

14 A. I don't -- no. I did not bring that.

15 Q. Okay. Let me ask you this. Does State's Exhibit 13
16 look like various still shots from that video?

17 A. Yes.

18 Q. State's Exhibit 39, is that, once again, excerpts of
19 photographs that you viewed in digital form?

20 A. Yes, they are.

21 Q. State's Exhibit 44. First of all, I'll call your
22 attention to the -- obviously not a photograph, but a diagram
23 in the bottom left-hand corner, which is marked as Exhibit
24 44J. Had you seen it before too?

25 A. No. I have not seen 44J. The photographs, though,

1 are all photographs that were included in the photographs
2 that I've seen.

3 Q. Okay.

4 MR. CRANE: Charlie, which one's J? Sorry.

5 MR. ROGERS: J is the diagram.

6 MR. CRANE: All right.

7 Q. State's Exhibit 74?

8 A. Yes.

9 Q. And those are what's been -- photographs you
10 viewed --

11 A. Yes.

12 Q. -- digitally as well as in --

13 A. Yes.

14 Q. -- Xerox copies?

15 A. Yes.

16 Q. And last but not least, State's Exhibit 34. Are
17 those also photographs that you reviewed --

18 A. Yes, they are.

19 Q. -- digitally. Now, what would be the advantage to
20 viewing a photograph digitally, first of all, from the point
21 of view of your analysis, to viewing a photograph digitally
22 rather than a -- an enlargement, eight-by-ten enlargement of
23 a photograph?

24 A. There's still a little bit of controversy about
25 this, so I'll be careful how I phrase this. From my own

1 personal standpoint, I prefer to look at digital photographs,
2 because, in my opinion, they tend to be clearer. The
3 resolution -- assuming that they're taken with a camera that
4 has a good enough resolution, they tend to be clearer than
5 photographs -- 35-millimeter photographs that are shot with
6 film. Although film that is transferred to digital is just
7 as good, as long as the process is proper.

8 The big advantage is that it allows you to use the
9 power of the computer to zoom in on areas and look at areas
10 that may only be represented as a small portion of a
11 photograph. And again, assuming that you have enough of the
12 initial resolution, whether it be by film or digital camera,
13 and the image is good enough, you can actually get some very
14 good images of larger sections of -- or of smaller sections
15 of larger photographs. So that makes it a lot easier.

16 Plus, I can go through a whole series of
17 photographs, although in this case I had, you know, a stack
18 of Xerox copies about that thick, and then I had these disks.
19 I can go through a disk, pick out the ones that are germane
20 to what -- to the questions that I'm being asked, and print
21 those in my -- in-house and have things in my hand that I can
22 look at.

23 Q. And in terms of explaining to the Court and jury
24 what you see in the photographs and the conclusions you draw
25 from what you see, are there any advantages to using the

1 digital format and a screen such as this over using a still
2 photo mounted on a piece of foamboard?

3 A. Well, the obvious advantage is that you can blow up
4 the digital photograph to as large as the, again, the
5 resolution of the image will allow you to. And it allows
6 people to see things that perhaps would be harder to see on a
7 smaller enlargement, particularly with the photographs that I
8 was dealing with, which were smaller than even the
9 eight-by-tens that you have here.

10 MR. ROGERS: Your Honor, at this time I would offer
11 Defendant's Exhibits K, L, M, N, O, and that portion of P
12 which deals with the victim's car.

13 MR. KNIGHT: Your Honor, I would object. I don't
14 have any problem with the defense maybe playing these or
15 showing these images that are maybe enhanced digitally.

16 MR. ROGERS: They're not -- they're not enhanced.
17 They're --

18 MR. KNIGHT: Well --

19 MR. ROGERS: -- what we got from you. But we intend
20 to use the computer to focus on things.

21 MR. KNIGHT: These digital images that they intend
22 to put up there on that screen, I'm not going to object to
23 that if they are duplicates of photographs that are already
24 admitted into evidence. Otherwise, these disks certainly
25 contain photographs that have not been entered into evidence.

1 So, I -- there is no foundation at all that this witness was
2 at the crime scene. That -- at any time close in time to the
3 processing the crime scene.

4 Also, if the defense wanted to use these exhibits,
5 they could have laid a foundation through a person that was
6 there, that testified earlier. Jeff Nichols.

7 So, I'm certainly opposed to all these images and
8 all these disks coming in. But if they want to play or just
9 show the ones that are duplicates of the ones -- the images
10 that already are in, I'm not going to have an objection. But
11 entering all these CDs, the entire CDs, I'm certainly
12 opposed.

13 THE COURT: Let me just -- before you respond, are
14 these the CDs that the state furnished to the defense in the
15 course of discovery? I mean, you've looked at the CD itself?
16 Or these other CDs?

17 MR. ROGERS: These are copies that we made. Direct
18 copies that we made of them.

19 MR. KNIGHT: Yes, Your Honor, but still --

20 THE COURT: I'm just -- that was my only question.
21 You've already made your objection, Mr. Knight.

22 You may respond.

23 MR. ROGERS: Your Honor, I don't think there's a
24 serious question as to the authenticity of these photographs.
25 Obviously these actual CDs themselves were not here when

1 Mr. Nichols testified, so we couldn't have had him identify
2 them. And plus, he didn't make them. But I don't think that
3 that's the issue here. Mr. Nichols testified that he made
4 digital photographs. The state chose to have some of those
5 developed or printed or whatever and mounted as exhibits, and
6 I have no problem with that. But I do think that the rest of
7 them, since we got them in discovery from the state and gave
8 them to this expert for his formulation of conclusions,
9 becomes admissible to explain his conclusions.

10 THE COURT: Okay. I'm going to sustain the
11 objection as to those photographs on those disks. And I have
12 no way of knowing, because I don't have a laptop here, to
13 know which ones are here that have already been admitted and
14 for which a foundation has been laid. If there's no
15 foundation laid for the particular photograph, then I will
16 sustain the objection. And that sort of leaves you in an
17 uncomfortable position, because I don't know -- I'm going to
18 let the jury take its morning recess anyway. And perhaps you
19 can work it out somehow during the recess. Simply because
20 the state provided them does not make them authenticated or a
21 foundation laid.

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 Jury may take a 10- or 15-minute recess.

6 If it's necessary for you to look at those CDs and
7 see which ones are admitted and which ones you want to lay
8 another foundation for, we might take a shorter -- a little
9 longer break. But I don't want to be out 45 minutes looking
10 at CDs.

11 Ladies and gentlemen, you may be excused.

12 Mr. Singer, you may step down, as long as you're
13 available. And would ask you not to discuss your testimony
14 with other witnesses, as you probably understand.

15 THE WITNESS: Yes.

16 - - -

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

19 THE COURT: We'll be in recess then.

20 (Recess taken.)

21 - - -

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

24 THE COURT: Have we arranged to get the photographs
25 sorted out that are to be displayed?

1 you viewed, both in Xerox and in digital format?

2 A. Yes, sir, we did.

3 Q. And have we selected out digital images which are
4 the same photograph as the image depicted in State's Exhibit
5 33F?

6 A. Yes.

7 Q. State's Exhibit 33C?

8 A. Yes.

9 Q. State's Exhibit 74A?

10 A. Yes.

11 Q. And we've managed to locate those on the CDs of many
12 photographs.

13 A. Yes, we have.

14 Q. And now I'm going to hand you what's been marked as
15 Defendant's Exhibit Q and ask you if that is a photograph
16 that you viewed both in digital form and in the printout
17 form.

18 A. Yes, sir, it is.

19 MR. ROGERS: At this time, Your Honor, I'd offer
20 Defendant's Exhibit Q.

21 THE COURT: Do you have an objection, Mr. Knight?

22 MR. KNIGHT: No objection, Your Honor.

23 THE COURT: Defendant's Exhibit Q is admitted.

24 - - -

25 Defendant's Exhibit Q admitted into evidence.

1

- - -

2 Q. Now, let's start with generally what you did
3 regarding the blood stain pattern analysis in this case.

4 A. I was asked to review a series of reports, as well
5 as a large number of photographs that depicted this scene,
6 the crime scene, and also depicted the victim's vehicle, both
7 at the scene and then later on, after it had been impounded,
8 in an effort to determine if there was any information that I
9 could provide in the way of just simply basic information
10 regarding the scene itself, as well as an attempt to perhaps
11 reconstruct what occurred or might have occurred at the time
12 of the incident.

13 The first thing that I -- that I noticed and made
14 you aware of and is in my report is that there is evidence,
15 both in the reports themselves as well as the photographs,
16 that Mr. Heitholt's body had been moved prior to the
17 photographs being taken. And in addition, there is evidence
18 that there was some medical intervention that had occurred at
19 the scene prior to Mr. -- prior to the photographs being
20 taken.

21 Q. Well, now, what impact would that information have
22 on your crime scene reconstruction regarding blood stain
23 pattern analysis?

24 A. Well, when you look at the blood stain pattern
25 analysis, you have to take into account that, because he had

1 been moved and because there was activity that was going on
2 right around his body, plus there was a lot of blood there,
3 that there is the possibility and, in fact, the probability
4 that at least some of what we're seeing is the result of the
5 attempts to save his life, as opposed to the actual incident
6 itself. So when there's -- when someone like myself is asked
7 to reconstruct the events that occurred, obviously I can't do
8 that completely without at least the caveat that there is the
9 possibility that some of the stains that I'm seeing are the
10 result of those activities, as opposed to the actual incident
11 itself.

12 Q. And are there particular areas that you were able to
13 focus on that were clearly independent of the medical
14 intervention and the moving of the body after the incident,
15 before photographs were taken?

16 A. Yes, there are. And, in addition, when you -- when
17 you do this, some of what you have to look at is: You look
18 at a pattern and you say, "Okay, you know, what is the
19 possibility or what are the probabilities?" So even in those
20 areas where the medical intervention took place, I think, at
21 least in my opinion, there is some evidence of what actually
22 took place at the scene. And so I was able to get a general
23 reconstruction, again, in my opinion, of the incidents that
24 took place.

25 Q. Let me first call your attention to the interior of

1 the vehicle. And I will show you again what has been
2 received in evidence as State's Exhibit 34, containing
3 photographs labeled 34A through H. And are these, in fact,
4 copies of -- hard copies, if you will, of photographs that
5 you have viewed and analyzed in connection with this case?

6 A. Yes, they are.

7 Q. Do you have the laser pointer?

8 A. Yes. It's over here.

9 Q. You can use that.

10 A. Okay.

11 Q. Start in 34A and 34B. Is 34B a close-up of the
12 white card in 34A?

13 A. Yes, it is.

14 Q. And can you tell what that card is there for?

15 A. Yes, I can. If I could step down, it might --

16 Q. Sure.

17 A. -- be easier for me to go through this.

18 Q. As long as the court reporter can hear you. And
19 she -- she has laryngitis and can't tell you whether she can
20 or not.

21 A. Okay.

22 THE COURT: If you hear a croaking sound, you'll
23 notice that -- if I see that she's trying to talk to you,
24 I'll speak for her.

25 THE WITNESS: Thank you.

1 A. 34A is a photograph of the interior of the driver's
2 side door. Front door. And the card is placed there to show
3 that on the window there are spatters. And the close-up is
4 actually of that area that is being highlighted by the card.
5 If the card wasn't there, you could see the spatters, but you
6 couldn't really tell what side of the window it's on, and it
7 would be more difficult actually to see the spatters.

8 These are, visually, at least, consistent with blood
9 spatter. The fact that they are on the interior of this
10 window, along with several of the other photographs here --
11 if I could just go on, you know, I --

12 Q. All right.

13 A. If we look at, say, 34E here, what we see is a
14 photograph of the panel, the door panel that's just below the
15 window. This is where the armrest is. And here's where all
16 the controls are. And you can see that there are some blood
17 stains on that as well. 34D is a little higher up. You can
18 see that there are some impact spatters on that as well. 34C
19 is the portion of the door that is right by the edge of the
20 frame where the door closes. And right here is a nice little
21 droplet of blood. These spatters all are either striking
22 this door either at 90 degrees or at an angle that approaches
23 90 degrees.

24 Now, when -- and I don't know -- well, when I --
25 when I analyze a scene like this, I tend to group blood

1 spatters into three categories: Those that impact at what I
2 call a high angle of impact, which would 70, 80, or 90
3 degrees; then there's the medium angle of impact, which is
4 40, 50, 60 degrees; and then there would be low angle of
5 impact, which would be 10, 20, or 30 degrees.

6 And basically the way that you can tell is: That
7 when a drop strikes an object at 90 degrees, it makes a nice
8 round drop. If it strikes that object at anything other than
9 90 degrees, the drop that's formed is going to be elongated.
10 And the lower the angle, that is, the closer that blood
11 stain, that blood droplet, is to the surface as it strikes
12 it, the longer and skinnier that elongated drop is going to
13 come up -- is going to be.

14 Now, there is a method that you can use to precisely
15 measure these angles. But I find that in general, when --
16 particularly in a scene like this, where you've had
17 intervention, what you're really looking for is an overall
18 picture. You're just trying to get the big picture of what's
19 going on. And so by grouping it into those kinds of angles,
20 in the general classes, you can get a much better idea,
21 without having to risk the possibility that you're including
22 in your measurements something that is not really from that
23 scene.

24 And these are all, as I said, high angles of impact.
25 80, 90 -- 70, 80, 90 degrees. That indicates to me that --

1 oh. And one other that I think that's important. And that
2 is: These photographs down here, 34I and 34J, which -- and
3 34K, which depict the door frame at the bottom, that's the
4 frame of the vehicle at the bottom of where the door shuts,
5 and you can see that there are -- some of these are fairly
6 round drops that are impacting here, which would indicate
7 that there's some dripping going on or maybe, again, some of
8 this relatively straight-down drops that are coming down.

9 All of this together indicates to me that the attack
10 on Mr. Heitholt began at least near the passenger -- the
11 driver's side of the car, with the door open. Because the
12 door had to be open in order for these blood stains to get on
13 the interior side of the door and show up as they do.

14 Q. Let me stop and ask a question. Could a single blow
15 to Mr. Heitholt at the time he was near the open driver's
16 side door account for this blood spatter depicted on State's
17 Exhibit 34?

18 A. No, sir, it could not.

19 Q. Why not?

20 A. There has to be at least two blows, and possibly
21 more. The reason for that is: Because the first time that
22 you strike somebody, particularly with a blunt instrument,
23 the first time you strike somebody, there's no blood there.
24 It's -- the blood has to accumulate on the surface in order
25 for this spatter to occur. Because the way the spatter

1 occurs is: That you have a surface that has blood on it.
2 Then you have another object that comes down and strikes that
3 surface. When it does, basically what's happening is you're
4 creating this, I guess for want of a better word, sandwich,
5 with the two solid objects being the pieces of bread and the
6 blood being in between as the meat in the sandwich. And
7 blood is a fluid. It's a liquid. It's just like any other
8 liquid. So it doesn't compress. And so what happens is: As
9 this force comes down, it forces the blood out, away from the
10 objects that are coming into contact with one another.
11 That's what creates the spatter.

12 In addition, when you remove that object, if you're
13 coming back and you're going to go down again, you'll have
14 some spatter that comes off of the object. But in this case
15 what you're looking at is impact spatter. That is, spatter
16 that is the result of this impact occurring. And it has to
17 at least have been on the second blow, because there has to
18 be enough time, as I said, for blood to start to accumulate
19 on the surface that's being struck, and then you have the
20 resulting spatter.

21 Q. Now, do you tend to categorize impact spatter with
22 regard to the velocity of the impact?

23 A. Yes. That's -- I'm kind of old school when it comes
24 to that. I do believe in that, yes. You can generally
25 categorize blood spatter into high-, medium-, and

1 low-velocity spatter. And very simply put, low-velocity
2 spatter is spatter that is the result of gravity. You cut
3 your hand, and blood begins to accumulate, it runs down your
4 fingertip, and then it accumulates until there's enough
5 volume of blood there to break the surface tension that's
6 holding it to your finger, and it drops off your finger and
7 hits the ground. That would be low-velocity spatter. You
8 can also create low-velocity spatter by, you know, kind of
9 shaking your hand, maybe moving an object a little bit. Then
10 you reach that kind of gray area.

11 And then you move into medium-velocity spatter.
12 With medium-velocity spatter, you're actually applying some
13 energy to it. So that if I have, say, a baseball bat, and
14 I'm striking someone with the baseball bat, that momentum is
15 building up energy, and that energy is then transferred to
16 that activity that occurs when that spatter is created. And
17 what that does is, if there's enough energy there, to break
18 the blood into smaller droplets.

19 And then, of course, there's high-velocity spatter,
20 which is extremely energetic. Such as, say, a head impacting
21 a windshield at 40 or 50 miles an hour in a head-on
22 collision. Or a gunshot wound. That energy -- there's so
23 much energy there. It's generally classified as energy
24 that's greater than or equal to about a hundred feet per
25 second. That's enough energy to actually break the blood

1 into tiny little droplets, like you get out of a perfume
2 atomizer.

3 And so you can look at a surface, and by looking at
4 general size of the droplets, you can get some idea of the
5 kind of impact that was occurring here.

6 These are medium-velocity stains. With the possible
7 exception of some of the ones that are down there on the
8 frame, the bottom of the frame of the vehicle. Those could
9 be low-velocity. But the ones on the window appear to be
10 medium-velocity spatter, which is consistent with a beating.

11 Q. By the way, based only on the photographs that you
12 viewed concerning the driver's side door and its environs,
13 could you tell -- you told us there had to be at least two
14 blows; correct?

15 A. Yes.

16 Q. Could you tell us if there may have been more than
17 two?

18 A. Well, there may have been more than two, but I
19 can't -- I can't actually say exactly how many blows occurred
20 at this particular position, because then you have to start
21 looking at the big picture.

22 Q. Okay. Now in looking at the big picture, you, of
23 course, viewed photographs, including those in State's
24 Exhibit 33, including 33A through 33H? Is that correct?

25 A. Yes.

1 Q. Okay. And are those photographs that are useful to
2 you in looking at the big picture of the blood stain pattern
3 revealed in the scene of Mr. Heitholt's death?

4 A. Yes, they are.

5 Q. Okay. Could you tell us what you found significant
6 in those photographs.

7 A. Sure. Again, if I may step down.

8 Q. Yes, you may. And bring the laser pointer if you
9 want to.

10 A. If you look at 33A, which is the top left-hand
11 photograph, and then you look at 33G, which is a photograph
12 taken from essentially the same angle, but backed away, what
13 you see is, this is the first thing that you want to look at
14 is: What's on the ground here. And there are two relatively
15 large areas of pooled blood. There's one that's right here
16 by the tire, and then there is another that is associated
17 with Mr. Heitholt's body, under his head.

18 Now, this is where some of that generality comes in
19 that I was talking about before, because we can see from --
20 well, there are other photographs that depict medical
21 intervention in Mr. Heitholt. So we know that he's been --
22 that the EMTs have been working on him. In fact, you can see
23 a chest pad right there, in here. And so we know he's been
24 moved. Plus, there was testimony -- at least in the report,
25 there was an indication in the report that a civilian had,

1 who had witnessed the incident or come right after it, had
2 rolled him over. So we know there's some movement.

3 So I don't know whether he's -- you know, whether
4 this position that he's in here is the result of that
5 movement or not, or whether there are two actual incidents
6 that have occurred here. Either one of those is possible.
7 But that shows you at least that there is some movement now.
8 And we know then -- and you've got a lot more blood here,
9 which means there's a lot more bleeding going on.

10 So in my opinion, at least, the incident started by
11 the passenger -- I mean, I'm sorry, the driver's side front
12 door. And there was then some movement that occurred from
13 there, to end up back over here by the rear driver's side
14 tire.

15 When you look closely at the driver's side tires,
16 and now I'm looking at 33D, E, and F, what you can see there
17 is very interesting to me. I'll have to be careful how I say
18 that too, because I had a serologist who used to work -- who
19 worked for me when I was in Metairie, who made the statement
20 on the stand one day that the clotting process in blood is
21 very -- is a fascinating scientific process, because it is.
22 And that got translated into a newspaper article that said
23 that the witness said that he liked to watch blood dry.

24 So, I have to be a little careful about how I
25 approach this, but this is a -- this tells me a lot. This

1 rear wheel is fascinating to me as a blood spatter expert,
2 because it tells me a lot. What it --

3 Q. Let me ask you, would it be -- with regard to
4 Exhibit 33F, would it be useful and helpful to the jury, in
5 your view, to be able to utilize computer technology to
6 demonstrate things that you saw on that particular
7 photograph?

8 A. Yes. That one and this one.

9 Q. 33C.

10 A. Yes.

11 Q. Which one first?

12 A. Well, you can show F first.

13 Q. Okay.

14 MR. ROGERS: And that would be jpg 93, please.

15 Q. And that's the same photograph as 33F?

16 A. Yes.

17 If you could rotate it 90 degrees to the right. No.
18 Other way. Yeah. That way.

19 Q. There we go.

20 A. There we go.

21 Q. All right.

22 A. Okay. What this -- what this shows is several
23 things. Number one, if you look at these spatters, that's
24 the smaller droplets that are here, those small droplets take
25 two forms. Some of them are very round. Others are

1 elongated. And the shape of the stain will also tell you the
2 direction that the blood is moving. Okay. And if you
3 examine some of these stains closely -- and I don't know if
4 we can come up a little more with it or not. If possible.
5 If not... Well, okay.

6 MR. ROGERS: A little more. If you can.

7 A. All right. Yeah, that's good.

8 You can see, like here and here and here, these are
9 nice round stains. On the other hand, the stains here and
10 down here and across here and these in here, they all have
11 directionality. All right. So what does this tell me? What
12 it tells me is: That at some point during this incident, the
13 victim's head is at a level that is more or less level with
14 that hubcap. Okay. The ones that show the directionality,
15 that are moving up -- that's the round stains (indicating).
16 The ones that show the directionality that are moving up show
17 me that the blood, the source of that blood, is below the
18 level of that hubcap, so -- or at least the top of that
19 hubcap, so that it's closer to the ground.

20 Q. Let me stop you here, Mr. Singer. How can you tell
21 the directionality of an elongated stain?

22 A. Okay. Well, an elongated -- to put it simply, an
23 elongated stain will be pear-shaped, okay, with the smaller
24 end of the pear pointing in the direction of travel of the
25 stain. And that has to do with the fact that, as the blood

1 strikes the object, of course the momentum of that blood, you
2 know, the first blood that strikes the object is going to
3 stay on the object. The rest of that little blood droplet is
4 going to continue to move. And as it moves forward, because
5 of momentum, there's less and less blood there, so that the
6 stain gets narrower and narrower. So you end up this with
7 pear-shaped stain that is in the direction, general direction
8 of the activity. That is, the travel of the blood.

9 And in these stains, you can see quite easily that
10 the blood is moving in this direction. And that these stains
11 are in that medium angle category. So that they're coming
12 from -- and, you know, if you wanted to, you could actually
13 measure some of them and put some -- tape some strings and
14 calculate the angles and pull the strings down and come to a
15 general area. But that really isn't necessary here, because
16 we see that big pool of blood right below the wheel, and we
17 know that they're moving in this direction. What it tells me
18 is that they're coming from a low position.

19 So what this tells me is: That he was struck after
20 he was on the ground. Okay. And perhaps while he was -- his
21 head was higher, not completely on the ground, but somewhat
22 off of the ground. He could have either been on all fours,
23 going down, or he could have lifted his head up in some way.
24 But -- and I can't really tell you that. I don't know that.
25 All I know is that his head is higher up, so that the spatter

1 is coming right on to the hubcap, and that, in at least some
2 of these instances, the spatter is moving up like this at a
3 relatively, as I said, kind of a moderate angle, so that it's
4 coming from below. All right.

5 The next thing that this tells me is this large area
6 here, we don't see any drops. All you see is this big mass
7 of blood. That's called a transfer stain. And that --

8 Q. What's a transfer stain?

9 A. I'm sorry.

10 Q. What's a transfer stain?

11 A. What happens then -- or what a transfer stain is is
12 when a bloody object comes in contact with another object,
13 and -- like a rubber stamp or, you know, or a wet rag, it
14 leaves -- it transfers some of that blood from that object to
15 the other object.

16 This not only tells me that a bloody object came
17 into contact with the hubcap, but it was very bloody. And
18 the reason I can say that it was very bloody is because some
19 of these droplets are of enough volume to actually be running
20 down the tire. So this is -- this is not just -- see if I
21 can give -- well, when you're a painting a house, you know,
22 when you're painting the -- a wall in your house, if you just
23 slop the paint on, what happens? You get run-down. You get
24 those big runs that come down. If you're -- use a thin
25 amount, it just comes off the brush and just stays right

1 where you put it. Well, there's enough blood there to run
2 down. So it's a fair amount of blood.

3 What is the bloody object that came into contact
4 with the hubcap? I can't say. You know, obviously there's a
5 good candidate for that. And that is Mr. Heitholt. Because
6 he is very bloody, as you see in the subsequent photographs
7 that we were looking at. And that would be consistent.

8 So that tells me that, again, in my opinion, he came
9 into contact with that hubcap.

10 Now --

11 Q. Would that -- do you know what part of his body that
12 might have been?

13 A. Well, I can speculate, but I can't say for sure.

14 Q. Don't speculate.

15 A. Obviously it was a bloody part.

16 Then there is more information here. Okay. And
17 that information is going to be a little difficult for you to
18 see, but if you look carefully at this photograph, what
19 you'll see is that there are spots, impact spatter, that is
20 sitting on the top of this transfer stain.

21 MR. ROGERS: Could you enlarge that a little bit,
22 Mr. Weis?

23 A. Ah. Yeah. That's good. Wonderful.

24 There's one here. There's one here.

25 If I could refer to my notes, I have a diagram.

1 All along in here. Here, here, here, here, here,
2 here. Down here there's a nice big one. Almost a clot.
3 Over here there's one.

4 So what you can see is that there's impact spatter
5 that is layered on top of this transfer stain. What that
6 means is that after that object came into contact with the
7 hubcap, there was another incident, at least one more
8 incident, perhaps more, that created impact spatter, that
9 ended up on the hubcap of the wheel.

10 Q. Okay.

11 A. Now if we could go to the next one.

12 Q. All right.

13 MR. ROGERS: If you could then, Mr. Weis, take us to
14 jpg --

15 A. Not that one.

16 MR. ROGERS: -- 96, which is State's Exhibit 33C.

17 Q. So this one here?

18 A. Yes.

19 Q. Okay.

20 A. Yes.

21 Q. And what is this?

22 A. This is -- now we're looking at the rear quarter
23 panel of the car. This is the tire. This is the tire that
24 we have just been looking at. And this is what's immediately
25 on top of that tire. Okay.

1 Now, you see several things here. You see all of
2 this over here. The first -- in the first place. That's the
3 first thing that generally draws your eye.

4 Q. What is that?

5 A. It looks like mud to me. It doesn't have the
6 characteristics of blood. It certainly looks like -- this is
7 what generally happens -- I mean, this is an example of
8 spatter pattern analysis that doesn't involve blood, but it's
9 the same kind of thing. The wheel went through something
10 that was muddy and wet and threw the liquid up onto the
11 quarter panel, and that's what you see.

12 This is much more interesting over here. Okay.
13 This actually is kind of -- well, it shows what we call brush
14 strokes. Again, go back to painting the room in your house.
15 You know, if you get too much paint on there and you don't
16 smooth it out, you end up -- it shows brush strokes. Well,
17 we see this sometimes when bloody hair comes into contact
18 with a vehicle. Okay. Or with a surface. Or -- and that
19 may be what that is. I'm not saying that it is, but it
20 certainly has those characteristics. And it is a transfer
21 type stain rather than an impact stain.

22 These are impact stains. And you can see that they
23 are also coming up from down here. And these are at a
24 kind -- hitting this at a lower angle than the previous
25 stains that we were looking at that are on the tire. So I'm

1 not sure that they're actually related to those -- those
2 incidences. I think these are perhaps independent
3 incidences.

4 And you'll notice here that these form a line.
5 That's what happens when blood is thrown off of an object
6 that's in motion. In this case we're talking about a beating
7 with a blunt object. As that object goes down and strikes,
8 that's when you get the impact spatter. As that object comes
9 back up, you get what's known as cast-off. These are little
10 spatters that come up and then will deposit independently,
11 until you reach the arch of your swing and then you come back
12 down and you start it all over again.

13 These are low angle. That indicates these were made
14 by some fairly short strokes. But -- because there's not
15 enough -- the object is not coming up high enough to actually
16 give you little round dots. What you're seeing is blood
17 that's coming up from the object. So I think you're talking
18 about some short strokes, like this. And there are several.

19 Q. Let me go back a couple of times, and first of all,
20 I'll call your attention to Exhibit 33E, which shows both the
21 hubcap and the fender area, even though it doesn't show the
22 detail of the photograph on the screen; correct?

23 A. Yes. That's correct.

24 Q. But given the relationships spatially between the
25 area that you called the brush stroke transfer stain, or I'm

1 calling it that, based on what you said, and this large
2 transfer stain, does that support an inference that perhaps
3 it was his head, his bloody head, that caused the large
4 stain?

5 A. Yes.

6 Q. Would that be consistent with then a later blow
7 being struck while his head was on the ground?

8 A. Oh, yes.

9 Q. And would that be consistent with the direction of
10 the castoff spatter that you note in the digital version of
11 33C?

12 A. Yes. That's correct.

13 Q. Now, does that explain at least the most significant
14 conclusions you could draw from the area of spatter at the
15 rear of the car?

16 A. Yes, that is.

17 Q. Okay. What were you able to tell -- I'm losing
18 photographs.

19 Oh. Still on the same one I just took down. I note
20 this area of orange cones in 33H. The lower right-hand.

21 A. Yes.

22 Q. Do you know what those are there for?

23 A. According to the reports, that was the extent of the
24 blood spatter that they found.

25 Q. How far out it went?

1 A. That's correct, yes.

2 Q. Okay. And that's the blood spatter on the surface
3 of the parking lot.

4 A. Yes, it is.

5 Q. Were you able to infer a lot from the blood spatter
6 on the surface of the parking lot?

7 A. Only that it was low-angle impact -- low-angle
8 spatter. I -- there's not a lot that I can say about that,
9 because when I look at the photographs and I look at the
10 major portion of that spatter, it leads me back to
11 Mr. Heitholt's present position in the photographs. That is,
12 that position that he's in at -- at the time that the
13 photographs are taken, and not to any of the other areas of
14 the -- of the incident. And because I know that there was
15 activity going on in that area, I don't -- I cannot say what
16 created that spatter. That spatter is consistent with an
17 object falling into or being placed down into a pool of
18 blood. That's when you get that kind of spatter that comes
19 out. As a matter of fact, you've all done that in your
20 kitchens when you drop a pot that's got, you know, spaghetti
21 sauce in it or something, and you see it kind of (indicating)
22 out like that. That's exactly what we're talking about here.
23 If a foot or an object of some sort drops into the pool, you
24 get that spatter that comes out. And when you look at this
25 spatter, it all goes right back to that area right around

1 Mr. Heitholt's head.

2 Q. Would that also relate back to the area where the
3 medical intervention --

4 A. Yes.

5 Q. -- took place?

6 A. Exactly.

7 Q. And when a co-worker may have turned the body.

8 A. That's correct. That's why I really can't --
9 there's nothing that I can say or infer from that without,
10 you know, that probability.

11 Q. Did you also examine some blood stains on the
12 interior of the vehicle depicted in State's Exhibit 74, 74A
13 through G, and in State's Exhibit -- excuse me, Defendant's
14 Exhibit Q?

15 A. Yes, I did.

16 Q. And could you explain what you noted in those
17 photographs and its significance as far as you could tell?

18 A. Yes. If I could come back down.

19 Q. Sure.

20 A. 74A depicts the front seat of the vehicle. And you
21 see that there's a black nylon-looking kind of briefcase.
22 There's this pad, yellow legal pad. Then there is a pair of
23 glasses that are sitting here.

24 This legal pad is of interest to me, because it has
25 transfer stains on it or what appears to be transferred blood

1 stains on it.

2 Q. Would it be significant or easier if you saw that on
3 the big screen?

4 A. Yes, it would. Actually what we have is just a
5 portion of it. If I could --

6 Q. Well, actually --

7 A. We have both. Yeah. Okay.

8 MR. ROGERS: Well, let's first of all look at jpg
9 number 67 on the other CD.

10 THE COURT: Mr. Rogers, when you're concluded with
11 the examination about this particular item, then we will
12 recess. I believe the jury's lunch has arrived. But we'll
13 let you finish on this -- on this photograph.

14 MR. ROGERS: Okay. This particular photograph or
15 the other photograph, however the Court pleases.

16 THE COURT: Well, I'll allow the witness to testify
17 to matters contained here.

18 MR. ROGERS: Okay.

19 THE COURT: Before we break.

20 MR. ROGERS: Great.

21 Q. Go ahead and tell us about that.

22 A. If you look at this pad, there's a couple of areas,
23 again, of interest. One of the areas is right down here.
24 That immediately comes to -- that shows up. Okay. At a
25 distance, and in this photograph -- if you could rotate it.

1 Well, in this photograph, it certainly looks like a blood
2 stain. No question about it. It even has a little ragged
3 edge on it, like blood that was coming out.

4 But the important stains are up here. And there's
5 one over here. In addition, there's a stain right back here.
6 All of -- these are -- these appear to be transfer blood
7 stains. This one -- well, on closer examination, this one is
8 actually -- appears to be a leaf. That's sitting under the
9 glasses. This, what you see here, is the writing on the pad.
10 So that's not a blood stain, but -- can you move it? Maybe
11 not.

12 Okay. Here, right here, I find this to be very
13 significant, because this does appear to be a transfer stain.
14 Okay.

15 If we could go to the next -- that next photograph.

16 Q. Which would be Exhibit Q. 95.

17 A. That has all of the characteristics, in my
18 experience, of a transfer of stain. And there is another one
19 on the other side of the pad that also appears to be a
20 transfer of stain. There is -- that stain, as I said, on
21 interior of -- or on the back of the seat of the car, that
22 also appears to be a transfer of stain.

23 Now, the significance of these is -- there are
24 several possibilities. Okay. Certainly one possibility is
25 that someone with blood on their hands was moving these

1 objects around. The question of who that is is open in the
2 air, of course. The other possibility is that these are
3 artifacts that appear to be blood stains, but are not. I
4 can't say with a hundred percent certainty that they are
5 blood stains, because there is no evidence that they were
6 collected or tested.

7 Q. Okay. And you didn't have the actual legal pad --

8 A. And I didn't have the legal pad. But it certainly
9 does appear -- it certainly does appear to be a transfer of
10 blood stain.

11 MR. ROGERS: Time for lunch?

12 THE COURT: Time for lunch.

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

21 We will commence at 1:00.

22 The witness may step down. And if you care to have
23 lunch, you may. Discuss not your testimony with other
24 witnesses. But you're free to leave the courtroom at this
25 time if you wish.

1 THE WITNESS: Thank you.

2 THE COURT: We'll be in recess then.

3 Is there anything we need to take up?

4 MR. ROGERS: Yes, Your Honor.

5 THE COURT: All right. If the lawyers will remain
6 then.

7 - - -

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

10 THE COURT: Yes, sir.

11 MR. ROGERS: Your Honor, with regard to our motion
12 to endorse, we now have present both Mr. Canada and I believe
13 Miss Griggs, and we would like to make an offer of proof with
14 those witnesses, explaining the late endorsement and hoping
15 to get the Court to change its mind.

16 THE COURT: I have not ruled on the endorsement of
17 the female that you've endorsed. Miss Griggs. I've taken
18 that under advisement. Absent some -- I'm going to give both
19 sides an opportunity to be heard on whether or not the state
20 actually knew of her testimony and failed to disclose it to
21 the defense.

22 MR. ROGERS: With regard to Mr. Canada, Your Honor,
23 we would ask the Court to reconsider its earlier ruling. And
24 I conceptually blurred the two when I spoke earlier
25 obviously. We have, since the Court's ruling, learned from

1 Mr. Canada that he also asserts that he was contacted by
2 members of the prosecution staff in the past. And I will
3 advise the Court that we have no reports or disclosure of any
4 of that contact. So I think that he's in the same situation.
5 At least that's what I anticipate his testimony to be from
6 what I'm told.

7 THE COURT: I'll give you ten minutes to present
8 these witnesses. I'm going to have lunch, and the reporter
9 is going to have lunch too. So I -- you may call your
10 witness.

11 MR. ROGERS: Mr. Canada.

12 THE COURT: I assume these witnesses are outside
13 this courtroom.

14 MR. ROGERS: Mr. Canada came in -- and does
15 Mr. Singer need to leave while we do this?

16 THE COURT: Well, he -- he should.

17 MR. ROGERS: Yeah. You need to wait. And don't
18 listen to the media.

19 THE COURT: Would you raise your right hand, please.

20 - - -

21 KRISTOPHER CANADA,
22 being first duly sworn by the Court, testified as follows:

23 THE COURT: You may take the witness stand.

24 MR. ROGERS: Your Honor, while this witness
25 testifies, I'd request that Mr. White and Mr. Hawes be asked

1 to leave the courtroom.

2 MR. CRANE: What if -- I want to have him see if he
3 recognizes them. Can we just do that right now?

4 MR. ROGERS: They're both here and looking at him
5 now.

6 MR. CRANE: Yeah.

7 MR. ROGERS: The record can --

8 THE COURT: I'll let them approach and see if they
9 recognize him. And I don't know if he always had facial hair
10 or not. So I'll let them -- they can come forward and take a
11 look at him, if they're not real farsighted.

12 MR. CRANE: Well, no, I was talking about him seeing
13 you.

14 MR. HAWES: Oh. Okay.

15 THE COURT: Okay. In other words, you want the
16 witness to take a look at your investigators.

17 MR. CRANE: Yeah. These two guys right here.

18 THE WITNESS: Yes, sir.

19 MR. CRANE: Do you recognize either one of them?

20 THE WITNESS: Yes.

21 THE COURT: Just a moment. They may step outside
22 the courtroom. I will allow defense counsel to inquire
23 first. If you want to call them back into the courtroom --

24 MR. CRANE: Okay.

25 THE COURT: -- and make those questions, you may on

1 cross-examination.

2 MR. CRANE: Okay. That's fine, Judge.

3 - - -

4 DIRECT EXAMINATION

5 BY MR. ROGERS:

6 Q. For the record, tell us your name.

7 A. Kristopher Canada.

8 Q. And Mr. Canada, what was your job back in October
9 and November of 2001?

10 A. I was a bartender at By George.

11 Q. And were you the bartender who worked Halloween
12 night?

13 A. I was one of many.

14 Q. One of many. Okay. And on Halloween night, what
15 time did By George's close?

16 A. Same time as always. We turn the lights on at 1:15.
17 Everybody was out by 1:30.

18 Q. And what happened at 1:30?

19 A. Doors were locked.

20 Q. Doors were locked?

21 A. Yes, sir.

22 Q. And has -- before this week, has anyone asked you
23 questions like that?

24 A. Yes, sir.

25 Q. And have you given them the same answers?

1 A. Yes, sir.

2 Q. And do you know who asked you those questions?

3 A. I believe the dark-headed investigator that was just
4 in here. I can't recall his name.

5 Q. Okay. And was that the man wearing the dark jacket
6 and the tie, standing behind the guy with the gray hair?

7 A. Yes, sir.

8 MR. ROGERS: May the record reflect the witness has
9 indicated Mr. White.

10 MR. CRANE: Yeah. It's one of the two guys
11 standing, the one with the dark hair. Yeah, I don't have --

12 Q. How long ago was that?

13 A. I really can't be that sure, but I would say
14 probably -- I want to say eight months to a year maybe. It's
15 been a while.

16 Q. And you've never been contacted by anybody else
17 about being a witness in this case, have you?

18 A. No, sir.

19 MR. ROGERS: I don't have any further questions for
20 this witness, Your Honor.

21 THE COURT: You may inquire, Mr. Crane.

22 - - -

23 CROSS-EXAMINATION

24 BY MR. CRANE:

25 Q. Where did he talk to you?

1 A. They came to my work at Boone Hospital Center.

2 Q. Okay. And you say "they"?

3 A. Him.

4 Q. Okay. Was -- the guy was by himself?

5 A. Yes. They -- I believe they tried to contact me at
6 work a couple times, and then eventually they got a hold of
7 someone in security and found out that I was working that
8 day, and I came down and talked to the investigator.

9 Q. Okay. And what did you talk about?

10 A. What time the bar closed, what my duties entailed at
11 the bar. That's about it.

12 Q. Okay. And you remembered specifically what time the
13 bar closed on Halloween of 2001?

14 A. Yes, sir.

15 Q. You had a memory -- you're talking about a
16 conversation you had eight months to a year ago today; right?

17 A. Yes, sir.

18 Q. And your testimony is you had a memory when you
19 talked to the guy with dark hair of the time you closed on
20 October 31st, 2001.

21 A. I don't know if I could remember that exact date,
22 but as -- you know, the law of the land is you close by 1:30.
23 And that's what time our boss always had us close.

24 Q. Right. That's what time the bar's supposed to be
25 closed.

1 A. Yes.

2 Q. Is it your testimony that you told the guy with the
3 dark hair, we'll just call him Ben, White, that on October
4 31st, 2001, you closed at 1:30, and you remembered that date
5 and that time as when the bar closed.

6 A. Yes, sir.

7 Q. And your testimony here is today that you don't
8 remember that date specifically. That that's when you always
9 close.

10 A. I didn't remember whenever I talked to the
11 investigator.

12 Q. So since you've talked to the investigator, have you
13 talked to somebody in Mr. Rogers' office or working for the
14 defense?

15 A. In the past day.

16 Q. Okay.

17 A. Yesterday.

18 Q. Just today.

19 A. Yesterday.

20 Q. And you hadn't talked to anyone before that.

21 A. No, sir.

22 Q. How is it that they indicated they'd located you?

23 A. I have no idea.

24 Q. And when you were talked to before -- at Boone
25 Hospital?

1 A. Yes, sir.

2 Q. -- how are you aware that it wasn't somebody from
3 the defense that was talking to you?

4 A. I don't know. They -- the people I talked to said
5 that this was an investigator who used to be a Columbia
6 Police Department -- or used to be a Columbia police officer.

7 Q. The people you talked to?

8 A. The security officer at Boone Hospital who, you
9 know, called me down from work and brought me down into their
10 office, and I had the interview there.

11 Q. Okay. And so you're not aware of how the defense
12 found out about you today --

13 MR. ROGERS: I'll object to that as irrelevant to
14 the subject of this hearing.

15 THE COURT: Well, how, Mr. -- Mr. Crane, how is that
16 relevant? How is it relevant how they --

17 MR. CRANE: That they -- they just found out about
18 him today?

19 MR. ROGERS: Yesterday.

20 THE COURT: He said yesterday.

21 MR. CRANE: Or yesterday. I mean, I'm trying to
22 explore whether or not they had made contact with him before
23 yesterday.

24 THE COURT: Well, you can ask that question.

25 MR. CRANE: Okay.

1 THE COURT: How is he supposed to know how they
2 found him?

3 MR. CRANE: Well, maybe they told him.

4 Q. Did they?

5 A. Excuse me?

6 Q. Would you -- were you aware of how they found out, I
7 mean, even who you were?

8 A. No, sir.

9 Q. Okay. And the first contact you had after the
10 occasion when the investigator, Mr. White, talked to you,
11 eight months, a year ago, was yesterday, on this case?

12 A. Yes, sir. Yesterday morning.

13 MR. CRANE: I don't have any further questions.

14 - - -

15 REDIRECT EXAMINATION

16 BY MR. ROGERS:

17 Q. Sir, to clarify just one point, have you ever worked
18 as a bartender at By George's when they stayed open after
19 hours for a private party?

20 A. No, sir.

21 MR. ROGERS: Thank you.

22 MR. CRANE: Have -- I'm sorry. You're not done?

23 MR. ROGERS: Yeah, I'm done.

24 - - -

25

1 RECROSS-EXAMINATION

2 BY MR. CRANE:

3 Q. Have you talked to David Tye recently?

4 A. Yes. Last night.

5 Q. You talked to David Tye last night?

6 A. Yes.

7 Q. And is David Tye the former owner of By George's?

8 A. Yes, sir.

9 Q. And he's a potential witness in this case. Correct?

10 A. I guess.

11 Q. And had he -- did he indicate to you that he had
12 talked to the defense attorneys in this case?

13 A. No, sir.

14 Q. What did Mr. Tye tell you?

15 A. I asked him if he was having to come in tomorrow
16 and --

17 Q. You called him?

18 A. Yes.

19 Q. Okay. And that was after you'd been contacted by
20 the defense or before?

21 A. After.

22 Q. Had you talked to Mr. Tye about this case before
23 that?

24 A. No, sir.

25 MR. CRANE: No further questions.

1 MR. ROGERS: Thank you, sir.

2 THE COURT: You may step down. If you'd step
3 outside the courtroom, please.

4 THE WITNESS: Okay.

5 MR. ROGERS: Miss Griggs, please.

6 THE COURT: Literally, I'm going to recess in five
7 minutes. It's 20 minutes into the lunch hour. And --

8 MR. ROGERS: I'm trying to move as quickly as I can,
9 Your Honor. And that's one of my objections to the
10 cross-examination. But --

11 THE COURT: Well, if it's not relevant, you know how
12 to make an objection, I assume.

13 MR. ROGERS: That's correct.

14 THE COURT: Do you want to have those individuals
15 step into the courtroom? Your investigators?

16 MR. CRANE: Okay. Yeah.

17 THE COURT: Would you come forward and be sworn,
18 please. Raise your right hand.

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MELISSA RENEE GRIGGS,

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

THE COURT: Take the witness stand, please.

And if we could just identify the witness, so that it would be on the record who it is that's saying this.

- - -

DIRECT EXAMINATION

BY MR. ROGERS:

Q. State your name, please.

A. Melissa Griggs.

THE COURT: All right.

Q. Miss Griggs --

THE COURT: Would you come forward, please. Both --
Mr. White.

MR. HAWES: I recognize her now, Your Honor. I'm
the one that talked to her.

THE COURT: All right.

MR. ROGERS: Okay. Fair enough.

MR. CRANE: Did you do a report?

MR. HAWES: No.

Q. Now --

MR. ROGERS: That saved a lot of time.

Q. Do you remember talking to that guy?

A. I do. Yes.

Q. And did you tell him what time By George's closed on

1 Halloween night?

2 A. I did.

3 Q. 2001.

4 A. Yes.

5 Q. You were at By George's Halloween 2001?

6 A. Yes.

7 Q. Do you know Charles Erickson?

8 A. Yes.

9 Q. Did you see him there?

10 A. I did.

11 Q. Did you talk to him there?

12 A. Yes.

13 Q. And did you tell Mr. Hawes what time By George's

14 closed?

15 A. Yes.

16 Q. And what time did you tell him it closed?

17 A. 1:30.

18 Q. Thank you.

19 MR. ROGERS: That's all.

20 - - -

21 CROSS-EXAMINATION

22 BY MR. CRANE:

23 Q. Who did you talk to?

24 A. Charles Erickson.

25 Q. Did you also tell that to Mr. Hawes?

1 A. No.

2 Q. So that's the first time you told anybody that?

3 A. Yes.

4 Q. Okay. And --

5 MR. CRANE: Well, Judge, I guess this is for -- the
6 rest of this is going to be an issue --

7 THE COURT: All right. Anything further?

8 MR. ROGERS: No, Your Honor. Thank you.

9 THE COURT: You may step down. Would ask you to be
10 excused from the courtroom, please.

11 MR. ROGERS: No further evidence on this point from
12 the defense at this juncture, Your Honor.

13 THE COURT: Does the state wish to present any
14 evidence on this issue?

15 MR. CRANE: Well -- Ben, do you remember talking to
16 Canada?

17 MR. WHITE: (Shaking head from side to side.)

18 MR. CRANE: Do you remember?

19 MR. WHITE: No.

20 MR. CRANE: You can't say you didn't?

21 MR. WHITE: I can't say I didn't.

22 MR. CRANE: He said -- we'll stipulate that
23 Detective -- or Investigator White says he can't say whether
24 or not he did talk to Canada. And we'll also agree that --

25 MR. WHITE: Was it prior to my employment here or

1 when I was a detective?

2 MR. CRANE: He said eight months to a year ago.

3 MR. WHITE: No, I don't.

4 THE COURT: Are you offering him as a witness?

5 MR. CRANE: No. We'll agree that he would testify
6 that he can't remember whether he talked to Mr. Canada or not
7 eight months to a year ago.

8 MR. ROGERS: I'll accept that, Judge.

9 THE COURT: All right.

10 MR. ROGERS: I think we've established that this was
11 information known to the state or its agents, or at least
12 with regard to -- I think with regard to both of these
13 witnesses. I think the exculpatory nature of the information
14 is obvious, in the context of the case. I think its
15 impeaching nature with regard to Mr. Erickson is obvious
16 within the context of the case. Whether or not a report is
17 generated, the state has an absolute constitutional
18 obligation to provide that information to the defense. That
19 obligation is rooted in the due process clause of the Fifth
20 Amendment to the United States Constitution, made applicable
21 to this prosecution by the Fourteenth Amendment. And I don't
22 think the state, which, by failing to memorialize and
23 disclose exculpatory information, has any standing to
24 complain of the late endorsement when we finally discover the
25 exculpatory information.

1 MR. CRANE: Well, first of all, Judge, the state has
2 tendered voluminous and complete discovery to the defense in
3 this case. I never heard about these people before. No
4 report was generated. And the issue is solely the one of
5 when these people think George's closed at 1:30.

6 And I want to start off by saying that the idea that
7 Mr. Rogers is trying to imply is that I'm crooked. And that
8 I have deliberately withheld evidence from the defense. And
9 that is simply not true. There have been no reports
10 generated on this. And further, with respect to Ms. Griggs,
11 a report that was duly tendered to the defense, in fact, at
12 discovery page 2277, discovery page number 2277, supplement
13 332, is the complete report of the proffer entered into by
14 Chuck Erickson on October 1, 2004. And in that, Mr. Erickson
15 is recorded as saying: "We asked Erickson if there were
16 other people at By George that had seen him and Ferguson
17 together that night, and he stated there was a girl who had
18 seen them before the crime was committed by the name of
19 Melissa Griggs." That's in the report.

20 Now, Judge, I don't know how the defense themselves
21 got onto Canada. And it's all well and good that they did.
22 They have been noticed up with respect to David Tye, who's
23 the owner of the -- who was the owner of By George's. And
24 would be someone -- we gave them the report on that. Now, if
25 my guy didn't write down what Canada said about the -- it

1 sounds to me like he's just saying he thinks the bar closed
2 at 1:30 because they always did. Okay. I'll take the blame
3 for that. But I certainly do not think it's appropriate to
4 be crucified as a -- some kind of obstructionist, subversive,
5 on this information.

6 THE COURT: There's not going to be any more
7 argument.

8 Mr. Crane, I don't believe the allegation is that
9 you personally withheld information that you knew existed.
10 However, as you're aware, whether your secretary or your
11 investigator knew of it, it is imputed in law that you knew
12 it. I'm not --

13 MR. CRANE: I recognize that.

14 THE COURT: And I don't think defense counsel is
15 saying that you did that. I'm going to sustain the motion to
16 endorse. However, I will permit you time to have someone,
17 co-counsel or some other attorney in the office, to talk to
18 those individuals before they're called as witnesses.

19 MR. CRANE: And that would be with respect to Griggs
20 as well?

21 THE COURT: Both witnesses.

22 We'll be in recess until 1:00.

23 (Recess taken.)

24 - - -

25 The following proceedings were held out of the presence

1 of the jury:

2 THE COURT: Is defendant ready to proceed?

3 MR. ROGERS: Yes, Your Honor.

4 THE COURT: Is state ready to proceed?

5 MR. CRANE: Yeah. Mr. Knight's going to -- I'm
6 going to -- I've been --

7 THE COURT: I understand --

8 MR. CRANE: -- talking to witnesses.

9 THE COURT: -- that this witness appears to be
10 Mr. Knight's, since he's the one that's made objections to
11 certain things, so I assume that would be his witness on
12 cross.

13 MR. KNIGHT: That's correct, Your Honor.

14 THE COURT: We are only missing one essential part
15 of this equation here.

16 MR. ROGERS: The jury.

17 THE COURT: Yes.

18 Is the jury ready to come back in?

19 DEPUTY COURT MARSHAL BAER: Yes, Judge.

20 - - -

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

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RONALD SINGER,

resumed the stand and testified further:

THE COURT: Defendant may inquire.

MR. ROGERS: Thank you, Your Honor.

- - -

RESUMED DIRECT EXAMINATION

BY MR. ROGERS:

Q. Mr. Singer, before the lunch break, had we covered the significant findings that you were able to determine regarding the blood stain patterns at the scene? Most of them?

A. Yes, I think we have.

Q. Okay. Let me move then to the luminol trail. You observed photographs, including those on State's Exhibit 41, 41A, 41B, 41C, 41D, 41E; is that correct?

A. Yes.

Q. And is it your understanding that the photo markers depicted in photographs 41B, C, D, and E were, in fact, placed at the sight of chemiluminescence reacting from -- from the reaction with luminol and something there on the sidewalk?

A. Yes.

Q. And did you also discern little chalk arrows by where those were?

A. Yes, I did.

1 Q. Okay. Do you have any criticism of the way the
2 luminol examination was documented and preserved?

3 A. Well, yes, I do. It -- what I received was two CDs
4 that had a large number of photographs. One was marked
5 "Luminol Trail 1;" one was marked "Luminol Trail 2." And in
6 the report -- in one of the reports that I have, reference is
7 made to testing the area for luminol and getting a positive
8 reaction. Unfortunately, the only thing that was on the CDs
9 are photographs such as the five that are on this -- on this
10 board. It was basically photographs of yellow numbered
11 placards. There was -- I didn't even -- I couldn't find, in
12 the material that had been given to me, any descriptions,
13 other than they appeared to be shoe prints. I believe that's
14 the way that it was described. There was no description that
15 said anything about the size, the intensity, anything else.
16 Nor was there any photographic documentation of the
17 luminescence itself.

18 So basically, for me, you know, when I'm asked to
19 evaluate what all of this means, the significance of all of
20 this, I have nothing to evaluate, because all I see is a line
21 of yellow placards, and that means nothing to me.

22 Q. Okay. With regard to the technique of luminol
23 examination, is it a fair statement that there has to be
24 something that shields the area being examined from outside
25 light?

1 A. Well, yeah. It -- the basic reaction is a chemical
2 reaction that occurs between blood, actually the heme
3 molecule in the blood, and the chemical, luminol. Luminol is
4 actually a trade name for a word that's about that long, and
5 I don't remember what it is, frankly, but it -- and this
6 reaction occurs. And the reaction basically causes a
7 fluorescence. And so it has to be darkened in order to see
8 the fluorescence. And depending on the intensity, of course,
9 and depending on the amount of blood that's present, or other
10 substances, because it is not specific for blood, by the way,
11 you get different intensities, you get different shapes,
12 sizes. And all of that needs to be recorded.

13 Q. Okay. With regard to the photographs depicted, did
14 you see anything that would indicate how light was excluded
15 during the observation of the fluorescence?

16 A. Yeah. In some of the photographs, I don't know that
17 it's depicted on any of these, in some of the photographs you
18 can actually see the team down -- further down the block.
19 Actually -- it appears that they're conducting the luminol
20 examination. And it looks like what they've done is
21 constructed some sort of box that will go -- fit over the
22 concrete, and then they're -- I don't know exactly how
23 they're look into it, but, you know, the spraying occurs --
24 luminol is a liquid, by the way, which you spray. And so you
25 spray it on, and then you look for this fluorescence. So

1 they've gotten some device to darken the area, keep the
2 ambient street light out.

3 Q. So how would one go about recording the luminescence
4 inside such a device?

5 A. Well, I mean, you know, if there's a hole for you to
6 look into, there's a hole for you to take a picture through.
7 And generally speaking -- now, I do realize that there are
8 certain limitations to this. Okay. And obviously -- and I'm
9 not trying to be -- see how I can put this. I'm not trying
10 to be overly critical of the technology that was used. I
11 think that it was, you know, it was -- at least the concept
12 that they had was a well-thought-out concept. The problem is
13 that, you know, if you want to photograph a shoe print -- now
14 I'm talking about any kind of shoe print. If you want to
15 photograph a shoe print, there's certain rules that generally
16 you're supposed to follow. And one is: That you're supposed
17 to shoot the photograph, you know, on the same plane as the
18 shoe print, so that you don't get any distortion of the
19 image. Well, in this case, what you're dealing with here is
20 a photoluminescent reaction, a fluorescent reaction, that you
21 just want to record. And it would seem to me that if you
22 cannot, under the circumstances, set a tripod up and level it
23 and get the thing right, what you want to do is at least get
24 a photograph of what it is that you're dealing with, what
25 you're seeing in there, so that someone else can look at that

1 photograph and say, "Oh. Okay. I either see what you're
2 seeing or I don't see what you're seeing and I disagree with
3 what you've said." In this case, you have nothing.

4 Q. Okay. And since you have no detail to really look
5 at, you have nothing else to say about the luminol trail.

6 A. No. You know, as I indicated in my report, if -- if
7 it is indeed blood that was reacting, the trail basically
8 leads along the side of the building and then up Fourth
9 Street to Walnut.

10 Q. Calling your attention, sir, to State's Exhibit 39,
11 and more particularly 39E, have you seen that photograph
12 before?

13 A. Yes, I have.

14 Q. And what does that appear to be?

15 A. It appears to be a bloody heel print.

16 Q. Okay. Was that photographed in accordance with the
17 rules you've told us about?

18 A. It appears to be, yes.

19 Q. So it's basically straight down on it, so it doesn't
20 distort the photograph.

21 A. That's exactly right, yes.

22 Q. And would the same be true of the print depicted in
23 39F?

24 A. Yes. That's correct.

25 Q. And the print depicted in 39G.

1 A. Yes.

2 Q. And I don't know how well from your -- where you are
3 you can see 39C. Let me bring it closer to you.

4 A. Oh, yes.

5 Q. Is that something you've noted before?

6 A. Yes, it is.

7 Q. And what is that?

8 A. It -- it does have a certain -- a tread pattern
9 attached to it. It could certainly be a shoe print. It's
10 hard to say. It -- because you're dealing now, not with --
11 the yellow background is nice, because the yellow and the red
12 kind of contrast one another. Here it's a darker background,
13 and the print itself is dark, so it's a little difficult to
14 see. But that does appear to also be a shoe print.

15 Q. By the way, these L-shaped cards that are there with
16 numbers on them, on each of these photographs, is that
17 another of the ways one photographs shoe prints or tread
18 prints?

19 A. Yeah. Actually, those -- those little L-shaped
20 rulers are very nice for photographing anything that's laying
21 flat or that's on a flat surface, because what it does is, it
22 gives you a vertical and a horizontal scale from which to
23 work. One of the things that we like to do or attempt to do
24 with shoe prints particularly, but with other items as well,
25 is to blow it up so that it's actual size. And this allows

1 you to do that. And that's, of course, one of the reasons
2 you want to keep your camera in the same plane, so that you
3 don't get any -- any stretching when you enlarge it.

4 Q. I'm going to hand you what has been marked for
5 identification as Defendant's Exhibit I and Defendant's
6 Exhibit J and ask you if you were provided with those
7 photographs in the course of your examination of the evidence
8 in this case.

9 A. Yes, I was.

10 Q. And what's Defendant's Exhibit I?

11 A. I'm sorry?

12 Q. Defendant's Exhibit I. That's the top one.

13 A. Oh. Defendant's Exhibit I is photographs number --
14 well, that are identified as number 3 and number 4.

15 Q. That would be -- 3 would be 39E?

16 A. Right.

17 Q. State's Exhibit 39E. And 4 would be State's Exhibit
18 39F?

19 A. Yes. That's correct. And it shows those tread
20 patterns of those two shoe prints. And then next to it is a
21 photograph of a -- the bottom of a running type shoe, with
22 the logo "Sketchers" on it.

23 Q. Okay. And what is 30 -- what is Defendant's Exhibit
24 J?

25 A. Defendant's Exhibit J is an enlargement of the

1 Sketchers shoe.

2 Q. And if you had a footprint such as the one in
3 Exhibit 39E, how would you go about comparing it to different
4 brands of shoes?

5 A. Well, what you look at is the tread pattern.
6 It's -- that is, if you look at the bottom of most casual
7 type shoes, or shoes with rubber soles, what you see is that
8 they have some kind of pattern on the bottom of them, some
9 kind of either wavy or chevrons or little dots, or some of
10 them say Nike, some of them say other things across the
11 bottom of them. And basically what you do is look at that
12 tread pattern, and then either use your own experience or you
13 compare it to some database that you accumulated either in
14 the laboratory or some other outside database. Most of us
15 don't accumulate large databases of these because we don't
16 get a lot of shoe print cases. And -- or the ones we do get
17 are, you know, Did this shoe print -- did this shoe make this
18 shoe print? And so it's a different kind of comparison. So
19 what we do is rely on a source like the FBI.

20 Q. And when you rely on a source like the FBI, do you
21 get back a photograph such as Exhibit J?

22 A. Yes. Generally that's what they'll do. They'll
23 send you a report that says, "Our database -- the one that
24 most closely matches the tread pattern is such and such a
25 shoe," and then they'll send you an illustration.

1 Q. And can you tell from that illustration if the
2 Sketchers standard, I'll call it, is consistent with the shoe
3 print in Exhibit 39E, which is the number 3 on the -- on
4 Defendant's Exhibit I?

5 A. Yes. In general it is. There is some detail that's
6 missing from the photograph. And certainly all you're
7 looking at is the heel portion, so you can't, you know, make
8 any great comment about the whole shoe, but it certainly does
9 match the heel portion of the Sketchers that they came up
10 with.

11 Q. And it doesn't match any other type of shoe that
12 you're familiar with?

13 A. Not that I know of offhand, no.

14 Q. And you've seen Nikes?

15 A. Yes.

16 Q. You've seen New Balance?

17 A. Yes.

18 Q. You've seen Timberland boots?

19 A. Yes.

20 Q. With regard to the shoe print depicted in Exhibit
21 39F, which is number 4 on Exhibit I, is there enough detail
22 there for you to either rule out or include the Sketchers as
23 having made it?

24 A. Well, I think there's enough detail there to say
25 that the Sketchers probably did not make that print, but

1 there's not a lot of detail there. But when you look at the
2 distance between the wavy lines, it certainly is different
3 than the distance between the wavy lines and the other thing,
4 or in the depiction of the shoe. That, again, with the
5 caution that I'm not sure that this is a one-to-one
6 photograph. And I know that this is not, so. But it
7 certainly does appear to be different.

8 Q. And looking at State's Exhibit 39G, has the number
9 5, how does that compare with the Sketchers standard?

10 A. Well, G looks pretty much like the Sketchers.
11 Again, it's lacking a lot in detail, but on the surface it
12 does have a similarity to the Sketchers, yes.

13 Q. Now, given the L-shaped ruler on -- in Exhibit 39E,
14 were you able to determine the size of that shoe?

15 A. No, I was not --

16 MR. KNIGHT: I would object at this time.

17 MR. ROGERS: He was going to say no.

18 MR. KNIGHT: Okay. Then I'm not going to object.

19 MR. ROGERS: Okay.

20 Q. Were you able to determine the size?

21 A. No, I was not.

22 Q. Okay.

23 MR. ROGERS: Those are all the questions I have,
24 Your Honor.

25 THE COURT: You may inquire, Mr. Knight.

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CROSS-EXAMINATION

BY MR. KNIGHT:

Q. You saw a photograph of a legal pad sitting on the front seat?

A. Yes.

Q. Driver's seat? And I'd like to show you what's been marked as State's Exhibit 76. Does this appear to be what you saw on that image up there on the screen?

A. Uh-huh. Yes, it does.

Q. And you're testifying that this area right here in the top corner, that appeared to you, when you looked at the photograph, to be blood transfer; is that correct?

A. Yes, it did.

Q. Okay. Now that you've had a chance to actually look at the exhibit itself and -- has your opinion changed at all?

A. Yes, it has. This -- it appears that this was sprayed with anhydrant, to develop fingerprints. And that is some kind of pattern that was developed with an anhydrant. If that's correct. I -- and it doesn't look like -- you know, it doesn't look like a blood stain, no.

Q. Okay. And also -- you talked about the luminol trail.

A. Yes.

Q. Singular. And you had -- Jeff Nichols, you know

1 that he's the person that was involved in the luminol
2 processing of this area from the Tribune on Fourth -- Fourth
3 Street going south, and as you can see on this exhibit, going
4 south all the way to Broadway.

5 A. Yes.

6 Q. You understand that, don't you?

7 A. Yes, I do. Yes.

8 Q. And he testified on direct examination that, as he
9 started documenting this luminol trail, or as he started
10 using this luminol to detect nonvisible blood, that when he
11 got to this point, right in here, about halfway -- halfway
12 between this alley and Walnut Street, while he was still on
13 this sidewalk here on Fourth, he saw two trails. He saw two
14 trails side by side.

15 A. Uh-huh.

16 Q. And you've seen photographs also of the placards
17 that showed two different trails.

18 A. Yes.

19 Q. Is that right?

20 A. Yes.

21 Q. So you wouldn't have any quarrel with his
22 determination that there were two independent trails, at
23 least at that particular point.

24 A. Well, the only problem that I have, I mean, I -- I
25 don't have any quarrel -- if we assume, and I have no reason

1 to doubt that he knew what he was looking at when he saw the
2 photoluminescence, then I have no reason to doubt that he saw
3 two areas that photoluminesced, and that they, in his
4 opinion, formed two trails. Without seeing the
5 photoluminescence myself, I can't make any comment.

6 Q. Okay. And also -- let's go -- I want to just
7 briefly summarize what I think your testimony is with regard
8 to the blood stain interpretation on the car at the crime
9 scene. The blood evidence that you found inside of the car,
10 this -- you had low impact, medium impact on the inside
11 driver's window. That's consistent with Kent being upright;
12 is that correct? And being struck at least twice in an
13 upright position.

14 A. Yes. That's correct.

15 Q. That's right. Because the first time wouldn't be a
16 blood-causing event.

17 A. That's correct, yes.

18 Q. Okay.

19 A. Well, it could -- it would be a blood-causing event.
20 It wouldn't -- the blood wouldn't be there for --

21 Q. To --

22 A. -- to have spatter.

23 Q. Okay. And -- okay. But then after that -- can you
24 please come down off the stand for just a second?

25 A. Sure.

1 THE COURT: You can take the laser with you if you
2 want.

3 Would you like to take the laser? I think it's here
4 on the bench.

5 THE WITNESS: Oh. Yes.

6 THE COURT: Right over here.

7 Q. And then after that, you focused pretty much on this
8 area that's right above this rear wheel; is that correct?

9 A. Well, I focused on the whole area of the rear wheel.
10 You have to look at the whole picture. And what you see is:
11 There's this large stain. There's the staining on the wheel,
12 and then there's the staining above the wheel.

13 Q. Okay. Let's just talk about the staining above the
14 wheel first.

15 A. Sure.

16 Q. This -- this area right here is something that -- I
17 don't quite understand what you said before. Did you say
18 that this, these linear marks right here, did you say that
19 you thought that was maybe mud?

20 A. Yes. That does not appear to be blood to me.

21 Q. Okay. How about if you look over here at this
22 photograph. 33D. Doesn't that appear to be red, just like
23 this is red, just like this is red, which you admitted
24 before, that appears to you to be, especially right here,
25 impact spatter; correct? I mean --

1 A. That's true. But when I -- you know, when I look at
2 the totality of it, you've got one picture here that's got a
3 little bit of a red tint to it here.

4 Q. I mean, are we talking --

5 A. There's nothing here. I mean, I can't tell exactly
6 what it is that this is showing, based on here. My opinion
7 is that these long linear strikes here are probably, and
8 again, I'm only basing this on the photograph that I'm
9 seeing, and I've got -- you know, the caveat all along has
10 been that there's been intervention and everything else.
11 This appears more typical of mud. This is not what we would
12 see, say, with a castoff stain or anything else. This is --
13 this is representative of something that's of a higher
14 velocity, to me, because there's no individual staining here.
15 It's more long streaks.

16 Q. But see, I've got a couple of problems with that.
17 My first problem is that the police officer who was actually
18 at the scene, Jeff Nichols, the witness who came and
19 testified before you, he said that this was castoff spatter.
20 He said that this appeared to him to have been cast off.
21 Some type of an instrument coming down, downward, from right
22 to left. He was at the scene. He's the person that actually
23 photographed this. He thought it was blood. And he didn't
24 say anything about dirt. Based on that right there, would
25 you maybe give -- would you give maybe that a little bit of

1 weight in your determination as to whether or not this
2 particular part of this photo was mud or maybe castoff?

3 A. Well, my comment on that would have been that --
4 would be that there would have been a very easy way to
5 determine that. And apparently it was not. Because there
6 is -- there are very simple tests that you can use to
7 determine -- to distinguish what is blood and what is not
8 blood on a vehicle. And that wasn't run. As far as castoff
9 goes, I think I would disagree that that's castoff.

10 Q. Well, if it was --

11 A. Let me -- let me rephrase that, if I may. It is --
12 it may be castoff in the sense that I think that it's being
13 cast off of the wheel, but it is not the same kind of castoff
14 that we're talking about with low-velocity spatter.

15 Q. Okay. So let me ask you this question. If you
16 think that this is mud that was maybe coming off of a wheel,
17 all right, at what speed would this be coming off?

18 A. Oh, I have no idea.

19 Q. How fast would the car be going for mud to be
20 projected up onto this upper wheel well that way?

21 A. I have no idea. I know --

22 Q. Would you agree with me, though, that it would
23 probably have to be going at a pretty significant speed?

24 A. Not necessarily --

25 Q. Well --

1 (Counsel and witness talking at the same time.)

2 THE COURT: Excuse me. Only one person at a time.

3 THE WITNESS: I'm sorry.

4 THE COURT: Mr. Knight, if you'll allow the witness
5 to finish his answer, and then you may proceed with the next
6 question.

7 MR. KNIGHT: Okay.

8 A. You're talking about circular velocity, first of
9 all. You're not talking about forward velocity. And this
10 wheel is turning, is turning -- the speed of this wheel and
11 whatever is coming off of it is what is going to determine
12 how quickly or the length or the shape of the spatter pattern
13 that comes off of it.

14 And in my opinion, and it is only my opinion, what
15 you're dealing with here -- and it may -- I don't know when
16 it happened or how it happened. Okay. I can't tell you
17 that. But when I look at the overall pattern, what I'm
18 seeing here is not consistent with what I normally see when
19 we're talking about castoff spatter.

20 Q. Well, if the tire -- one other thing. If the tire's
21 inside -- these tires are not mounted outside the car;
22 correct?

23 A. Uh-huh.

24 Q. The car frame. Wouldn't you expect -- I mean, just
25 the way that the tire is mounted on this car, wouldn't you

1 expect to see other dirt radiating out, all above this --

2 A. Possibly.

3 Q. -- this wheel well?

4 A. It just depends on how -- when that happened and how
5 long it's been there. I have no idea.

6 Q. You know, and this is not -- I'm not asking you this
7 sarcastically at all. What color is dirt in Fort Worth? I
8 mean, is it more of a reddish color?

9 A. Well, dirt --

10 Q. Are you aware that here in Mid-Missouri dirt pretty
11 much is brown?

12 A. Well, dirt is dark colored. I'm not -- I'm not
13 arguing that. I'm telling you, if there was an issue, then
14 there was an easy way to solve the issue, although you can't
15 solve it now.

16 Q. Well, here's the thing. I'm looking at State's
17 Exhibit 72A. And you can see right here, you can see this
18 area that you think maybe is dirt. But I don't see anything
19 up along the front wheel. And wouldn't you think that it
20 probably would be consistent, that if you've got two wheels
21 on the same side of the car, and you're going over an area
22 that might be dirt or mud or whatever's going to cast up onto
23 the car, that we would have mud up here somewhere also?

24 A. It's possible.

25 Q. Well, wouldn't you -- logically, wouldn't you think

1 that would be consistent?

2 A. Since I don't know what's happened to that car
3 before, since, or after that incident that caused that to
4 occur, I have no way of knowing whether it would be there or
5 not. If you're asking me, does it always happen that way,
6 the answer is no. But you can certainly have spatter and
7 dirt, and everyone who has a car certainly knows that, where
8 the front wheels are completely not affected, especially if
9 it was only the rear wheel that hit whatever it was that
10 spread that up.

11 Q. Yeah, and I guess that might be applicable, you
12 know, if you're doing really sharp turns, going at high rates
13 of speed, in order to cast mud up.

14 A. Not necessarily --

15 Q. -- back tires what caught the mud and not the front
16 tires.

17 A. Not necessarily.

18 Q. Okay. But, see, the jury's going to have a chance
19 to look at these exhibits really close when they get back
20 there. And your testimony is that this area right here,
21 right here -- what -- what color do you think that is?

22 A. I -- I -- my testimony is that this, these long
23 streaks that are here, is different than what you normally
24 see with castoff blood. And in my opinion, based on my
25 experience and my own personal experience with automobiles,

1 you're not dealing with castoff blood there; you're dealing
2 with dirt.

3 Q. My question is this: Is this blood right here, in
4 your opinion? Does that look like --

5 A. That's more consistent with impact spatter. Well,
6 it's consistent with castoff spatter.

7 Q. What color is that?

8 A. Reddish orange.

9 Q. What color is this area right here that you're
10 saying is maybe mud or dirt?

11 A. Kind of brown.

12 Q. You think that that is brown?

13 A. I certainly do. I think that this is a different
14 color than this on that photograph. Most definitely.

15 Q. Okay. What about over on this photograph? A little
16 bit different angle. What color is that? Same thing.

17 A. First of all, if I may, you don't see those streaks
18 in this photograph. I mean, what you see here, I can't tell
19 you what color that is. There's some dark streaks there.
20 This up here, this could be something that I'm not seeing on
21 here. I don't know. I cannot relate necessarily this area
22 to that area.

23 Q. All right. You have -- around this area, above the
24 wheel well, do we have 90-degree spatter?

25 A. I didn't see any, no.

1 Q. Okay. What about this information right here on the
2 wheel?

3 A. Well --

4 Q. Does that look like 90 degree to you?

5 A. Some of this is 90 degree, yes.

6 Q. Okay.

7 A. As far as I can tell. Or close. It's a high angle.
8 So it's between, you know, 70 and 90 degrees. Because
9 obviously without doing any measurements, all of these -- I
10 don't think any of these are perfect circles. You never see
11 that. So I'm not going to pinpoint it to 90 degrees. But it
12 is high-angle spatter, yes.

13 Q. Would this blood information that you see on the
14 wheel at least be consistent with the victim's head being
15 above the ground when it was struck with an instrument?

16 A. I think that some of it is, yes.

17 Q. Okay. What information do you have -- what blood
18 information do you have on this car that might be consistent
19 with the victim in this case maybe being at knee level, maybe
20 this high, when he was struck?

21 A. Well, I don't have anything that really says knee
22 level to me. What I see is stuff that is down. That's why I
23 say, either coming down or on all fours. Because if he's --
24 if he's on his knees, but down like this, then his head tends
25 to be closer to that --

1 Q. Okay.

2 A. -- to this level.

3 Q. Okay. And I'm just about -- almost done here. But,
4 as I've said before, the police officer that was at the scene
5 testified that this was castoff right here. Okay. And if
6 this was, in fact, castoff blood, right here, this area,
7 would that be then consistent with the victim's head being in
8 this area, right in this area, when it was struck? Assuming
9 that this is, in fact, blood and not maybe dirt.

10 A. Well, first of all, I don't -- I can't -- you know,
11 I can't see any directionality to these -- to these spatters.
12 I don't know what he's saying -- what he's using to say it's
13 going this way as opposed to going this way. Regardless of
14 which way it's going, I don't know that that necessarily
15 would put his head anywhere near here, because the same kind
16 of spatters, if we're assuming that, and I'm not, because I
17 just don't agree with that, but if -- if that is castoff, it
18 could still come from an area that's closer to the hubcap.
19 But it is --

20 Q. Even if the tails are going in this direction?

21 A. Well, you know, if the directionality is this way,
22 that's going to present a whole new set of questions,
23 because --

24 Q. That's what the police officer testified about.

25 A. All right. Well, then, I have to -- I have to

1 respectfully disagree with the police officer, again, because
2 when you're -- castoff spatter occurs when the object is
3 being swung away. Not when it's coming down. And the reason
4 is: Because the blood is pooling as -- as the motion -- the
5 upward motion causes the blood to pool down to the end and
6 come off as castoff. So --

7 Q. I don't mean to -- can I just interject one thing?

8 A. Sure.

9 Q. Respectfully. So you're saying then that castoff
10 does not include times when a weapon maybe is coming down
11 before impact. Only when --

12 A. Not generally, no.

13 Q. Okay. What would you -- how would you describe
14 blood that flies off of an instrument as it is coming down?
15 What is that called? Is that just called impact? Or what is
16 that? Before -- before -- before it makes any contact with
17 any other object.

18 A. I'm not exactly sure how you would create that kind
19 of spatter. If you have a bloody object, and you hold it up
20 here, without doing this motion (indicating), if you've got
21 this bloody object already that's up here, that you come down
22 with --

23 Q. Right, right.

24 A. -- then I guess it's possible to create some kind of
25 spatter that would approximate castoff. But that's not

1 generally what happens in beatings.

2 Q. What do you call it when you're making -- you're
3 talking about a backward motion with a weapon or tool or
4 whatever --

5 A. Uh-huh.

6 Q. -- that's definitely castoff. I just want to know
7 what you call -- what would you call it if blood came off
8 from a downward motion?

9 A. Well, it would be castoff. But the requirements for
10 that to happen -- see, that's where we're having our problem.
11 Because in order for that to happen, someone would have to
12 have a bloody object, okay, in this position (indicating),
13 without ever doing this (indicating). Okay. Because this
14 action (indicating) is going to -- is going to push the blood
15 off of the object. So when you're up here, you're not going
16 to have any more blood. If you've got a bloody object, and
17 I'm not exactly sure how you'd do this, but I guess if you
18 picked it up off the ground, say, and it's dripping with
19 blood, and you held it up like this, and then came down with
20 it, you could make a castoff stain that way. But in my
21 opinion, it would have looked like that. It would be --

22 Q. Even if you came down at an angle like this.

23 A. It would be more discrete, in my opinion. You'd be
24 able to see where those droplets came off. Because this is
25 coming off in a stream. This is -- this is coming off of an

1 object, again, in my opinion, at a faster rate than the arm
2 is going to create.

3 Q. Okay. You had an opportunity in court -- my last
4 series of questions. You had an opportunity in court to look
5 at this notepad. And earlier, on direct examination, you
6 said that this was blood transfer.

7 A. I said it appeared to be, yes.

8 Q. Yeah. And you were fairly confident, though, in
9 your -- in your opinion, based on the photograph you saw;
10 correct?

11 A. Actually, I think I qualified my opinion and said
12 that it was based on the photograph that I saw, yes.

13 Q. Okay. So based on the photograph that you saw, you
14 thought that this right here was blood transfer; correct?

15 A. Uh-huh.

16 Q. But today, when you see the object close up, right
17 here, the physical, tangible object, you changed -- you're
18 saying now that, no, you do not believe that that is blood
19 transfer; correct?

20 A. That's correct.

21 Q. Okay. Same thing might hold true for this scenario.
22 This, on a photograph, you think is blood. Correct?

23 A. No. I think that's not blood.

24 Q. I mean, you think it's not blood. Right?

25 A. That's correct.

1 Q. I'm sorry. But the police officer who was actually
2 there, that had the ability to view that -- that item, that
3 car, thought that this was, in fact, blood. So, might you
4 defer to Jeff Nichols' opinion on that issue?

5 A. Since I have no idea what Officer Nichols'
6 qualifications are for identifying things as blood, in the
7 absence of any chemical test to establish whether it's blood
8 or not, no, I can't. My opinion is my opinion.

9 Q. Okay.

10 MR. KNIGHT: Nothing further.

11 THE COURT: Redirect?

12 - - -

13 REDIRECT EXAMINATION

14 BY MR. ROGERS:

15 Q. Looking at the photograph which is State's Exhibit
16 33C, is it clear to you that the castoff blood spatter and
17 the transfer of blood stain are a different color than the
18 things Mr. Knight was asking you about that you say look like
19 mud?

20 A. It is to me, yes.

21 Q. Okay. Is it even more obvious when you see the
22 photograph under magnification, in its digital form?

23 A. Well, as I said, I mean, this is -- what we're
24 boiling down to now is some kind of a visual discrimination,
25 based on a photograph, and I will give you that, but, you

1 know, it certainly does appear to me to be entirely different
2 than the spatter that we're looking at a little further back
3 on the car.

4 MR. ROGERS: Mr. Weis, could you play the -- display
5 the photograph digitally, please?

6 Q. So you're telling me that -- you're telling me that
7 that looks different in color than that and that?

8 A. That's exactly what I'm telling you, yes.

9 Q. And you and I appear to be contemporaries of a sort,
10 age wise?

11 A. I'm 58 years old.

12 Q. I will be next month. Have you ever had an
13 experience of being in the mud in a car that does not have
14 traction control, or Positrack as they called it when we were
15 kids?

16 A. Absolutely.

17 Q. What happens to -- rear wheel drive car especially,
18 what happens?

19 A. The wheels spin in the back and not in the front.

20 Q. And one wheel might spin, and then the other just
21 sits there.

22 A. Especially -- yeah. It depends on the kind of axle
23 you have, but it may be only one of the four wheels that's
24 spinning. That's correct.

25 MR. ROGERS: Those are all the questions I have,

1 Your Honor.

2 THE COURT: Recross?

3 MR. KNIGHT: Thank you, Your Honor.

4 - - -

5 RE-CROSS-EXAMINATION

6 BY MR. KNIGHT:

7 Q. And you're aware, aren't you, that this is a Maxima.

8 Correct? Maxima? Japanese vehicle?

9 A. Right. I'll give you that.

10 Q. And this is a front wheel drive vehicle, isn't it?

11 A. Yeah -- I don't know. It could be, yes.

12 Q. So we certainly wouldn't have this rear wheel

13 spinning out under any circumstances.

14 A. Not under the same circumstances that he's talking
15 about, no.

16 Q. Right.

17 A. Of course not.

18 MR. KNIGHT: Nothing further.

19 THE COURT: Any further questions, Mr. Rogers?

20 - - -

21 FURTHER REDIRECT EXAMINATION

22 BY MR. ROGERS:

23 Q. Did you ever have a situation where one wheel goes
24 through a mud puddle and the others don't?

25 A. Yes.

1 MR. ROGERS: That's all.

2 THE COURT: Anything further?

3 MR. KNIGHT: No, Your Honor.

4 THE COURT: Would you mind putting the screen down
5 so our marshal is able to see?

6 MR. WEIS: Sure.

7 THE COURT: May we release Mr. Singer? For the
8 defendant?

9 MR. ROGERS: Yes, Your Honor.

10 THE COURT: For the state?

11 MR. KNIGHT: Yes, Your Honor.

12 THE COURT: You're excused, sir. You may take your
13 papers and go. Don't take any of ours. Would ask you not to
14 discuss your testimony with any other witness, but you're
15 free to go.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: You may call your next witness,
18 Mr. Rogers.

19 MR. ROGERS: Jenny Smith, Your Honor.

20 THE COURT: Would you raise your right hand, please.

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JENNY SMITH,

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

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

- - -

DIRECT EXAMINATION

BY MR. ROGERS:

Q. Tell us your name, please.

A. Jenny Smith.

Q. And how are you employed, Miss Smith?

A. I am a forensic chemist at the Missouri State
Highway Patrol crime lab in Jefferson City, Missouri.

Q. In that connection, did you come into contact with
some evidence submitted to the crime lab from the Columbia
Police Department in connection with the death of Kent
Heitholt?

A. I did.

Q. What kind of evidence did you come into custody of?

A. I received items of clothing from the victim for
examination for trace evidence.

Q. Okay. Did you also receive bags which had been
removed from the victim's hand at the autopsy?

A. Yes.

Q. And did you also receive hairs which had been
removed from the victim's hands at the autopsy?

1 A. Yes.

2 Q. And did you receive standards with which to compare
3 those items?

4 A. Yes.

5 Q. Let me show you a bunch of stuff; okay? These are
6 all evidence bags with numbers on them and initials and
7 things. First of all, State's Exhibit 3, would you look in
8 there -- it's been cut open on the side, I believe -- and
9 tell me, have you seen that item before?

10 A. Yes. It is a hair brush.

11 Q. And you received that in the laboratory?

12 A. Yes. It bears my initials and the date I opened it.

13 Q. And what did you do with that hair brush?

14 A. It was to be used as a hair standard from the
15 victim.

16 Q. Now, is it common for somebody's hair to be clipped
17 at the time of the autopsy? Or at least a standard to be
18 taken?

19 A. Yes.

20 Q. But that wasn't done in this case, as far as you
21 know.

22 A. No, it was not.

23 Q. Okay. And would that be maybe because there was a
24 great deal of blood in the hair?

25 A. I don't know why.

1 Q. Okay. But in any event, you got that hair brush for
2 the purpose of taking hair from it to use as elimination hair
3 in comparison purposes?

4 A. Yes. It is purported to have belonged to the
5 victim.

6 Q. Right. And it's been identified as having belonged
7 to the victim by the deceased widow who provided it, so. I'm
8 not try to be sneaky here. All right. And calling your
9 attention to State's Exhibit 93, did you also receive that in
10 the laboratory?

11 A. Yes. It bears my initials and the date I opened it.

12 Q. And what was in it?

13 A. This is a -- part of it is hair standards taken from
14 Charles Erickson.

15 Q. And also what are called buccal or buccal swabs?

16 A. Buccal swabs, yes.

17 Q. Which are like DNA swabs?

18 A. Yes. I would not have examined the buccal swabs.
19 Just the hair standards.

20 Q. Of Mr. Erickson.

21 A. That's right.

22 Q. And show you what's been received in evidence as
23 State's Exhibit 92.

24 A. Yes. This bears my initials and the date I opened
25 it.

1 Q. And what is that?

2 A. Hair standards and buccal swabs from Ryan Ferguson.

3 Q. And now I'm going to hand you what has been marked
4 State's Exhibit 83. And that's an evidence bag. And did you
5 receive that in the laboratory also?

6 A. Yes. It bears my initials as well and our lab
7 number.

8 Q. And what was in that when you opened it?

9 A. It was a paper bag.

10 Q. And was that bag marked, indicating it had been the
11 bag removed from the hand -- one of the hands of Kent
12 Heitholt at the time of the autopsy?

13 A. Yes. His left hand.

14 Q. And is that bag in an evidence bag now?

15 A. Yes. It's a bag containing the bag.

16 Q. And what about -- the bag from a bag. And what's it
17 marked? It's got a red sticker on the other side.

18 A. State's Exhibit 83.

19 Q. Okay. So those are both marked State's Exhibit 83.
20 Is that correct?

21 A. Yes.

22 Q. And that's the bag that you removed from this bag.

23 A. Yes.

24 Q. And what did you do when you removed this smaller
25 bag from the larger bag, State's Exhibit 83?

1 A. Well, anything that might have dropped off the
2 victim's hand into that bag would be of interest to me. So
3 the bag was -- was examined for any extraneous debris that
4 might have fallen off the hand.

5 Q. And when you say "extraneous debris," what do you
6 mean?

7 A. Hairs, fibers, particles. Anything that might have
8 fallen off.

9 Q. And did you find extraneous debris in the left hand
10 bag, 83?

11 A. There were a few hairs.

12 Q. Okay. And giving you what's been marked Exhibit 84,
13 another bag, does that have your initials on it?

14 A. Yes, it does.

15 Q. And removing a smaller bag from the bag, also marked
16 State's Exhibit 84, what is that?

17 A. This is the bag that was removed -- or purportedly
18 removed from the victim's right hand.

19 Q. Okay. And did you also look for trace evidence in
20 it?

21 A. Yes.

22 Q. And what did you find, if anything?

23 A. There were also a few hairs in this bag as well.

24 Q. Okay. Now I'm going to hand you what has been
25 marked State's Exhibit 85. And I will tell you that this is

1 another paper bag that contains some boxes inside of it. So
2 would you look at those, please.

3 A. These were items collected at autopsy from the
4 victim.

5 Q. Including hairs from his hands.

6 A. Yes.

7 Q. Okay. And do they also include the hairs that you
8 collected from the bags in Exhibits 83 and 84?

9 A. That would have been separate. Those would have
10 been kept separate. The ones from the bags and ones from
11 autopsy.

12 Q. Okay. How many boxes are in here?

13 A. Four boxes.

14 Q. And they were all --

15 A. Two are fingernail clippings, or scrapings, and two
16 were hair, one from left hand, one from right hand, that had
17 been collected at autopsy.

18 Q. Okay. Working with what we've got now, did you do
19 comparisons microscopically? Is that how you did it?

20 A. Yes. I would have been examining all hairs removed
21 from all these items, to determine if there were any hairs
22 that were dissimilar to the victim's hairs.

23 Q. Okay. And did you, in fact, find hairs that were
24 dissimilar to the victim's hairs?

25 A. I did find one hair that appeared to not be

1 consistent microscopically with the victim's hairs that were
2 from the hair brush.

3 Q. And did you also find other hair fragments that were
4 not suitable for microscopic comparison?

5 A. Yes. There were many fragments and limb hairs that
6 we don't normally proceed with microscopic exams on.

7 Q. And you say "limb hairs." And that sounds fairly
8 self-explanatory. Is that a hair that's not on your head,
9 but on some limb, leg, arm, hand?

10 A. That's right.

11 Q. Some other body hairs too?

12 A. That's right.

13 Q. If it came from my chest, is that a limb hair?

14 A. No. It would mostly be arms and legs.

15 Q. Okay. I'm going to hand you what have been
16 marked -- when you were doing microscopic comparison, would
17 you mount these things on slides?

18 A. Yes. They -- the ones I would select to proceed
19 with microscopic comparisons, we would mount it on slides and
20 compare it on a dual microscope with hairs from the victim.

21 Q. Once you did this comparison, were there some items
22 that you chose to send on to the FBI laboratory for further
23 analysis?

24 A. Yes.

25 Q. Okay. And that happened on more than one occasion,

1 with regard to this case?

2 A. Yes. I believe in December of '04 and then in July
3 of '05.

4 Q. Okay. I'm going to ask you to look at these items
5 which have been marked for identification as Defendant's
6 Exhibits R, S, and T. Open that, please, starting with
7 Exhibit R. And that's not the envelope you used, is it?

8 A. No. It does not bear any of my markings.

9 Q. Okay. In fact, the red tape there says, "Federal
10 Bureau of Investigation" on it; right?

11 A. That's right.

12 Q. Okay. What's in that envelope?

13 A. I really can't identify these. They do not have my
14 markings on them.

15 Q. Okay. So you don't know what that is.

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

17 Q. All right. How about Exhibit S?

18 You've removed three small envelopes; is that
19 correct?

20 A. Yes, I have. And again, they do not bear my
21 markings, or my handwriting, so I really can't identify them,
22 except for their labeling is printed on them.

23 Q. Okay. And the labeling is consistent with the items
24 that you sent from your laboratory to the FBI?

25 A. These were packaged by Cary Maloney, a fellow

1 criminalist at the highway patrol.

2 Q. Who works in the same lab you do?

3 A. Yes.

4 Q. And he's the DNA guy who testified yesterday?

5 A. I don't know when he testified.

6 Q. DNA guy.

7 A. Okay. Yes.

8 Q. Okay. Thanks. And open Exhibit T, please.

9 A. (Complying.)

10 These are microscope hair slides that were prepared
11 by me.

12 Q. Okay. In Exhibit T we have hit the jackpot here;
13 right?

14 A. Yes.

15 Q. These are the slides that you prepared in connection
16 with this investigation that were submitted to the FBI lab
17 for further testing.

18 A. Yes. There would be a head hair control standard
19 and -- from the victim. Well, this was a secondary hair
20 control from the hair brush.

21 Q. Exhibit 3.

22 A. And hair slides prepared from the -- Mr. Erickson
23 and Mr. Ferguson.

24 Q. Okay.

25 MR. ROGERS: Your Honor, at this time I would offer

1 Defendant's Exhibit T.

2 MR. KNIGHT: No objection.

3 THE COURT: Defendant's Exhibit T, as in Thomas?

4 MR. ROGERS: Yes.

5 THE COURT: Is admitted.

6 - - -

7 Defendant's Exhibit T admitted into evidence.

8 - - -

9 A. May I clarify further? That I believe there -- I
10 did not open those slide boxes, but there should also have
11 been a slide in there containing the hair in question, from
12 the right hand of the victim.

13 Q. Okay. You're saying a hair from the right hand of
14 Mr. Heitholt was not consistent with the standards that you
15 had been given, microscopically.

16 A. The hair in question, that was recovered from the
17 victim's right hand, was not consistent microscopically with
18 his -- the hair from the hair brush that was from the victim.
19 And that hair was of interest and sent on to the FBI for
20 further mitochondrial DNA testing. And that hair, I believe
21 part of it should still be remaining with those hair
22 standards.

23 Q. Okay. And the FBI people who looked at it would
24 know that.

25 A. Yeah, they would know that.

1 Q. Okay. You said mitochondrial DNA testing. What is
2 that?

3 A. I am a trace evidence chemist, and that is outside
4 my area.

5 Q. Okay. Don't worry about it. We'll have somebody
6 else tell us.

7 Do you know whether or not that's an expensive
8 procedure to use?

9 MR. KNIGHT: I'm sorry, Your Honor. I'd object.
10 That's hearsay.

11 MR. ROGERS: That's fine. I'll withdraw it.

12 I have no further questions. Thank you.

13 THE COURT: You may inquire.

14 - - -

15 CROSS-EXAMINATION

16 BY MR. KNIGHT:

17 Q. So microscopic testing, that's only done on head
18 hairs that are longer than what?

19 A. Generally about an inch.

20 Q. Okay. And when you're looking at hairs, you're
21 looking at them macroscopically, which means just eyeballing
22 them; is that correct?

23 A. That would be the initial exam.

24 Q. Okay. And then some -- in some cases you decide to
25 look at hairs microscopically. Under a microscopic. Is that

1 right?

2 A. Yes.

3 Q. Okay. And what kind of a microscope do you use?

4 A. It will magnify up to 400 times.

5 Q. Okay.

6 A. It's a polarized light microscope and also has just
7 transmitted light.

8 Q. All right. So when you decide to do microscopic, it
9 has to be on a head hair that's longer than an inch. So you
10 don't do microscopic testing on body hairs, limb hairs; is
11 that correct?

12 A. And hair fragments.

13 Q. Yeah. I meant to say: And hair fragments. And
14 hair fragments then would be less than an inch. Basically.
15 Is that correct?

16 A. Yes.

17 Q. Okay. And if you look at a head hair, and that head
18 hair looks to be microscopically similar -- like in this
19 case, you looked at a number of hairs, and some of those
20 hairs under the microscope looked to be similar to what was
21 provided to you as the victim's hair standard; is that
22 correct?

23 A. Yes.

24 Q. And under those circumstances, when you got those
25 microscopic similarities, those hairs that you were looking

1 at that maybe were recovered from the crime scene, similar to
2 the victim's hair standard, you're not going to recommend
3 that any further testing be done; is that correct?

4 A. That's right.

5 Q. Generally speaking.

6 A. Yes.

7 Q. But in cases where you find dissimilarities between
8 maybe the victim and -- the victim's standards and the hair
9 that's been recovered at the crime scene, you might, under
10 those circumstances, recommend that mitochondrial DNA testing
11 be performed; is that correct?

12 A. Yes. I'm doing somewhat of a screen.

13 Q. Okay. And mitochondrial DNA can't be done at the
14 Missouri State Highway Patrol crime lab right now; is that
15 correct?

16 A. That's correct.

17 Q. Okay. It's a very expensive procedure; the
18 equipment isn't in place down there to do it; is that
19 correct?

20 A. We don't do mitochondrial DNA testing.

21 Q. How many hairs on average does a person lose per
22 day?

23 A. The reports I've heard range anywhere from 80 to 120
24 hairs a day. Average.

25 Q. And tell us about -- what's -- what is primary hair

1 transfer?

2 A. That would be if two people come into physical
3 contact and the hair from person A is transferred to person
4 B. That's a primary transfer.

5 Q. And that would pretty much be, if we're talking
6 about a head hair, that would be the head hair from person A
7 going directly from the head of person A onto something on
8 person B; is that correct?

9 A. Yes. Head hair would be of interest to us. Not the
10 other hairs.

11 Q. Well, okay. I was just using that as an example.

12 A. Yes.

13 Q. Or maybe it could even be a limb hair. But it would
14 have to go directly from the limb, I guess, over to the other
15 person; is that correct? To be a primary hair transfer.

16 A. Yes.

17 Q. Okay. What is a secondary hair transfer?

18 A. That would be like person A sits in a theater seat,
19 drops a hair on the seat, person B comes and sits in that
20 seat, and the hair gets on his clothing. That would be
21 secondary. It -- the hair is moved twice.

22 Q. Okay. So, in this case, you could easily have --
23 any of these hairs that you looked at could have been either
24 primary or secondary hair transfers; is that correct?

25 MR. ROGERS: Objection. Calls for speculation.

1 THE COURT: Sustained.

2 Q. Okay. I'm going to move right on to the testing
3 that you did. You had the victim's hair brush. You had
4 standards from the defendant; from Charles Erickson. And
5 then you also looked at one hair, isn't that correct,
6 Missouri State Highway Patrol number 8, which is our 83,
7 which should be in front of you, which was the paper bag from
8 Kent Heitholt's left hand.

9 A. Yes.

10 Q. Do you want to go ahead and look at that? Because
11 you talked about hairs, plural, I think, with regard to that
12 piece of evidence, but in fact, when you looked inside that
13 bag, or really both of those bags, you only found one hair;
14 is that right?

15 A. I believe I found a limb hair.

16 Q. Okay. One limb hair. And do you need to look at
17 your notes, to just confirm that? Or --

18 A. I am looking at my notes.

19 Q. Okay. And it was a limb hair; correct?

20 A. It appeared to be, yes.

21 Q. But there was just one hair.

22 A. Yes.

23 Q. Okay. And that limb hair, in July of 2005, was sent
24 to the FBI for mitochondrial testing; is that correct?

25 A. Yes, it was.

1 Q. Okay. And then if you could also take a look there
2 at State's Exhibit 84, which was, correct me if I'm wrong,
3 but that was the hand bag from the right hand on Kent
4 Heitholt; is that correct?

5 A. Yes.

6 Q. Okay. And in that bag you located two head hairs;
7 is that right?

8 A. Yes.

9 Q. And one of those head hairs you found was not
10 microscopically similar to the victim's hair, so that hair
11 was sent to the FBI for mito testing; is that correct?

12 A. That's right.

13 Q. Okay. And then you found another head hair in that
14 bag, didn't you, and you did microscopic analysis on that.
15 You found that that was microscopically similar to the
16 victim's hair; correct?

17 A. Yes.

18 Q. And because of that finding, that hair was not sent
19 for mitochondrial testing at least; is that correct?

20 A. It was not.

21 Q. Okay. But -- you testified earlier that -- you said
22 something about -- let's just talk about this bag that you
23 looked at, where you found the two hairs from the victim's
24 right hand. Right? Those bags; correct?

25 A. Yes.

1 Q. You don't know whether or not either one of those
2 hairs was on the victim's hand at any time, do you?

3 A. No. They were recovered out of the bag that had
4 been on his hand.

5 Q. No. Because you don't have any personal
6 knowledge -- we've had a witness come and testify about the
7 collection of that hand bag and how he put the hand bag into
8 the bigger bag and sealed it all up and sent it over to you.
9 But you don't have any personal knowledge, do you, about
10 either one of those hairs at any time being directly on
11 actually the right hand of the victim in this case, Kent
12 Heitholt.

13 A. No. They were just in a bag purported to be taken
14 from his right hand. I don't know how they got there.

15 Q. And of course you don't have any personal knowledge
16 of these hairs ever being on the victim's hand; is that
17 correct?

18 A. That's right.

19 Q. Okay. So then let's get to State's Exhibit 85 -- I
20 think you've got that in front of you -- which was four
21 boxes. And two of those boxes were labeled as hairs
22 collected from Kent's hands at autopsy, I believe. Do you
23 see those boxes in there? Do you want to take them out?

24 A. Yes.

25 Q. Okay. Can you take those boxes out, by the way?

1 The two boxes that are the hairs that were actually collected
2 from his hands at autopsy? Do you have those in front of you
3 now?

4 A. Yes.

5 Q. Okay. And 10C, there were four hairs in that box;
6 is that correct?

7 A. That's right.

8 Q. Okay. And 10C is labeled as "head hairs from Kent's
9 right hand"; is that correct?

10 A. It was labeled "hairs from victim's right hand."

11 Q. Okay.

12 A. It doesn't say "head hairs."

13 Q. Okay. I'm sorry. But you -- you analyzed those
14 hairs, didn't you?

15 A. Yes.

16 Q. And you did microscopic comparisons of those hairs;
17 is that right?

18 A. I did.

19 Q. And you found that all four of those hairs that were
20 collected from his right hand were all microscopically
21 similar to the victim's hair; is that correct?

22 A. Yes.

23 Q. So those hairs in that box, they were not sent to
24 the FBI for mitochondrial testing; correct?

25 A. No. There was not an indication to do so.

1 Q. And that would be per your procedures, your protocol
2 out there at the highway patrol, when you have microscopic
3 comparisons and you find similarities, they're similar?
4 Known standard, victim, and the hairs that you found, when
5 you find that those are similar, you don't send those on.
6 Correct?

7 A. That's correct.

8 Q. All right. And same thing with 10D. That's labeled
9 as "hairs from the victim's left hand"; is that correct?

10 A. Yes.

11 Q. Okay. And there were two hairs in that box; is that
12 right?

13 A. That's right.

14 Q. Okay. And you did microscopic comparisons on those;
15 is that right?

16 A. Yes.

17 Q. Because they were head hairs of sufficient length to
18 do so; is that right?

19 A. That's right.

20 Q. And what were the results of your tests?

21 A. They were not similar to the victim's secondary hair
22 standard.

23 Q. I'm sorry?

24 A. They were not consistent with the victim's -- or
25 excuse me. They were consistent with the victim's secondary

1 hair standards.

2 Q. Okay. Microscopically consistent with the victim's
3 hair standards; correct?

4 A. Yes.

5 Q. And so you did not, because of that, following
6 protocol at the highway patrol, you did not send those off to
7 the FBI for additional mito testing; correct?

8 A. No.

9 Q. So -- you also tested other evidence in this case.
10 You looked at State's Exhibit 35, which was your number 13.
11 Highway Patrol number 13. And do you remember looking at the
12 victim's pants?

13 A. Yes.

14 Q. Okay. And you did comparisons on some hairs that
15 were obtained from there; is that correct?

16 A. I noted that there -- there were some hairs. I
17 believe they were mostly limb hairs; possibly some hair
18 fragments. I didn't mount anything for microscopic
19 comparisons from the pants.

20 Q. And what were the results of your tests on State's
21 Exhibit -- well, it's actually Missouri State Highway Patrol
22 number 13, our number 35?

23 A. These hairs looked macroscopically consistent with
24 the other hairs on the clothing and the victim's standards.
25 There didn't appear to be anything that was foreign to him.

1 Q. Okay. And you also -- you also analyzed Missouri
2 State Highway Patrol number 15A and 15B; is that correct?

3 A. Yes.

4 Q. And those items were the victim's T-shirt and
5 sweater; correct?

6 A. That's right.

7 Q. And before you looked at those, did you basically
8 beat them down over some type of, I don't know what you had
9 in front of you, some type of paper or something, to collect
10 items that came off these items?

11 A. Yes. They're hung up on some clips over butcher
12 block paper and shook down, to collect anything that falls
13 off of them.

14 Q. Okay. And what did you do then with these? Did you
15 find hairs then?

16 A. Yes. There were many hairs collected from the
17 sweater and T-shirt.

18 Q. What did you do with those hairs?

19 A. They are preserved. And I sift through them, under
20 stereoscope, looking for any debris that might be useful for
21 further comparisons. I also pick hairs out of interest that
22 are longer than an inch and have a root on them and are --
23 for possible microscopic exams. I picked about seven hairs
24 out of this for microscopic exams, although there were many
25 hairs.

1 Q. Well, all the hairs that you saw at least initially
2 you believed to be macroscopically similar; is that correct?

3 A. Yes. There were --

4 Q. To the victim's hair.

5 A. Yes. Although there were some short, darker
6 fragments that were -- that were later sent for more testing.
7 They were beyond -- they were too short for me to do
8 microscopic testing, but they did appear a little bit darker
9 than the other hairs in that collection.

10 Q. And you sent those on over to the FBI for
11 mitochondrial testing; is that correct?

12 A. Yes. That was in July of this year, those were sent
13 off.

14 Q. And were you shown those hairs? Is that one of
15 those exhibits, defendant -- that we have defendant --
16 defendant's exhibit stickers on? Do you remember?

17 A. It would have not been -- no, this would not have
18 been that second shipment of hairs. That was the first
19 shipment of hairs.

20 Q. You also did microscopic comparisons on hairs that
21 came from the sweater and the T-shirt; is that right?

22 A. Yes. I selected a few off of those items for
23 microscopic comparisons. And they all appeared to be
24 consistent with the victim's head hairs.

25 Q. Okay. Now, wrapping up here, you were speaking

1 earlier, and you said people lose an average of maybe 80
2 hairs per day? And how are these hairs lost? Generally.
3 Mostly.

4 A. How many?

5 Q. Didn't you say 80?

6 A. 80 to 120.

7 Q. Okay. And how are these hairs lost? Usually.

8 A. The hair has reached the end of its growth phase and
9 isn't -- the root goes into a resting phase and is passively
10 shed.

11 Q. Okay. And then you also talked about primary hair
12 transfers and secondary hair transfers; is that correct?

13 A. Yes.

14 Q. Okay. And you talked about -- there are a number of
15 different ways that hairs can be transferred to people. I
16 mean, just because somebody has a hair on him doesn't mean
17 that that hair came from him. You can't tell. You can't
18 tell the source of the hair, can you?

19 A. No.

20 Q. I mean, because if you have a hair, say, on a piece
21 of clothing or on the body or something, that hair could be
22 transferred in a number of different ways to that person; is
23 that right?

24 A. You can't tell whether it was a primary or secondary
25 or even a tertiary transfer.

1 Q. Okay. So, for instance, in this case, the victim in
2 this case could have picked up hair from maybe a sporting
3 event that he attended earlier that day; correct?

4 A. Yes.

5 Q. Is that possible? He could have picked up hair that
6 he -- he could have picked up hair from a restaurant that he
7 went to days before; isn't that correct? And still had it on
8 his body somewhere; is that right?

9 A. Yes.

10 Q. Okay. There are a number of different ways that
11 people can collect hairs and retain hairs; is that right --

12 A. That's right.

13 Q. -- that aren't their own.

14 A. It's not uncommon.

15 Q. Okay. And in this case, you didn't find any hairs
16 that were consistent with Ryan Ferguson's hairs or Chuck
17 Erickson's hairs; is that correct?

18 A. That's correct.

19 Q. Okay. And that does not mean, though, that they
20 were not at the crime scene; correct?

21 A. It does not.

22 Q. Okay. And for a couple of different reasons. First
23 of all, their hairs -- weren't there -- hairs from one of
24 those individuals would have had to have fallen out at the
25 crime scene; correct?

1 A. Yes.

2 Q. And there's no guarantee that that's going to happen
3 in the middle of a crime; isn't that right?

4 A. No.

5 Q. Okay. And the second challenge, even if hairs from
6 either one of those individuals did fall out at the crime
7 scene, the second challenge would be to actually find one of
8 those hairs; isn't that correct?

9 A. That's correct. And as I said, I found many, many
10 hairs on all of this evidence.

11 Q. Yeah, I know, but I'm --

12 A. So, I mean, finding that one in hundreds of hairs
13 could be a challenge.

14 Q. And you also know that in crimes where we have close
15 contact between defendants and victims, talking about maybe
16 assault situations, it's extremely rare, isn't it, to have a
17 transfer from either the defendant to a victim or victim to a
18 defendant. Isn't that correct?

19 A. I wouldn't call it extremely rare. Is that what
20 you -- was that your characterization?

21 Q. Well, rare, at least?

22 A. Oh. That is -- no, it's not rare.

23 Q. Well --

24 A. But it's not necessarily -- you're not always going
25 to find that transfer. But it is not uncommon to find a

1 transfer.

2 Q. Well, didn't you and I just discuss this on the
3 phone last week?

4 MR. ROGERS: I'll object, Your Honor.

5 MR. KNIGHT: This is cross-examination.

6 MR. ROGERS: I'll withdraw the objection.

7 Q. Didn't you and I just discuss on the phone last week
8 a study where, in cases where you had close physical contact,
9 violent crimes, close physical contact between defendants and
10 victims, that in only 10 percent of those cases would we
11 have -- would we expect to find either a defendant's hair on
12 the victim or a victim's hair on the defendant? Isn't that
13 true? We discussed that scenario.

14 A. We discussed that, and I guess in my mind, that's
15 not extremely rare.

16 Q. No. No. My question is: Did we discuss that
17 scenario, though?

18 A. Yes, we did.

19 Q. That only 10 percent of the time we have defendant's
20 hair on victim or victim's hair on defendant; right?

21 A. Yes. That was a study done in Canada.

22 Q. And isn't it true that on the telephone you told me
23 that you would not dispute that. That you thought that
24 sounded about right. 10 percent of the time.

25 A. That's a reasonable figure.

1 Q. Okay.

2 A. But, to me, that still makes it -- it's common
3 enough that we look for those head hairs. Even 10 percent is
4 common enough for us to look for those --

5 Q. Sure. I understand that. But really, you would not
6 dispute that study that said that 10 percent of the time we
7 can have transfer of the victim to defendant or defendant to
8 victim.

9 A. That's a reasonable figure, from my experience.

10 Q. Okay.

11 MR. KNIGHT: Nothing further.

12 THE COURT: Redirect?

13 MR. ROGERS: Thank you, Your Honor.

14 - - -

15 REDIRECT EXAMINATION

16 BY MR. ROGERS:

17 Q. Ma'am, you, I assume, don't have any studies about
18 the frequency of a foreign hair being found in the bag used
19 to wrap the bloody hand of a murder victim who was beat in a
20 very violent manner being consistent or inconsistent with
21 that of the person who actually did the beating. Is that a
22 fair statement?

23 A. That would --

24 Q. No 10 percent, no 20 percent, no 90 percent.

25 A. That would be very precise conditions, and I'm sure

1 there hasn't been any studies that fit that precise -- those
2 precise conditions.

3 Q. Okay.

4 A. So I would not know what those chances are.

5 Q. And I want to make sure I did not misunderstand.
6 You talked with Mr. Knight about a number of hairs that you
7 had examined, and some that you couldn't examine but sent on
8 to be examined. But there were also many other hairs and
9 hair fragments that were recovered and seen by you during
10 your examination of the clothing and things that you did not
11 select to examine microscopically; is that true?

12 A. That's true, because they did have a general
13 appearance of consistency with that of the victim's hair and
14 other hairs that were on the items of evidence.

15 Q. And that we can understand. And kind of, if you got
16 zillions of hairs, then you don't want to look at the ones
17 that look the same; you want to look at the ones that look
18 different. Right?

19 A. That's right. And that's what my screening is all
20 about, to find hairs that are different.

21 Q. Okay. And here you found one head hair that was
22 definitely different.

23 A. Yes.

24 Q. And that was the head hair found in the bag wrapped
25 around the right hand of the decedent after the scrub;

1 correct?

2 A. It was from that bag, yes.

3 Q. And it would be very unusual for somebody to get a
4 hair on their hand at a sporting event earlier in the day, go
5 home, have dinner with their wife and family, go back to
6 work --

7 MR. KNIGHT: Your Honor, at this point --

8 Q. -- work for a couple of hours --

9 MR. KNIGHT: I'm sorry. I'd have to object to the
10 leading form of the question.

11 THE COURT: Well, I haven't heard the whole
12 question. If you want to continue, I'll --

13 MR. ROGERS: Yeah, I do, because -- I think we need
14 all of those factors put in.

15 MR. KNIGHT: I would object to him commenting on the
16 question.

17 Q. And then have that hair still remain at 2:00 in the
18 morning, on that right hand, just coincidentally when they
19 happened to be beaten to death.

20 MR. KNIGHT: Once again, Your Honor, I'm going to
21 object to the leading form of the question.

22 THE COURT: The objection to the form of the
23 question is sustained.

24 Q. Considering the factors that I enumerated in the
25 question, would that be -- would you find the foreign hair on

1 the right hand of interest with regard to an identification
2 of the possible perpetrator of the beating?

3 MR. KNIGHT: Your Honor, I'd object. Well,
4 speculation. Foundation. Both. Form of the question also.
5 Leading, for sure.

6 THE COURT: The objection is sustained as to the
7 form of the question.

8 Q. Let me go at it a different way. You testified
9 that, on average, people lose 80 to 120 head hairs per day?

10 A. Yes.

11 Q. Of course, people like me don't. Or if so, they're
12 not suitable for comparison. Right?

13 A. Right.

14 Q. But we don't walk through a sea of hair every day
15 that just sticks with us all the time, do we?

16 A. I -- no. I mean --

17 Q. Okay.

18 A. Not a sea of hair.

19 Q. Right. And it is -- assuming somebody has a hair
20 which has reached its growth limit and is ready to fall out,
21 if somebody is involved in violent activity, that might
22 provide the impetus to make the hair fall out.

23 A. That's possible.

24 Q. And if somebody is involved in a struggle where
25 somebody's trying to defend themselves, somebody might, in

1 fact, lose a hair during that struggle.

2 A. Well, yes. And that's the whole point of why I
3 examine clothing from victims. I'm looking for hairs that
4 might have transferred to him.

5 Q. And even though you can't say with certainty that
6 that hair came during the struggle, you certainly want to
7 know whose hair that is, don't you?

8 A. It would be a hair of interest.

9 Q. Okay. Thank you.

10 MR. ROGERS: That's all the questions I have.

11 THE COURT: Recross?

12 - - -

13 RE-CROSS-EXAMINATION

14 BY MR. KNIGHT:

15 Q. And like you said before, the hair in this case
16 could have come from anywhere. Could have come from
17 attending a sporting event. Could have come from a
18 restaurant. Could have come at any time. That hair could
19 have been deposited on his body any time. Isn't that
20 correct?

21 A. Yes, it is.

22 MR. KNIGHT: Okay. Nothing further.

23 THE COURT: Redirect?

24 - - -

25

1 FURTHER REDIRECT EXAMINATION

2 BY MR. ROGERS:

3 Q. It could have come from one of his assailants --

4 MR. KNIGHT: Your Honor, I'd object.

5 MR. ROGERS: Oh, I thought you were done. I'm
6 sorry.

7 MR. KNIGHT: No. I was just -- the way you're
8 starting that question out, it seems to me to be pretty
9 leading. And I was going to object to the leading form of
10 the question.

11 Q. Could -- tell us whether or not it could have come
12 from one of the assailants during the violent struggle that
13 caused his death.

14 A. Yes. And that's why it's a hair of interest.

15 Q. And do you have any scientific basis for assessing
16 probabilities of coming from a sporting event the day before
17 as opposed to coming during the struggle?

18 A. No.

19 MR. ROGERS: Thank you.

20 THE COURT: Anything further, Mr. Knight?

21 MR. KNIGHT: Nothing further, Your Honor.

22 THE COURT: May this witness be finally excused for
23 the defendant?

24 MR. ROGERS: Yes, Your Honor.

25 THE COURT: For the state?

1 MR. KNIGHT: Yes, Your Honor.

2 THE COURT: You're excused. Would ask you not to
3 discuss your testimony with any other witness. And do not
4 take any of the exhibits that may be deposited there. If you
5 have your own notes or whatever, that's fine. But anything
6 that looks like a bag with a red sticker on it or a box, if
7 you'd leave it behind, please.

8 THE WITNESS: Sure.

9 THE COURT: Thank you.

10 You may call your next witness.

11 MR. ROGERS: Karen Lanning, Your Honor.

12 THE COURT: Would you raise your right hand.

13 - - -

14 KAREN ANN LANNING,
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. ROGERS:

21 Q. Good afternoon, Miss Lanning.

22 A. Good afternoon.

23 Q. State your name for the record, please.

24 A. Karen Ann Lanning. Lanning is spelled
25 L-a-n-n-i-n-g.

1 Q. And you appear to have testified before?

2 A. Yes, I have.

3 Q. Okay. How are you employed?

4 A. I am a physical scientist in the trace evidence unit
5 of the Federal Bureau of Investigation laboratory in
6 Quantico, Virginia.

7 Q. And that's by Washington, D.C.?

8 A. Yes, it is.

9 Q. And did you have occasion in your occupation to come
10 into possession of items sent to you by the Missouri State
11 Highway Patrol Laboratory relating to the death of Kent
12 Heitholt?

13 A. Yes, I did.

14 Q. And I want to show you what have been marked for
15 identification as Defendant's Exhibits R, S, and T. And are
16 those things that you've seen before?

17 A. Yes, they are.

18 Q. And could you tell us what's in Exhibit R.

19 A. In which one?

20 Q. R.

21 A. It is a hair identified as specimen Q1.1. It's
22 sublabeled. It was a hair identified to me as coming from
23 Mr. Heitholt's hand. And it has been placed in these tubes
24 by myself.

25 Q. Okay. So you put it in the tubes that are inside

1 there?

2 A. Yes.

3 Q. And that's the hair from the right hand of Kent
4 Heitholt?

5 A. Yes.

6 MR. ROGERS: And Your Honor, at this time I'd offer
7 Defendant's Exhibit R.

8 THE COURT: Do you have any objection, Mr. -- is it
9 Mr. Knight or Mr. Crane?

10 MR. KNIGHT: No, Your Honor. The only objection I
11 have is that it came from his hand. But no, I don't have
12 objection to the admission of that exhibit.

13 THE COURT: Exhibit R is admitted.

14 - - -

15 Defendant's Exhibit R admitted into evidence.

16 - - -

17 Q. Now Exhibit S.

18 A. Actually, Exhibit S -- I misspoke earlier. I did
19 not examine these items. I recognize FBI markings, but I did
20 not examine those items.

21 Q. Okay. And those are -- we'll talk to somebody else
22 about those. Go ahead. And Exhibit T?

23 A. Yes. These items I recognize. And again, these
24 were specimen Q1 and Q2. The Q1 was the hair identified to
25 me as from Mr. Heitholt's right hand, which I had removed.

1 The item Q2 was a hair brush identified to me as belonging to
2 Mr. Heitholt. Item K1 was a head hair sample identified to
3 me as belonging to Ryan Ferguson. And item K2 was a head
4 hair sample identified to me as coming from Charles Erickson.

5 Q. Okay. And is it -- is the question hair, which you
6 said was identified to you as being from the right hand of
7 Mr. Heitholt, the same in Exhibit T as it is in Exhibit R?

8 A. No. There were two hairs on the initial Q1 item.
9 One of those hairs was removed and subsequently labeled as
10 Q1.1. That's in specimen R.

11 Q. Okay. So two different ones.

12 A. Yes.

13 Q. And what type of examination did you conduct with
14 those hairs?

15 A. I conducted a microscopic comparison on those hairs.
16 I compared the head hair, which is now specimen Q1.1, to
17 hairs from the hair brush, as well as to the two known
18 samples, and concluded that the one head hair identified as
19 Q1.1 exhibited similarities and differences to hairs from the
20 hair brush. So there was no conclusion as to whether or not
21 that hair possibly could have come from Mr. Heitholt. And I
22 compared that hair to the known head hair samples from
23 Mr. Ferguson and Mr. Erickson, and those hairs were
24 microscopically dissimilar to those -- to the Q1.1 sample.

25 Q. So what did you do to resolve the issue of whether

1 or not that hair came from Mr. Heitholt?

2 A. That hair was removed for mitochondrial DNA
3 analysis.

4 Q. And that's how it ended up in the little tubes?

5 A. Yes.

6 Q. Okay. Now with regard to the question hair -- the
7 other question hair from the right hand -- and by the way,
8 was this a hair that came from his hand or from the bag that
9 was put around his right hand or --

10 A. The bag from his right hand.

11 Q. Okay. And you're familiar with the technique of
12 bagging a body's hand and removing the bag at the autopsy;
13 correct?

14 A. Yes.

15 Q. That's standard in the industry?

16 A. Yes, it is.

17 Q. What about the other hair?

18 A. The other hair was a fringy head hair. It was not
19 suitable for microscopic comparison purposes, so I did
20 nothing else with it.

21 Q. Okay. Did you also present it for mitochondrial DNA
22 examination?

23 A. No, I did not.

24 Q. In general, is mitochondrial DNA examination more or
25 less reliable than microscopic hair comparison?

1 taking showers, brushing your hair, things like that; is that
2 correct?

3 A. Yes, it is.

4 Q. Okay. Primary hair transfer, that's just basically
5 where hair comes out, talking about head hair, onto something
6 else. Right?

7 A. That's correct.

8 Q. And secondary hair transfer would be hair coming
9 onto something else and then getting transferred onto yet
10 another item; is that correct?

11 A. Yes.

12 Q. Okay. In general, isn't it true that the presence
13 of a hair on a murder victim, that is foreign to the victim,
14 that doesn't mean, if there is a hair on the victim, that's
15 foreign to that victim, that doesn't mean that that hair came
16 from the killer; isn't that right?

17 A. No, that does not mean it is.

18 Q. And just because maybe a hair in this case is
19 recovered from a hand bag that was on the victim, that was
20 foreign to the victim, that doesn't mean that that is the
21 killer's hair either, does it?

22 A. No, it does not.

23 Q. And that's because hairs can be transferred in a
24 number of different ways. Primarily and secondarily.
25 Correct?

1 A. Yes.

2 Q. Okay. And hair in this situation, if we had a
3 situation where the victim was on the ground, in distress,
4 paramedics were hovering over that victim, police officers
5 were at the crime scene and were over the victim also, under
6 those circumstances, maybe even coworkers, hairs could be
7 transferred from any of those people onto the victim; isn't
8 that correct?

9 A. Yes. That's possible.

10 Q. And you wouldn't recommend that -- even though we
11 have other people at the crime scene, paramedics, police
12 officers, co-workers, you wouldn't recommend that hair
13 samples or DNA samples be obtained from any of these other
14 people who might have been at the crime scene or who were at
15 the crime scene, or anybody else that maybe the victim had
16 contact with that day, for comparative analysis; is that
17 correct?

18 MR. ROGERS: Objection. Compound question.

19 THE COURT: The objection as to the form of the
20 question is sustained.

21 Q. Okay. You wouldn't recommend in this case that we
22 obtain hairs from co-workers of the victim for comparative
23 analysis; is that correct?

24 A. That's correct.

25 Q. Why?

1 A. Well, they would be known to have had contact with
2 that individual, so it really wouldn't be meaningful if they
3 had hair that was from that person on an item, because they
4 had to come -- come in contact with each other. And it could
5 be unending. The hair still may never be able to be
6 identified as coming from a particular individual, regardless
7 of how many samples you gave us.

8 Q. Okay. You wouldn't recommend that hairs be obtained
9 from maybe police officers who were at the crime scene for
10 comparative analysis either; is that correct?

11 A. That's correct.

12 Q. And that's for the same reasons that you just stated
13 for the coworkers --

14 A. Yes.

15 Q. -- right? And you wouldn't recommend that hairs be
16 obtained from the -- hairs or DNA be obtained from paramedics
17 at the crime scene, for the same reasons you stated as to the
18 coworkers; is that correct?

19 A. Yes.

20 Q. That's because hairs can be picked up anywhere in
21 any number of ways; isn't that right?

22 A. Yes.

23 Q. Okay. And even if we did test all of the hairs of
24 everybody that was at the crime scene, and you did your
25 analysis, comparing this one hair that we have, that's on the

1 victim, of all these other known hair standards, and even if
2 you found that this hair was inconsistent with people who
3 were at the crime scene, that would not, under any
4 circumstances, mean that this was the hair of one of the
5 killer's; isn't that correct?

6 A. That's correct.

7 Q. Okay. And the problem that we have at crime scenes
8 is, with regard to maybe defendants leaving behind evidence,
9 is that, first of all, we have to find hairs; isn't that
10 correct?

11 A. Yes.

12 Q. Okay. And -- well, I'm sorry. First of all, hairs
13 can be lost, and second of all, we have to find them; isn't
14 that correct?

15 A. Yes, that is correct.

16 Q. Okay. And isn't it true that -- what's a probative
17 transfer rate?

18 A. I'm sorry. Could you repeat --

19 Q. Probative transfer rate.

20 A. I find associations approximately 10 percent of the
21 time, in the cases that I work. Meaning, maybe, with regards
22 to hair, maybe a head hair or a pubic hair from a victim on a
23 suspect's item or a hair from a suspect's item on a victim's
24 item.

25 Q. Okay. And these -- we're talking about crimes where

1 we have close physical contact, aren't we?

2 A. Yes.

3 Q. Okay. Only 10 percent of the time in these types of
4 crimes you find either suspect's hairs on victims or victim's
5 hairs on suspects; is that correct?

6 A. That's correct.

7 Q. All right. Pretty rare. Pretty rare; correct?

8 A. Yes.

9 Q. All right. Now, the testing in this case. You did
10 not do any on Q3, which I think is a limb hair which was
11 taken from the paper bag from the victim's left hand? Is it
12 -- you called it Q3?

13 A. Yes. I identified it as a Caucasian body area hair
14 and removed it from the glass microscope slide for
15 mitochondrial DNA analysis.

16 Q. Okay. And since it was just a body hair, you
17 weren't going to do microscopic analysis; correct?

18 A. I didn't compare it to anything. I did an analysis
19 to identify it as a body area hair.

20 Q. But this one hair, Q -- or Q1.1, you found that that
21 was a head hair. That's --

22 A. Yeah.

23 Q. -- the one we've been talking about; right?

24 A. Yes.

25 Q. And you found that that was microscopically

1 inconsistent with the victim's hair; is that right?

2 A. I had no conclusion to the victim. It exhibited
3 similarities and slight differences to those hairs from the
4 hair brush.

5 Q. Okay. But you sent that on, didn't you, for
6 mitochondrial analysis.

7 A. Yes, I did.

8 Q. Okay. And then in Q4.1 there were three fragments;
9 is that correct?

10 A. In Q4 there were three hair fragments. I removed
11 one of those for mitochondrial DNA analysis and sublabeled it
12 Q4.1. And those three fragments, again, they were Caucasian
13 origin hairs, but they were not suitable for microscopic
14 comparison purposes.

15 Q. So those are sent on -- all three of these -- my
16 understanding, all three of those were sent on for
17 mitochondrial testing; isn't that correct?

18 A. One hair was. I removed one hair for mitochondrial
19 DNA and sublabeled it Q4.1.

20 Q. Okay. Just to be sure, can you look at your notes
21 with regard to specimen Q4? It was my understanding that all
22 three of those fragments were sent for mitochondrial testing.

23 MR. ROGERS: Objection. Asked and answered.

24 THE COURT: It's cross-examination. I'll allow --
25 I'll allow her to review her notes.

1 Q. Is that your understanding from looking at your
2 notes? There were three fragments that were set for mito?

3 A. No. There were three fragments. I only sent one
4 fragment to mitochondrial DNA.

5 Q. All right.

6 MR. KNIGHT: Nothing further. Thanks.

7 THE COURT: Redirect?

8 MR. ROGERS: Yes, Your Honor. Thank you.

9 - - -

10 REDIRECT EXAMINATION

11 BY MR. ROGERS:

12 Q. So when you gave the estimate that in about 10
13 percent of the cases that you have worked on with hairs
14 recovered from crimes involving close physical contact, there
15 is some sort of probative hair transfer? That's basically
16 what your job is; right?

17 A. Yes.

18 Q. And when you say "a probative hair transfer," you
19 have an idea, at least by the time that that case enters the
20 10 percent, as to who the victim is and who the suspect is.

21 A. Yes. It's what has been identified to me as the
22 victim and a suspect in a case.

23 Q. But there are many other cases where there are hairs
24 which are not the victim's and unidentified otherwise;
25 correct?

1 A. Yes.

2 Q. And you don't know whether or not those hairs are
3 the perpetrator's as opposed to the suspect's.

4 A. That's correct.

5 Q. And there is a difference, isn't there?

6 A. Yes, there is.

7 Q. Okay. And so the fact that a hair is found in the
8 bag removed from the hand of the decedent after a homicide
9 does have evidentiary significance in your mind, doesn't it?

10 A. Yes, it does.

11 Q. And that's why you do what you do.

12 A. Yes. That's correct.

13 Q. And it would be -- you don't do the mitochondrial
14 testing.

15 A. No, I do not.

16 MR. KNIGHT: I'm going to object to the form of the
17 question.

18 Q. Tell us whether or not you do the mitochondrial
19 testing.

20 A. No, I do not.

21 MR. ROGERS: I thought it was a preliminary
22 question, Your Honor. I get to lead on those. But that's
23 okay.

24 Q. If there were samples of police officers and
25 paramedics kept in a mitochondrial DNA database, that would

1 facilitate the elimination of those people as donors of hair,
2 wouldn't it?

3 A. I can't speak to mitochondrial DNA. I don't know
4 enough about what all they do; what they can and can't do.
5 I'm sorry.

6 Q. If you had head hair standards of those people in
7 some sort of accessible database, and don't ask me what that
8 would be, that would facilitate elimination of those people
9 as donors of question hairs.

10 A. I would have to physically compare that question to
11 those known samples to determine whether or not it was
12 consistent with those known samples.

13 Q. So that wouldn't speed things up much from your
14 point.

15 A. No. We don't have databases for microscopic hair
16 comparison. It has to be a side-by-side comparison using the
17 microscope.

18 Q. And the more farfetched -- tell us whether or not
19 the more farfetched a source of an extraneous hair found on a
20 murder victim's hand becomes, does it make it more likely
21 that the hair is related to the event which caused the
22 victim's death?

23 MR. KNIGHT: Your Honor, I'd object to the form of
24 that question. Speculation.

25 THE COURT: The objection is sustained. That it is

1 speculation. Unless you have a foundation you want to lay.

2 MR. ROGERS: No, Your Honor. I will give up.

3 I have no further questions.

4 THE COURT: Recross?

5 MR. KNIGHT: No more questions, Your Honor.

6 THE COURT: May this witness be finally excused for
7 the defendant?

8 MR. ROGERS: Yes, Your Honor.

9 Thank you for coming.

10 THE COURT: And for the state?

11 MR. KNIGHT: Yes, Your Honor.

12 THE COURT: You're finally excused. Would ask you
13 not to discuss your testimony with any other witness, but
14 you're free to leave.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: Ladies and gentlemen, we'll take our
17 mid-afternoon break.

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

1 THE COURT: What about 9:00?

2 MR. ROGERS: We can -- if we're not done with
3 everybody but the tomorrow witness by 9:00, we would ask to
4 recess, but my guess is we will certainly -- I don't know
5 that we're going to go that late, but we might get close.
6 Because we have several witnesses.

7 MR. CRANE: You don't feel obligated to go until
8 9:00.

9 MR. ROGERS: I don't think that's what the Court's
10 wanting -- the Court is saying, if you're not done with
11 everybody but Dr. Loftus, you will go 'til 9:00. That's what
12 I'm hearing.

13 THE COURT: Yeah. I'm not asking a question.

14 MR. ROGERS: Am I correctly understanding it?

15 THE COURT: You have it correct. I don't want to
16 start and have six or eight witnesses tomorrow, including
17 that witness. Because it will not get submitted tomorrow.
18 And I don't know but that the state may have some rebuttal
19 testimony. So that's -- that's not within your control. I
20 assume.

21 MR. ROGERS: Not by direct conscious control at
22 least.

23 THE COURT: All right. So I just want you to be
24 prepared that you need to have your witnesses here so that we
25 can continue. And I will visit with our marshal to make sure

1 that they haven't already ordered some kind of dinner for our
2 jurors. And I guess I somewhat indicated it, but perhaps not
3 strongly enough, that we might go tonight.

4 Les?

5 DEPUTY COURT MARSHAL WERNER: Yes, ma'am.

6 THE COURT: We're considering an evening session, so
7 that we can have all but an out-of-town witness on the stand.
8 And the jurors had previously said they wouldn't mind eating
9 pizza or having something here.

10 DEPUTY COURT MARSHAL WERNER: That's what they just
11 told me.

12 THE COURT: Yes. I figured they would. Is it
13 possible -- I mean, have you already made arrangements for
14 dinner yet?

15 DEPUTY COURT MARSHAL WERNER: We can cancel that and
16 we can make arrangements for other things.

17 THE COURT: I suggest you make arrangements for
18 dinner here then.

19 DEPUTY COURT MARSHAL WERNER: Okay.

20 THE COURT: All right. Somewhere around 6, 6:15,
21 something like that. Because if they ate at noon, it's
22 reasonable to have them eat again at 6, 6:15.

23 DEPUTY COURT MARSHAL WERNER: Okay.

24 THE COURT: And then there is another matter that I
25 need to visit with Mr. Ferguson about.

1 calls Catherine Theisen.

2 THE COURT: Would you raise your right hand.

3 - - -

4 CATHERINE THEISEN,

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

6 THE COURT: You may take the witness stand.

7 You may inquire.

8 - - -

9 DIRECT EXAMINATION

10 BY MR. ROGERS:

11 Q. Would you please state your name.

12 A. My name is Catherine Theisen. Catherine is spelled
13 with a C and Theisen is spelled T-h-e-i-s-e-n.

14 Q. And Miss Theisen, how are you employed?

15 A. I'm a forensic DNA examiner in the mitochondrial DNA
16 unit of the FBI laboratory, which is in Quantico, Virginia.

17 Q. Okay. We've had some testimony about what DNA is.
18 What is mitochondrial DNA?

19 A. Mitochondrial DNA is another kind of DNA in our
20 bodies which we have in addition to what's called nuclear
21 DNA. Nuclear DNA is what you, although you may not know it,
22 you may be more familiar with it. Nuclear DNA we get from
23 both our mothers and our fathers. And it's what makes us
24 unique. It's unique to individuals, with the exception of
25 identical twins.

1 And so if two items in a forensic case have the same
2 nuclear DNA type, you can say that a person contributed that
3 item of evidence to the exclusion of all other individuals.

4 On the other hand, mitochondrial DNA is inherited
5 only from our mothers. So therefore we share our
6 mitochondrial DNA type with our mother, our brothers and
7 sisters, and anybody else who's relate to us maternally. And
8 we also, by chance, share our mitochondrial DNA type with
9 other people at random.

10 Q. And is the other kind of DNA called nuclear DNA?

11 A. Yes. That's correct.

12 Q. And is that because it's in the nucleus of the cell?

13 A. It is. The nucleus can be thought of as sort of the
14 brain center of the cell. That's where the nuclear DNA is.
15 The mitochondrial DNA is in the mitochondria, which are in
16 the outer part outside of the nucleus. The mitochondria you
17 can think of as sort of the energy factor of our cells. And
18 that's where mitochondrial DNA is contained.

19 Q. Okay. Do hair contain -- the cells in your hair, or
20 your hair, not mine, obviously, the cells in your hair
21 contain nuclei?

22 A. No, they don't. Our hairs don't really even contain
23 cells. They are -- they contain remnants of cells. And
24 that's why typically we can't get a nuclear DNA result from a
25 hair. So we use mitochondrial DNA typing.

1 Q. They do -- the remnants of cells in your hair do,
2 however, contain mitochondria.

3 A. Not intact mitochondria, but mitochondrial DNA.

4 Q. Enough to type.

5 A. Enough for us to do this typing, yes.

6 Q. Okay. Now, you indicated that, unlike nuclear DNA,
7 mitochondrial DNA is not unique to the individual.

8 A. Yes. That's correct.

9 Q. Is, however, an exclusion by mitochondrial DNA a
10 total and certain exclusion?

11 A. Yes, it is. Two types that -- two mitochondrial
12 types that are different mean that those two samples did not
13 come from the same individual.

14 Q. Or from anybody who is maternally related to either
15 individual.

16 A. That's correct.

17 Q. Okay. Now in connection with -- well, let me ask
18 you first, at your laboratory, do you perform mitochondrial
19 DNA analysis on question hairs and hair fragments?

20 A. Yes, we do.

21 Q. And do you know a woman named Alice Eisenberg?

22 A. Yes, I do. She is in my same unit at the FBI
23 laboratory.

24 Q. Do you sometimes work together on cases?

25 A. Yes, we do.

1 Q. And have you been given to understand that you are
2 here to testify not only about your own work, but also work
3 you did in conjunction with Alice Eisenberg on this case?

4 A. The -- not exactly. She did a portion of the work
5 on the case, and then evidence that came into the laboratory
6 later, I conducted the exams on that evidence.

7 Q. Okay. And do you have also her notes and her
8 information with regard to the exams that she conducted?

9 A. Yes, I do. And I have reviewed those.

10 Q. Okay. And calling your attention to Defendant's
11 Exhibits R, S, and T.

12 A. May I look inside them?

13 Q. Yes. Look inside of them and see if you've seen
14 them before.

15 A. I recognize the outside of this package, which is R,
16 by our laboratory number, the FBI's laboratory number, and
17 the item number. And then I recognize this package inside
18 by, again, our laboratory, the item number, and the initials
19 of the technician who performed the work that Alice Eisenberg
20 then examined.

21 Q. Okay. And that technician was who?

22 A. That was Holly Morton.

23 Q. Okay.

24 A. May I set them here?

25 Q. Yes, please.

1 A. Item S, again, I recognize it by the FBI
2 laboratory's number on the outside and the item numbers. And
3 I recognize each package inside by the individual item
4 number, by the FBI laboratory number, and by the initials of
5 the technician who worked these samples.

6 Q. And what are those items inside?

7 A. The first one, our designation for that is K3. And
8 it is indicated that it is a buccal swab from Ryan Ferguson.
9 A buccal swab is a swabbing taken on a cotton swab from the
10 inside of one's mouth.

11 Q. Let me stop you there and ask you, what is purpose
12 of taking a buccal swab?

13 A. When we conduct mitochondrial DNA analysis, or any
14 kind of DNA analysis, the DNA types are compared from an
15 unknown item of evidence, for example, a hair found at a
16 crime scene, with known reference standards from people
17 thought to be involved in that crime or somehow associated
18 with that. And those are typically suspects or victims in a
19 crime. So we perform a comparison from these known samples
20 with what we call our question samples.

21 Q. So the buccal swab is the source of the known
22 sample?

23 A. That's correct.

24 Q. Because there's cells that have DNA, both nuclear
25 and mitochondrial --

1 A. Yes.

2 Q. -- inside your mouth.

3 A. And it's much easier and faster in the lab. We
4 could compare DNA from a known hair and a question hair, but
5 it's actually much more efficient to compare DNA from a known
6 sample from a buccal swab.

7 Q. Okay.

8 A. The second item is our laboratory's item designation
9 K4. And that is a buccal swab from Charles Erickson. And
10 the third item is our item K5. And that is a blood stain
11 from Keith Heitholt.

12 Q. Kent?

13 A. Kent. I'm sorry. Kent Heitholt.

14 Q. And then item T.

15 A. T is --

16 Q. This one up here.

17 A. Thank you.

18 Q. Defendant's Exhibit T. I'm sorry.

19 A. Yes. This one, again, the outer packaging I
20 recognize by our laboratory's number and our item designator.
21 Now, these are not items that were handled in our unit.
22 These would be the items that were processed by Karen
23 Lanning. These are microscope slides containing hairs. She
24 then removed, in this -- in one of these packages she removed
25 one hair and gave it to Alice Eisenberg to examine. But that

1 was given to Alice in a separate container.

2 Q. Would that be the hair that ended up in Exhibit R?

3 A. Yes.

4 Q. Okay.

5 A. Yes.

6 Q. Now, what is the protocol in your laboratory with
7 regard to the screening of hairs for mitochondrial DNA
8 analysis?

9 A. We don't especially use the term "screening," but we
10 do perform mitochondrial DNA analysis when we can in
11 conjunction with microscopic hair examinations. So that the
12 forensic hair examiner will compare, if she can, hairs found
13 at a crime scene with any known hair standards she may have.
14 She then makes an initial decision, based on her work, as to
15 what hairs would be suitable for mitochondrial DNA analysis.
16 We then discuss that, and she then transfers to me hairs that
17 are appropriate for mitochondrial DNA analysis. And when I
18 say "appropriate," I mean ones that would potentially prove
19 useful or probative in a particular case.

20 Q. Now, calling your attention to the comparison --
21 well, first of all, how were these comparisons done?

22 A. Which comparisons do you mean?

23 Q. Mitochondrial DNA comparisons. I'm sorry.

24 A. We go through some procedures in the laboratory,
25 some chemical-based procedures, where we grind up a hair, and

1 then add various chemicals to ex -- what we call extract or
2 get the DNA from that hair. And following some other
3 procedures, we actually can get a DNA profile of that hair.

4 Once that's completed, we then turn to our reference
5 standards. In this case we had two different buccal swabs
6 from two individuals and a blood stain from a third
7 individual. We then conduct a similar procedure, where we
8 extract the DNA from each of those known samples and perform
9 the mitochondrial DNA typing from those reference standards.

10 We then look at the mitochondrial -- examine the
11 mitochondrial DNA type that we have, from the evidence
12 samples as well as from the known samples, and make the
13 determination as to whether they match or not.

14 And to repeat what I said before, a match doesn't
15 mean that a person could have contributed that evidence to
16 the exclusion of all other individuals.

17 Q. But a nonmatch excludes the known -- the giver of
18 the known standard as the contributor of that sample.

19 A. Yes. An exclusion is absolute.

20 Q. And with regard to the question hair known in your
21 laboratory number as Q1.1, is that the one that was compared
22 by Miss Eisenberg?

23 A. Yes, it is.

24 Q. And did she follow that same procedure in comparing
25 that with the known standards from Kent Heitholt, Charles

1 Erickson, and Ryan Ferguson?

2 A. Yes, she did.

3 Q. And what results did she reach?

4 A. She concluded that the mitochondrial DNA types of
5 each of those four samples were different. Therefore, Ryan
6 Ferguson, Charles Erickson, and Kent Heitholt could not have
7 been the source of the Q1.1 hair.

8 Q. And have you reviewed her bench notes and her report
9 and her findings in that regard?

10 A. Yes, I have.

11 Q. And do you concur with that conclusion?

12 A. Yes, I do.

13 Q. Now, you later, yourself, this summer, were asked to
14 do some comparisons; is that correct?

15 A. Yes, I was.

16 Q. And what did you end up -- did you compare them with
17 the same known standards?

18 A. Yes, I did.

19 Q. And what did you compare with those known standards?

20 A. I received two additional hairs, one of which our
21 designation is Q3, and another designation is Q4.1. And I
22 compared the mitochondrial DNA types from those two hairs to
23 each of the three known standards.

24 And the mitochondrial DNA types of those two hairs
25 is the same as the mitochondrial DNA type of Kent Heitholt.

1 Therefore, he can't be excluded as the source of those hairs.

2 And because mitochondrial DNA is not uniquely
3 identifying, we then use a population database to give an
4 estimate as to how common or rare that mitochondrial DNA type
5 is in the population. And I would like to read those
6 percentages to you.

7 Q. Yes, please.

8 A. And these are what we call an upper bound frequency
9 estimate. It's an estimate of how common or rare this
10 particular type is in the general population.

11 And when we give these results, we give an estimate
12 for each of the three major racial and ethnic groups in the
13 United States: African-Americans, Caucasians, and Hispanics.
14 And we do have slightly different results for the Q3 hair and
15 Q4.1 hair, because we got more information from one hair than
16 the other hair.

17 For the Q3 hair, I would not expect that
18 mitochondrial DNA type to occur in more than .94 percent of
19 the African-American population. It would not occur in more
20 than 9.65 percent of the Caucasian population. Nor would I
21 expect it to occur in more than 2.13 percent of the Hispanic
22 population.

23 Now turning to the Q4.1 hair, I would not expect
24 that type to occur in more than 1.06 percent of the
25 African-American population, 9.83 percent of the Caucasian

1 population, nor 2.13 percent of the Hispanic population.

2 Q. And you can be sure also that it does not occur in
3 either the known -- did not occur in either Mr. Erickson or
4 Mr. Ferguson.

5 A. Their mitochondrial DNA types are different. They
6 could not have been the source of the Q3 or the Q4.1 hair.

7 Q. But Mr. Heitholt certainly could have.

8 A. He could have.

9 Q. And it seems fairly likely that he might have been.

10 A. I can't say that. The mitochondrial DNA type of
11 that particular hair is the most common type in the Caucasian
12 population. So it's possible.

13 Q. Okay. And the one that Miss Eisenberg compared, the
14 Q1.1, was marked to indicate that it had been recovered from
15 a bag removed from Kent Heitholt's right hand at his autopsy;
16 is that correct?

17 A. That's what was indicated to the FBI laboratory when
18 we received that hair, yes.

19 Q. Thank you.

20 MR. ROGERS: I have no further questions.

21 THE COURT: You may inquire.

22 MR. KNIGHT: No questions, Your Honor.

23 THE COURT: May this witness be finally excused for
24 the defendant?

25 MR. ROGERS: Yes, Your Honor.

1 THE COURT: For the state?

2 MR. KNIGHT: Yes, Your Honor.

3 THE COURT: Thank you so much for coming. You're
4 finally excused. If you would leave the samples. The
5 exhibits.

6 THE WITNESS: I will.

7 THE COURT: But you may, of course, take your notes
8 with you.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: You may step down.

11 Defendant may call his next witness.

12 MR. ROGERS: Holly Admire, Your Honor.

13 MR. CRANE: Judge, could we just approach real quick
14 while she's coming up?

15 THE COURT: Surely.

16 MR. CRANE: I guess maybe before you get her sworn.

17 - - -

18 Counsel approached the bench and the following
19 proceedings were held:

20 MR. CRANE: I don't have any problem with her
21 testifying. I would point out that the defense has never
22 noticed the state up on the defense of alibi. If any
23 testimony will -- if the defense seeks to illicit any
24 testimony from Miss Admire, who I believe the testimony will
25 be she will notice -- will recognize phone records about

1 calls between her and the defendant on the night of October
2 31st, I think that's what she is going to testify to, we were
3 given no notice of this alibi. So this witness should not be
4 asked about where the defendant was by the defense. We've
5 talked to her. She said she didn't know where he was. So
6 she --

7 MR. ROGERS: How does she know where he was? I
8 mean, if he was on the phone, obviously on the other end of
9 the phone. She can describe what she heard on the phone.
10 That's not saying where he was. And anything he said on the
11 phone about where he was has got to be hearsay.

12 MR. CRANE: Well, then, let me do this way.
13 Assuming this witness is not going to testify that she knew
14 where he was, during the conversations.

15 MR. ROGERS: I don't anticipate -- I'm not doing
16 this witness. Mr. Weis is.

17 MR. WEIS: No, I'm not going to ask her that.

18 MR. CRANE: Well, okay. Then, I mean, either side
19 can -- if that's going to be the answer, I -- and I thought
20 that was, but, you know, I mean, I'm just saying there ain't
21 no alibi. So if you want to ask her where she was.

22 MR. ROGERS: She was not in his physical presence at
23 the time --

24 MR. CRANE: Okay. So I can ask her or you can ask
25 her, "Do you know where he was?" And the answer will be no.

1 A. Oh, I live here in Columbia.

2 Q. All right. I hate to ask you this, but how old are
3 you now?

4 A. I'm 21.

5 Q. Okay. October 31st, 2001, how old would you have
6 been on that day?

7 A. I guess 17.

8 Q. And where did you reside on October 31st, 2001?

9 A. I lived in Columbia as well.

10 Q. Okay. And were you in school at that time?

11 A. Yes.

12 Q. Where did you go to school?

13 A. Rock Bridge.

14 Q. I'm sorry?

15 A. Rock Bridge.

16 Q. You got to speak up a little bit. I'm --

17 A. Sorry.

18 Q. -- kind of hard of hearing too. Okay. Rock Bridge
19 High School here in Columbia?

20 A. Yes.

21 Q. And did you know Ryan Ferguson on October 31st of
22 2001?

23 A. Yes.

24 Q. Okay. Do you know Charles Erickson?

25 A. Yes.

1 Q. And how did you know those two?

2 A. They were friends. Went to high school with them.

3 Q. You went to high school with both of them?

4 A. Yes.

5 Q. I'm going to direct your attention -- most of my
6 questions to the October 31st of 2001, night of, October
7 31st, 2001, and the early morning hours of November 1st,
8 2001. Okay?

9 A. Okay.

10 Q. Do you have any recollection of that date?

11 A. Yes.

12 Q. Of October 31st, 2001?

13 A. Yes.

14 Q. Okay. And that was Halloween of that year?

15 A. (Nodding head up and down.)

16 Q. You have to answer yes or no.

17 A. Yes. Sorry.

18 Q. Okay. Do you know whether you talked to
19 Mr. Ferguson on that date on the telephone.

20 A. Yes, I did talk to him.

21 Q. Okay. Did you own a cell phone at that time?

22 A. Yes, I did.

23 Q. Okay. Do you recall what -- and I'm not going to
24 ask you specifically what your number is, because -- what
25 your telephone number was, but did you -- do you recall what

1 your telephone number was at that time?

2 A. Yes, I do.

3 Q. Okay. Do you still have that same cell phone?

4 A. No.

5 Q. Okay.

6 MR. CRANE: As with that other one we had, with the
7 Kelly Ferguson, I don't -- I think I know the calls the
8 defense counsel's going to talk about. Insofar as the full
9 content of that document, with other calls to other people,
10 et cetera, that I don't remember, we may have to tailor the
11 exhibit.

12 MR. WEIS: That's fine.

13 MR. CRANE: But I won't object to him offering it at
14 this point for the purposes of discussing it with
15 Miss Admire.

16 MR. WEIS: And that's all I intend to do, Your
17 Honor. I'll lay a little bit more foundation here.

18 Q. I'm going to hand you, Miss Admire, what's been
19 marked as Defendant's Exhibit U. Can you look at that
20 document, please?

21 A. (Complying.)

22 Okay.

23 Q. Do you know what that document is?

24 A. A phone record.

25 Q. Okay. And is it a phone record for what phone?

1 A. It was my cell phone.

2 Q. Okay. It was the cell phone you used in October of
3 2001?

4 A. Yes.

5 Q. Okay.

6 MR. WEIS: I would offer Defendant's Exhibit U at
7 this time, Your Honor, with the stipulation that Mr. Crane --
8 we'll not publish it at this time. And we'll redact it if
9 necessary.

10 THE COURT: Exhibit U is admitted as stipulated.

11 - - -

12 Defendant's Exhibit U admitted into evidence.

13 - - -

14 Q. I want to ask you specifically, you've already
15 testified that you -- you did -- you do recall conversations
16 with Mr. Ferguson on October 31st, 2001?

17 A. Yes.

18 Q. Okay. And referencing specifically Defendant's
19 Exhibit U, do you recall what his cell phone was -- cell
20 phone number was at that time?

21 A. No, I don't.

22 Q. Okay. If you could look at Defendant's Exhibit U.

23 A. Okay.

24 Q. Do you -- well, let me ask you this. Do you know
25 whether you had -- how many conversations you had with

1 Mr. Ferguson that night?

2 A. I am not sure to exactly how many.

3 Q. Was it more than one or just one or --

4 A. It very well could have been more than one.

5 Q. Okay. I'm going to refer you to -- it's the second

6 page of Defendant's Exhibit U.

7 A. Uh-huh.

8 Q. All right. And those are phone calls coming and

9 going from that cell phone?

10 A. (Nodding head up and down.)

11 Q. Is that a yes?

12 A. Oh, yes. Sorry.

13 MR. CRANE: What cell phone?

14 MR. WEIS: From the cell phone that is represented

15 in Defendant's Exhibit U.

16 A. Yeah. It's a different number.

17 Q. You represent that that was the cell phone you used

18 at the time?

19 A. Yes. This was my cell phone.

20 Q. Okay. A phone call received at 10:28 p.m.?

21 A. Okay.

22 Q. Do you find that on that? And that's -- I'm

23 referring to October 31st, 2001.

24 A. Yes.

25 Q. And what's the -- what's the telephone number that

1 called at that point?

2 A. 573-356-6625.

3 Q. Was that -- what was the nature of the call? Was
4 that a received call or an outgoing call?

5 A. It was an incoming call.

6 Q. Okay. How long did that phone call last?

7 A. One minute.

8 Q. Again, I'm going to refer you to 11:03 on the same
9 night.

10 A. Okay. Hang on.

11 Q. Did you find that?

12 A. Yes.

13 Q. Okay. Was a phone call made at that time?

14 A. Yes.

15 Q. And what number was called?

16 A. It was the same number. 356-6625.

17 Q. 356 or 365?

18 A. 356.

19 Q. Okay. That's right. I transposed my own numbers.

20 MR. CRANE: What time did you say that was?

21 MR. WEIS: 11:03 p.m.

22 MR. CRANE: Okay. Go ahead.

23 Q. Another call at 11:34 p.m. on Defendant's Exhibit U?

24 A. Yes.

25 Q. Okay. And was that a -- what kind of call was that?

1 A. That was an incoming.

2 Q. Okay. And the telephone number that called you at
3 that time?

4 A. 356-6625.

5 Q. Okay. And how long was that telephone call?

6 A. That one was two minutes.

7 Q. Now referring to the same exhibit, but moving to
8 November 1st of 2001, did you receive a phone call at 1:41 in
9 the morning?

10 A. Yes.

11 Q. And you may have answered already. Was that a --
12 what was the nature of that telephone call?

13 A. It was an incoming.

14 Q. And how long did that phone call last?

15 A. Four minutes.

16 Q. And from what telephone number did you receive?

17 A. 356-6625.

18 Q. And did you -- you said that you remembered talking
19 to Mr. Ferguson.

20 A. Yes.

21 Q. Okay. I'm not going to ask you what the contents of
22 the conversations were. And I don't want you to even offer
23 that; okay?

24 A. Okay.

25 Q. Did -- could you -- were you able to hear any

1 background noise on the phone?

2 A. No.

3 Q. No loud noises?

4 A. (Shaking head from side to side.) Not that I
5 recall, no.

6 Q. Not that you recall. Okay. Did Mr. -- do you know
7 whether or not Mr. Ferguson contacted you or called you or --
8 through any other telephone that night?

9 A. I don't remember.

10 Q. You don't remember?

11 A. No.

12 Q. You don't -- did you receive a phone call at 2 in
13 the morning from him?

14 MR. CRANE: Judge, I'm going to object to the
15 leading nature of the question.

16 THE COURT: Sustained.

17 MR. WEIS: That's fine.

18 Q. Do you know where you spent the night on October
19 31st, 2001?

20 A. Where I spent the night?

21 Q. Yes.

22 A. Yes. At my friend Ann Churchill's house.

23 Q. What was her name?

24 A. Ann Churchill.

25 Q. Okay. And do you know whether or not Miss Churchill

1 had a cell phone at that time?

2 A. Yes, she did.

3 Q. Did you ever talk to Mr. Ferguson on that cell
4 phone?

5 A. I don't remember. I could have.

6 Q. Okay.

7 A. I really don't remember.

8 Q. That's fine. But you spent the night with her that
9 night.

10 A. Yes.

11 Q. Okay. And you recall that specifically that
12 specific night?

13 A. Yes.

14 Q. Okay. Do you recall Miss Churchill's cell phone
15 number?

16 A. No, I do not. I'm sorry.

17 Q. Let me just ask you, do you -- do you recall the
18 number 57 --

19 MR. CRANE: Judge, I'm going to object. It's a
20 leading question. He's going to sit there and give her the
21 phone number?

22 THE COURT: I don't know what the question is.

23 MR. CRANE: Okay. Well, once -- all right.

24 MR. WEIS: I was -- I was going to ask her, without
25 giving the number, I was going to ask her whether she

1 recognized this telephone number or not.

2 MR. CRANE: Well, now, how's he going to ask her if
3 she recognizes it without giving it to her? Objection.

4 MR. WEIS: Well, I'm going to --

5 MR. CRANE: The question suggests the answer.

6 MR. WEIS: No, it -- I'm asking for the -- I'm
7 asking whether she knows who the phone number went to.
8 Obviously I'm going to give her the telephone number. If I
9 gave her my telephone number, she wouldn't know it.

10 MR. CRANE: My point exactly.

11 MR. WEIS: It doesn't suggest the answer.

12 THE COURT: What is your objection, Mr. Crane?

13 MR. CRANE: The form of the question is improper.
14 Further, the witness has already stated -- I believe she
15 stated that she doesn't recall Ann Churchill's phone number.

16 THE COURT: Would you please approach the bench?

17 MR. WEIS: Sure.

18 - - -

19 Counsel approached the bench and the following
20 proceedings were held:

21 THE COURT: Is the number included in the question
22 that you're going to ask her Ann Churchill's cell phone
23 number?

24 MR. WEIS: It was. And that's why I didn't go ahead
25 and ask it.

1 THE COURT: Okay. She's already testified she
2 doesn't remember the number. If you -- I don't know Ann
3 Churchill's --

4 MR. WEIS: I don't know whether she still uses it or
5 not. That's why I didn't want to throw the number out there,
6 Your Honor.

7 MR. CRANE: I thought you were getting ready to
8 throw out the number.

9 MR. WEIS: That's why I went ahead --
10 (Counsel talking at the same time.)

11 THE COURT: All right. The objection is sustained.

12 - - -

13 The following proceedings were held in open court:

14 Q. Do you recall testifying that you recall speaking
15 with Mr. Ferguson on October 31st, sometime that night;
16 right?

17 A. Yes.

18 Q. Okay. And again, I'm not asking you -- I don't want
19 you to tell me what he said.

20 A. Okay.

21 Q. Okay? The tenor of the conversation you had with
22 him you described as?

23 A. The what?

24 Q. Well, the -- the tenor of the conversation that you
25 had with him.

1 A. I don't know if I can without saying what he said.

2 Q. And again, I don't want you to tell me what --

3 A. Yeah. It was a more serious conversation. Like, it
4 wasn't, like, just a "Hey, how you doing" type thing.

5 Q. Was it personal?

6 A. Yes. I guess that's more --

7 Q. Personal to the two of you?

8 A. Kind of. Probably more personal to me.

9 Q. Okay.

10 A. Yeah.

11 Q. Had, at this time, you and Mr. Ferguson ever had a
12 relationship?

13 A. No.

14 Q. Okay. Did it relate to any relationship with you?

15 A. No.

16 MR. CRANE: Well, Judge, I'm going to object to
17 leading question. "Did it relate to any relationship."

18 THE COURT: She's already said no. And your
19 objection's overruled as untimely.

20 MR. WEIS: That's all the questions I have, Your
21 Honor.

22 THE COURT: Do you have any questions, Mr. Crane?

23 - - -

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CROSS-EXAMINATION

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BY MR. CRANE:

Q. The -- let's see. What did we say? The last call I believe defense -- I just wanted to make sure I got this straight, Miss Admire. The last call you said from -- wasn't it from him? It was from Mr. Ferguson? The last one of the night?

A. I --

Q. 1:40 -- what is it?

A. I see one from him at -- oh, wait. No. That's the next day. Hang on a second.

Q. Yeah.

A. It was 1:41 that night.

Q. Okay. And you said it was four minutes?

A. Yes.

Q. Okay. So if the record there is accurate, it would have gotten over with at 1:45 a.m., November 1, 2001. We got that right?

A. Yes.

Q. Okay. And you were at your buddy's house?

A. Yes.

Q. You didn't go to George's that night, did you?

A. No.

Q. Did you go to Swilling's?

A. Yes.

1 Q. The Swilling party?

2 A. Yes.

3 Q. But then you didn't -- you didn't hit George's

4 afterwards?

5 A. No.

6 Q. Okay. What did you do?

7 A. I actually took a few friends home, and then I went

8 to Ann's house.

9 Q. Okay. Study?

10 A. I did -- I was doing homework that I had due the

11 next day.

12 Q. So you -- the party ended for you, and you went home

13 and studied.

14 A. Yes.

15 Q. You don't recall seeing any conflicts between

16 Charles Erickson and Ryan Ferguson, do you? No arguing or

17 anything --

18 A. No.

19 Q. -- of that nature?

20 A. No.

21 Q. And ma'am, before you looked at those phone

22 records --

23 A. Yes.

24 Q. -- did you remember the time the -- let me just

25 start there, the exact time of the call or calls that he made

1 to you?

2 A. Not the exact time, no.

3 Q. Okay. You were thinking it was at night?

4 A. I knew it was later.

5 Q. After the party?

6 A. I knew it was later. I actually was thinking
7 between 1 and 3, was what I was thinking, but.

8 Q. Okay. You don't dispute that it was from 1:41 to
9 1:45?

10 A. I mean, I don't remember that time exactly, no.

11 Q. Right. But I mean, you're not disagreeing with the
12 record.

13 A. Oh, no, I'm not saying that that's not right, yeah.
14 That sounds right.

15 Q. And Mr. Weis asked you if you heard any noise in the
16 background or anything. The -- when you started thinking
17 about that night, you know -- or Halloween of '01 and the
18 next day, when did that process of thinking about that night
19 start for you?

20 A. When the cops came and talked to me.

21 Q. Okay. After March of 2004, when --

22 A. Yeah.

23 Q. -- Ferguson and Erickson were arrested?

24 A. Yes.

25 Q. Okay. And you hadn't been dwelling on that

1 conversation or him calling you over the three years in the
2 middle, had you?

3 A. Well, there is sometimes that I was, but it was just
4 the content of the conversation, but.

5 Q. Okay.

6 A. But not at that time, no.

7 Q. Right. I mean, by 2004 --

8 A. No, I wasn't.

9 Q. -- the -- this brought it up again; correct?

10 A. Yes. Yes. Yes.

11 Q. You don't know what Mr. Ferguson, Ryan Ferguson, did
12 after you and he got done with that conversation, do you,
13 ma'am?

14 A. No.

15 Q. And you don't know who he was with at the time he
16 called you, do you, ma'am?

17 A. No.

18 Q. And you cannot tell this jury where he was at the
19 time he called you, can you, ma'am?

20 A. No.

21 MR. CRANE: No further questions.

22 THE COURT: Redirect?

23 - - -

24

25

1 REDIRECT EXAMINATION

2 BY MR. WEIS:

3 Q. Can you tell us whether or not it's possible that
4 Mr. Ferguson might have called you --

5 MR. CRANE: Objection. Calls for speculation.
6 Sorry to interrupt your question, but "if it's possible" is
7 speculation on the part of this witness, Judge.

8 THE COURT: Sustained.

9 Q. Mr. Crane asked you whether -- when you started
10 thinking about these conversations; correct?

11 A. Yes.

12 Q. And you didn't think about it until after
13 November -- March of '04, was your testimony. Is that --

14 A. Yes.

15 Q. Did you hear anything on the conversation or in the
16 background -- did you hear anything on the phone that would
17 have made you think about it before March of 2004 when the
18 police talked to you?

19 A. No.

20 Q. No noises?

21 A. No. No noises.

22 MR. WEIS: I think that's all I have.

23 THE COURT: Anything further?

24 MR. CRANE: Nothing further.

25 Thank you, ma'am.

1 THE COURT: May this witness be finally excused for
2 the defendant?

3 MR. WEIS: Yes, Your Honor.

4 THE COURT: And for the state?

5 MR. CRANE: Yes, Judge.

6 THE COURT: You're finally excused. Would ask you
7 not to discuss your testimony with any other witness. You're
8 free to leave, or if you wish to stay, you may.

9 THE WITNESS: Okay. Thank you.

10 THE COURT: You may step down.

11 You may call your next witness.

12 MR. WEIS: Let me make sure they're back here.

13 MR. ROGERS: Melissa Griggs, Your Honor.

14 THE COURT: Raise your right hand, please.

15 - - -

16 MELISSA RENEE GRIGGS,

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

18 THE COURT: If you'd take the witness stand, please.

19 - - -

20 DIRECT EXAMINATION

21 BY MR. WEIS:

22 Q. Ma'am, could you state your name for the record.

23 A. Melissa Renee Griggs.

24 THE COURT: Are you able -- are all the jurors able
25 to hear? Okay.

1 JUROR: She may want to sit a little closer.

2 THE COURT: All right. The microphone on the bench,
3 the flat black one -- no. That one. That one is -- should
4 be on. And you don't have to put your face right on it. If
5 you just move your chair a little bit and speak up, your
6 voice will carry. Thank you.

7 Q. Okay. Why don't you repeat your name for the
8 record.

9 A. Melissa Renee Griggs.

10 Q. Okay. And Miss Griggs, where do you currently
11 reside?

12 A. Columbia, Missouri.

13 Q. I'm going to ask you about some events that occurred
14 on October 31st, 2001. Do you recall that night?

15 A. I do.

16 Q. Okay. Where were you living on October 31st, 2001?

17 A. At my mom's house.

18 Q. Okay. And where does your mom live?

19 A. She --

20 Q. You don't have to give me the address.

21 A. Columbia, Missouri, 204 West Leslie Lane.

22 Q. Oh, you don't -- that's fine. You did anyway. And
23 you lived with your mom in Columbia at that time?

24 A. I did.

25 Q. And how old were you on October 31st, 2001?

1 A. 15, 16. I want to say 16.

2 Q. And were you in school?

3 A. Yes.

4 Q. Where were you in school?

5 A. Hickman.

6 Q. Hickman High School?

7 A. Yes.

8 Q. Okay. Do you know Ryan Ferguson?

9 A. Yes, I do.

10 Q. How do you know Mr. Ferguson?

11 A. He -- I played soccer with him when we were around

12 12 years old, in a rec. team. He went to West, and I had

13 known him from other friends.

14 Q. West is --

15 A. West Junior High.

16 Q. -- West Junior High?

17 A. Yeah.

18 Q. Do you know Charles Erickson?

19 A. I do, yes.

20 Q. And how do you know Mr. Erickson?

21 A. I knew him when he moved here, and he started

22 hanging out with a lot of the people that I knew. So I met

23 him through friends.

24 Q. And how long did you know Mr. Erickson before

25 October 31st of 2001?

1 A. Probably two to three years.

2 Q. Okay. That night, Halloween of October of 2001,
3 what did you do that day? Or that evening?

4 A. That evening, my ex-boyfriend, Ryan Swilling, had a
5 party at his house. So I went there and got ready. We were
6 at the party. It got broken up by the police. I left with a
7 few friends and went to By George.

8 Q. Okay. Let me stop you there. Were you dressed up
9 that night?

10 A. I was.

11 Q. Okay. And what did you dress up as?

12 A. I was a biker.

13 Q. And you said you were with some other friends. Who
14 were you with at Mr. Swilling's party?

15 A. Well, I was with friends. Lisa Waters. Friends
16 from high school. Heather Ramsey. Sara St. Romaine. There
17 was a girl named Stephanie Slay that was there with me. And
18 Jenny Westberry.

19 Q. Do you remember seeing Mr. Erickson at the party?

20 A. I don't.

21 Q. You don't remember seeing him?

22 A. No.

23 Q. Did you see Mr. Ferguson there at the party?

24 A. No.

25 Q. You said that the -- do you know what time you

1 arrived?

2 A. At the party?

3 Q. Yes.

4 A. It was probably early, like around 5 or 6.

5 Q. All right. And you said that the police had broken
6 up the party. Do you know what time that happened?

7 A. I don't. I can't recall.

8 Q. After dark?

9 A. Yes.

10 Q. Okay. Where did you go after the party? Or after
11 the Swilling party?

12 A. I got in the car with my friends Stephanie and
13 Jenny, and they drove to By George, where we went and -- went
14 inside.

15 Q. Okay. You went to By George -- By George's is a
16 bar --

17 A. Yes.

18 Q. -- is that correct? And you were how old at that
19 time?

20 A. 16.

21 Q. Okay. How did you get in the bar?

22 A. I used Stephanie's ID.

23 Q. And Stephanie's?

24 A. She was 21 at the time.

25 Q. Okay. And was she at the party with you at Ryan

1 Swilling's house?

2 A. Yes.

3 Q. Did you see Charles Erickson at By George's?

4 A. Yes.

5 Q. Did you see Ryan Ferguson?

6 A. Yes.

7 Q. Can you describe for me By George's? Sort of the
8 layout of the bar itself?

9 A. Yeah. You walk in, where they take your ID and you
10 pay. It's on the left side of the building. And then once
11 you go inside, you have to turn to the right to go towards
12 the dance floor. There's a bar that you will come to before
13 you hit the dance floor, and then there's a bar on the far
14 side of the dance floor, on the right side of the building as
15 well.

16 Q. Do you know where you saw Mr. Ferguson?

17 A. I can't recall, no.

18 Q. Do you know where you saw Mr. Erickson?

19 A. No.

20 Q. But you recall seeing them?

21 A. Yes, I do recall seeing them.

22 Q. And why is that? Why do you recall?

23 A. Because whenever I -- it was right when we first got
24 there, Erickson came up to me and asked, "Where's Ryan?"
25 Referring to my ex-boyfriend at the time. And I said that he

1 had gotten arrested. And -- and that's it. That's the
2 extent of it.

3 Q. Did you see him -- was that early on in the evening?

4 A. That was when we first got to By George. So it
5 was -- yeah, it was early.

6 Q. Did you see him any other times throughout the
7 night?

8 A. I did not.

9 Q. How long did you stay at that -- at By George's?

10 A. I stayed until 1:30.

11 Q. You say 1:30. How do you know it was 1:30?

12 A. Well, because that's when it closed, and you had to
13 leave.

14 Q. How did you know that you had to leave the bar?

15 A. Because they turned the lights on, around 1:15. And
16 the bouncers start pushing everyone out and making you leave.

17 Q. Okay. Was Mr. Ferguson wearing a costume that
18 night?

19 A. I don't know.

20 Q. How about Mr. Erickson?

21 A. I'm not sure either.

22 Q. Where did you go after By George?

23 A. I went to Stephanie Slay's house.

24 Q. Did you hang out in the parking lot of By George at
25 all?

1 A. No.

2 Q. Did you see Mr. Erickson or Mr. Ferguson leaving the
3 party?

4 A. No.

5 Q. Is this the first time you had been to By George?

6 A. No.

7 Q. No? So you had been there before October 31st,
8 2001?

9 A. Oh, was it the first time that I --

10 Q. Was that the first time you went there?

11 A. That night?

12 Q. Yes.

13 A. Yes.

14 Q. Okay. Have you been to By George's since then?
15 Since October 31st, 2001.

16 A. Yes. I think --

17 Q. My understanding it's not operating any more.

18 A. Right. No. No, it closed down.

19 Q. Have you ever been at By George's after 1:30 in the
20 morning?

21 A. No.

22 MR. WEIS: I think that's all the questions I have
23 at this time.

24 THE COURT: You may inquire.

25 - - -

CROSS-EXAMINATION

1

2 BY MR. CRANE:

3 Q. Now -- hi, Ms. Griggs. How are you doing?

4 A. I'm good. How are you?

5 Q. Oh, I'm hanging in there. On -- now, how old are
6 you now?

7 A. I'm 20.

8 Q. You going to the bars these days, are you?

9 A. Yes.

10 Q. Okay. I'll try not to run into you there. You
11 started off -- I think you said you were 15 or 16.

12 THE COURT: You need to speak out loud.

13 Q. Yeah, you got to say so for the record.

14 A. Yes.

15 Q. 15 or 16?

16 A. I was 16 years old.

17 Q. Okay. What, did you do the math?

18 A. Tried. Yeah.

19 Q. All right. And since then, before George's closed,
20 you'd gone there periodically?

21 A. No, not since they closed.

22 Q. No, no. Since -- since the first time, before it
23 closed, since the first time you went, the date we're talking
24 about October 31st, '01 --

25 A. Yes.

1 Q. -- you've been to By George's --
2 A. After that.
3 Q. -- several times; right?
4 A. Yes.
5 Q. Okay. And other bars here in town.
6 A. Yes.
7 Q. Okay. Now, on this night, October 31st, 2001, did
8 you have any alcoholic beverages?
9 A. Yes.
10 Q. And where did you start drinking?
11 A. At my ex-boyfriend Ryan's house.
12 Q. Swilling's?
13 A. Yes.
14 Q. And they had beer there?
15 A. Yes.
16 Q. Is that what you drank?
17 A. Yes.
18 Q. Did you have several beers there at Ryan's?
19 A. Yes.
20 Q. Okay. And then when you got to -- did you go right
21 from Ryan's to By George bar?
22 A. Yes.
23 Q. And when you got to the bar, you got on in, and did
24 you have some alcoholic beverages inside George's?
25 A. Yes.

1 Q. About how many -- was it still beer or did you
2 switch up?

3 A. I probably switched up.

4 Q. What did you go to? Hard liquor?

5 A. Yes.

6 Q. Okay. What did you -- what's your -- what was your
7 pleasure that evening?

8 A. An Amaretto Sour.

9 Q. Amaretto Sour. Popular drink?

10 A. Yes.

11 Q. Do you know how many of those you had as you sit
12 there today?

13 A. No.

14 Q. Okay.

15 A. Estimation, probably two.

16 Q. Okay. Two? And did you pay for those?

17 A. Yes.

18 Q. Okay. Was there also a cover charge that evening?

19 A. Yes.

20 Q. And did you pay for that yourself?

21 A. No.

22 Q. Somebody else paid for it?

23 A. Yes.

24 Q. Okay. Did you get intoxicated at some point during
25 the evening?

1 A. Yes.

2 Q. Okay. And was that time prior to when you all left?

3 I say "you all" because I'm picturing you with some buddies;

4 right?

5 A. Yes. Yes. I was intoxicated before we left.

6 Q. Okay. You don't recall what Mr. Ryan Ferguson was

7 wearing when you saw him at the bar?

8 A. No.

9 Q. And you don't recall what Chuck Erickson was wearing

10 when you saw him at the bar?

11 A. No.

12 Q. But you don't think they were in costume; is that

13 correct?

14 A. I don't know.

15 Q. Okay. Can't remember that at all.

16 A. No.

17 Q. Okay. Fair enough. You indicated you did not see

18 either of those two individuals at Swilling's --

19 A. Right.

20 Q. -- party. Your ex-boyfriend's party.

21 A. Right.

22 Q. But that you saw them both at By George bar.

23 A. Yes.

24 Q. Were they together when you saw them?

25 A. Yes.

1 Q. Okay. And when you saw them, you thought that was
2 at the early point in the evening?

3 A. Yes.

4 Q. And ma'am, thereafter did you ever see them during
5 that night, if you will, into the next morning, again?

6 A. No.

7 Q. Okay. And you indicated you had a brief
8 conversation with Mr. Erickson, but you did not at least
9 recall speaking with Ryan Ferguson that night.

10 A. Correct.

11 Q. Now, were you wearing a watch that evening?

12 A. No.

13 Q. When you have been to the bars -- and I'm really not
14 trying to get on you. You know. I mean, you shouldn't do
15 that; okay?

16 A. I know.

17 Q. But -- hey, let me ask you, you've been to the bars
18 a lot, and you've been there at closing time a lot.

19 A. Yes.

20 Q. Okay. And the -- what happens is, is they -- you
21 leave when the lights come up? At least that's the way they
22 had it at George's?

23 A. Well, yeah. They'll turn the lights on usually
24 around 1:15.

25 Q. Okay.

1 A. That's when they stop selling you alcohol. You'll
2 need to stop drinking what you're drinking, throw it away,
3 and they want you out of the building.

4 Q. Okay. Now, when you left at that time, where did
5 you go?

6 A. I went straight to Stephanie's car, and then went to
7 Stephanie's house with her.

8 Q. Okay. Ma'am, you don't know what Ryan Ferguson or
9 Chuck Erickson did after you last saw them, do you?

10 A. No.

11 Q. And you don't know who was inside George's bar after
12 you left; isn't that correct?

13 A. That's correct.

14 Q. You didn't have any trouble getting in, did you?

15 A. No.

16 Q. Did you have some photographs of the party at
17 Swilling's?

18 A. I did, yes.

19 Q. When you looked at those -- have you looked at those
20 recently?

21 A. Yes.

22 Q. Did they help you, when you've looked at those,
23 remember a little bit more about that night?

24 A. Yes.

25 Q. Okay. And maybe some details you'd forgotten, you

1 were able to remember those by the photographs you saw?

2 A. Yes.

3 Q. Okay. Like the exact outfit you had on?

4 A. Yes.

5 Q. Or what somebody else was wearing?

6 A. Yes.

7 Q. And it brought other memories back to you?

8 A. Yes.

9 Q. Now those were accurate memories.

10 A. Yes.

11 Q. But you'd forgotten them.

12 A. Yes.

13 Q. Before you saw the photographs.

14 A. Yes.

15 Q. Something that jogged your memory.

16 A. Yes.

17 MR. CRANE: No further questions, Your Honor.

18 THE COURT: Redirect?

19 - - -

20 REDIRECT EXAMINATION

21 BY MR. WEIS:

22 Q. Miss Griggs, do you remember the lights coming up at

23 By George's on October 31st, 2001?

24 A. Can you repeat that?

25 Q. Do you remember the lights coming up at the By

1 George bar --

2 A. Yes.

3 Q. -- on October 31st, 2001?

4 A. Yes.

5 Q. Is that an accurate memory?

6 A. Yes.

7 Q. Were other people leaving at the same time you were

8 leaving?

9 A. Yes.

10 Q. Lots of people or --

11 A. Yeah. A majority of the people that were there were

12 going out the door.

13 Q. Okay. And was the music still playing when the

14 lights go up?

15 A. No.

16 Q. Did you get any drinks after the lights went back

17 up?

18 A. No.

19 Q. And your experience, you have to leave at 1:30, at

20 bars in Columbia.

21 A. Yes.

22 MR. WEIS: That's all the questions I have.

23 THE COURT: Anything further?

24 MR. CRANE: Nothing further.

25 Thank you, ma'am.

1 THE COURT: May this witness be finally excused?

2 MR. WEIS: Yes, Your Honor.

3 THE COURT: For the state?

4 MR. CRANE: Yes.

5 THE COURT: Miss Griggs, you're excused. You will
6 not discuss your testimony with any other witnesses to be
7 called, but you're free to go.

8 THE WITNESS: Okay.

9 THE COURT: Thanks.

10 You may call your next witness.

11 MR. WEIS: Call Kris Canada.

12 THE COURT: Raise your right hand, please.

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