

VOLUME FIVE OF EIGHT VOLUMES

15698

THE STATE OF SOUTH CAROLINA IN THE COURT OF APPEALS

Appeal from York County
Honorable John C. Hayes, III, Circuit Court Judge

Case No 2004-GS-46-2614
2004-GS-46-3232,200,3233,3234,196-199,

The State,

Respondent,

versus

~~Billy Wayne Cooper~~

James Edward Sanders

Appellant

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1 THESE LETTERS BEFORE THE POLICE DEPARTMENT COULD GET
2 THERE THE NEXT MORNING, SIR AND THAT WOULD BE
3 MR DAVID WOOD

4 Q OKAY YOU WANT TO, COULD YOU STEP DOWN HERE
5 COULD WE HAVE THE LIGHTS PLEASE

6 (THE WITNESS EXITS THE WITNESS STAND
7 AT 06 26 PM)

8 Q NOW MS SIMMONS, YOU'VE TESTIFIED THAT THESE ARE
9 LETTERS THAT MR COPE SENT TO YOU WHILE HE WAS IN
10 PRISON, IS THAT RIGHT?

11 A I WOULD HAVE TO SEE EACH SPECIFIC ONE YES, HE
12 DID WRITE ME LETTERS

13 Q OKAY AND THIS ONE, WOULD YOU OPEN THAT LETTER
14 PLEASE?

15 A SURE

16 Q WOULD YOU AGREE WITH ME, TAKE A LOOK AT IT AND
17 BE SURE, WOULD YOU AGREE WITH ME THAT IS A COPY OF
18 THAT LETTER YOU HOLD IN YOUR HAND RIGHT THERE

19 A IT APPEARS BUT THERE IS SOME STAMPS AND SOME
20 MARKINGS ON THIS ONE THAT AREN'T ON THAT ONE I
21 DON'T KNOW IF THAT'S --

22 Q OKAY HERE I WANT YOU TO DO SOMETHING FOR ME
23 WOULD YOU COME OVER HERE PLEASE TO THE LETTER
24 NOW YOU SEE THAT PHRASE OVER THERE THAT I'VE
25 UNDERLINED I HOPE THAT YOU ARE NOT MAD, HURT, OR

1 ANGRY?

2 A UH-HUH

3 Q DO YOU SEE THAT ANYWHERE IN HERE? WHAT ABOUT
4 RIGHT HERE?

5 A YEAH

6 Q HOW ABOUT HIGHLIGHTING THAT ARE FOR ME, JUST
7 WITH THE HIGHLIGHTER ALL THE WAY THROUGH IT PLEASE
8 THERE YOU GO COULD WE MAYBE DO IT A LITTLE BIT
9 BETTER THAN THAT THERE YOU GO AND DO YOU SEE THAT
10 RIGHT UNDER IT, I JUST FELT YOU SHOULD KNOW, DO YOU
11 SEE THAT ANYWHERE IN THERE HIGHLIGHT THAT FOR ME?

12 A (COMPLIES)

13 Q SO THOSE TWO ARE RIGHT TOGETHER IN THAT LETTER
14 AND THEY ARE RIGHT TOGETHER IN THIS LETTER, ISN'T
15 THAT RIGHT?

16 A THAT'S CORRECT

17 Q OKAY AND DO YOU SEE THAT UP THERE THAT SAYS
18 PLEASE DON'T STOP WRITING?

19 A UH-HUH

20 Q WHAT DO YOU THINK RIGHT THERE? IS THAT IN THAT
21 LETTER TOO?

22 A WELL, IT'S CUT OFF YES BUT I CAN ALSO TELL FROM
23 LOOKING AT THE LETTERS AND THE MAJORITY OF THE
24 LETTERS HAVE THE SAME THINGS AND WORDS ALL THE WAY
25 THROUGH THEM MULTIPLE TIMES SO

1 Q OKAY THAT'S FINE NOW LET'S HAVE IT BACK
2 WAIT I GOT ONE MORE I MISSED IT RIGHT AT THE
3 BOTTOM LET ME SEE THAT PLEASE WOULD YOU AGREE
4 THAT THAT PHRASE FITS INTO THIS LETTER, THAT PHRASE
5 RIGHT THERE, I HAVE TO GET ON WITH MY LIFE, RIGHT
6 THERE AT THE BOTTOM OF THE LINE I MEAN OF THE PAGE?

7 A IT'S IN HERE WHERE?

8 Q WELL, ISN'T IT AT THE BOTTOM OF THAT LETTER?

9 A I'M SORRY IT'S FOLDED

10 Q RIGHT THERE?

11 A YES

12 Q ISN'T IT RIGHT AT THE BOTTOM OF THAT LETTER
13 RIGHT THERE WHY DON'T YOU HIGHLIGHT THAT FOR ME
14 TOO

15 A (COMPLIES)

16 Q OKAY NOW THANK YOU HOLD ON WILL YOU OPEN
17 THAT LETTER FOR ME PLEASE

18 A YES, SIR

19 Q WOULD YOU AGREE WITH ME THAT THE FOURTH PAGE OF
20 THAT LETTER, THAT THIS IS THE FOURTH PAGE OF THAT
21 LETTER, LOOK AT THE TOP AND MAKE SURE IT IS THE SAME
22 JESUS LEFT THE EARTH, SO FORTH, RIGHT?

23 A THESE ARE ACTUALLY TWO LETTERS IN ONE ENVELOPE

24 Q OKAY WELL YOU FIND THE ONE THAT I'M TALKING
25 ABOUT THAT SAYS JESUS LEFT THE FARTH AT THE TOP?

1 A NO, SIR I MUST HAVE THE WRONG ONE

2 Q I BELIEVE I DO HAVE THE WRONG LETTER SO WE'LL GO
3 ON TO ANOTHER LETTER OPEN THIS LETTER FOR ME YOU
4 CAN HAVE THE ENVELOPE BACK DO YOU SEE PAGE SEVEN
5 THERE IT STARTS OUT A LONG TIME

6 A UH-HUH

7 Q YOU SEE THAT?

8 A I DO

9 Q OKAY AND DO YOU SEE WHAT I'VE UNDERLINED IN
10 THAT LETTER I WISHED HE HAD CREEPED INTO MY HEAD?

11 A IN MY BEDROOM OR

12 Q I WISH HE HAD CREEPED INTO MY BEDROOM AND KILLED
13 ME INSTEAD I WISHED HE HAD CREEPED INTO MY HEAD,
14 NOT MY BEDROOM, AND KILLED ME INSTEAD ISN'T THAT
15 RIGHT THERE IN THAT LETTER?

16 A I SEE THAT'S NOT WHAT THIS LETTER SAYS

17 Q WELL, IT'S ONE WORD OFF, ISN'T IT? I WISH THAT
18 HE HAD CREEPED INTO MY HEAD AND KILLED ME INSTEAD
19 THAT'S ALMOST THE EXACT SAME THING THAT'S UP THERE,
20 ISN'T THAT RIGHT?

21 A BUT THAT SENTENCE GOES ON BUT YES

22 Q BUT THAT PHRASE IS IN THERE?

23 A UH-HUH

24 Q OKAY I WANT YOU TO HIGHLIGHT THAT ON THERE FOR
25 ME LET ME HAVE THAT ENVELOPE BACK PLEASE

1 A (COMPLIES)

2 Q WOULD YOU OPEN THAT LETTER PLEASE IS THIS --
3 DO YOU KNOW THE POST MARK ON THAT DATE?

4 A IF THIS IS THE RIGHT ENVELOPE IT SAYS APRIL 14,
5 2004

6 Q RIGHT OKAY

7 A THERE IS NO DATE ON THE LETTER

8 Q AND -- WELL, I MEAN, IS IT NOT POST MARKED?

9 A YES I'M JUST SAYING TO YOU, I DON'T KNOW
10 THERE IS NO DATE ON THE LETTER

11 Q ALL RIGHT NOW DO YOU SEE THAT, IS THAT A COPY
12 OF THAT LETTER RIGHT THERE? COPY OF THAT PAGE?

13 A UH-HUH

14 Q OKAY AND THERE IS SOME PHRASES, THERE IS SOME
15 PHRASEOLOGY IN HERE AT THE TOP AS ALWAYS COMES OUT
16 VICTORIOUS?

17 A UH-HUH WELL, THIS IS CAME OUT I DON'T KNOW

18 Q OKAY IS THAT ALSO IN THIS LETTER?

19 A YEAH

20 Q YOU WANT TO HIGHLIGHT THAT FOR ME

21 A (COMPLIES)

22 Q AND DOWN AT THE BOTTOM OF THAT PAGE I CAUGHT
23 MYSELF PRAISING THE LORD YOU SEE THAT IN THERE?

24 A NOT YET

25 Q RIGHT WHERE I HAVE IT IT'S TOWARD THE BOTTOM,

662005

1 MS SIMMONS

2 A YEAH

3 Q OKAY AND ISN'T THAT RIGHT UP THERE I CAUGHT
4 MYSELF PRAISING THE LORD?

5 A UH-HUH

6 Q OVER ALL RIGHT WE CAN DO THAT GO AHEAD AND
7 HIGHLIGHT I CAUGHT MYSELF PRAISING THE LORD OVER

8 A (COMPLIES)

9 Q AND SAYS I QUESTIONED GOD YOU SEE THAT?

10 A UH-HUH

11 Q OKAY AND YOU SEE THAT IN THERE?

12 A RIGHT

13 Q QUESTION GOD, THERE YOU GO NOW DO IT GOOD SO
14 WE CAN SEE HERE LET ME HELP ALL RIGHT AND THEN
15 OVER THE ENDING, IS THAT IN THERE?

16 A WROTE THE ENDING ONCE

17 Q HERE IT IS RIGHT THERE, OVER THE ENDING, WANT TO
18 HIGHLIGHT THAT YOU SEE IT THERE ON THE LETTER OVER
19 THE ENDING?

20 A I SEE DIFFERENT THINGS BUT YOU'RE READING WHOLE
21 SENTENCES THAT AREN'T TOGETHER WHOLE

22 Q YES, MA'AM, I'M PUTTING TOGETHER THE PHRASE IS
23 WHAT I'M TRYING TO DO GO AHEAD AND DO THAT

24 A (COMPLIES)

25 Q OKAY OPEN THAT LETTER PLEASE YOU SEE THE

002006

1 THING THAT SAYS I HAVE BEEN THINKING ABOUT, I BELIEVE
2 THAT WOULD BE PAGE TWO, CORRECT?

3 A REFERRING TO WHERE UP THERE?

4 Q MA'AM?

5 A I'M SORRY I DIDN'T

6 Q DO YOU SEE THE PART THAT I'VE UNDERLINED IN THE
7 EXAMPLE THERE, THAT'S IN THAT LETTER, ISN'T IT?

8 A IT IS AND IT'S IN MULTIPLE OTHER ONES TOO

9 Q HOW IS BRIAN AND JAMIE I DON'T KNOW IF THEY
10 REMEMBER ME OR NOT?

11 A AND THAT'S IN THREE OR FOUR LETTERS

12 Q AND I BELIEVE THAT IS RIGHT THERE

13 A THAT'S A COMMON PHRASE THAT HE USES A LOT

14 Q UH-HUH SO THAT'S IN THERE TOO, RIGHT?

15 A UH-HUH

16 Q WAS THAT IN THERE?

17 A YES

18 Q THANK YOU ONE THAT'S POST MARKED 5-7?

19 A UH-HUH

20 Q WOULD YOU OPEN THAT PLEASE IS THIS THE ONE
21 THAT HAS THIS BIG WRITING THAT SAYS INTERMISSION ON
22 IT YEAH, RIGHT THERE SEE THAT?

23 A I DO

24 Q OKAY DO YOU SEE THE PART THAT I'VE GOT
25 UNDERLINED, GOT MY FEELINGS HURT WHEN I TALKED TO?

1 A I SEE IT

2 Q DOES THAT SHOW UP IN HERE TOO?

3 A I'M SURE IT DOES

4 Q I GOT MY FEELINGS HURT WHEN I TALKED TO?

5 A YUP

6 Q MARK IT GOOD

7 A (COMPLIES)

8 Q I WANT TO MAKE SURE THE JURY CAN SEE THERE YOU

9 GO HERE'S ANOTHER LETTER CAN'T FIND THAT SET

10 THAT ASIDE FOR JUST A MOMENT

11 MR BAITY BEG THE COURT'S INDULGENCE

12 JUST A MOMENT PLEASE

13 Q YOU RECOGNIZE THIS LETTER?

14 A UH-HUH

15 Q IS THAT A LETTER YOU RECEIVED FROM MR COPE?

16 A YES, IT IS

17 MR BAITY I'M SORRY, YOUR HONOR

18 Q OKAY HERE WE CAN LET ME SEE THAT ENTIRE

19 LETTER DO YOU RECOGNIZE THIS LETTER?

20 A UH-HUH

21 Q THERE IS THE ENVELOPE?

22 A OKAY

23 Q ALL RIGHT

24 A YES

25 Q OKAY AND IF YOU LOOK ON THE TOP IT STARTS I

002008

1 CANNOT LIVE A LIE, IS THAT RIGHT?

2 A THIS IS AT TOP OF THE LETTER?

3 Q OR ALONE I'M SORRY AND THERE IS SOME PHRASES
4 IN THERE I HOPE YOU DON'T MIND THE DRAWINGS ON THE
5 ENVELOPES, IS THAT IN HERE?

6 A I KNOW THAT WAS IN A LOT OF LETTERS --

7 Q SO YOU SEE IT IN THERE --

8 A ---AND SAY I HOPE YOU DON'T MIND

9 Q I HOPE YOU DON'T MIND THE DRAWINGS ON THE
10 ENVELOPES LET'S MARK THAT ONE PLEASE

11 A (COMPLIES)

12 Q AND THE PHRASE MY ATTORNEYS, SEE THAT IN THERE?

13 A PRETTY COMMON PHRASE FOR SOMEBODY IN TROUBLE

14 Q ALL RIGHT NOW MARK IT GOOD PLEASE?

15 A (COMPLIES)

16 Q RECOGNIZE THAT LETTER?

17 A I DO

18 Q THIS IS A PAGE FROM IT?

19 A YES

20 Q OKAY AND YOU RECOGNIZE ANY PHRASES ON THAT? I
21 MEAN, SEE WHAT I UNDERLINED --

22 A IT'S UNDERLINED, YES

23 Q UH-HUH HAS ALWAYS CAME OUT VICTORIOUS, RIGHT?
24 WE'VE ALREADY DONE THAT RIGHT?

25 A IT'S ALREADY BEEN IN TWO SEPARATE LETTERS

002009

1 Q OKAY WELL, NOW IS THAT WHAT THAT IS?

2 A YOU'VE ALREADY SHOWED ME ANOTHER LETTER WITH
3 THAT IN IT

4 Q NO, ACTUALLY THIS IS THE SAME ONE I CAUGHT
5 MYSELF PRAISING THE LORD ON THAT TOO, ISN'T IT?
6 ISN'T THAT IN THERE, SO I ALREADY SHOWED THIS ONE TO
7 YOU?

8 A I'M SURE BECAUSE IT'S IN MULTIPLE LETTERS

9 Q WELL, THEN YOU CHECK THAT?

10 A NO, THAT'S FINE

11 Q THIS IS ONE I'M SORRY WE'VE ALREADY GONE
12 THROUGH THAT ONE

13 MR BRACKETT ARE THESE LETTERS ENDING UP
14 IN SAME ENVELOPES?

15 A I'VE SEEN SOME OF THEM TWICE

16 MR BRACKETT I SEE SEVERAL OF THEM OUT
17 OF THE ENVELOPES I'M NOT SURE

18 Q DO YOU RECOGNIZE THAT SIGN OFF PHRASE THERE?

19 A I DO

20 Q DOES THAT NOT APPEAR IN OUR LETTER RIGHT THERE
21 ON THE SECOND PAGE

22 A IT MAY BE IT APPEARS IN MANY OF HIS LETTERS

23 Q YOU SURE?

24 A I BELIEVE SO, YEAH YOU DON'T HAVE ALL OF THEM
25 THAT'S A STANDARD PHRASE

002010

1 Q OKAY I WANT YOU TO JUST GIVE ME ONE SECOND

2 MR BAITY YOUR HONOR, I APOLOGIZE

3 WE'VE GOT THE EXHIBITS CONFUSED RIGHT NOW

4 THE COURT LET ME LET THE JURY GO TO THE

5 JURY ROOM AND WE WILL TRY TO GET IT STRAIGHT

6 MR BAITY THANK YOU

7 (THE JURY EXITS THE COURTROOM AT 06 55
8 PM)

9 (COURT'S IN RECESS AT 06 55 PM)

10 (COURT RESUMES AT 07 06 PM)

11 MR BAITY I APOLOGIZE, YOUR HONOR

12 THEY GOT SHUFFLED A LITTLE BIT FROM THE LAST TIME I

13 SAW THEM I THOUGHT WE WERE GOING TO MARK THEM ALL

14 FOR IDENTIFICATION BEFORE SHE WAS CALLED, BUT I'M

15 SORRY I WASN'T READY I'M READY NOW

16 THE COURT THE BIG QUESTION NOW IS ARE

17 YOU READY?

18 MR BAITY I AM READY RIGHT NOW

19 THE COURT BRING IN THE JURY

20 (THE JURY RETURNS TO THE COURTROOM AT
21 07 07 PM)

22 MR BAITY PLEASE THE COURT AGAIN I

23 APOLOGIZE CAN WE HAVE THE LIGHTS PLEASE

24 Q MS SIMMONS, CAN YOU COME DOWN AGAIN YOU

25 RECOGNIZE THIS LETTER?

002011

1 A I DO

2 Q WOULD YOU OPEN IT PLEASE?

3 A (COMPLIES)

4 Q WOULD YOU AGREE WITH ME THAT THIS IS A COPY OF

5 THE FIRST PAGE OF THAT LETTER?

6 A UH-HUH

7 Q AND LET'S JUST TAKE A SENTENCE GOD IS GOING TO

8 REMOVE HIS SERVANT YOU SEE THAT IN THAT LETTER?

9 A UH-HUH

10 Q YOU SEE THAT IN HERE ANYWHERE? WHAT ABOUT RIGHT

11 THERE?

12 A YUP

13 Q MARK IT GOOD SO THE JURY CAN SEE IT OKAY

14 LET'S GO ON UPSTAIRS TO TELL YOU THAT, WHAT ABOUT

15 RIGHT THERE?

16 A TO TELL THAT YOU?

17 Q TO TELL YOU THAT, YES, MA'AM THAT'S RIGHT

18 THERE, ISN'T IT?

19 A (COMPLIES)

20 Q OKAY AND STANDING OVER HER I SAW YOU SCREAM,

21 IS THAT IN THERE?

22 A YES

23 Q ISN'T THAT RIGHT THERE FILL THAT IN

24 A THIS SAYS HER SCREAM THIS SAYS YOU SCREAM

25 Q YES, MA'AM, IT'S CLOSE

002012

1 A JUST LEAVE THE WORD OUT?

2 Q IF YOU WANT PLEASE DO IT SO THE JURY CAN SEE
3 IT IF YOU DON'T MIND OKAY I DIDN'T REALIZE WHAT
4 I SAW UNTIL AFTER PASTOR POWELL TOLD ME THAT SHE WAS
5 DEAD IS THAT SENTENCE, DOES IT APPEAR IN ITS
6 ENTIRETY RIGHT HERE IN THE SO CALLED CONFESSION
7 LETTER?

8 A ACTUALLY NO THERE IS WORDS THAT ARE DIFFERENT
9 AT THE END PARTS OF IT, BUT THERE ARE WORDS THAT
10 ARE DIFFERENT

11 Q FEEL FREE TO NOT MARK THOSE?

12 A I MEAN IT'S YOUR BOARD, YOU TELL ME WHAT TO
13 MARK

14 Q NO, MA'AM

15 A BUT IT'S DIFFERENT

16 Q I WANT YOU TO MARK WHAT'S, THAT SHOWS UP ON THE
17 LETTER TOLD ME THAT SHE WAS DEAD OKAY

18 A ABOUT THERE

19 Q OKAY IF YOU USE THE EDGE IT DOES BETTER LIKE
20 THAT INSTEAD OF JUST THE TIP IF YOU DON'T MIND

21 A OKAY

22 Q AND THEN I JUST WANT TO KNOW IF GOD WAS TRYING
23 TO SHARE WITH ME BEFORE IT HAPPENED SEE THAT
24 ANYWHERE IN THERE? WHAT ABOUT RIGHT THERE I JUST
25 WANT TO KNOW IF GOD WAS TRYING TO SHARE WITH ME

002013

1 BEFORE IT HAPPENED USE THE EDGE PLEASE,
2 MS SIMMONS THERE YOU GO?
3 A (COMPLIES)
4 Q ALL RIGHT CAN I HAVE THAT LETTER BACK
5 RECOGNIZE THAT LETTER?
6 A UH-HUH
7 Q TAKE A LOOK AT IT PLEASE WOULD YOU AGREE THAT
8 THAT'S PAGE THREE OF THAT LETTER?
9 A YES
10 Q NOW I DIDN'T KNOW WHICH WAY THAT I SHOULD TO
11 TURN
12 A THIS IS A POEM HE WROTE THAT HE SHARED SEVERAL
13 TIMES
14 Q UH-HUH OKAY I DON'T KNOW WHICH WAY THAT I
15 SHOULD TURN?
16 A IT'S A LITTLE DIFFERENT STILL, DIFFERENT WORDS,
17 BUT YOU TELL ME WHAT YOU WANT HIGHLIGHTED
18 Q OKAY DON'T INSTEAD OF DIDN'T?
19 A WELL, I DON'T KNOW HOW DIFFERENT BUT YOU TELL ME
20 WHAT YOU WANT
21 Q WELL, I'M LOOKING AT LETTERS AND HOW WORDS ARE
22 FORMED, OKAY ALL RIGHT WHAT ABOUT MY GIRLS WERE
23 RETURNED TO THE SPOT WHERE THEY BELONG RIGHT THERE
24 A MY GIRL
25 Q JUST LEFT THE 'S' OFF OKAY AND THEN TWO

002014

1 OTHER WORDS YOU DON'T SEE A WHOLE LOT OF, SCOFFING
2 THAT APPEARS IN HERE, DOESN'T IT?

3 A THIS PART ALSO

4 Q UH-HUH YOU SAY THAT IN THE LETTER ANYWHERE?
5 WHAT ABOUT THAT RIGHT THERE?

6 A (COMPLIES)

7 Q AND MY ENEMIES RIGHT THERE ON THE TOP PART
8 RIGHT THERE MY ENEMIES

9 A (COMPLIES)

10 Q OKAY LET ME HAVE THAT LETTER BACK PLEASE
11 RECOGNIZE THIS LETTER?

12 A I DO

13 Q PLEASE OPEN IT AND TAKE A LOOK AT IT CAN YOU
14 FIND THAT IN THERE I DON'T KNOW WHAT PAGE IT IS
15 LOOKS LIKE IT'S PAGE FOUR OF THE LETTER SEE THAT AT
16 THE BOTTOM, THE STORY WAS GOING TO END ON A HAPPY
17 NOTE?

18 A UH-HUH

19 Q THE STORY WAS NOT GOING TO END ON A HAPPY NOTE
20 YOU WANT TO JUST LEAVE THE NOT OUT?

21 A YOU TELL ME I'M DOING WHAT YOU ARE TELLING ME
22 TO DO

23 Q I JUST WANT YOU TO DO, WHAT MATCHES I WANT YOU
24 TO FILL IN THAT'S WHAT I WANT YOU TO DO

25 A OKAY WELL, I HAVE ALREADY HIGHLIGHTED THINGS

002015

1 BEFORE THAT DIDN'T MATCH, SO HOWEVER YOU WANT TO DO
2 IT

3 Q OKAY

4 A (COMPLIES)

5 Q AND THEN GO TO THE FIRST PART OF THAT LETTER
6 PAGE ONE WHERE IT SAYS AMY, JUST PLEASE FORGIVE ME,
7 RIGHT?

8 A NO THIS IS THE WRONG LETTER I THINK WE
9 ALREADY DID THAT ONE

10 Q I WILL SET THAT ASIDE FOR THE MOMENT SEE RIGHT
11 TOWARD THE END

12 A OKAY

13 Q OKAY GOD TOLD ME?

14 A THERE IS GOD TOLD ME, GOD TOLD ME, GOD TOLD ME,
15 YEAH

16 Q RIGHT THERE, RIGHT?

17 A UH-HUH

18 Q OKAY

19 A (COMPLIES)

20 Q HAVE THE LETTER BACK WOULD YOU PUT THEM BACK
21 IN THE ENVELOPE SO I DON'T GET THEM MIXED UP PLEASE

22 A OKAY

23 Q THANK YOU THIS LETTER

24 A OKAY

25 Q LOOKS LIKE THAT'S ON PAGE 11, A LONG ONE?

002016

1 A OKAY

2 Q KIND OF AN UNUSUAL PHRASE I NEED TO TELL YOU
3 THAT, IS THAT THERE?

4 A WAIT A MINUTE I NEED TO ALSO TELL YOU, YES

5 Q ALL RIGHT HE JUST LEFT ALSO OUT HIGHLIGHT
6 THAT PLEASE?

7 A I NEED TO TELL YOU THAT?

8 Q YES, MA'AM

9 A (COMPLIES)

10 Q THEN IN THE SAME LETTER A CERTAIN POLICE WOMAN?

11 A YEAH, HE USED THAT SEVERAL TIMES REFERENCING
12 CHARLENE BLACKWELDER

13 Q THAT'S FINE

14 A THAT WAS HIS CODE FOR HER SO HE DIDN'T HAVE TO
15 SAY HER NAME

16 Q ALL RIGHT YOU WANT TO PUT THAT BACK UP JUST
17 KIND OF UNDERLINED IT RIGHT THERE INSTEAD OF
18 HIGHLIGHTED JUST ONE MOMENT PLEASE THE LAST ONE
19 DO YOU RECOGNIZE THIS LETTER?

20 A I DO

21 Q IS THAT ONE YOU GOT FROM MR COPE?

22 A IT IS

23 Q ALL RIGHT IS THAT A COPY OF THE FIRST PAGE?

24 A IT APPEARS TO BE, YEAH

25 Q OKAY THEN THERE IS A PHRASE I'VE UNDERLINED

002017

1 PLEASE FORGIVE ME

2 A I THINK WE DID THAT ONE ALREADY

3 Q WELL, NO, WE DIDN'T THERE IT IS

4 A WE'VE SEEN IT I GUESS IT'S IN, ANOTHER LETTER
5 MENTIONED IT

6 Q NOW WOULD YOU AGREE WITH ME, MS SIMMONS, THAT
7 EXCEPT FOR -- THANK YOU

8 A YOU'RE WELCOME

9 Q EXCEPT FOR AMANDA IS IN THE LORD STREETS,
10 VIRTUALLY EVERY OTHER SENTENCE IN THIS LETTER HAS
11 BEEN HIGHLIGHTED AND A FEW WORDS ARE LEFT OUT HERE
12 AND THERE?

13 A WITHOUT I KILLED AMANDA, SECRETLY, SOME ANDS,
14 NOTS, AND IN THE LORD'S STREETS

15 Q SO ONE TWO?

16 A DON'T

17 Q YOU WANT TO COUNT?

18 A WELL, SOME OF THE WORDS WE HIGHLIGHTED THAT
19 WEREN'T, THAT WERE DIFFERENT I MEAN WE HAVE GO BACK
20 AND NOT HIGHLIGHT THOSE

21 Q BUT YOU WOULD ADMIT, WOULD YOU NOT, THAT
22 VIRTUALLY THE WHOLE LETTER WAS VERY SIMILAR TO
23 PHRASES THAT WERE FOUND --

24 A AS WERE ALL HIS LETTERS, YES --

25 Q ---AND SOMETIMES --

002018

1 THE COURT LET'S DO ONE PERSON AT A TIME
2 WHEN YOU ASK A QUESTION LET HER ANSWER BEFORE YOU
3 START

4 A CAN I SIT A BACK DOWN

5 THE COURT AND LET'S TURN THE LIGHTS ON
6 MR BRACKETT CAN WE MOVE THAT EXHIBIT
7 IT'S IN MY VIEW

8 Q ABSOLUTELY

9 MR BRACKETT SHE WAS IN THE PROCESS OF
10 EXPLAINING THE ANSWER TO THE LAST QUESTION I ASK
11 SHE BE GIVEN THE OPPORTUNITY TO FINISH

12 THE COURT YOU WANT TO FINISH YOUR
13 ANSWER, PLEASE MA'AM

14 A I BELIEVE --

15 MR BAITY SIR?

16 THE COURT I ASKED HER TO FINISH HER
17 ANSWER

18 A I BELIEVE YOUR QUESTION WAS DIDN'T A LOT OF THE
19 STATEMENTS THAT WERE HIGHLIGHTED APPEAR IN HIS
20 LETTERS AND I ANSWERED YOU YES AND I BELIEVE THOSE
21 THINGS WERE MULTIPLE LETTERS AND I THINK WE LOOKED AT
22 SOME OF THE SAME LETTERS, THAT IS TINKER'S STYLE OF
23 SPEAKING, THAT'S HOW HE SPEAKS, AND HOW HE
24 COMMUNICATES, SO YEAH, THAT'S VERY SIMILAR TO A LOT
25 OF THE LETTERS THAT I RECEIVED FROM HIM

002019

1 Q BUT DO YOU FIND IT A LITTLE STRANGE THAT THE
2 WHOLE LETTER, I MEAN, JUST GIANT FULL SENTENCES WOULD
3 BE LIFTED OUT?

4 A NO, I DON'T BECAUSE A LOT OF HIS, AGAIN A LOT
5 HIS WRITING WAS THE SAME AND ACTUALLY YOU HAD STATED
6 TO ME EARLIER THAT YOUR THEORY WAS THAT SOMEBODY
7 INTERCEPTED THE LETTERS IN THE JAIL AND COPIED THEM
8 AS AN INFORMANT AND A WORKER FOR CHARLENE
9 BLACKWELDER, SO APPARENTLY YOUR FIRST THEORY IS
10 SOMEBODY IN JAIL DID IT AND NOW YOU HAVE ANOTHER
11 THEORY, BUT NO, I THINK HE WROTE THAT

12 Q BUT WHAT YOU HAD WAS YOU HAD A 11 OR 12 LETTERS
13 FROM MR COPE, DID YOU NOT?

14 A I HAD MORE THAN THAT YES, I HAD A LOT OF
15 LETTERS

16 Q A LOT OF LETTERS?

17 A ABSOLUTELY

18 Q WHICH COULD PROVIDE PERFECT MODELS TO PUT
19 TOGETHER THE SENTENCES THAT ARE IN THAT LETTER?

20 A THAT I DON'T KNOW BECAUSE I DIDN'T PUT ANYTHING
21 TOGETHER CAN I FINISH

22 Q SURE YOU CAN?

23 A AS YOU KNOW I'VE BEEN SUPPORTIVE OF MR COPE,
24 HIS FAMILY, EMOTIONALLY, SPIRITUALLY, FINANCIALLY,
25 AND I WOULD HAVE NO REASON TO DO ANYTHING BUT SUPPORT

1 HIM IT WAS VERY DIFFICULT FOR ME TO COME FORWARD
2 AND DO THIS AND IN FACT LIKE I SAID I GAVE YOU GUYS
3 SIX MONTHS WITH THE FIRST LETTER NOT EVEN IN MY
4 POSSESSION BEFORE I MADE THE DECISION TO HAVE TO GO
5 FORWARD, SO IT'S BEEN A REAL HARD TIME FOR ME

6 Q YES, MA'AM ALL RIGHT NOW IT'S YOUR
7 TESTIMONY, IS IT NOT, THAT THIS LETTER THAT'S BLOWN
8 UP OVER THERE THAT SAYS GOD TOLD ME TO TELL YOU THAT
9 I KILLED AMANDA?

10 A UH-HUH

11 Q CAME IN THE ENVELOPE THAT IS ATTACHED TO THAT,
12 IS THAT CORRECT?

13 A THAT IS CORRECT I PUT THAT, I PUT THE LETTER
14 WITH THE ENVELOPE IN MY GLOVE COMPARTMENT AND LOCKED
15 IT IN MY CAR, KEPT IT LOCKED IN MY CAR AND IN MY
16 POSSESSION AT ALL TIMES BECAUSE I HAD PEOPLE TRYING
17 TO GET THAT LETTER FROM ME

18 Q ALL RIGHT AND MS SIMMONS, THIS IS THE LAST
19 LETTER YOU EVER RECEIVED FROM BILLY WAYNE COPE, ISN'T
20 IT?

21 A THAT I'M NOT SURE OF THERE MAY HAVE BEEN ONE
22 AFTER THAT

23 Q WAS THAT AMONG THE ONES THAT YOU TURNED OVER TO
24 THE POLICE?

25 A I WOULD HAVE TO LOOK AT THEM TO TELL YOU

1 Q WELL --

2 A I BELIEVE THERE MAY HAVE BEEN ONE. I COULD BE
3 WRONG

4 Q YOU CAN BE LOOKING AT THOSE SEE IF YOU FIND A
5 POST MARK AFTER 5-20 LOOK ON THE ENVELOPES AND SEE
6 IF YOU SEE ANY POST MARKS AFTER 5-20-2004

7 A I'M LOOKING BUT SUSAN AND I WERE LOOKING AT
8 LETTERS AT HER HOUSE SO I MAYBE THINKING OF ONE SHE
9 GOT

10 Q WELL, I JUST WANT YOU TO TAKE YOUR TIME

11 A YEAH, I DID GET ONE AFTER THAT FROM HIM

12 Q I JUST WANT YOU TO TAKE YOUR TIME--

13 A YES, IT'S HERE

14 Q ANY OF THOSE -- MA'AM?

15 A I DID RECEIVE ONE MORE

16 Q OKAY NOW THIS IS, THIS ONE IS DATED 5-20 OF
17 2004, IS IT NOT?

18 A YES THE POST MARK, IT IS POST MARKED 5-20 IS
19 THAT WHAT YOU ARE ASKING

20 Q YES, MA'AM?

21 A OKAY

22 Q HERE, LET'S NOT GET THEM MIXED UP NOW IS THERE
23 ANYTHING UNUSUAL ABOUT THAT ENVELOPE?

24 A I'M NOT SURE WHAT YOU ARE ASKING

25 Q WELL, IS IT JUST A PLAIN ENVELOPE OR DOES IT

002022

1 HAVE SOMETHING UNUSUAL ON IT?

2 A YOU WANT ME TO DESCRIBE THE ENVELOPE FOR YOU

3 Q YES, MA'AM

4 A OKAY IT'S A WHITE ENVELOPE IT HAS A STAMP IN
5 THE UPPER LEFT CORNER FROM THE YORK COUNTY DETENTION
6 CENTER IT HAS MY NAME AND ADDRESS IT HAS A
7 PICTURE ON KIND OF THE LEFT SIDE OF THE ENVELOPE A
8 PICTURE ON THE RIGHT --

9 Q PICTURE OF WHAT?

10 A THE FRONT LEFT IS A PICTURE OF A LION

11 Q UH-HUH

12 A THE FRONT RIGHT IS A PICTURE OF A CAT

13 Q UH-HUH

14 A AND THE BACK IS A PICTURE OF A CAT

15 Q OKAY AND IT'S YOUR TESTIMONY THAT THAT LETTER
16 WAS -- I MEAN, THAT ENVELOPE IS THE ENVELOPE IN WHICH
17 YOU RECEIVED THE CONFESSION LETTER, IS THAT YOUR
18 TESTIMONY?

19 A CORRECT I PUT THE LETTER IN THE ENVELOPE, KEPT
20 IT IN MY CAR, AND TURNED IT OVER TO THE POLICE THE
21 WAY THAT IT WAS WHEN I GOT IT

22 Q YES, MA'AM AND YOU'RE ABSOLUTELY CERTAIN THAT
23 THAT IS THE ENVELOPE THAT IT CAME IN, CORRECT?

24 A I TURNED OVER THE ENVELOPE THAT IT CAME IN TO
25 THE POLICE IN ONE PIECE

1 MR BAITY BEG THE COURT'S INDULGENCE ONE
2 MORE TIME, YOUR HONOR

3 Q NOW WOULD YOU AGREE WITH ME THAT ON THAT
4 ENVELOPE THERE IS A PICTURE OF A LION?

5 A CORRECT

6 Q IT SAYS I AIN'T LYING ON IT, IS THAT RIGHT?

7 A CORRECT

8 Q AND THERE IS A PICTURE OF A KITTY RIGHT THERE?

9 A CORRECT

10 Q ON THE FRONT AND ANOTHER PICTURE OF A KITTY ON
11 THE FRONT, WOULD YOU AGREE WITH ME

12 A A KITTY ON THE BACK, CORRECT

13 Q ON THE BACK SO THIS 5-20 MAY 20, 2004 ENVELOPE
14 THAT YOU SAY THIS LETTER CAME IN HAS A LION AND TWO
15 CATS ON IT, WOULD YOU AGREE?

16 A CORRECT

17 Q ALL RIGHT NOW WOULD YOU TAKE A LOOK AT THAT
18 LETTER DO YOU REMEMBER RECEIVING THAT LETTER?

19 A DO YOU WANT ME TO READ ANYTHING SPECIFICALLY

20 Q DO YOU RECOGNIZE THE LETTER?

21 A AS A LETTER THAT I RECEIVED

22 Q YES, MA'AM

23 A YES

24 Q OKAY AND DID YOU RECEIVE THIS LETTER BEFORE
25 YOU GOT THE SO CALLED CONFESSION LETTER?

1 A THAT I WOULDN'T KNOW BECAUSE THERE IS NO DATE ON
2 THE LETTER

3 Q OKAY BUT DOES THIS LETTER NOT MAKE REFERENCE
4 TO THINGS ON THE ENVELOPE?

5 A IT MAY HE WRITES LOTS OF KITTENS, LOTS OF
6 LIONS HE SENT A LION TO SUSAN THE SAME WEEK

7 Q BUT DID YOU EVER RECEIVE ANY OTHER ENVELOPES
8 THAT HAD LIONS AND KITTENS ON IT?

9 A UH-HUH SO DID OTHER FAMILY MEMBERS

10 Q WELL, DO YOU HAVE THEM HERE?

11 A I DON'T KNOW WHAT YOU HAVE, SIR I TURNED OVER
12 EVERYTHING THAT I HAD WHEN THE POLICE CAME FOR THEM
13 YOU HAVE 11 OUT OF PROBABLY 40 OR 50 LETTERS

14 Q OKAY BUT WOULD YOU AGREE WITH ME THAT THERE IS
15 NO LIONS OR KITTIES ON ANY OF THESE?

16 A I'D HAVE TO LOOK NO, SIR THERE IS A KITTY
17 ON THIS ONE

18 Q BUT THERE IS NOT A LION AND A KITTY, IS THERE?

19 A NO BUT THERE IS A CAT JUST LIKE THE ONE ON THAT
20 ONE

21 Q ALL RIGHT NOW DON'T LOSE THE LETTER I'M JUST
22 GOING TO REFER TO IT GO AHEAD YOU SEE ANY OTHER
23 LIONS AND KITTIES ON THERE?

24 A EVERY LETTER HAS A PICTURE THAT'S A BIRD A
25 CAT CAT IN THE HAT

002025

1 Q THAT'S A DR SEUSS CAT, CORRECT?

2 A LOOKS LIKE THAT

3 Q IT'S NOT A KITTY, BUT ALL RIGHT

4 A NO, THERE IS A BEAR THAT LOOKS LIKE THE LION

5 FACE BUT IT'S NOT A LION AND THAT'S ALL THAT'S THERE

6 Q AND SO I HOPE YOU LIKE THE KITTENS AND THE LION?

7 A UH-HUH

8 Q PLURAL, KITTENS AND ONE LION

9 A OKAY

10 Q IS IN THIS OTHER LETTER, CORRECT?

11 A OKAY

12 Q AND DOES THIS LETTER, IT DOESN'T HAVE A DATE ON

13 IT, BUT DOES IT REFER TO ANY DATE THAT'S COMING UP

14 FOR MR COPE?

15 A THAT I DON'T KNOW

16 Q WELL LET ME DRAW YOUR ATTENTION IF I MAY?

17 A OKAY CAN I READ THE LETTER

18 Q YOU CAN READ IT ALL YOU WANT

19 A (READING THE LETTER) HE TALKS ABOUT HAVING A

20 FAMILY COURT HEARING COMING UP IS THAT WHAT YOU ARE

21 REFERRING TOO?

22 Q HE DOES, DOESN'T HE?

23 A UH-HUH

24 THE COURT WAIT A MINUTE I HATE TO KEEP

25 INTERRUPTING YOU BUT LET HER FINISH

1 Q I'M SORRY, YOUR HONOR HE MENTIONS A FAMILY
2 COURT HEARING?

3 A CORRECT

4 Q AND DOES HE SAY ABOUT HOW FAR HE IS FROM THE
5 FAMILY COURT HEARING?

6 A THIS SAYS I GO TO FAMILY COURT IN LESS THAN
7 THREE WEEKS

8 Q IN LESS THAN THREE WEEKS?

9 A UH-HUH

10 Q OKAY IF I WERE TO TELL YOU THAT HIS FAMILY
11 COURT HEARING WAS JUNE SEVEN?

12 A UH-HUH

13 Q THAT WOULD BE ABOUT THREE WEEKS FROM THAT DATE,
14 WOULDN'T IT?

15 A YES, BUT I ALSO KNOW THAT THE FAMILY COURT
16 HEARING WAS NOT DEFINITELY SCHEDULED AND THERE WERE
17 QUESTIONS ABOUT WHEN IT WAS GOING TO BE AND HE WAS
18 CONFUSED AS YOU ALL SHARED WITH ME ABOUT WHEN THE
19 FAMILY COURT HEARING WAS ACTUALLY GOING TO TAKE
20 PLACE THAT WAS THE SCHEDULE DATE BUT THERE WAS SOME
21 DEBATE AGAIN HE MAY HAVE WRITTEN A LETTER WITH
22 LIONS OR KITTENS EARLIER THAT I DON'T HAVE, SO I'M
23 NOT GOING TO ARGUE WITH YOU YES, THE LETTER TALKS
24 ABOUT LIONS AND KITTENS, BUT IT ALSO REFERS TO MY CAT
25 AT HOME, MY PERSONAL CAT, THAT WE HAD SOME

1 CONVERSATION ABOUT, SO THAT'S PART OF IT

2 Q BUT YOU DON'T, YOU DON'T HAVE A PERSONAL LION AT
3 HOME --

4 A NO, I DON'T

5 Q DO YOU? NOW IF I TOLD YOU THAT HE SAYS HE'S
6 GETTING A FAMILY COURT HEARING IN ABOUT THREE WEEKS?

7 A UH-HUH

8 Q HE SAYS LESS THAN THREE WEEKS, DOESN'T HE?

9 A YES, HE DOES

10 Q IF I TOLD YOU THAT MAY 20 IS 18 DAYS AHEAD OF
11 JUNE 7, THAT WOULD BE ABOUT LESS, A LITTLE LESS THAN
12 THREE WEEKS, WOULDN'T IT?

13 A SAY THAT AGAIN IF YOU ARE TELLING ME THAT MAY
14 20 IS HOW MANY DAYS?

15 Q IS LESS THAN 3 WEEKS

16 A 18 DAYS

17 Q JUST SHY OF THREE WEEKS TO JUNE 7 WHICH WOULD
18 HAVE BEEN HIS FAMILY COURT HEARING DATE, ISN'T THAT
19 RIGHT?

20 A IF YOU ARE ASKING ME IF YOUR MATH IS RIGHT I
21 BELIEVE YOU ARE CORRECT

22 Q OKAY NOW WHAT THE TRUTH OF THE MATTER IS IS
23 THAT THAT UNDATED LETTER, MS SIMMONS, WAS WHAT WAS
24 MAILED IN THIS ENVELOPE, ISN'T THAT CORRECT?

25 A ALL I CAN TELL YOU IS THAT THE LETTER THAT CAME,

1 THIS LETTER, I TURNED OVER IN THE EXACT ENVELOPE THAT
2 IT CAME IN TO THE POLICE DEPARTMENT

3 Q THAT LETTER THAT YOU RECEIVED EARLIER WHICH
4 REFERS TO LIONS AND KITTIES AND TALKS ABOUT A FAMILY
5 COURT HEARING LESS THAN THREE WEEKS AWAY?

6 A UH-HUH

7 Q DATED MAY 20 AND IN TWO AND A HALF WEEKS HE HAD
8 HIS JUNE 7 FAMILY COURT HEARING, IT CAME IN THIS
9 LETTER, DIDN'T IT?

10 A NO ACTUALLY YOU ARE WRONG BECAUSE IT REFERS TO
11 I HOPE YOU LIKED AND HE WAS WRITING IN THE PAST TENSE
12 AND WHAT HE ALWAYS DID IS REFER BACK TO THE PREVIOUS
13 PICTURE, SO NO, IT DIDN'T COME IN THE ENVELOPE WITH
14 LION AND THE KITTY SAYING I HOPE YOU LIKED HE WAS
15 REFERRING BACK TO A PREVIOUS

16 Q SO HE WOULD BE REFERRING TO A LION AND A KITTY
17 ON ANOTHER ENVELOPE

18 A THAT COULD HAVE COME EARLIER, YES

19 Q AND WE DIDN'T FIND ANY LIONS AND KITTIES ON ANY
20 OTHER ENVELOPES, DID WE, MS SIMMONS?

21 A AGAIN, THERE ARE 11 LETTERS THAT ARE LEFT
22 THESE ARE THE LETTERS THAT WERE LEFT THAT I COULD
23 FIND WHEN THE POLICE OFFICERS ASKED FOR ANYTHING I
24 HAD IN MY POSSESSION THAT HE HAD WRITTEN TO ME

25 Q IN FACT, YOU FORGED THAT LETTER USING THE MODELS

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1 AS WE'VE DEMONSTRATED TODAY, PUT IT IN THIS ENVELOPE
2 THAT MR COPE SENT YOU THAT UNDATED LETTER IN, AND
3 YOU CALLED THE POLICE?

4 A NO, SIR THAT IS ABSOLUTELY INCORRECT

5 Q ISN'T THAT EXACTLY WHAT HAPPENED?

6 A THAT IS NOT EXACTLY WHAT HAPPENED I GUESS
7 THAT'S YOUR NEXT TRY THE JAIL, THE JAIL SITUATION
8 DIDN'T WORK I GUESS SAYING THAT SOMEONE THERE DID IT
9 MR BAITY COURT'S INDULGENCE
10 NOTHING FURTHER, YOUR HONOR

11 THE COURT MR GREELEY

12 MR GREELEY MAY IT PLEASE THE COURT
13 CROSS EXAMINATION BY MR GREELEY

14 Q MS SIMMONS, WE'VE NEVER MET, HAVE WE?

15 A NO, SIR

16 Q AND I NEVER TALKED WITH YOU ABOUT THIS CASE,
17 HAVE I?

18 A NO, SIR

19 Q NOBODY FROM MY OFFICE HAS EVER TALKED TO --

20 A NO, SIR

21 Q ---YOU ABOUT THIS CASE, HAVE THEY?

22 A NO, SIR

23 Q THANK YOU, MA'AM NO FURTHER QUESTIONS

24 THE COURT REDIRECT

25 MR BRACKETT JUST BRIEFLY, YOUR HONOR

1 REDIRECT EXAMINATION BY MR BRACKETT

2 Q MAY I HAVE THE STIPULATION THAT YOU WERE
3 REFERRING TO THIS STIPULATION THAT HE WAS TALKING
4 ABOUT EARLIER ON?

5 A YES, SIR

6 Q WHEN DID THAT GET SIGNED?

7 A THE ACTUAL DATE THAT I SIGNED THIS WITH THE
8 BOARD OF NURSING WAS DECEMBER 20 OF 2003

9 Q OKAY AND IT WAS CONDITIONED ON ACCEPTANCE, WAS
10 IT NOT, BY THE BOARD?

11 A CORRECT CORRECT

12 Q WHEN DID THEY ACCEPT IT?

13 A IT WAS ACCEPTED BY THE BOARD OF NURSING DECEMBER
14 31, 2003

15 Q SO AS OF DECEMBER 31, 2003, ALL YOUR PROBLEMS
16 WITH THE NURSING BOARD WERE GONE?

17 A CORRECT I'M COOPERATEING WITH THEM FULLY AND
18 PRACTICING NURSING

19 Q BUT I MEAN ANY MOTIVE YOU HAD TO GET HELP WITH
20 THAT OR ANYTHING WAS GONE DECEMBER 31?

21 A ABSOLUTELY I HAD NO MOTIVE ANYWAY I WAS
22 SIMPLY GOING BACK TO PRACTICING NURSING AND AGREEING
23 TO DO WHAT I NEEDED TO DO TO MOVE ON WITH MY LIFE

24 Q OKAY NOW YOU ALSO ARE AN INTELLIGENT LADY,
25 WENT TO COLLEGE?

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1 A I FEEL LIKE I'M PRETTY INTELLIGENT, YES I HAVE
2 A BACHELOR'S DEGREE IN NURSING

3 Q YOU'RE A REGISTERED NURSE?

4 A YES, I HAVE ADVANCED CERTIFICATION

5 Q NOW THE LETTERS, I DON'T KNOW WHERE THEY GOT TO?

6 A HE TOOK THEM BACK

7 Q HERE WE ARE THESE LETTERS HERE, NOT THE
8 INCRIMINATING LETTER

9 A CORRECT

10 Q STATE'S EXHIBIT 89, BUT ALL THESE OTHER LETTERS
11 THAT ARE NOW HERE PILED UP, THESE LETTERS HERE, DID
12 WE GET THESE BEFORE OR AFTER THAT?

13 A AFTER

14 Q OKAY AND WAS THERE ANYTHING PREVENTING YOU
15 FROM DESTROYING THOSE LETTERS?

16 A ABSOLUTELY NOT AND NOT ONLY WAS THERE NOTHING
17 PREVENTING ME BUT THE DEFENSE SUGGESTED THAT I
18 DESTROY THEM ALL AND THEN AFTER I REFUSED TO DO SO
19 SUGGESTED THAT I GO TO THE NEAREST FEDERAL EXPRESS
20 AND OVERNIGHT EXPRESS THEM TO THEM SO THAT THE
21 PROSECUTION AND THE POLICE DEPARTMENT COULD NOT GET
22 THEM THE NEXT DAY WHEN I FAILED TO DO THAT, THIS
23 WAS ON MAY 25 ON MY SON'S BIRTHDAY, WHEN I FAILED TO
24 TELL THEM THAT I WOULD SEND THEM FEDERAL EXPRESS, I
25 SENT ONE OF THEIR ATTORNEYS FROM ROCK HILL TO

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1 ANDERSON, WHICH IS A TWO AND A HALF DRIVE, AND I HAD
2 APPROXIMATELY 16 PHONE CALLS FROM ALL THEIR ATTORNEYS
3 TRYING TO FIND ME TO INTERCEPT THOSE LETTERS BEFORE
4 THE POLICE COULD GET THERE SO NO, I HAD NOTHING TO
5 HIDE

6 Q WE NEVER --

7 A ---FROM THE POLICE

8 Q ---WE NEVER CALLED YOU?

9 A NO, SIR, THAT WAS FROM THE DEFENSE

10 Q OKAY WHAT'S BEEN YOUR RELATIONSHIP WITH, WHEN
11 IS THE FIRST DAY YOU EVER MET ME AND TALKED TO ME
12 FACE-TO-FACE

13 A FACE-TO-FACE TODAY

14 Q AND HOW MANY TIMES HAVE WE TALKED ON THE PHONE?

15 A I BELIEVE TWICE

16 Q OKAY

17 A OTHER THAN A MESSAGE AND WE COULDN'T CONNECT
18 MAYBE

19 Q PRIOR TO TODAY?

20 A CORRECT

21 Q YOU HAVE NO UNDERSTANDING WITH OUR OFFICE?

22 A NO, SIR

23 Q YOU JUST GAVE US THE LETTERS?

24 A CORRECT

25 Q NO FURTHER QUESTIONS

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1 THE COURT MR BAITY

2 RE CROSS EXAMINATION BY MR BAITY

3 Q YOU RESOLVED YOUR PROBLEMS WITH THE NURSING
4 BOARD, DID YOU NOT, BUT YOU HAVE TOLD THE LADIES AND
5 THE GENTLEMEN OF THE JURY THAT YOU STILL HAVE
6 CRIMINAL CHARGES PENDING, IS THAT RIGHT?

7 A THAT IS CORRECT

8 MR BAITY ONE MOMENT PLEASE, YOUR HONOR

9 Q I'M GOING TO SHOW YOU THIS SAME LETTER THAT
10 MENTIONS THE FAMILY COURT HEARING BEING IN LESS THREE
11 WEEKS

12 A OKAY

13 MR BRACKETT EXCEEDS THE SCOPE OF
14 REDIRECT

15 THE COURT I SUSTAIN THE OBJECTION

16 MR BAITY THAT'S ALL, YOUR HONOR

17 MR BRACKETT I HAVE ONE

18 THE COURT NO

19 MR GREELEY I HAVE NOTHING EITHER

20 THE COURT WE'RE GOING TO STOP FOR THE
21 DAY AND WE'LL START BACK 9 30 WE'LL START A LATER
22 IN THE MORNING I HAVE ASKED THE CLERK TO HAVE SOME
23 DOUGHNUTS THERE WHEN YOU ARRIVE WE WON'T START
24 UNTIL 9 30 KEEP IN MIND DON'T MAKE UP YOUR MIND AND
25 DON'T DISCUSS THE CASE AND DON'T CATCH ANYTHING

1 INVOLVING IT THROUGH THE NEWS MEDIA THANK YOU
2 HAVE A PLEASANT EVENING

3 (THE JURY EXITS THE COURTROOM AT 07 38
4 PM)

5 THE COURT MS SIMMONS, YOU CAN GO AND
6 STEP DOWN
7 A OKAY

8 THE COURT YOU CAN BE EXCUSED ANY
9 REASON THE WITNESS CAN'T BE EXCUSED?

10 MR BAITY NO OBJECTION

11 MR GREELEY NO

12 THE COURT WE APPRECIATE YOUR TIME, MS
13 SIMMONS, THANK YON

14 A THANK YOU

15 THE COURT ANYTHING FROM THE STATE BEFORE
16 WE STOP FOR THE DAY

17 MR POPE NO, SIR

18 THE COURT ANYTHING FROM MR COPE
19 DEFENSE

20 MR MORTON NO, SIR, YOUR HONOR

21 MR GREELEY NO, SIR

22 THE COURT WE'LL SEE YOU AT 9 30

23 (COURT'S IN RECESS AT 07 39 PM)
24
25

1 I, JANET RICH, OFFICIAL COURT REPORTER FOR THE
2 SIXTEENTH CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
3 HEREBY CERTIFY THAT THE FORGOING IS A TRUE, ACCURATE,
4 AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
5 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL
6 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE
7 CIRCUIT COURT FOR YORK COUNTY, SOUTH CAROLINA, ON THE
8 14TH DAY OF SEPTEMBER 2004

9 I DO FURTHER CERTIFY THAT I AM NEITHER KIN,
10 COUNSEL, NOR INTEREST TO ANY PARTY HERETO

11
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25


JANET M RICH

002036

1 IN THE CIRCUIT COURT OF YORK COUNTY, SOUTH CAROLINA

2 STATE OF SOUTH CAROLINA

3 VERSUS

4 BILLY WAYNE COPE &
5 JAMES EDWARD SANDERS

6 INDICTMENT NUMBERS 2002-GS-46-3232-3234

7 2003-GS-46-1843-1844

2004-GS-46-2614-2618

8 2004-GS-46-196-199

9 HEARD AT THE MOSS JUSTICE CENTER,
10 1675 YORK HIGHWAY, YORK, SOUTH CAROLINA, ON
11 WEDNESDAY, SEPTEMBER 15TH, 2004, BEFORE THE
HONORABLE JOHN C HAYES, III AND A JURY

APPEARANCES

12 TOMMY POPE
13 KEVIN BRACKETT
14 WILLY THOMPSON
15 16TH CIRCUIT SOLICITOR'S OFFICE
16 1675 YORK HIGHWAY
17 YORK, SC 29745
18 REPRESENTING THE STATE

16 JAMES MORTON
17 DAVID WOOD
18 MICHAEL SMITH
19 MORTON & GETTYS
1051 OAKLAND AVENUE
ROCK HILL, SC 29732

20 A PHILIP BAITY
21 POST OFFICE BOX 275
FORT MILL, SC 29715
REPRESENTING BILLY WAYNE COPE

22 LELAND GREELEY
23 128 E MAIN STREET SUITE 102
24 ROCK HILL, SC 29732
REPRESENTING JAMES EDWARD SANDERS

25 REPORTED BY JANET M RICH
CIRCUIT COURT REPORTER
1992 DOWNEY STREET

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ROCK HILL, SC 29732

I N D E X

MOTIONS

IN CAMERA TESTIMONY

KYLA COPE

DIRECT EXAMINATION 17

CROSS EXAMINATION 29

REDIRECT EXAMINATION 33

JESSICA COPE

DIRECT EXAMINATION 34

CROSS EXAMINATION 52

REDIRECT EXAMINATION 59

RECROSS EXAMINATION 60

SCOTT WORSHAM

DIRECT EXAMINATION 64

CROSS EXAMINATION 104

REDIRECT EXAMINATION 125

THOMAS DARNELL

DIRECT EXAMINATION 132

CROSS EXAMINATION 148

REDIRECT EXAMINATION 153

DR STEPHEN LAMBERT

DIRECT EXAMINATION 158

CROSS EXAMINATION BY

002638

1 MR WOOD 211
2 MR GREELEY 223
3 REDIRECT EXAMINATION 243
4
5
6
7
8

9 E X H I B I T S

		ID	EV
10			
11	D-46-63 PHOTOS	14	
12	S-92 STIPULATION		63
13	S-93 LETTERS	75	77
14	S-94 LETTERS	75	77
15	S-95-99 POSTERS		80
16	S-100 BLOOD SAMPLE		192
17			
18			
19			
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21			
22			
23			
24			
25			

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1 (COURT RESUMES AT 09 43 AM ON
2 WEDNESDAY, SEPTEMBER 15, 2004)

3 MR BRACKETT PLEASE THE COURT, YOUR
4 HONOR MR MORTON HAS JUST SHOWN ME SOME PHOTOGRAPHS
5 THAT HE SAYS HE INTENDS TO USE IN THE CROSS
6 EXAMINATION AND I HAVE AN OBJECTION AS TO RELEVANCE
7 THEY ARE GOING TO BE MR THOMPSON'S WITNESSES, SO LET
8 ME GET HIM HE'S IN THE LIBRARY

9 THE COURT LET MR THOMPSON SEE THESE
10 MR THOMPSON YOUR HONOR, WE WOULD
11 OBVIOUSLY OBJECT TO THOSE PHOTOGRAPHS THEY ARE
12 OBVIOUSLY COME PRIOR TO THIS

13 THE COURT YES, I THINK SO

14 MR THOMPSON AND THEY WOULD HAVE NO
15 RELEVANCE AS TO WHAT HAPPENED AT THIS PARTICULAR
16 POINT IN TIME

17 THE COURT WHAT ABOUT UNLAWFUL NEGLECT OF
18 A CHILD? DOES IT NOT HAVE SOME RELEVANCE TO SHOW --

19 MR THOMPSON RIGHT, BUT IF HE STARTS
20 QUESTIONING ON THOSE, YOUR HONOR, THEN WE SHOULD BE
21 ABLE TO BRING IN WHAT HAPPENED IN 1999 WITH THE
22 DEFENDANT AND THE UNLAWFUL NEGLECTS AS TO THAT
23 BECAUSE THAT'S WHAT THEY ARE OPENING THE DOOR
24 BECAUSE IF THEY WANT TO SAY HE WAS GOOD TO THEM IN
25 THE PAST, WE CAN SAY NO HE WASN'T

1 THE COURT WELL, I THINK THAT'S TRUE IF
2 YOU WANT TO SHOW --

3 MR MORTON YOUR HONOR --

4 THE COURT WAIT, JUST LET ME FINISH
5 WE'RE KIND OF ON THE HORNS OF A DILEMMA IN A WAY I
6 THINK THEY COULD BE RELEVANT ON THE ISSUE HE'S
7 CHARGED WITH UNLAWFUL NEGLECT OF A CHILD YOU GOT
8 PICTURES THERE OF A HAPPY FAMILY ON SOME OCCASION
9 YOU GOT PICTURES OF KIDS IN HALLOWEEN COSTUMES, YOU
10 GOT PICTURES OF A BIRTHDAY CAKE, YOU GOT PICTURES OF
11 SMILING KIDS WITH CHRISTMAS PRESENTS, I THINK THAT
12 CAN GO TO SHOW A GENERAL LACK OF NEGLECT ALTHOUGH
13 HE'S CHARGED WITH THE WAY THE HOUSE WAS ON THAT
14 PARTICULAR DAY AND THE LACK OF FOOD OR WHATEVER I
15 DON'T REALLY KNOW WHAT THE STATE IS GOING TO ARGUE AS
16 FAR AS ALL THAT BUT JUST BASED ON THE EVIDENCE I
17 THINK THAT THOSE COULD GO TO SOME MITIGATION I'M
18 NOT GOING TO LET THEM ALL IN IF I LET ANY IN, I'LL
19 LET YOU CHOOSE MAYBE A FEW RATHER THAN USE THEM ALL,
20 BUT I THINK JUST TO GIVE YOU WARNING THAT IF YOU GO
21 BACK INTO THE PAST THEN I THINK THAT DOES OPEN THE
22 DOOR REGARDING ANY, IF YOU ARE GOING TO SAY THIS MAN,
23 IF YOU WANT TO SHOW PAST GOOD CONDUCT, I THINK THAT
24 RAISES A SPECTER OF THEM SHOWING THE FLIP SIDE OF
25 THAT

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1 MR MORTON WELL SO, YOU KNOW, THE
2 DILEMMA I'M FACED WITH, JUDGE, IS HERE'S THESE LITTLE
3 GIRLS, HADN'T SEEN THEIR DAD IN THREE YEARS, THEY ARE
4 TESTIFYING VIA CLOSED CIRCUIT AND THEY'LL BE CALLING
5 HIM BILLY, AND AM I NOT ALLOWED I MEAN, I CERTAINLY
6 DON'T THINK ANY DOORS HAS BEEN OPEN THUS FAR BY THEIR
7 OWN WITNESSES SAYING THAT THEY FOUND BIBLES AND HE
8 WENT TO CHURCH AND ALL OF THAT STUFF, BUT, YOU KNOW
9 IS MR THOMPSON GOING TO BE, IT'S JUST ALL, I
10 UNDERSTAND WHAT YOU ARE SAYING, BUT ARE THEY GOING BE
11 RESTRICTED TO SAYING WHAT THEY SAW AND HEARD ON THAT
12 NIGHT

13 THE COURT WELL, I THINK, I HAVE RULED
14 OUT ANY UNLAWFUL NEGLECT AS TO THOSE TWO CHILDREN AND
15 ANY CRIMINAL SEXUAL CONDUCT I CAN'T EVEN REMEMBER
16 IT'S BEEN SO LONG IS HE CHARGED WITH THAT ALSO ON
17 THOSE TWO CHILDREN OR JUST UNLAWFUL NEGLECT?

18 MR THOMPSON YES, SIR

19 THE COURT CRIMINAL SEXUAL CONDUCT YOU
20 KNOW, YOU RAISE ALL KIND OF ISSUES I DON'T THINK
21 THERE IS A DIRECT DOUBLE JEOPARDY ISSUE, BUT IF YOU
22 IN ESSENCE TRY ALL OF THOSE THINGS IN THIS CASE, I
23 CERTAINLY THINK SOMEBODY IS GOING TO MAKE A MOTION AT
24 SOME POINT THAT WELL YOU'VE GONE OVER ALL THOSE
25 WHAT DO YOU THINK IS RELEVANT, MR THOMPSON LET'S

1 START THERE AND SEE WHAT YOU PLAN TO PRESENT RATHER
2 THAN ME SPECULATE

3 MR THOMPSON OBVIOUSLY, I PLAN TO
4 PRESENT THE CONDITIONS OF THE HOUSE ON THAT DAY

5 THE COURT CORRECT THAT'S FINE

6 MR THOMPSON I PLAN TO PRESENT THEIR
7 TESTIMONY WHAT THEY RECALL FROM THE NIGHT BEFORE AND
8 THE NEXT MORNING I WOULD PLAN TO PRESENT THEIR
9 KNOWLEDGE OF THE, JUST THE HOUSE ITSELF, AND
10 BASICALLY THAT'S GOING TO BE IT THE ONLY OTHER
11 QUESTIONS THAT I THINK MAY CONCERN MR MORTON WOULD
12 BE SOMETHING ALONG THE LINES THAT THEY WERE SCARED OF
13 THEIR FATHER

14 THE COURT I DON'T THINK THAT'S RELEVANT

15 MR THOMPSON AND I DON'T UNDERSTAND WHY
16 THAT WOULDN'T BE

17 THE COURT WELL, I DON'T UNDERSTAND WHY
18 IT WOULD BE

19 MR THOMPSON IT CERTAINLY GOES TOWARDS
20 JUST THEM HAVING TO TESTIFY, THEM HAVING TO GO
21 THROUGH ALL THIS STUFF NOW

22 MR BRACKETT IT WAS MY WITNESS, I'M MORE
23 FAMILIAR, CAPTAIN CABANISS TESTIFIED, HE ASKED
24 CAPTAIN CABANISS YESTERDAY WHY DIDN'T THE GIRLS HEAR
25 SOMETHING AND HE SAID THEY ARE SCARED OF THEIR FATHER

1 AND MAYBE THEY ARE AFRAID THAT THEY ARE GOING TO HAVE
2 TO GO BACK TO HIM AND THAT'S WHY THEY DON'T WANT TO
3 SAY ANYTHING THAT HE WOULD PERCEIVE NEGATIVELY AND SO
4 HE'S RAISED THE SPECTER OF THAT

5 MR MORTON I HAVEN'T RAISED IT

6 MR BRACKETT HE'S MADE IT AN ISSUE IN
7 THIS CASE AND SO WE HAVE TO ADDRESS IT WE HAVE TO
8 EXPLAIN TO THE JURY WHY THE GIRLS AREN'T SAYING THEY
9 HEARD SOMETHING

10 MR MORTON THEY'VE RAISED THE SPECTER OF
11 IT, YOUR HONOR, AND THAT'S THE ONLY REASON THESE
12 GIRLS ARE HERE SO THEY CAN COME IN HERE AND SAY THEY
13 ARE SCARED OF THEIR DAD IN FRONT OF THIS JURY

14 MR THOMPSON THAT'S NOT TRUE

15 MR MORTON THEY ARE THE ONES WHO RAISED
16 THE SPECTER OF THIS ALL WHOLE THING THEY ARE
17 PUTTING THE WHOLE THING TOGETHER AND FOR ME NOT TO BE
18 ABLE TO, FOR THEM TO GO IN AND SAY, YOU ARE SCARED OF
19 YOUR DAD -- I MEAN, HOW DO YOU -- THAT'S JUST HIGHLY
20 PREJUDICIAL

21 THE COURT WELL, IT APPEARS TO ME TO BE
22 MORE OF AN ISSUE FOR CROSS EXAMINATION THAN IT WOULD
23 FOR DIRECT

24 MR MORTON WELL, JUDGE, CAPTAIN CABANESS
25 I THINK THE LAST TIME, HE'S A CAPTAIN AT THE ROCK

1 HILL POLICE DEPARTMENT, HE'S NOT A PSYCHOLOGIST

2 THE COURT WHAT HE SAYS ISN'T BINDING I

3 MEAN, THAT'S JUST HIS OPINION I'M NOT GOING TO

4 ALLOW YOU TO GO INTO THAT EXCEPT FOR, LET'S GET A

5 MARCHING PLANS KIND OF STRAIGHT THEN

6 MR MORTON CAN I OFFER ONE MORE THING

7 BEFORE YOU GO TO YOUR MARCHING?

8 THE COURT SURE

9 MR MORTON WILL I BE ABLE TO ASK THEM

10 IF THEY LOVE THEIR DAD BEFORE THEY WERE TAKEN AWAY

11 FROM HIM?

12 THE COURT WELL, THE PROBLEM IS, I DON'T

13 KNOW WHAT HAPPENED IN THE FAMILY COURT YOU KNOW

14 BETTER THAN I DO IF YOU ASK THAT QUESTION I DON'T

15 KNOW WHAT KIND OF ANSWER YOU ARE GOING TO GET AND

16 ALSO IF THEY HAVE TESTIFIED OTHERWISE AT ANOTHER TIME

17 THEN THE STATE IS GOING TO BE WHIPPING OUT

18 TRANSCRIPTS AND ALL THIS KIND OF STUFF SAYING WELL, I

19 HATE TO SEE SOMEBODY IMPEACH A CHILD BECAUSE IT'S

20 JUST THEY ARE CHILDREN

21 MR MORTON THEY TESTIFIED IN FAMILY

22 COURT THAT THEY DID

23 THE COURT THEY TESTIFIED TO THAT

24 MR THOMPSON THEY ALSO TESTIFIED THEY

25 WERE SCARED OF HIM SO

1 THE COURT SO IF YOU OPEN THAT DOOR I'M
2 GOING --

3 MR MORTON SO I CAN'T ASK THE CHILDREN?

4 THE COURT I'M NOT SAYING YOU CAN'T I'M
5 JUST TELLING YOU IF YOU DO WHAT IS GOING TO HAPPEN SO
6 YOU GOT TO MAKE THAT DECISION, BUT I'M NOT TELLING
7 YOU YOU CAN'T ASK IF THEY LOVE THEIR DAD OR ARE
8 SCARED OF THEIR DAD IF YOU ASK THAT THE DOOR IS
9 OPEN, BUT THAT'S --

10 MR MORTON SO IF I ASK THE CHILDREN IF
11 THEY LOVE THEIR DAD BEFORE THIS HAPPENED THEN THAT
12 OPENS THE DOOR TO THE FACT THAT THEY ARE SCARED OF
13 THEIR DAD NOW

14 THE COURT I THINK IT DOES, YES

15 MR MORTON WELL, I THINK I HAVE THE
16 RIGHT TO ASK THEM WHAT THEIR FEELINGS WERE TO THEIR
17 DAD IN 1999 VERSES WHAT HAS TRANSPIRED IN THREE YEARS
18 SINCE THEY HADN'T SEEN HIM AND NOW THAT THEY ARE
19 SCARED OF HIM BECAUSE THEY HAD BEEN TOLD THAT HE
20 KILLED THEIR DAUGHTER AMANDA

21 THE COURT THEIR SISTER NOT THEIR
22 DAUGHTER

23 MR MORTON I'M SORRY

24 THE COURT THEIR SISTER

25 MR MORTON THEIR SISTER I'M SORRY

1 THE COURT WELL, THE PROBLEM HERE IN '99,
2 IF YOU START ASKING ABOUT '99 THEN THEY ARE GOING TO
3 ARGUE YOU OPENED THE DOOR AS TO THE UNLAWFUL CONDUCT
4 IN 1999

5 MR MORTON WHAT IF THEY GET IN THERE
6 AND --

7 THE COURT I DON'T WANT TO OUTLINE -- I'M
8 THE REFEREE NOT THE COACH I'M GOING TO MAKE RULINGS
9 AND I THINK I'VE RULED THAT THEY GOT, WHERE THEY GOT
10 TO STICK WITH I'M NOT TO GOING RULE YET ON WHAT
11 YOUR CROSS EXAMINATION IS GOING TO BE, AND WE'LL JUST
12 HAVE TO TAKE IT STEP BY STEP BECAUSE I KNOW THESE ARE
13 KIND OF MOTIONS IN LIMINE BUT WE'RE GOING TO BE IN
14 THERE AND THE JURY IS GOING TO BE IN HERE AND IT'S
15 GOING TO BE A LITTLE AWKWARD BUT IT WILL WORK BUT
16 UNTIL I ACTUALLY HEAR WHAT THE QUESTIONS ARE AND THE
17 ANSWERS ARE, I'M NOT SURE WHERE WE'LL END UP GOING SO
18 I JUST CAN'T PREDICT

19 MR MORTON OKAY

20 THE COURT SO ALL I CAN TELL YOU IS
21 PROFFER WHAT YOU NEED TO PROFFER WE CAN, BE EASY TO
22 MAKE A PROFFER, WE'LL JUST TURN THE TV OFF, TURN THE
23 CAMERA OFF

24 MR MORTON ALL RIGHT, SIR

25 THE COURT ALL RIGHT AND MR THOMPSON,

1 DO YOU FEEL LIKE YOU UNDERSTAND

2 MR THOMPSON YES, YOUR HONOR

3 MR MORTON YOUR HONOR, I WANT TO OBJECT
4 TO ONE THING IF THEY ARE CALLING THEIR DAD BILLY
5 AND I'M PRECLUDED FROM CROSS EXAMINING THEM ABOUT HOW
6 THAT CAME TO BE AND THE FACT THAT THEY DIDN'T CALL
7 HIM BILLY BEFORE, YOU KNOW, I THINK I SHOULD BE ABLE
8 TO AND IF YOU RULE AGAINST ME, YOU KNOW YOU RULE
9 AGAINST ME, BUT I THINK I SHOULD BE ABLE TO SAY THEY
10 LOVED THEIR DAD BEFORE THEY WERE TAKEN AWAY AND
11 STARTED CALLING HIM BILLY

12 THE COURT IT'S YOUR CROSS EXAMINATION
13 THAT'S ALL I CAN TELL YOU

14 MR MORTON WELL, I'M TRYING, I DON'T
15 WANT TO OPEN THE DOOR TO THEM GOING INTO THE '99
16 DETAILS BY ASKING THEM IF THEY LOVE THEIR DADDY IN
17 '99 I GUESS IS THE ONLY DIRECTION I'M TRYING TO GET

18 THE COURT I KNOW AND I'M NOT GOING TO
19 START --AGAIN I'M NOT GOING TO BE THE COACH I'M NOT
20 GOING TO PASS ON EVERY QUESTION YOU PLAN TO ASK I
21 THINK I MADE IT, TRIED TO MAKE IT CLEAR AS TO WHERE I
22 SEE THE GENERAL SCOPE OF DIRECT AND CROSS WITHOUT
23 QUOTE OPENING THE DOOR END QUOTE WE'VE SEEN IT OUT
24 HERE HE HAD OUR WITNESS YESTERDAY THAT STARTED
25 BLURTING OUT ALL KINDS OF STUFF THAT WE PRETTY MUCH

1 AGREED AND RULED SOME WASN'T ADMISSIBLE BUT MADE HER
2 HAPPY TO SAY IT AND SHE SAID IT I DON'T THINK THE
3 CHILDREN WILL DO THAT, BUT WE CAN'T STAND HERE FOR AN
4 HOUR AND OUTLINE WHAT THE CHILDREN ARE GOING TO
5 TESTIFY TO AND HAVE IT GO, WE CAN'T PLAN THEIR
6 TESTIMONY

7 MR MORTON YES, SIR BUT WE CAN, I WAS
8 JUST TRYING TO GET SOME DIRECTION ON WHAT MY SCOPE OF
9 CROSS EXAMINATION WOULD BE WITHOUT OPENING UP ANOTHER
10 ISSUE

11 THE COURT I CAN'T TELL YOU THAT BECAUSE
12 ONE QUESTION MAY SOLICIT AN ANSWER AND OF COURSE YOUR
13 RESPONSE WHEN THEY SAY YOU OPENED THE DOOR WILL BE
14 THAT'S NOT THE QUESTION I ASKED IT'S NOT A
15 COMFORTABLE PLACE FOR YOU I KNOW I UNDERSTAND
16 THAT THE CHILDREN ARE, YOU KNOW, CHILDREN SAY THE
17 DARNEST THINGS

18 MR MORTON THANK YOU, YOUR HONOR

19 THE COURT AND THE ONLY I GUESS REAL
20 COMFORT MAYBE REGARDING THE TESTIMONY OF THESE
21 CHILDREN AT LEAST THEY HAVE MEMORIALIZED THE
22 TESTIMONY ONE TIME SO AT LEAST YOU CAN PERHAPS
23 ANTICIPATE SOME OF THE THINGS THEY ARE GOING TO SAY
24 AS FAR AS WHERE TO GO ON CROSS, I'VE GIVEN YOU ALL
25 THE GUIDANCE I THINK I CAN

1 MR MORTON ALL RIGHT, SIR
2 THE COURT ANYTHING ELSE ANYTHING, MR
3 GREELEY
4 MR GREELEY NO, YOUR HONOR
5 MR BRACKETT IF, THE MECHANICS
6 STANDPOINT, YOU SAID IT WOULD BE EASIER TO DO A
7 PROFFER, I JUST WANT TO MAKE SURE, IF YOU SAY IN
8 THERE SO WE CAN HEAR IN THERE TURN THE SOUND OFF, ARE
9 YOU ABLE TO TURN THE SOUND OFF IN HERE
10 (MAN INDICATES YES)
11 THE COURT OKAY
12 MR MORTON I JUST WANTED TO NOTE MY
13 OBJECTION FOR THE RECORD ABOUT THE PHOTOGRAPHS AND
14 PROFFER THE PHOTOGRAPHS AND ARGUE THAT THEY DON'T
15 OPEN THE DOOR TO ANYTHING
16 THE COURT YES ALL RIGHT
17 MR MORTON SO I DON'T KNOW WHERE THOSE
18 PHOTOGRAPHS ARE DID I GET THEM BACK CAN WE HAVE
19 THESE PHOTOGRAPHS MARKED PLEASE, JANET, AS JUST A
20 PROFFER
21 (DEFENDANT'S EXHIBITS 46-63
22 PHOTOGRAPHS MARKED FOR IDENTIFICATION)
23 THE COURT JUST FOR THOSE PARTICIPATING
24 INCLUDING THE TECHNICIAN, MY LAW CLERK WILL STAY IN
25 HERE AND IN THE EVENT SOMEONE IN HERE WANTS OUR

1 ATTENTION FOR SOME REASON, I CAN'T REALLY ANTICIPATE
2 WHY, BUT A LOT OF THINGS HAPPENS IN A TRIAL YOU DON'T
3 ANTICIPATE, IF YOU'LL JUST STAND AND DO LIKE THAT,
4 THAT WILL ALERT RICHARDS MY LAW CLERK TO TELL THE
5 TECHNICIAN TO STOP, AND HE'LL COME TELL US TO STOP
6 AND THEN WE'LL DO WHATEVER HAS TO BE DONE SO HE'S
7 GOING TO BE OUT WALKING TALKING LIAISON BETWEEN THE
8 COURTROOM AND THE LIBRARY

9 MR MORTON DOES HE GET A ROBE?

10 THE COURT I GOT ONE FOR HIM HE SAID HE
11 WOULDN'T WEAR IT ALL RIGHT LET'S BRING IN THE
12 JURY

13 (THE JURY RETURNS TO THE COURTROOM AT
14 10 00 AM)

15 THE COURT GOOD MORNING

16 (THE JURY GOOD MORNING)

17 THE COURT OUR NEXT TWO WITNESSES ARE
18 GOING TO BE KYLA AND JESSICA COPE AND WE'RE GOING TO
19 DO IT A LITTLE DIFFERENT WE'RE GOING TO DO IT BY
20 CLOSED CIRCUIT TELEVISION THE GIRLS WILL BE, ALONG
21 WITH MYSELF AND THE LAWYERS AND OUR CLERK TO SWEAR
22 THE WITNESSES AND THE COURT REPORTER, WILL BE IN THE
23 LIBRARY, YOU'LL BE ABLE TO SEE AND HEAR EVERYTHING
24 THAT GOES ON THIS IS NOT UNUSUAL WHEN YOU HAVE
25 YOUNG CHILDREN TESTIFYING AND THAT'S WHY IT'S BEING

1 DONE NOW I WILL NOT BE IN HERE MY LAW CLERK,
2 INCIDENTALLY I HAVEN'T INTRODUCED HIM, RICHARDS
3 MCCRAE FROM FORT MILL, IS GOING TO BE IN HERE SO IF
4 ANYTHING HAPPENS IN HERE THAT NEEDS TO BE
5 COMMUNICATED TO US BECAUSE IT'S GOING TO BE, THE
6 AUDIO IS GOING TO BE ONE WAY FROM THERE TO HERE NOT
7 BACK, SO IF ANYBODY, IF SOMETHING HAPPENS HERE AND
8 ANYBODY WANTS US TO STOP FOR A LEGITIMATE REASON,
9 THEY CAN JUST STAND AND GET RICHARDS ATTENTION AND HE
10 WILL COME AND WE WILL STOP AND SEE WHAT'S NEEDS TO BE
11 DONE, THAT WAY WE'LL HAVE SOME COMMUNICATION WITH THE
12 COURTROOM BUT WE'LL BE IN THERE WITH THE WITNESSES
13 ALL RIGHT ANYTHING ELSE BEFORE WE GO INTO THE
14 LIBRARY

15 MR THOMPSON NOTHING FROM THE STATE,
16 YOUR HONOR

17 MR MORTON NOTHING, YOUR HONOR

18 MR GREELEY NOTHING FROM MR SANDERS

19 THE COURT WE'LL GO IN THERE AND GET THE
20 TV IN AND BARE WITH US JUST A MINUTE

21 (THE FOLLOWING PEOPLE ARE ASSEMBLED IN
22 THE LIBRARY JUDGE HAYES, JANET RICH, JAMES MORTON,
23 LELAND GREELEY, WILLY THOMPSON, ALLISON DEFELICE,
24 CINDY MEEKS, TECHNICIAN SHAWN STALLINGS, KYLA COPE,
25 AND APRIL GURGANUS)

1 THE COURT IF YOU'D RAISE YOUR RIGHT HAND
2 PLEASE THE CLERK WILL SWEAR YOU IN

3 KYLA COPE, BEING FIRST DULY
4 SWORN WAS EXAMINED AND TESTIFIED AS FOLLOWS

5 THE COURT MR THOMPSON
6 DIRECT EXAMINATION BY MR THOMPSON

7 Q GOOD MORNING, KYLA HOW ARE YOU THIS MORNING?

8 A GOOD

9 Q GOOD KYLA, WHERE DO YOU LIVE NOW?

10 A NORTH CAROLINA

11 Q NORTH CAROLINA HOW OLD ARE YOU?

12 A NINE

13 Q AND WHERE DID YOU GO TO SCHOOL?

14 A BULADEAM

15 Q AND WHAT GRADE ARE YOU IN?

16 A FOURTH

17 Q FOURTH GRADE DO YOU LIKE SCHOOL RIGHT NOW?

18 A YES

19 Q YEAH KYLA, DO YOU REMEMBER WHERE YOU LIVED
20 BEFORE YOU LIVED IN NORTH CAROLINA?

21 A SOUTH CAROLINA

22 Q DO YOU REMEMBER WHERE IN SOUTH CAROLINA?

23 A RICH STREET, ROCK HILL

24 Q ROCK HILL, OKAY DO YOU REMEMBER THE STREET?

25 A RICH STREET

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1 Q RICH STREET CAN YOU TELL ME A LITTLE BIT ABOUT
2 RICH STREET WHEN YOU LIVED THERE, THE LAST TIME YOU
3 LIVED THERE CAN YOU TELL ME I GUESS WAS IT IN 2000
4 THAT Y'ALL LIVED THERE LAST?

5 A YES

6 Q RIGHT BEFORE AMANDA DIED, CAN YOU TELL ME WHAT
7 IT WAS LIKE AT RICH STREET, WHAT THE HOUSE ITSELF WAS
8 LIKE?

9 A MESSY

10 Q MESSY HOW WAS IT MESSY?

11 A IT HAD LIKE BUGS AND ROACHES IN IT AND IT HAD
12 CLOTHES ALL ON THE FLOORS AND THE BEDROOMS AND THERE
13 WAS LIKE HOLES IN THE FLOOR IN OUR ROOM AND A HOLE IN
14 THE WALL, AT THE SPIGOTS IN THE BATHROOM

15 Q CAN YOU TELL ME THE HOLES THAT YOU ARE TALKING
16 ABOUT, DID ANYTHING USED TO COME IN AND OUT OF THOSE
17 HOLES AT ALL?

18 A CATS

19 Q THE CATS WERE THEY JUST BIG ENOUGH FOR THE
20 CATS TO COME THROUGH?

21 A YES

22 Q HOW MANY CATS DID YOU ALL HAVE?

23 A SIX OR SEVEN

24 Q SIX OR SEVEN DID THEY KIND OF COME AND A GO
25 WHENEVER THEY WANTED?

002053

1 A YES

2 Q HOW LONG HAD YOU HAD THE CATS?

3 A A COUPLE OF MO--YEARS OR MONTHS, SOMETHING LIKE
4 THAT

5 Q OKAY NOW DO YOU REMEMBER IN THE HOUSE ITSELF
6 IN AMANDA'S ROOM, WAS ONE OF THE WINDOWS BROKEN IN
7 THAT ROOM?

8 A YES

9 Q DO YOU KNOW HOW THAT HAPPENED?

10 A ME AND JESSICA WERE, WHEN WE WERE LIKE PLAYING
11 AROUND IN THERE AND PLAYING WITH AMANDA, I PUSHED
12 JESSICA BY ACCIDENT AND SHE FELL INTO THE MIRROR, NOT
13 MIRROR, BUT WINDOW AND BROKE IT

14 Q OKAY DO YOU REMEMBER HOW LONG THAT WAS BEFORE
15 THE TIME THAT AMANDA DIED THAT THAT HAPPENED?

16 A NOT REALLY

17 Q OKAY WAS IT, HAD IT BEEN JUST A COUPLE OF DAYS
18 OR HAD IT BEEN LONGER THAN THAT?

19 A LONGER THAN THAT

20 Q LONGER THAN THAT DID THAT WINDOW GET FIXED UP
21 IN ANY WAY?

22 A MY MOM PUT PLASTIC OVER IT

23 Q OKAY DO YOU KNOW HOW SHE PUT THE PLASTIC ON
24 IT, HOW SHE MADE IT STICK?

25 A STAPLES

002054

1 Q SO THE PLASTIC WAS STAPLED ON THAT WINDOW?

2 A YES

3 Q AND CAN YOU REMEMBER ON THE NIGHT THAT AMANDA
4 DIED WAS THAT PLASTIC ON THE WINDOW STAPLED UP ON
5 THAT WINDOW?

6 A YES

7 Q DO YOU REMEMBER THE OTHER WINDOW IN AMANDA'S
8 ROOM?

9 A YES

10 Q DO YOU REMEMBER, DID YOU ALL EVER USE TO OPEN
11 THAT WINDOW?

12 A SOMETIMES IF IT WAS REAL HOT

13 Q IF IT WAS REAL HOT IN NOVEMBER, NOVEMBER 29,
14 WAS IT HOT THEN?

15 A NO

16 Q HAD Y'ALL BEEN OPENING THAT WINDOW AT ALL IN THE
17 LAST FEW DAYS?

18 A NO

19 Q NO WAS THAT WINDOW EASY TO OPEN?

20 A NO

21 Q AND CAN YOU TELL ME WHY?

22 A IT WAS JUST HARD TO OPEN

23 Q OKAY HOW ABOUT AMANDA'S DOOR DO YOU REMEMBER
24 ANYTHING ODD ABOUT AMANDA'S DOOR TO HER BEDROOM?

25 A IT WOULD SCUFF AGAINST THE FLOOR

1 Q ALL RIGHT DID THAT MAKE IT HARD OR EASY TO
2 OPEN?

3 A HARD

4 Q AND DID YOU HAVE A HARD TIME OPENING THAT DOOR?

5 A YES

6 Q WAS IT NOISY WHEN YOU TRIED TO OPEN AND CLOSE
7 THAT DOOR?

8 A YES

9 Q IN THE HOUSE, WHERE DID YOU USUALLY SLEEP?

10 A IN A BEDROOM OUT BESIDE AMANDA'S

11 Q OKAY DID ANYBODY SLEEP WITH YOU THERE?

12 A JESSICA

13 Q ALL RIGHT DID YOU SLEEP IN SEPARATE BEDS OR
14 THE SAME BED?

15 A THE SAME BED

16 Q WAS IT A BUNK IN THAT ROOM?

17 A YES

18 Q DID YOU ALL SLEEP ON THE TOP OF THE BUNK OR THE
19 BOTTOM OF THE BUNK?

20 A BOTTOM

21 Q NOW DO YOU REMEMBER THE BACK DOOR OF THE HOUSE
22 AT ALL?

23 A YES

24 Q WAS THERE ANYTHING ODD ABOUT THAT DOOR?

25 A IT WOULD SCUFF AGAINST THE FLOOR

1 Q DID YOU ALL KEEP ANYTHING NEXT TO THE BACK DOOR?

2 A A FAN

3 Q WAS THAT ALWAYS AT THE BACK DOOR?

4 A YES

5 Q WAS THAT DOOR NOISEY IF YOU OPENED IT?

6 A YES

7 Q NOW KYLA, I'D LIKE TO TALK TO YOU A LITTLE

8 BIT -- WELL, BEFORE I DO THAT HAVE ANY BROTHERS OR

9 SISTERS?

10 A YES

11 Q WHAT DO YOU HAVE?

12 A I HAVE THREE BROTHERS AND ONE SISTER AND A

13 SISTER-IN-LAW ROCKY, JOSH, AND JODY, JESSICA AND

14 LOLA

15 Q OKAY AND THAT'S WITH THE FAMILY YOU ARE LIVING

16 WITH NOW?

17 A YEAH

18 Q BACK IN 2001 WHEN THIS HAPPENED WHO WAS IN YOUR

19 FAMILY THEN?

20 A MARY, BILLY, AMANDA, ME, AND JESSICA

21 Q AND WAS MARY YOUR MOTHER?

22 A YES

23 Q AND BILLY, IS THAT BILLY COPE?

24 A YES

25 Q WAS, WAS THAT YOUR FATHER?

002657

1 A YES

2 Q AND JESSICA YOU SAID?

3 A YES

4 Q OR JESSIE HOW OLD IS JESSIE?

5 A 14

6 Q THAT'S NOW SHE'S 14?

7 A (NODS HEAD)

8 Q OKAY AND WHO WAS YOUR OTHER SISTER THERE?

9 A AMANDA

10 Q HOW OLD WAS AMANDA BACK THEN?

11 A 12

12 Q CAN YOU TELL ME THE NIGHT BEFORE AMANDA DIED DO

13 YOU REMEMBER WHAT Y'ALL DID THAT NIGHT?

14 A WELL, WE COME HOME FROM SCHOOL AND I DID A

15 LITTLE BIT OF MY MATH THAT I DIDN'T FINISH IN SCHOOL

16 AND, I DID, I WATCHED TV, AND THEN WE ATE SUPPER AND

17 I WENT TO BED AND JESSICA AND AMANDA STAYED UP AND

18 AMANDA HELPED JESSICA WITH HER HOMEWORK

19 Q OKAY DO YOU REMEMBER WHAT YOUR MOM USED TO DO

20 WHAT SHE DID WORKING BACK THEN?

21 A YEAH, SHE WAS WORKING

22 Q OKAY DO YOU REMEMBER WHAT TIME SHE WOULD WORK?

23 A SHE WOULD LEAVE AT NINE O'CLOCK

24 Q OKAY AND DID SHE GO TO WORK AT NINE O'CLOCK

25 THAT NIGHT?

002658

1 A YES

2 Q WHEN DID SHE USUALLY GET BACK FROM WORK?

3 A IN THE MORNING

4 Q IN THE MORNING?

5 A RIGHT BEFORE WE WENT TO SCHOOL

6 Q DO YOU HAVE ANY IDEA WHAT TIME THAT WAS?

7 A HUH-UH

8 Q ALL RIGHT DO YOU REMEMBER, YOU SAID YOU ATE

9 DINNER THAT NIGHT, DO YOU REMEMBER WHAT YOU ATE FOR

10 DINNER?

11 A NOODLES

12 Q NOODLES IS THAT WHAT Y'ALL USUALLY ATE?

13 A YES

14 Q DO Y'ALL DO ANYTHING WITH THE NOODLES TO MAKE

15 THEM ANY BETTER?

16 A WE WOULD MIX VEGETABLES IN THEM

17 Q DID Y'ALL HAVE MIXED VEGETABLES IN THE NOODLES

18 THAT NIGHT?

19 A NO

20 Q OKAY CAN YOU REMEMBER ABOUT WHAT TIME YOU ATE

21 THAT NIGHT?

22 A AROUND 8

23 Q AROUND 8 OKAY AND DI YOU THE EAT WITH YOUR

24 MOM AND DAD THEN AND YOUR WHOLE FAMILY?

25 A MOM WAS, I DON'T THINK SHE ATE, AND WE ATE WITH,

1 AMANDA ATE, ME AND JESSICA AND BILLY ATE

2 Q OKAY DO Y'ALL USUALLY EAT THAT LATE AT NIGHT?

3 A YEAH

4 Q PRETTY MUCH OKAY AFTER YOU ATE WHAT DID YOU
5 DO?

6 A I WENT TO BED

7 Q YOU WENT TO BED WHEN YOU GO TO SLEE -- DID YOU
8 GO TO BED IN YOUR ROOM THAT NIGHT?

9 A YES

10 Q IN THE BOTTOM OF THAT BUNK BED?

11 A YES

12 Q DID JESSICA GO TO SLEEP WITH YOU AT THAT TIME?

13 A NO

14 Q ARE YOU A HEAVY SLEEPER OR A LIGHT SLEEPER?

15 A HEAVY

16 Q IS IT HARD TO WAKE YOU UP?

17 A NOT REALLY NOW BUT IT USED TO BE

18 Q USED TO BE BACK THEN WHEN THIS HAPPENED WAS IT
19 HARD TO WAKE YOU UP?

20 A YES

21 Q OKAY AFTER YOU WENT TO SLEEP THAT NIGHT DO YOU
22 RECALL HEARING ANYTHING DURING THE NIGHT?

23 A WELL, AFTER JESSICA AND AMANDA WENT TO BED I
24 HEARD LIKE SOMEONE SCREAM AND LIKE SOMEONE GASPING
25 FOR AIR

002060

1 Q OKAY DID YOU GET OUT OF BED DURING THAT TIME?
2 A NO
3 Q DID YOU JUST STAY ASLEEP?
4 A NO, I WOKE UP AND THEN I JUST THOUGHT IT WAS A
5 DREAM AND WENT BACK TO SLEEP
6 Q OKAY WHEN YOU WENT TO BED THAT NIGHT, I GUESS
7 WHEN YOU WOKE UP THINKING IT WAS A DREAM, DID YOU SEE
8 ANY LIGHTS ON?
9 A NO
10 Q NO OKAY WHAT WOKE YOU UP IN THE MORNING?
11 A JESSICA SCREAMING
12 Q JESSICA SCREAMING?
13 A UH-HUH
14 Q DO YOU REMEMBER ABOUT WHAT TIME THAT WAS?
15 A NO
16 Q NO WOULD Y'ALL HAVE TO GET UP FOR SCHOOL THAT
17 MORNING?
18 A YES
19 Q WHEN DO YOU USUALLY GET UP FOR SCHOOL?
20 A SIX
21 Q SIX O'CLOCK WHAT DID YOU DO WHEN YOU HEARD
22 JESSICA SCREAMING
23 A I GOT OUT OF BED AND RAN INTO AMANDA'S ROOM
24 Q IS THAT WHERE JESSICA WAS?
25 A YES

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1 Q WAS THERE ANYONE ELSE IN THE ROOM?

2 A BILLY

3 Q AND WAS AMANDA IN THERE?

4 A YES

5 Q WHAT WAS HAPPENING WHEN YOU WENT INTO THE ROOM?

6 A BILLY, I SAID, I SAID, WHAT HAPPENED, WHAT

7 HAPPENED AND JESSICA SAID AMANDA DIED, AMANDA DIED

8 AND BILLY SAID GO IN THERE INTO THE LIVING ROOM AND

9 HE COME AFTER US

10 Q DID YOU CRY THEN WHEN YOU HEARD AMANDA DIED?

11 A YES

12 Q CAN YOU TELL ME DID YOU NOTICE ANY LIGHTS ON IN
13 THE HOUSE AT THAT TIME?

14 A THE HALL LIGHT WAS ON AND THE LIVING ROOM LIGHT
15 AND BILLY'S ROOM AND AMANDA'S ROOM LIGHT WAS ON

16 Q DID YOU NOTICE ANYTHING ELSE BEING ON WHEN YOU
17 WENT INTO THE LIVING ROOM?

18 A THE COMPUTER

19 Q DID YOU SEE WHAT WAS ON THE COMPUTER SCREEN WHEN
20 YOU WENT IN?

21 A NO

22 Q OKAY DO YOU REMEMBER HOW MANY PHONES Y'ALL HAD
23 IN THE HOUSE?

24 A ONE

25 Q ONE DO YOU REMEMBER WHERE IT WAS?

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1 A IT WAS IN BILLY'S ROOM

2 Q WAS IT A REGULAR PHONE OR A CORDLESS PHONE OR?

3 A A CORDLESS PHONE

4 Q OKAY WHAT DID YOU DO AFTER, WHAT DID YOU DO
5 WHILE YOU WERE OUT IN THE LIVING ROOM?

6 A WELL, WE HAD A COVER ON US AND BILLY CALLED THE
7 AMBULANCE AND, BUT HE HAD GONE, WENT TO THE COMPUTER
8 AND SAID THIS WAS AN EASY WAY TO CALL THE AMBULANCE,
9 AND HE CALLED THE AMBULANCE, OUR PAW-PAW, AND THE
10 PREACHER

11 Q OKAY DO YOU REMEMBER WHAT ORDER HE CALLED THEM
12 IN?

13 A IT WAS THE AMBULANCE FIRST AND PAW-PAW AND THEN
14 THE PREACHER

15 Q OKAY BUT YOU SAID HE GOT ON THE COMPUTER
16 FIRST?

17 A YES

18 Q OKAY KYLA, WHEN YOU LEFT THAT HOUSE DID YOU
19 HAVE TO BE TREATED FOR LICE?

20 A YES

21 Q HAVE YOU HAD THEM FOR AWHILE?

22 A YES

23 Q THANK YOU, KYLA IF YOU'LL ANSWER ANY QUESTIONS
24 THE DEFENSE HAS FOR YOU

25 THE COURT WE'LL BE AT EASE JUST A

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1 MOMENT MR MORTON AND MR GREELEY WISH TO GO SPEAK
2 TO THEIR CLIENTS FOR A MOMENT BEFORE THEY DO CROSS
3 WE'LL CERTAINLY STAY AT EASE FOR A MOMENT

4 MR MORTON THANK YOU, YOUR HONOR

5 (COURT IS AT RECESS AT 10 20)

6 (COURT RESUMES)

7 THE COURT MR MORTON

8 MR MORTON THANK YOU

9 CROSS EXAMINATION BY MR MORTON

10 Q KYLA, I'M JIM MORTON WE MET ONE TIME BEFORE,
11 YOU REMEMBER?

12 A YES

13 Q AND THIS IS ALLISON AND SHE'S MY FRIEND AND
14 YOU REMEMBER I TOLD YOU I HAD A LITTLE GIRL LIKE YOU
15 TOO, RIGHT?

16 A YEAH

17 Q KYLA, I'M GOING TO SHOW YOU A PHOTOGRAPH,
18 STATE'S EXHIBIT NUMBER 50, IS THAT YOUR HOUSE, THAT
19 USED TO BE YOUR HOUSE?

20 A YES

21 Q NOW YOU DIDN'T CALL YOUR MOM MARY AND YOUR DADDY
22 BILLY BACK IN '99, DID YOU?

23 A NO

24 Q OKAY NOW DO YOU REMEMBER YOUR DAD TRYING TO
25 PUT A, WAS THERE A FENCE BACK HERE IN THE BACK?

1 A YES

2 Q OKAY AND I'M POINTING BACK TO WHERE THAT
3 BUILDING IS IN THE BACK AND THERE IS A LADDER WITH A
4 RED TOP ON IT RIGHT THERE AND IF YOU ARE LOOKING AT
5 THAT PICTURE JUST TO THE LEFT, YOU SEE THAT TAPE,
6 THAT'S YELLOW TAPE THE POLICE PUT UP, BUT RIGHT TO
7 THE LEFT AS YOU ARE LOOKING AT THAT PICTURE, WAS
8 THERE A FENCE BACK THERE?

9 A YES

10 Q AND WAS THERE A LITTLE PATHWAY THAT WENT THROUGH
11 THERE?

12 A YES

13 Q OKAY DO YOU REMEMBER YOUR DAD PUTTING
14 SOMETHING UP BACK THERE TO TRY AND KEEP PEOPLE FROM
15 WALKING THROUGH THERE?

16 A NO

17 Q YOU DON'T REMEMBER THAT CAN YOU TELL IN THAT
18 PHOTOGRAPH RIGHT THERE, YOU SEE THE LEAVES, HOW THEY
19 ARE CHANGED COLORS, CAN YOU TELL IF THAT IS A PATH
20 RIGHT THERE? DOES THAT LOOK LIKE A PATH TO YOU?

21 A (NODS HEAD)

22 Q IT DOES?

23 A YES

24 Q NOW Y'ALL HAD A DOG FOR WHILE TOO, DIDN'T YOU?

25 A YES

590200

1 Q AND WHAT HAPPENED TO HIM?

2 A HE WAS KEPT ON GETTING, BREAK LOOSE FROM THE
3 CHAIN SO

4 Q WHAT KIND OF DOG WAS IT?

5 A I DON'T REMEMBER

6 Q OKAY WAS IT A BIG DOG OR A LITTLE DOG?

7 A YEAH

8 Q WHICH ONE BIG DOG?

9 A IT WAS BIG

10 Q BIG DOG, LIKE A LAB OR SOMETHING LIKE THAT?

11 A YES AND BILLY TOOK IT TO THE DOG POUND

12 Q DID HE GET HIT BY A CAR OR SOMETHING?

13 A NO

14 Q NO JESSICA, WHEN YOU --

15 A JESSICA I'M KYLA

16 Q I'M SORRY, KYLA OKAY SORRY I KNOW LITTLE
17 GIRLS DON'T LIKE TO BE CALLED THEIR SISTER'S NAME
18 YOU HAD NEVER, YOU SAY THAT YOU HEARD SOMEONE SCREAM
19 THAT NIGHT WHEN WE TALKED EARLIER DO YOU REMEMBER
20 WHEN WE TALKED EARLIER IN FAMILY COURT, YOU DIDN'T
21 TELL ME THAT AT THAT TIME I DON'T BELIEVE DO YOU
22 REMEMBER?

23 A HUH-UH

24 Q YOU DON'T REMEMBER WHETHER YOU TOLD ME THAT OR
25 NOT?

1 A NO

2 Q OKAY LET ME SHOW YOU ONE MORE PICTURE IS
3 THAT, DO YOU REMEMBER THAT AS AND I'LL SHOW YOU
4 STATE'S EXHIBIT 42 D AND IS THAT A PHOTOGRAPH OF
5 YOUR --

6 A LIVING ROOM

7 Q LIVING ROOM IF YOU DON'T MIND I'M GOING TO
8 COME WALK AROUND THERE SO THEY CAN SEE WHAT WE GOT
9 THIS IS A PHOTOGRAPH OF THE LIVING ROOM, RIGHT?

10 A YES

11 Q AND THAT'S THE PHONE RIGHT THERE IN FRONT OF THE
12 COMPUTER, RIGHT?

13 A YES

14 Q OKAY AND ON THIS PREVIOUS PHOTOGRAPH THAT I
15 SHOWED YOU, WE WERE TALKING ABOUT THIS PATH BACK
16 HERE, THERE IS A FENCE BACK HERE WITH A PATH, RIGHT?

17 A RIGHT

18 Q IS THAT RIGHT?

19 A RIGHT

20 Q OKAY YOUR ACCENT HAS CHANGED A LITTLE BIT

21 MR MORTON I BEG THE COURT'S INDULGENCE
22 ONE SECOND, YOUR HONOR

23 Q THAT'S ALL I HAVE, KYLA THANK YOU VERY MUCH

24 THE COURT MR GREELEY

25 MR GREELEY YOUR HONOR, I DON'T HAVE

1 ANYTHING FOR KYLA GOOD MORNING

2 THE COURT MR THOMPSON

3 MR THOMPSON JUST A COUPLE QUESTIONS,

4 YOUR HONOR

5 REDIRECT EXAMINATION BY MR THOMPSON

6 Q KYLA, DO YOU REMEMBER SEEING THE TRANSCRIPT OF
7 YOUR TESTIMONY IN FAMILY COURT?

8 A YES

9 Q AND I'M GOING TO SHOW YOU PAGE 88 ON THAT IF
10 YOU COULD JUST LOOK AT THAT HIGHLIGHTED PORTION IN
11 THE MIDDLE THERE

12 A (READING)

13 Q IN FAMILY COURT DID YOU TELL THEM ABOUT HEARING
14 THAT SCREAM AT NIGHT?

15 A YEAH, I FORGET ABOUT THAT

16 Q OKAY NOW HE SHOWED YOU A PICTURE OF A COMPUTER
17 DESK RIGHT HERE AND IS THAT A PHONE ON THAT DESK
18 RIGHT THERE?

19 A YES

20 Q SO DID YOU HAVE MORE THAN ONE PHONE?

21 A I NEVER KNEW ABOUT THAT PHONE

22 Q OH, OKAY BUT THE OTHER PHONE YOU RECALL WHAT
23 THAT ONE WAS?

24 A YEAH

25 Q HAD YOU USED THE OTHER PHONE?

002068

1 A YEAH

2 Q AND THAT'S ONE YOU SAID DIDN'T HAVE A CORD?

3 A IT DIDN'T HAVE A CORD

4 Q ALL RIGHT THANK YOU

5 THE COURT MR MORTON

6 MR MORTON NO, SIR I DON'T HAVE

7 ANYTHING ELSE

8 THE COURT ALL RIGHT THANK YOU WE'LL

9 LET YOU LEAVE AND WE'LL ASK MISS JESSICA TO COME IN

10 (JESSICA ENTERS THE LIBRARY)

11 THE COURT JESSICA, I'M JOHN, AND IF

12 YOU'LL JUST RAISE YOUR RIGHT HAND AND PUT YOUR LEFT

13 HAND ON THE BIBLE, THIS LADY IS GOING TO ADMINISTER

14 AN OATH TO YOU

15 JESSICA COPE, AFTER BEING DULY SWORN

16 TESTIFIES AS FOLLOWS

17 DIRECT EXAMINATION BY MR THOMPSON

18 Q GOOD MORNING, JESSICA HOW ARE YOU?

19 A GOOD

20 Q JESSICA, WHAT'S YOUR WHOLE NAME?

21 A JESSICA NICOLE COPE

22 Q AND JESSICA, WHAT STATE DO YOU LIVE IN NOW?

23 A NORTH CAROLINA

24 Q HOW OLD ARE YOU?

25 A 14

002063

1 Q WHERE DO YOU GO TO SCHOOL?

2 A BULADEAM ELEMENTARY

3 Q WHAT GRADE ARE YOU IN?

4 A 8TH

5 Q 8TH GRADE?

6 A YEAH

7 Q DO YOU LIKE SCHOOL THIS YEAR?

8 A YEAH

9 Q CAN YOU TELL ME DO YOU REMEMBER WHERE YOU LIVED
10 AND WHAT STATE YOU LIVED IN BEFORE YOU LIVED IN NORTH
11 CAROLINA?

12 A SOUTH CAROLINA

13 Q DO YOU REMEMBER WHERE IN SOUTH CAROLINA YOU
14 LIVED?

15 A ROCK HILL

16 Q DO YOU REMEMBER THE STREET YOU LIVED ON THERE?

17 A 407 RICH STREET

18 Q OKAY CAN YOU TELL ME BACK IN NOVEMBER 2001,
19 THE LAST TIME YOU THERE, CAN YOU TELL ME WHAT THE
20 HOUSE WAS LIKE AT 407 RICH STREET?

21 A IT WAS MESSY THERE WAS CLOTHES, ROACHES,
22 GARBAGE ALL ON THE FLOOR

23 Q OKAY AND HAD IT BEEN LIKE THAT FOR AWHILE?

24 A UH-HUH

25 Q IF YOU CAN ANSWER OUT SO WE CAN TAKE YOUR

1 ANSWERS

2 A YES

3 Q THANK YOU CAN YOU TELL ME WHO LIVED WITH YOU
4 BACK AT 407 RICH STREET?

5 A MARY, BILLY, ME, KYLA, AND AMANDA

6 Q AND AMANDA AND ARE KYLA AND AMANDA YOUR
7 SISTERS?

8 A YES

9 Q HOW OLD WERE YOU BACK THEN?

10 A I THINK I WAS 11

11 Q OKAY DO YOU REMEMBER HOW OLD AMANDA WAS THEN?

12 A 12

13 Q OKAY SO KYLA IS YOUNGER THAN YOU?

14 A YES

15 Q CAN YOU TELL ME A LITTLE BIT ABOUT THE HOUSE
16 THERE DO YOU REMEMBER IN AMANDA'S ROOM WAS THERE A
17 WINDOW THAT WAS BROKEN?

18 A YEAH

19 Q AND CAN YOU TELL ME DO YOU REMEMBER HOW THAT GOT
20 BROKEN?

21 A ME AND KYLA WAS JUMPING AROUND AND I FELL
22 THROUGH IT

23 Q OH, OKAY HOW CLOSE WAS THAT TO THE TIME WHEN
24 AMANDA DIED?

25 A I DON'T REMEMBER

1 Q WAS IT WITHIN A COUPLE DAYS OR WAS IT LONGER
2 THAN THAT?

3 A LONGER

4 Q AND WAS THAT WINDOW FIXED PRETTY QUICK?

5 A YEAH

6 Q HOW DID IT GET FIXED?

7 A THEY PUT PLASTIC OVER IT

8 Q DO YOU HOW THEY ATTACHED THE PLASTIC TO THE
9 WINDOW?

10 A STAPLER

11 Q A STAPLER OKAY DO YOU REMEMBER THE OTHER
12 WINDOW IN AMANDA'S ROOM?

13 A YES

14 Q DID Y'ALL EVER USE TO OPEN THAT WINDOW UP?

15 A SOMETIMES WHEN IT WAS HOT

16 Q WHEN IT WAS HOT BACK IN NOVEMBER 2001 WAS IT
17 HOT THEN?

18 A NO, IT WAS PRETTY MUCH COLD

19 Q OKAY DID YOU HAVE TO OPEN THE WINDOW AT ALL
20 DURING THAT TIME?

21 A NO

22 Q NO WAS THAT WINDOW EASY TO OPEN?

23 A NO

24 Q NO

25 A IT WAS HARD

002072

1 Q AND IN WHAT WAY WAS IT HARD?

2 A WHEN YOU PUSHED IT UP AND IT WAS HARD TO GET
3 OPEN

4 Q OKAY WHEN YOU WOULD SHUT AMANDA'S DOOR DID YOU
5 NOTICE ANYTHING WHEN YOU OPEN OR SHUT HER DOOR?

6 A IT WAS HARD TO SHUT THE DOOR

7 Q IT WAS?

8 A YES

9 Q AND WHY WAS THAT?

10 A IT LIKE SCRAPED UP AGAINST THE FLOOR

11 Q WAS THAT NOISY WHEN IT SCRAPED ON THE FLOOR?

12 A YEAH

13 Q OKAY CAN YOU TELL ME THE BACK DOOR IN THE
14 HOUSE, WERE THERE ANY PROBLEMS WITH THE BACK DOOR?

15 A IT WAS HARD TO GET OPEN THE DOOR

16 Q OKAY AND WHY IS THAT?

17 A BECAUSE IT WAS SCRAPED AGAINST THE FLOOR TOO

18 Q WAS THAT DOOR NOISY WHEN IT SCRAPED AS WELL?

19 A YES

20 Q IF YOU COULD, IF WE COULD JUST GO BACK A LITTLE
21 BIT THE DAY BEFORE AMANDA DIED, CAN YOU TELL ME WHAT
22 DO YOU REMEMBER ABOUT DURING THAT AFTERNOON?

23 A I CAME HOME FROM SCHOOL AND I STARTED MY
24 HOMEWORK

25 Q DID YOU HAVE A LOT OF HOMEWORK?

002073

1 A YEAH

2 Q WHAT KIND OF HOMEWORK DID YOU HAVE?

3 A LONG DIVISION

4 Q YOU DID?

5 A (NODS HEAD)

6 Q WAS THIS HOMEWORK THAT WAS JUST FOR THAT NIGHT
7 OR HAD IT BUILT UP FOR AWHILE?

8 A IT HAD BUILT UP FOR AWHILE

9 Q AND WAS LONG DIVISION EASY TO YOU?

10 A NO IT WAS HARD

11 Q OKAY GO AHEAD AND TELL ME ABOUT WHAT YOU DID
12 WHEN YOU STARTED THE HOMEWORK?

13 A I DIDN'T UNDERSTAND IT, SO I JUST SAT THERE AND
14 TRIED DOING IT AND ABOUT SIX O'CLOCK DURING THAT DAY
15 BILLY HAD STARTED SHOWING ME, AND HE SAID, SHOWED ME
16 ONE PROBLEM AND SAID OKAY NOW YOU GO DO THE REST
17 AND THEN MOM SHOWED ME AN EASIER WAY TO DO IT AND SHE
18 SAID OKAY LET'S SEE IF YOU CAN DO IT NOW AND
19 WHENEVER I WENT INTO THE, SAT DOWN ON THE COUCH,
20 BILLY SAID THAT NO THAT AIN'T RIGHT, JUST CALL MARY
21 STUPID AND ALL BECAUSE SHE DIDN'T FINISH SCHOOL, AND
22 THEN AMANDA SHOWED ME AND WE WENT INTO THE HALLWAY
23 AND FINISHED AND THEN WE ATE

24 Q WHEN YOU WORKED ON IT IN THE HALLWAY WHERE DID
25 YOU WORK IN THE HALLWAY ON YOUR HOMEWORK?

1 A IT'S LIKE A LITTLE SEWING MACHINE TYPE DESK AND
2 WHEN YOU FOLD IT DOWN IT BECOMES A DESK

3 Q RIGHT

4 A AND WHENEVER I GOT DONE WITH MY HOMEWORK LATER
5 THAT NIGHT, ABOUT ONE

6 Q BEFORE WE GO THAT FAR, YOU SAID THAT AMANDA
7 STARTED HELPING YOU WITH IT?

8 A YEAH

9 Q DID Y'ALL TAKE A BREAK TO EAT ANY TIME THAT
10 NIGHT?

11 A YEAH

12 Q DO YOU REMEMBER WHEN THAT WAS?

13 A AROUND 8-8 30 SOMEWHERE IN THERE

14 Q OKAY AND DID YOUR MOM WORK OUTSIDE THE HOUSE
15 THEN?

16 A SHE WAS WORKING AT, I CAN'T REMEMBER THE NAME OF
17 IT, LEINER

18 Q LEINER HEALTH PRODUCTS DID SHE HAVE TO WORK,
19 WHAT TIME OF DAY DID SHE HAVE TO GO WORK?

20 A AT NIGHT SHE HAD GO ABOUT NINE O'CLOCK AND
21 COME HOME AT SEVEN

22 Q OKAY WHEN YOU ATE THAT NIGHT DO YOU REMEMBER
23 WHAT Y'ALL ATE?

24 A NOODLES

25 Q IS THAT WHAT YOU USUALLY ATE?

002075

1 A YEAH

2 Q DID Y'ALL DO ANYTHING TO DOCTOR UP THE NOODLES
3 AT ALL?

4 A PUT MIXED VEGETABLES IN IT

5 Q DO YOU RECALL HAVING MIXED VEGETABLE IN THAT
6 NIGHT?

7 A NO

8 Q CAN YOU TELL ME WHEN, GOING BACK TO AMANDA'S
9 ROOM FOR JUST A MINUTE, WHAT WAS THE CLOSEST LIKE IN
10 AMANDA'S ROOM?

11 A IT WAS MESSY IT HAD BAGS OF CLOTHES IN IT AND
12 STUFF ALL IN IT I COULDN'T GET IN IT

13 Q YOU COULDN'T GET IN THE CLOSET?

14 A NO

15 Q IT WAS THAT FULL OF STUFF?

16 A YEAH

17 Q OKAY NOW DID YOUR DAD HELP YOU ANYMORE WITH
18 YOUR HOMEWORK AFTER DINNER?

19 A NO

20 Q WHO IF ANYONE HELPED YOU WITH YOUR HOMEWORK
21 AFTER DINNER?

22 A AMANDA

23 Q AMANDA DID HOW LONG DID YOU WORK ON YOUR
24 HOMEWORK?

25 A NINE TO ABOUT ONE

002076

1 Q OKAY AND WHAT MADE YOU STOP AT ONE?
2 A BILLY HAD SAID OKAY GIRLS, TIME FOR BED
3 Q HAD HE TOLD YOU AHEAD OF TIME THAT ONE O'CLOCK
4 WAS THE TIME YOU HAD TO STOP?
5 A YEAH
6 Q WHAT DID BILLY DO WHILE Y'ALL WERE DOING THE
7 HOMEWORK?
8 A HE WAS ON THE COMPUTER
9 Q ALL RIGHT AND WHEN ONE O'CLOCK ROLLED AROUND
10 WHERE WAS BILLY THEN?
11 A IN THE BED
12 Q OKAY NOW HE SLEPT WITH KIND OF A MACHINE,
13 DIDN'T HE?
14 A CPAP MACHINE
15 Q OKAY WAS THAT ON BEFORE ONE O'CLOCK?
16 A YEAH
17 Q SO WHILE HE WAS IN THE ROOM HE HAD THAT ON?
18 A RIGHT
19 Q OKAY AND DO YOU RECALL AT ONE O'CLOCK WERE YOU
20 HEARING ANYTHING AT ONE O'CLOCK?
21 A I HEARD THE PHONE RING
22 Q ALL RIGHT
23 A AND HE SAID, OKAY GIRLS, TIME FOR BED
24 Q DID YOU HAVE AN ALARM ON THAT PHONE?
25 A (NODS HEAD)

002677

1 Q DID BILLY USED TO USE THAT ALARM TO WAKE HIMSELF
2 UP?

3 A THAT'S THE WAY HE WOKE UP IN THE MORNING

4 Q OKAY WHAT KIND OF PHONE WAS THAT? WAS THAT A
5 PHONE THAT HAD A CORD TO IT?

6 A NO, IT WAS A CORDLESS

7 Q WHERE DID YOU USUALLY KEEP THE CORDLESS PHONE?

8 A IN HIS ROOM

9 Q ALL RIGHT DID HE GET OUT OF BED TO COME TELL
10 YOU IT WAS TIME TO GO TO BED?

11 A NO

12 Q DID YOU SEE HIM OUT OF HIS ROOM ANY OTHER TIME
13 THAT NIGHT?

14 A NO

15 Q NOW WHEN IT WAS TIME FOR YOU TO GO TO BED AT ONE
16 AFTER YOU WERE TOLD, WHAT DID YOU AND AMANDA DO?

17 A WE STAYED UP FOR ABOUT 20 MINUTES ALMOST
18 TALKING

19 Q OKAY WHERE DID YOU STAY UP? WHERE DID YOU GO
20 TO TALK?

21 A AMANDA'S ROOM

22 Q ALL RIGHT WHERE IN HER ROOM?

23 A ON HER BED

24 Q ON HER BED

25 A UH-HUH

002078

1 Q WHEN IT WAS TIME FOR Y'ALL TO GO TO BED DID YOU
2 DO ANYTHING BEFORE YOU WENT TO BED?

3 A CUT OFF THE LIGHT AND TOLD HER GOOD NIGHT AND I
4 LOVED HER

5 Q ALL RIGHT DID Y'ALL GO DOWN ANY OF THE DOORS
6 OR ANYTHING?

7 A WE WENT AROUND AND SHUT OFF ALL THE LIGHTS AND
8 MAKE SURE ALL THE DOORS WERE LOCKED

9 Q OKAY DID YOU GO TO ANY DOOR IN PARTICULAR?

10 A I LOCKED THE BACK DOOR AND THEN WHEN I CAME BACK
11 THROUGH THERE I SHUT OFF ALL THE NIGHTS, I SAW AMANDA
12 SHUT AND LOCK THE LITTLE TURNING THINGY IN THE DOOR,
13 AND THEN SHE LOCKED THE CHAIN

14 Q OKAY THE CHAIN ON THE FRONT DOOR?

15 A (NODS HEAD)

16 Q AND YOU SAW THAT CHAIN GET LOCKED?

17 A UH-HUH (NODS HEAD)

18 Q DID Y'ALL HAVE A CHAIN ON THE BACK DOOR?

19 A NO

20 Q DO YOU REMEMBER THE BACK DOOR, WAS THAT DOOR
21 WIGGLY OR DID IT STAY PRETTY MUCH SHUT TIGHT WHEN YOU
22 SHUT IT?

23 A I DON'T REMEMBER

24 Q OKAY HAVE Y'ALL IN THE PAST EVER HAD TO BREAK
25 INTO THE HOUSE IN ANY WAY?

002079

1 A NOT THAT I KNOW OF

2 Q OKAY AFTER Y'ALL DID THAT, DID YOU NOTICE
3 ANYTHING ELSE, WAS ANYTHING ELSE ON IN THE LIVING
4 ROOM WHEN YOU WENT TO BED?

5 A NO

6 Q WAS THE COMPUTER ON?

7 A NO

8 Q ALL RIGHT HOW COULD YOU TELL?

9 A A LITTLE GREEN LIGHT ON THE MONITOR AND THE CP
10 WERE ON

11 Q THE LITTLE GREEN POWER BUTTON?

12 A YEAH

13 Q OKAY SO WHEN YOU WENT TO BED WERE THERE ANY
14 LIGHTS ON?

15 A NO

16 Q AND WHERE DID YOU GO TO SLEEP THAT NIGHT?

17 A IN MY BEDROOM

18 Q AND WAS ANYBODY ASLEEP WITH YOU?

19 A KYLA

20 Q KYLA AND Y'ALL SLEEP IN A BUNK BED?

21 A YEAH

22 Q DO YOU SLEEP IN THE TOP OF THE BUNK BED OR THE
23 BOTTOM OF THE BUNK BED?

24 A THE BOTTOM BUNK

25 Q DID YOU HEAR ANYTHING DURING THE NIGHT THAT

1 NIGHT?
2 A NO
3 Q CAN YOU TELL ME WHAT WOKE YOU UP IN THE MORNING?
4 A I HEARD BILLY SAY AMANDA, AMANDA, WAKE UP
5 Q AND
6 A I HEARD HIM RUNNING THROUGH THE HALL
7 Q RUNNING?
8 A UH-HUH
9 Q NOT WALKING?
10 A NOT WALKING, RUNNING
11 Q OKAY AND WAS THERE ANYTHING UNUSUAL TO YOU AT
12 THAT POINT?
13 A YEAH, HE NEVER RUNS
14 Q HE NEVER RUNS HOW ABOUT IN THE WAY HE CALLED
15 AMANDA, WAS THAT UNUSUAL?
16 A YEAH, BECAUSE USUALLY HE SCREAMED IT
17 Q OKAY HOW DID HE SAY IT THAT DAY?
18 A IT WAS A LOW VOICE, AMANDA AMANDA
19 Q ALL RIGHT AND THEN HE STARTED RUNNING TO THE
20 BEDROOM?
21 A UH-HUH
22 Q DID YOU LOOK TO SEE WHERE HE RAN FROM?
23 A YEAH, IT WAS IN THE LIVING ROOM
24 Q HE RAN FROM THE LIVING ROOM?
25 A UH-HUH

002081

1 Q DID HE GO INTO AMANDA'S BEDROOM THEN?

2 A UH-HUH

3 THE COURT YOU NEED TO SAY YES OR NO IF
4 YOU DON'T MIND

5 A YES

6 Q WHEN YOU, WHEN THAT HAPPENED, WHAT DID YOU DO?

7 A I RAN ABOUT FIVE SECONDS BEHIND HIM AND I SAW
8 HIM LIKE PICK HER UP HALFWAY

9 Q UH-HUH?

10 A AND UNWRAP THE COVERS FROM AROUND HER NECK

11 Q WHAT DO YOU THE MEAN THE COVERS FROM AROUND HER
12 NECK?

13 A THE, IT'S HARD TO DESCRIBE, THE COVER THAT WAS
14 HALFWAY BROKEN

15 Q OKAY WAS IT FROM A BLANKET?

16 A YEAH

17 Q WAS IT PART OF THE BLANKET THAT WAS AROUND HER
18 NECK?

19 A YEAH

20 Q OKAY AND YOU SAW HIM UNWRAP THAT?

21 A YEAH

22 Q DID HE HAVE TO OPEN AMANDA'S DOOR TO GET INTO
23 THE ROOM?

24 A NO, NOT THAT I KNOW OF

25 Q DID YOU HEAR IT OPEN?

002082

1 A NO

2 Q DID YOU HEAR ANY NOISE WHEN YOU RAN INTO THE
3 ROOM?

4 A NO

5 Q NO DID HE STOP AT THE DOOR? DID YOU HEAR ANY
6 POUNDING OR ANYTHING LIKE THAT?

7 A NO

8 Q NOW WHAT DID YOU NOTICE, YOU SAID YOU NOTICED
9 HIM UNWRAPPING THAT FROM AROUND HER NECK, WHAT ELSE
10 DID YOU NOTICE?

11 A HER FACE WAS BLUE AND HER NECK WAS BLUE

12 Q OKAY WHAT -- DID BILLY SAY ANYTHING TO YOU AT
13 THAT TIME?

14 A HE SAID THAT SHE HAD BEEN DEAD FOR FOUR HOURS
15 AND SHE HAD SWALLOWED HER TONGUE

16 Q OKAY AND IS THAT HOW HE HAD SAID IT? HE SAID
17 SHE HAD BEEN DEAD FOR FOUR HOURS?

18 A YES

19 Q WHAT ELSE HAPPENED AT THAT POINT IN THE ROOM?

20 A HE SAID FIRST TO GO GET ON THE COUCH AND WE TOOK
21 A COVERING AND HE SAID HE WAS GOING TO CALL THE
22 AMBULANCE AND THE PASTOR AND OUR PAW-PAW

23 Q OKAY DO YOU REMEMBER WHEN YOU WERE STILL IN
24 AMANDA'S ROOM HOW DID YOU REACT WHEN HE TOLD YOU
25 AMANDA WAS DEAD?

-
Ccccc

1 A I SCREAMED

2 Q DID KYLA COME TO THE ROOM?

3 A YEAH

4 Q WHEN DID SHE COME?

5 A RIGHT AFTER I SCREAMED

6 Q OKAY WHAT HAPPENED WHEN KYLA CAME INTO THE
7 ROOM?

8 A SHE SAID WHAT'S WRONG, WHAT'S WRONG I SAID
9 AMANDA IS DEAD AND SHE SCREAMED

10 Q OKAY IS THAT WHEN YOUR DAD TOLD Y'ALL TO GO TO
11 THE LIVING ROOM?

12 A RIGHT BEFORE

13 Q WHAT DID YOU DO WHEN YOU WENT INTO THE LIVING
14 ROOM?

15 A ME AND KYLA HAD GOT A LITTLE COVER AND WRAPPED
16 THAT UP BECAUSE WE HAD ON A LITTLE SHORT GOWN AND
17 BILLY HAD ON HIS COMPUTER AND HE SAID THAT THE, THERE
18 WAS A WAY ON THE COMPUTER THAT YOU COULD CALL AND IT
19 MAKE EASIER TO CALL THE NUMBER, AND HE GOT ON THAT
20 AND CALLED THE AMBULANCE, THE PASTOR, AND OUR
21 PAW-PAW, AND THE AMBULANCE CAME THE DOOR WAS
22 ALREADY UNLOCKED

23 Q THE DOOR WAS UNLOCKED WHEN?

24 A WHEN THEY CAME IN

25 Q WHEN YOU AND KYLA CAME IN?

002084

1 A YEAH

2 Q OKAY AND HOW DID YOU KNOW IT WAS UNLOCKED WHEN
3 YOU GUYS CAME IN

4 A WHENEVER I LOOKED AT THE DOOR IT WAS UNLOCKED
5 AND ALL AND THEN BILLY WENT OVER THERE AND OPENED UP
6 THE DOOR

7 Q OKAY DO YOU REMEMBER ABOUT WHAT TIME IT WAS
8 THAT YOU WOKE UP THAT MORNING?

9 A SIX

10 Q IS THAT WHEN YOU USUALLY GOT UP FOR SCHOOL?

11 A YEAH

12 Q OKAY JESSICA, FOR A MINUTE GOING BACK TO THE
13 NIGHT BEFORE, WAS AMANDA'S BED NORMAL, SITTING UP
14 STRAIGHT AND EVERYTHING THAT NIGHT?

15 A (NODS HEAD)

16 Q WAS IT LAYING, IF YOU WOULD ANSWER

17 A OH, YEAH

18 Q YEAH WAS IT ON THE FLOOR AT ALL THAT NIGHT?

19 A NO

20 Q OKAY CAN YOU TELL ME THE PART OF THE BLANKET
21 THAT YOU SAW AROUND HER NECK, WAS THAT FROM THE EDGE
22 OF THE BLANKET?

23 A YEAH

24 Q HAD THAT EDGE BEEN OFF BEFORE THAT NIGHT?

25 A YEAH

002085

1 Q OFF THE BLANKET? ABOUT HOW FAR WAS IT OFF THE
2 BLANKET BEFORE THAT NIGHT?

3 A HUH, HALFWAY I GUESS

4 Q ABOUT HALFWAY?

5 A YEAH

6 Q HAD YOUR DAD EVER SAID ANYTHING TO YOU ALL ABOUT
7 THAT BEING DANGEROUS?

8 A NO

9 Q HAD YOU EVER HEARD HIM SAYING ANYTHING TO AMANDA
10 ABOUT IT BEING DANGEROUS?

11 A NO

12 Q DID HE EVER INSTRUCT ANY OF Y'ALL NOT TO SLEEP
13 WITH THAT BLANKET?

14 A NO

15 Q WHOSE BLANKET WAS THAT?

16 A AMANDA'S, SHE KEPT IT ON HER BED

17 Q HAD SHE HAD IT FOR A GOOD WHILE?

18 A UH-HUH

19 Q IF YOU CAN ANSWER AGAIN?

20 A OH, YEAH

21 Q OKAY DID Y'ALL KEEP IT ANY OTHER PLACES OTHER
22 THAN AMANDA'S ROOM?

23 A SOMETIMES IT WOULD BE ON THE COUCH IN THE LIVING
24 ROOM

25 Q OKAY BUT AT NIGHT IF AMANDA NEEDED TO USE A

002086

1 BLANKET WHAT BLANKET DID SHE USE?

2 A THAT ONE

3 Q DID SHE USE IT JUST ABOUT EVERY NIGHT?

4 A YEAH

5 Q ONE OTHER QUESTION, JESSICA AFTER YOU LEFT THE
6 HOUSE OR HOW DID YOU LEAVE THE HOUSE THAT NIGHT? WHO
7 TOOK YOU THAT NIGHT OR THAT MORNING, THAT MORNING?

8 A OUR PAW-PAW HAD CAME AND GOT US

9 Q PICKED YOU UP?

10 A UH-HUH

11 Q DID HE COME PRETTY QUICK AFTER THE AMBULANCE?

12 A YEAH

13 Q DID YOU HAVE TO BE TREATED FOR LICE AFTER YOU
14 LEFT THE HOUSE?

15 A YEAH

16 Q OKAY THANK YOU, JESSICA PLEASE ANSWER ANY
17 QUESTIONS THEY HAVE FOR YOU

18 THE COURT WE'LL BE AT EASE JUST A MOMENT
19 WHILE WE LET MR MORTON AND MR GREELEY GO TALK TO
20 THEIR CLIENTS

21 (PAUSE AND COURT RESUMES)

22 THE COURT MR MORTON

23 MR MORTON THANK YOU, YOUR HONOR

24 CROSS EXAMINATION BY MR MORTON

25 Q HI, JESSICA

C02087

1 A HI

2 Q HOW ARE YOU?

3 A GOOD

4 Q WE SPOKE ONE TIME BEFORE DO YOU REMEMBER?

5 A YEAH

6 Q OKAY YOU'VE GROWN UP EVEN SINCE THEN YOU
7 WERE I THINK 11 BACK IN 1999, IS THAT RIGHT?

8 A YEAH

9 Q OKAY AND BACK THEN YOU DIDN'T CALL YOUR DADDY
10 BILLY, DID YOU?

11 A NO

12 Q OKAY AND YOU TALKED ABOUT, I'M JUST GOING TO
13 ASK A COUPLE QUESTIONS I'M NOT GOING TO ASK YOU TOO
14 MANY

15 THE COURT I HATE TO INTERRUPT BUT YOU
16 ASKED ABOUT 1999

17 MR MORTON 2001, I'M SORRY

18 Q YOU WERE 11 IN 2001 BECAUSE THIS IS 2004 THE
19 OLDER YOU GET YOU LOOSE TRACK OF TIME YOU HAD
20 TALKED TO, I GUESS, MRS BLACKWELDER AFTER THIS
21 HAPPENED, DO YOU REMEMBER THAT?

22 A YEAH

23 Q OKAY AND DO YOU REMEMBER TELLING
24 MRS BLACKWELDER THAT YOUR DAD HAD WALKED AND NOT RUN
25 BACK TO AMANDA'S ROOM?

OC208B

1 A I DON'T REMEMBER

2 Q YOU DON'T REMEMBER THAT? I'M GOING TO SHOW YOU

3 MR THOMPSON I OBJECT

4 THE COURT YEAH, I SUSTAIN THE

5 OBJECTION

6 MR MORTON OKAY

7 Q YOU TESTIFIED THAT YOUR DAD WORE A SLEEP APNEA
8 MACHINE?

9 A YEAH

10 Q THAT HE WORE ON HIS HEAD?

11 A YEAH

12 Q AND HE HAD FANS IN HIS ROOM, RIGHT?

13 A RIGHT

14 Q Y'ALL HAD FANS IN YOUR ROOM TOO?

15 A YEAH

16 Q NOW THE FAN AND THE APNEA MACHINE YOU COULD
17 PROBABLY, IF YOU WERE ASLEEP, OPEN THE BACK DOOR OR
18 OPEN AMANDA'S DOOR IF YOU HAD A SLEEP APNEA MACHINE
19 ON AND FANS BLOWING, YOU DIDN'T HEAR THAT DOOR
20 OPENING THAT NIGHT, DID YOU?

21 A WHICH DOOR?

22 Q EITHER DOOR?

23 A NOT THAT I RECALL

24 Q DO YOU THINK A SLEEP APNEA MACHINE AND FANS
25 WOULD BE LOUDER THAN THE DOOR SQUEAKING ON THE FLOOR?

002089

1 A NO

2 Q YOU DON'T THINK SO?

3 A (SHAKES HEAD)

4 Q YOU HAD NEVER MENTIONED BEFORE ANYTHING ABOUT
5 THE CHAIN BEING PUT ON THE LOCK, HAD YOU?

6 A I DON'T REMEMBER

7 Q YOU DON'T REMEMBER SAYING THAT BEFORE?

8 A NO

9 Q NO WELL, HOW DID THAT, DID SOMEBODY TALK TO
10 YOU ABOUT THAT? WHO DID YOU FIRST MENTION THAT TO,
11 DO YOU REMEMBER?

12 A IT WAS WILLY

13 Q IT WAS WILLY AND WHEN WAS THAT? WILLY
14 THOMPSON YOU ARE TALKING ABOUT, THE SOLICITOR?

15 A (NODS HEAD)

16 THE COURT YOU GOT TO SAY YES OR NO

17 A OH, YES

18 Q WHEN DID YOU MENTION THAT TO HIM?

19 A WE TALKED

20 Q AND WHEN WAS THAT, JUST PREPARING FOR THIS CASE?

21 A YEAH

22 Q WITHIN THE LAST MONTH?

23 A UH-HUH

24 Q YES

25 A YES

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1 Q THAT WAS THE FIRST TIME YOU MENTIONED THAT TO
2 WILLY?

3 A UH-HUH

4 Q OKAY NOW AMANDA, YOUR DAD THAT NIGHT, NOT
5 AMANDA BUT YOUR DAD BILLY, HE TOLD Y'ALL TO GO ON THE
6 COUCH IN THE LIVING ROOM, RIGHT?

7 A YEAH

8 Q AND HE TOLD YOU TO GO IN THERE AND PRAY AS HARD
9 AS YOU COULD, DIDN'T HE?

10 A I DON'T REMEMBER

11 Q YOU DON'T REMEMBER THAT?

12 A NO

13 Q YOU REMEMBER WHAT TIME YOU ATE SUPPER THOUGH?

14 A YEAH

15 Q YOU DO REMEMBER THAT?

16 A YEAH

17 Q AND THAT'S BEEN THREE YEARS AGO, RIGHT?

18 A RIGHT

19 Q OKAY AMANDA, Y'ALL DIDN'T GO TO CHURCH THAT
20 NIGHT I DON'T BELIEVE?

21 A NO

22 Q IT WAS A WEDNESDAY NIGHT, RIGHT, BECAUSE YOU HAD
23 SO MUCH HOMEWORK TO DO, RIGHT?

24 A RIGHT

25 Q AND DID AMANDA PLAY HER VIOLIN THAT NIGHT?

TGCJ30

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1 A NO

2 Q OKAY DO YOU, YOU REMEMBER YOU SAID GOING
3 AROUND THE HOUSE AND LOCKING THE DOORS, AND DID YOU
4 MAKE SURE THE WINDOWS WERE SHUT?

5 A UH-HUH

6 Q DID YOU MAKE SURE THE KITCHEN WINDOW WAS SHUT?

7 A I COULDN'T REACH THAT ONE BECAUSE THE BLINDS

8 Q OH, OKAY SO IT WAS OPEN?

9 A I DON'T

10 Q YOU DON'T REMEMBER?

11 A I DIDN'T LOOK

12 Q OKAY DO YOU REMEMBER -- LET ME, I'M GOING TO
13 IF I CAN GET UP, I JUST WANTED TO SHOW YOU A COUPLE
14 OF THESE PHOTOGRAPHS, OKAY AND THIS IS WHAT'S BEEN
15 MARKED FOR THE COURT AS STATE'S EXHIBIT 42 AND THIS
16 IS A PHOTOGRAPH OF THE LIVING ROOM, RIGHT?

17 A YES

18 Q AND THE COMPUTER?

19 A YES

20 Q AND THE PHONE RIGHT IN FRONT OF IT, RIGHT?

21 A YEAH

22 Q OKAY NOW I'M GOING TO SHOW YOU DEFENDANT'S
23 EXHIBIT NUMBER 50 AND THAT IS THE SIDE OF Y'ALL'S
24 HOUSE, RIGHT?

25 A RIGHT

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1 Q DO YOU REMEMBER THAT LADDER BEING OUT THERE?

2 A YEAH

3 Q AND WHAT ELSE WAS BACK HERE TO THE RIGHT JUST TO
4 THE LEFT OF THAT LADDER AS WE LOOKED AT THE PICTURE,
5 WAS THERE A FENCE BACK THERE?

6 A YES

7 Q WAS THERE A LITTLE HOLE OR GATE IN THE FENCE
8 BACK THERE?

9 A I CAN'T REMEMBER

10 Q DO YOU REMEMBER YOUR DAD TRYING TO PUT A ROPE OR
11 A CHAIN OR SOMETHING UP THERE TO KEEP PEOPLE FROM
12 WALKING THROUGH?

13 A NO

14 Q YOU DON'T REMEMBER THAT?

15 A NO

16 Q AND THIS IS AMANDA'S WINDOW BACK HERE, RIGHT?

17 A RIGHT

18 Q OKAY NOW Y'ALL HAD A DOG?

19 A NO

20 Q YOU DIDN'T HAVE A DOG?

21 A NOT AT THAT TIME

22 Q YOU DIDN'T HAVE A DOG DID YOU USED TO HAVE A
23 DOG?

24 A YEAH

25 Q OKAY WHAT KIND OF DOG WAS IT?

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1 A I DON'T KNOW

2 Q OKAY WAS IT LIKE A LAB OR SOMETHING?

3 A I DON'T KNOW

4 Q DO YOU REMEMBER WHAT HAPPENED TO IT?

5 A YES

6 Q WHAT?

7 A IT GOT, IT KEPT GETTING LOOSE SO THEY TOOK TO
8 THE VET OR THE POUND

9 Q OKAY DID YOU SAY THAT YOUR DAD, THAT YOU WOKE
10 UP WHEN YOU HEARD YOUR DAD YELLING JESSICA'S NAME,
11 YELLING AMANDA'S NAME?

12 A YEAH

13 Q SO WAS HE SAYING IT LOUD ENOUGH TO WAKE YOU UP
14 AT LEAST?

15 A JUST THAT, IT WAS LIKE TALKING

16 Q AND THAT WOKE YOU UP?

17 A (NODS HEAD) YEAH

18 Q OKAY

19 MR MORTON THAT'S ALL I HAVE, YOUR
20 HONOR

21 THE COURT MR GREELEY

22 MR GREELEY JESSICA, I DON'T HAVE ANY
23 QUESTIONS FOR YOU THANK YOU

24 THE COURT ALL RIGHT MR THOMPSON

25 MR THOMPSON JUST A COUPLE, YOUR HONOR

1 REDIRECT EXAMINATION BY MR THOMPSON

2 Q JESSICA, YOU HAD MENTIONED THAT THE KITCHEN
3 WINDOW THAT THE BLINDS WERE IN THE WAY, THE BLINDS UP
4 OR DOWN?

5 A DOWN

6 Q OKAY IS THAT WHY THEY WERE IN THE WAY?

7 A I WAS TOO SHORT TO REACH IT, SO I JUST DIDN'T
8 WORRY ABOUT IT

9 Q OKAY AND THE DOORS TO YOUR ROOM WHEN YOU WENT
10 TO BED, WAS THAT DOOR OPEN OR CLOSED?

11 A OPEN

12 Q AND THE DOOR TO AMANDA'S ROOM WHEN Y'ALL WENT TO
13 BED?

14 A OPEN

15 Q I'M SORRY

16 A OPEN

17 Q HOW ABOUT THE DOOR TO BILLY'S ROOM?

18 A OPEN

19 Q OKAY THANK YOU NO FURTHER QUESTIONS

20 MR MORTON JUST ONE FOLLOW UP

21 RE CROSS EXAMINATION BY MR MORTON

22 Q DO Y'ALL SLEEP WITH THE LIGHT ON?

23 A NONE IN THAT HOUSE THAT NIGHT WE USUALLY KEPT
24 THE BATHROOM LIGHT ON

25 Q RIGHT

1 A BUT WE DIDN'T THAT NIGHT

2 Q AND YOU REMEMBER THAT SPECIFICALLY ABOUT THAT
3 NIGHT?

4 A UH-HUH

5 Q YOU AND KYLA DON'T SLEEP WITH YOUR LIGHT ON IN
6 YOUR BEDROOM?

7 A NO

8 Q OKAY

9 MR MORTON THAT'S ALL I HAVE, YOUR
10 HONOR

11 THE COURT ALL RIGHT THANK YOU IF
12 EVERYBODY WILL JUST REMAIN HERE I'M GOING TO STEP
13 INTO THE COURTROOM AND WE ARE GOING TO TAKE A BREAK
14 BUT LET ME GO IN THERE TO DO THAT AND THEN WE'LL GET
15 BACK IN ORDER

16 (COURT IS IN RECESS AND THE JURY EXITS
17 THE COURTROOM)

18 (COURT RESUMES AT 11 20 AM IN THE
19 COURTROOM)

20 THE COURT BRING IN THE JURY

21 (THE JURY RETURNS TO THE COURTROOM AT
22 11 20 AM)

23 THE COURT MEMBERS OF THE JURY PANEL,
24 AGAIN I KNOW YOU SAY WHY DON'T THOSE LAWYERS AND THAT
25 JUDGE TAKE CARE OF THIS WHILE WE'RE OUTSIDE THE ROOM,

1 BUT THINGS POP UP AND LIKE I USE THE ANALOGY OF A
2 BASEBALL GAME, SOMETIMES THINGS, YOU THINK
3 EVERYTHING, SO IT WILL BE A COUPLE MINUTES WHILE
4 COUNSEL CONFERS, AND THEN WE'LL GO FORWARD

5 (COURT IS IN A BRIEF RECESS)

6 THE COURT MEMBERS OF THE JURY PANEL,
7 I DON'T REMEMBER WHETHER I TALKED TO YOU ABOUT A
8 STIPULATION, BUT YOU'VE HEARD YESTERDAY THERE WAS
9 TALK ABOUT A STIPULATION INVOLVING ONE OF THE
10 WITNESSES, A STIPULATION IS ESSENTIALLY AN AGREEMENT
11 BETWEEN INDIVIDUALS OR PARTIES THAT A FACT IS TRUE
12 THAT IS, AS I TOLD Y'ALL EARLIER ARE THE SOLE JUDGES
13 OF THE FACTS AND YOU HAVE TO DETERMINE THE TRUE FACTS
14 WHERE THERE IS A DISPUTE HOWEVER, IF THE PARTIES
15 AGREE UPON A FACT THEN YOU DON'T HAVE TO WRESTLE WITH
16 WHETHER IT'S A FACT OR NOT, THEY HAVE AGREED ON IT
17 THAT'S WHAT A STIPULATION IS THE PARTIES HAVE
18 REACHED A STIPULATION AS I TOLD YOU YESTERDAY, THEY
19 ARE WORKING ON SOME STIPULATION SO THAT WITNESSES, TO
20 SAVE TIME, SO AT THIS TIME I'M GOING TO LET THE
21 SOLICITOR PUBLISH THE STIPULATION AND KEEP IN MIND
22 THIS IS SIMPLY AN AGREEMENT OF THE PARTIES THAT THESE
23 FACTS ARE TRUE FACTS

24 MR POPE MAY IT PLEASE THE COURT, YOUR
25 HONOR THIS WOULD BE STATE'S EXHIBIT 92 PARTICULARLY

1 REFERENCES THE NUMEROUS LETTERS THAT WERE DISCUSSED
2 YESTERDAY AS WELL AS SOME ADDITIONAL KNOWN SAMPLES OF
3 WRITING OBTAINED, MR COPE'S WRITING BASICALLY WHAT
4 THIS TWO PAGE DOCUMENT DOES IS REFERENCES THE CHAIN
5 OF EVIDENCE OF EACH OF THOSE LETTERS IN OTHER
6 WORDS, THERE WAS TESTIMONY CONCERNING TURNING INTO
7 ANDERSON COUNTY, THIS WILL EXPLAIN THAT WHAT
8 HAPPENED, HOW IT WAS RECOVERED BY LAW ENFORCEMENT,
9 AND HOW ULTIMATELY IT WAS TAKEN TO THE STATE LAW
10 ENFORCEMENT DIVISION FOR TESTING YOUR HONOR, IT'S
11 TWO PAGE DOCUMENT, RATHER THAN WASTE THE JURY'S TIME
12 READING IT, BUT IN ESSENCE THAT IS WHAT IT DETAILS,
13 THE TIMES AND DATE EACH TIME EACH DOCUMENT WAS TAKEN
14 IN THE CUSTODY AND CONTROL OF LAW ENFORCEMENT ONCE
15 THEY RECEIVED IT AND WHAT STEPS THEY TOOK UNTIL IT
16 WAS ULTIMATELY TAKEN TO THE STATE LAW ENFORCEMENT
17 DIVISION

18 THE COURT THAT WILL BE AN EXHIBIT AND
19 YOU WILL HAVE IT IN THE JURY ROOM DURING
20 DELIBERATIONS EXHIBIT NUMBER 92 CALL YOUR NEXT
21 WITNESS

22 (STATE'S EXHIBIT 92 STIPULATION
23 RECEIVED INTO EVIDENCE)

24 MR BRACKETT THE STATE WOULD CALL AGENT
25 SCOTT WORSHAM

1 SCOTT WORSHAM, BEING FIRST
2 DULY SWORN, TESTIFIED AS FOLLOWS
3 DIRECT EXAMINATION BY MR BRACKETT
4 Q SIR, WOULD YOU STATE FOR THE JURY AND THE COURT
5 REPORTER YOUR FULL NAME AND SPELL YOUR LAST SO THE
6 COURT REPORTER CAN GET THAT RIGHT?
7 A MY NAME IS WILLIAM SCOTT WORSHAM LAST NAME IS
8 SPELLED W-O-R-S-H-A-M
9 Q ALL RIGHT COULD YOU TELL US PLEASE WHERE YOU
10 ARE EMPLOYED AND IN WHAT CAPACITY?
11 A I'M EMPLOYED WITH THE SLED, SOUTH CAROLINA LAW
12 ENFORCEMENT DIVISION, IN COLUMBIA, SOUTH CAROLINA, IN
13 THEIR FORENSIC LABORATORY IN THE CAPACITY OF A
14 QUESTION DOCUMENTS EXAMINER
15 Q OKAY CAN YOU RELATE TO THE JURY SOME OF YOUR
16 GENERAL WORK AND EDUCATIONAL BACKGROUND?
17 A AS FAR AS EDUCATIONAL BACKGROUND I HAVE A
18 BACHELOR OF SCIENCE DEGREE WITH A MINOR IN CHEMISTRY
19 AND MAJOR IN BIOLOGY I HAVE BEEN EMPLOYED AS A
20 SCHOOL TEACHER WHERE I TAUGHT HIGH SCHOOL PHYSICAL
21 SCIENCE, CHEMISTRY, AND BIOLOGY I ALSO WORKED AS A
22 CHEMIST WITH THE DEPARTMENT OF AGRICULTURE IN NORTH
23 CAROLINA IN 1975 I WAS EMPLOYED AS A FORENSIC
24 CHEMIST WITH THE NORTH CAROLINA STATE BUREAU OF
25 INVESTIGATION IN THEIR FORENSIC LABORATORY IN

1 RALEIGH, NORTH CAROLINA

2 Q OKAY HOW MANY YEARS HAVE YOU BEEN EMPLOYED AS
3 AN EXAMINER IN A FORENSIC LABORATORY?

4 A I WAS EMPLOYED THERE IN OCTOBER OF 1975 I'VE
5 BEEN IN LABORATORIES MOST OF MY LIFE PERFORMING
6 ANALYSIS ON EVIDENCE THAT COMES IN FROM LOCAL AND
7 FEDERAL LAW ENFORCEMENT AGENCY THROUGHOUT THE STATE
8 OF SOUTH CAROLINA AND NORTH CAROLINA

9 Q AND DURING THIS TIME PERIOD ABOUT HOW MANY TIMES
10 HAVE YOU TESTIFIED IN A COURT OF LAW?

11 A I WOULDN'T KNOW AN EXACT NUMBER IT WOULD BE IN
12 EXCESS OF THREE HUNDRED TIMES I'VE TESTIFIED AS AN
13 EXPERT IN COURTS

14 Q FOCUSING YOUR ATTENTION ON ONE SPECIAL AREA,
15 HAVE YOU EVER RECEIVED ANY SPECIALIZED TRAINING IN
16 THE FIELD OF QUESTION DOCUMENT EXAMINATION?

17 A YES, I HAVE UPON BEING EMPLOYED WITH THE NORTH
18 CAROLINA STATE BUREAU OF INVESTIGATION IN THEIR
19 FORENSIC LAB UNDERWENT A TWO YEAR IN-HOUSE TRAINING
20 PROGRAM A PRESCRIBED TRAINING PROGRAM WITH THEM UNDER
21 THREE DIFFERENT HANDWRITING OR QUESTION DOCUMENT
22 EXPERTS IN ADDITION TO TAKING A REGIMENTED COURSE
23 OF TESTING AND PASSING THAT WITH NORTH CAROLINA
24 THEY ALSO SENT ME TO THE UNITED STATES SECRET SERVICE
25 SCHOOL IN QUESTION HANDWRITING WHERE I SPENT A TWO

1 WEEK COURSE AND PASSED THAT COURSE IN ADDITION THEY
2 SENT ME TO THE UNITED STATES POSTAL SERVICE
3 LABORATORY AND THERE, THIS IS IN DULLES, VIRGINIA,
4 AND THERE I SPENT A ONE MONTH INTERSHIP IN TRAINING
5 UNDER THE HEAD OF THE QUESTION DOCUMENTS DEPARTMENT
6 THERE WITH THE US POSTAL SERVICE LABORATORY THIS
7 WAS A ONE-ON-ONE TRAINING FOR A ONE MONTH PERIOD OF
8 TIME AND IT WAS VERY INTENSIFIED TRAINING AFTER
9 COMPLETING THAT I WAS TESTED AGAIN BY THE NORTH
10 CAROLINA STATE BUREAU OF INVESTIGATION AND ALLOWED TO
11 START DOING CASE WORK IN QUESTION DOCUMENTS THAT WAS
12 OVERSEEN BY OTHER EXPERTS AT THE TIME THEY STARTED
13 OUT WITH THE BASIC MORE LESS SKILL LEVELED OBVIOUS
14 HANDWRITING THAT COULD BE IDENTIFIED AND THEN WORKING
15 INTO THE MORE COMPLEX CASES THAT'S MY BACKGROUND
16 I'VE BEEN DOING DOCUMENTS NOW SINCE CASES I'M ON
17 SINCE 1994

18 Q SO ABOUT HOW MANY YEARS WOULD THAT BE THEN?

19 A APPROXIMATELY 12 YEARS NOW

20 Q OKAY AND THIS FIELD OF STUDY YOU SAID
21 SPECIFICALLY INCLUDED THE STUDY OF HANDWRITING AND
22 HANDWRITING PATTERNS?

23 A YES WE'RE CALLED REQUEST DOCUMENT EXAMINERS
24 BECAUSE WE LOOK AT MORE THAN JUST HANDWRITING WHEN WE
25 LOOK AT DIFFERENT PIECES OF PAPER OR DOCUMENTS,

1 HOWEVER, THE MAJORITY OF THE WORK I LOOK AT INVOLVES
2 COMPARISON OF HANDWRITING HANDWRITING OF AN
3 INDIVIDUAL COMPARED TO A QUESTION DOCUMENT, A
4 DOCUMENT THAT HAS HANDWRITING ON IT AND I'M ASKED TO
5 FORM AN OPINION AS TO WHETHER OR NOT THAT PERSON
6 COULD HAVE PREPARED THAT DOCUMENT

7 Q SO IN THIS TEN YEAR PERIOD HOW MANY OR 12 YEARS
8 SINCE '92, WHEN YOU FIRST --

9 A WHEN I FIRST STARTED TRAINING, YES

10 Q HOW MANY QUESTION DOCUMENTS HAVE YOU, CASES,
11 QUESTION DOCUMENT CASES THAT HAVE YOU PERFORMED
12 EXAMINATIONS ON?

13 A HUNDREDS I WOULDN'T KNOW THE EXACT NUMBER, BUT
14 I'VE LOOKED AT, I'VE WORKED HUNDREDS OF CASES AND
15 I'VE LOOKED AT THOUSANDS OF DIFFERENT HANDWRITING
16 SAMPLES, AND EXAMINED THEM

17 Q AND HAVE YOU EVER BEEN QUALIFIED IN A COURT OF
18 LAW AS A QUESTION DOCUMENT EXAMINER AND SPECIFICALLY
19 ON THE ISSUE OF EXAMINING HANDWRITING?

20 A YES I'VE BEEN QUALIFIED AS AN EXPERT IN SOUTH
21 CAROLINA COURTS, FEDERAL COURTS, AND NORTH CAROLINA
22 COURTS

23 MR BRACKETT YOUR HONOR, AT THIS TIME I
24 WOULD TENDER AGENT WORSHAM AS AN EXPERT IN THE FIELD
25 OF QUESTION DOCUMENTS EXAMINATION

1 MR BAITY NO OBJECTION, YOUR HONOR

2 MR GREELEY NO OBJECTION

3 THE COURT I FIND HE'S QUALIFIED

4 MR BRACKETT THANK YOU, YOUR HONOR

5 Q WOULD YOU EXPLAIN TO THE JURY THE BASIC
6 PRINCIPLES OF HOW YOU ARE ABLE TO CONDUCT A
7 HANDWRITING EXAMINATION, EDUCATE THEM A LITTLE BIT
8 ABOUT WHAT IT IS YOU DO WHEN YOU ARE CALLED IN IN A
9 CASE LIKE THIS TO CONDUCT A HANDWRITING EXAMINATION?

10 A A HANDWRITING EXAMINATION INVOLVES A COMPARISON
11 AS I MENTIONED BEFORE IT'S A COMPARISON BETWEEN KNOWN
12 STANDARDS OF WRITING THIS IS HANDWRITING THAT CAN
13 BE IDENTIFIED AS HAVING COME FROM A CERTAIN
14 INDIVIDUAL AND THEN COMPARING IT BACK TO A QUESTION
15 WRITING WHICH IS A PIECE OF PAPER NORMALLY THAT WOULD
16 HAVE HANDWRITING ON IT OR A SIGNATURE ON IT, AND THE
17 QUESTION IS, DID THIS PERSON REPRESENTED IN THE KNOWN
18 WRITING AUTHOR OR PREPARER WRITE THE QUESTION

19 WRITING I USE A MICROSCOPE FOR DOING THIS
20 SOMETIMES I HAVE ANOTHER METHODS OF ANALYSIS THAT I
21 DO IN DURING MY COURSE WORK IF I WANT TO ENHANCE OR
22 ENLARGE OR LOOK AT CERTAIN FEATURES I DO THAT

23 WHAT IT IS WITH HANDWRITING IS EVERY
24 PERSON WHO HAS GONE TO SCHOOL HAS PERHAPS SAT DOWN
25 AND THE TEACHER WILL HAVE THE ABC'S WRITTEN ACROSS

1 THE BLACKBOARD AT THE TOP AND AS YOU LEARN TO WRITE
2 YOU TRY TO MODEL YOUR HANDWRITING JUST LIKE THE
3 WRITING THAT YOU SEE ON TOP OF THE BLACKBOARD YOU
4 TRY TO MAKE YOUR A'S LIKE THAT THE TEACHER IS MAKING
5 YOU TRY TO MAKE YOUR B'S YOU LEARN YOUR UPPER CASE
6 YOU LEARN YOUR LOWER CASE AND WHAT YOU ARE DOING IS
7 YOU'RE TRYING TO MODEL YOUR HANDWRITING TO FIT THAT
8 OF THE TEACHER, BUT EVERYBODY'S HANDWRITING IS
9 DIFFERENT BECAUSE THEY HAVE DIFFERENT SKILL LEVELS
10 THEY PERFORM DIFFERENTLY THEY ARE NOT AS ARTISTIC
11 AS OTHER PEOPLE, AND THE TEACHER EVEN AT THAT LOW
12 LEVEL OF EDUCATION, LIKE FIRST OR SECOND GRADE, CAN
13 PROBABLY LOOK AT THE PAPERS AND JUST ABOUT KNOW WHICH
14 STUDENT WROTE THESE ABC'S BECAUSE SHE'S USED TO
15 SEEING THEM WRITE ALL RIGHT WHAT WE DO IN
16 HANDWRITING IS WE LOOK AT THE FEATURES, WE STUDY
17 THESE FEATURES THAT THE TEACHER HAS LOOKED IT AS
18 YOU PROGRESS IN YOUR HANDWRITING YOUR HANDWRITING
19 BECOMES MORE SOPHISTICATED AND MORE UNIQUE TO YOU
20 YOU INCREASE IN SPEED, YOU DEVELOP CERTAIN WAYS AND
21 STYLES THAT YOU MAKE YOUR LETTERS THE WAY YOU LAY
22 THE WRITING ON THE PAPER, WE LOOK AT THE FORMAT WE
23 LOOK AT HEIGHT RATIOS BETWEEN THE LETTERS HOW HIGH
24 IS THE H COMPARED TO THE A THERE ARE MANY DIFFERENT
25 FEATURES THE BASE LINE CHARACTERISTICS, THE SKILL

1 LEVEL, ALL THESE GO IN AND ALL THESE FACTORS ARE
2 CONSIDERED IN MAKING A HANDWRITING OR DOING
3 HANDWRITING EXAMINATION

4 Q ALL RIGHT, SIR DOES A PERSON WHO IS WRITING
5 ALWAYS WRITE THE SAME WAY?

6 A A PERSON NEVER WRITES THE SAME WAY TWICE IF
7 YOU WERE TO TAKE YOUR SIGNATURE OR WRITE A SENTENCE
8 AND YOU WERE TO DO IT 100 TIMES ON A TABLET, EVERY
9 SIGNATURE OR EVERY SENTENCE WOULD BE DIFFERENT
10 WE'RE NOT MACHINES WE CAN'T REPRODUCE OUR SIGNATURE
11 EXACTLY EVERY TIME IF A HANDWRITING CAN BE, IS
12 EXACT, THEN WE KNOW IT IS NOT A LEGITIMATE
13 HANDWRITING BUT RATHER THAN A SIMULATION OR SOMETHING
14 THAT HAS BEEN PERPETRATED AS A FORGERY TO LOOK LIKE
15 SOMEBODY'S ELSE HANDWRITING

16 Q ALL RIGHT IS IT POSSIBLE WITHIN THE SCIENCE OF
17 HANDWRITING ANALYSIS, IS IT POSSIBLE IN YOUR OPINION
18 TO DETERMINE ABSOLUTELY WHETHER OR NOT AN INDIVIDUAL
19 WROTE A CERTAIN DOCUMENT?

20 A IF I HAVE ENOUGH COMBINATION OF CHARACTERISTICS
21 COMING TOGETHER AT ONE TIME ON ANY ONE DOCUMENT AND
22 ALL THESE CHARACTERISTICS CAN BE DEMONSTRATED IN THE
23 KNOWN STANDARDS STANDS FROM THAT INDIVIDUAL THEN I
24 CAN REACH A CONCLUSION, AN OPINION, BASED ON MY
25 EXPERIENCE AND MY TRAINING IN THAT FIELD THAT THIS

1 INDIVIDUAL DID IN FACT WRITE THE QUESTION WRITING OR
2 I CAN LOWER IT IF I HAVE REASON TO LOWER IT TO A
3 LESSER OPINION

4 Q WERE YOU ASKED TO EXAMINE A QUESTIONED DOCUMENT
5 IN THIS CASE?

6 A YES, I WAS

7 Q TWO QUESTION DOCUMENTS?

8 A YES

9 Q I'M SHOWING YOU NOW WHAT HAS BEEN MARKED AS
10 STATE'S EXHIBIT 89 AND STATE'S EXHIBIT 90 AND THESE
11 ITEMS ARE IN EVIDENCE, SIR, AND I'LL ASK IF YOU CAN
12 IDENTIFY THOSE TWO DOCUMENTS ARE THOSE THE
13 DOCUMENTS THAT YOU WERE ASKED TO EXAMINE AND
14 DETERMINE THE AUTHORSHIP OF?

15 A YES, SIR STATE'S EXHIBIT NUMBER 20 IS A LETTER
16 THAT I RECEIVED THERE IN THE LABORATORY

17 Q I'M SORRY STATE'S EXHIBIT NUMBER?

18 A EXCUSE ME IT HAS A, LET ME FIND IT I'M
19 SORRY STATE'S EXHIBIT NUMBER 90

20 Q ALL RIGHT?

21 A IS A SEALED PLASTIC BAG IT CONTAINS A ONE-PAGE
22 LETTER AND IT STARTS OUT DEAR AMY AND IT'S SIGNED BY
23 BILLY TINKER COPE OR A PERSON SIGNING BILLY TINKER
24 COPE AND ON THE BACK SIDE THERE IS AN ENVELOPE THE
25 ENVELOPE WAS A ASSOCIATED WITH THIS LETTER WHEN I

1 RECEIVED IT IN THE LABORATORY FOR ANALYSIS THIS IS
2 A QUESTION DOCUMENT THERE IS QUESTION WRITING ON
3 THIS AND ON THE ENVELOPE THAT WAS SUBMITTED I SHOW
4 YOU THE FACE OF THE ENVELOPE I RECEIVED THIS
5 ENVELOPE AND THIS LETTER BOTH OF WHICH WERE
6 QUESTIONED AND I WAS SUBMITTED HANDWRITING SAMPLES TO
7 COMPARE TO THIS ENVELOPE AND THIS LETTER IN THE
8 LABORATORY

9 IN ADDITION, I ALSO RECEIVED STATE'S
10 EXHIBIT NUMBER 89 WHICH IS A FOUR PAGE LETTER, TWO OF
11 THE PAGES OF THIS LETTER HAD QUESTION WRITING ON IT
12 ONE PAGE OF THIS LETTER CONTAINS A NUMBER OF SQUALL
13 LINES AND IT HAD PRINTED THIS IS A COVER SHEET TO
14 PREVENT WANDERING EYES THE LAST PAGE OF THE FOUR
15 PAGE LETTER WAS ANOTHER SHEET THAT WAS USED THIS
16 WAS USED EVIDENTLY IN AN ATTEMPT TO CONCEAL ANY
17 WRITING SO YOU CAN'T SEE IT THROUGH THE ENVELOPE I
18 WAS ASKED TO LOOK AT THE HANDWRITING ON THIS, IN THIS
19 LETTER, AND SEE IF I COULD COMPARE IT TO THE KNOWN
20 WRITING SUBMITTED AND REACH AN OPINION IN THIS CASE
21 IN ADDITION TO THAT, THOSE FOUR PAGES, I ALSO
22 RECEIVED THIS ENVELOPE WHICH CONTAINED THIS LETTER
23 AND ASKED TO DO HANDWRITING ANALYSIS ON THIS ENVELOPE
24 TOO

25 Q AND YOU WERE ASKED SPECIFICALLY TO DETERMINE

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1 WHETHER THAT WAS THE HANDWRITING OF BILLY COPE?

2 A I WAS SUBMITTED A KNOWN HANDWRITING SAMPLE FROM
3 BILLY WAYNE COPE AND ASKED TO MAKE A COMPARISON IN
4 THIS CASE, YES, SIR

5 Q WHEN YOU SAY KNOWN HANDWRITING SAMPLE, WHAT
6 PARTICULARLY DO YOU NEED TO BE ABLE TO MAKE A
7 COMPARISON IN THIS CASE?

8 A IN THIS PARTICULAR CASE THE INDIVIDUAL
9 REPRESENTED, THE WRITING REPRESENTED INDIVIDUAL HAD A
10 HIGH SKILL LEVEL OF WRITING HIS WRITING HAD A
11 COMBINATION OF BOTH CURSIVE LONG HAND AS WELL AS HAND
12 PRINTING SOMETIMES IT WAS JUST PRINTING, SOMETIMES
13 IT WAS CURSIVE, SOMETIMES IT WAS A COMBINATION A
14 PERSON WITH A HIGH SKILL LEVEL OF WRITING CAN DEGRADE
15 THEIR WRITING DRASTICALLY AND AS THEY DEGRADE OR
16 CHANGE THEIR WRITING YOU GET A WIDE RANGE OF WRITING
17 REPRESENTED THE BEST WRITING THAT THAT PERSON CAN
18 DO, A MEDIOCRE WRITING OR LOWER SKILL WRITING MAYBE
19 REPRESENTED FOR EXAMPLE, YOU DON'T NECESSARILY
20 WRITE THE HOUSE PAYMENT THE SAME WAY YOU WOULD WRITE
21 A TEN DOLLAR CHECK AT WALMART YOU MAY BE A LESS
22 LITTLE CAREFUL WITH YOUR HANDWRITING WHEN YOU ARE
23 DOING A SMALL AMOUNT OF CHECK AS OPPOSED TO A LARGE
24 PAYMENT ON YOUR MORTGAGE YOUR HANDWRITING CHANGES
25 YOU HAVE A RANGE OF VARIATION YOU MAY MAKE A SERIES

1 OF R'S, IF YOU HAVE EVER STUDIED YOUR HANDWRITING,
2 ALL YOUR R'S MAYBE NOT BE THE SAME YOU MAY HAVE
3 FOUR OR FIVE DIFFERENT R'S THAT YOU MAKE, NOT JUST
4 UPPER AND LOWER CASE, BUT DIFFERENT FORMATIONS, SO
5 THE QUESTION IS WHAT I'M LOOKING FOR AND THE STANDARD
6 IS WHAT DO I NEED TO COMPARE THE QUESTION WRITING
7 BACK I NEED A NICE LARGE VOLUME OF WRITING FROM AN
8 INDIVIDUAL IN ORDER TO LOOK AT THIS RANGE AND FIND
9 THAT RANGE THAT'S REPRESENTED ON THESE LETTERS AND
10 THEN STUDY THE FEATURES THAT I JUST MENTIONED BEFORE
11 IN MAKING THAT COMPARISON BEFORE I CAN REACH A
12 CONCLUSION

13 Q DID YOU TAKE HANDWRITING EXEMPLARS IN THIS CASE
14 AND TELL WHAT IS AN EXEMPLAR?

15 A IN THIS PARTICULAR CASE I OBTAINED MY OWN
16 HANDWRITING STANDARDS IN ADDITION TO THE, A NUMBER OF
17 LETTERS THAT I RECEIVED IN THE CASE THE LETTERS, I
18 HAD 11 I CAN'T REMEMBER, I HAVE TO GO BACK AND CHECK
19 THE EXACT NUMBER, BUT I HAD A NUMBER OF DIFFERENT
20 LETTERS, ENVELOPES CONTAINING LETTERS I HAD 84
21 PAGES OF WRITING AND I TOOK THAT WRITING AND IN
22 ADDITION TO THAT I WANTED MY OWN STANDARDS SO I WENT
23 TO THE DETENTION CENTER HERE AND MET WITH BILLY WAYNE
24 COPE AND SAT DOWN IN THE PRESENCE OF HIS ATTORNEYS
25 AND COLLECTED MORE HANDWRITING STANDARDS I HAD HIM

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1 WRITE WHAT I DICTATED TO HIM

2 Q ALL RIGHT DID YOU ACTUALLY OBSERVE HIM MAKING
3 THOSE WRITINGS?

4 A YES, SIR, I DID

5 Q AND WHAT DID YOU DO AT THE CONCLUSION OF ASKING
6 HIM TO WRITE VARIOUS THINGS WHAT DID YOU DO WITH THE
7 WRITINGS HE HAD JUST MADE?

8 A I THEN TOOK THOSE WRITINGS, COMPARED THEM BACK
9 TO THE WRITINGS ON THOSE 84 PAGES OF LETTERS AND
10 ENVELOPES THAT I HAD, AND THEN COMPARED ALL OF THAT
11 TO THE HANDWRITING IN QUESTION ON STATE'S EXHIBIT 89
12 AND 90

13 Q ALL RIGHT, SIR I'VE GOT THREE SEPARATE
14 ENVELOPES HERE, ONE OF WHICH IS MARKED IN EVIDENCE
15 ALREADY, THE OTHER TWO ARE NOT IF I CAN GET THESE
16 TWO ENVELOPES MARKED

17 (STATE'S EXHIBIT 93 ENVELOPE MARKED
18 FOR IDENTIFICATION)

19 MR BRACKETT ALL RIGHT

20 Q FIRST I WILL SHOW YOU WHAT HAS BEEN MARKED AS
21 STATE'S EXHIBIT 93 AND ASK IF YOU CAN IDENTIFY THE
22 CONTENTS OF THAT ENVELOPE?

23 A THIS ENVELOPE IN MY HANDWRITING I'VE WRITTEN
24 HANDWRITING STANDARDS OF BILLY WAYNE COPE ON JULY 13,
25 '04 COLLECTED BY AND MY INITIALS SCOTT WORSHAM AS

1 SOON AS I GET THIS OPEN I CAN IDENTIFY THE CONTENTS
2 THE ENVELOPE ALSO CONTAINS MY INITIALS AND THE DATE
3 THAT I SEALED THE ENVELOPE AND MY SEAL ON THEM IT
4 IS IDENTIFIED AS STATE'S EXHIBIT NUMBER 93 AND AS I
5 ASKED MR COPE TO WRITE, HE HAD A BLUE BALL POINT
6 PEN, NOT THE PEN ACTUALLY BUT JUST THE INSERT THAT
7 WOULD GO INTO THE BLUE BALL POINT PEN, AND THAT'S
8 NORMALLY WHAT THEY USE TO WRITE LETTERS AND I
9 COLLECTED EIGHT PAGES OF WRITING FROM HIM AND HE
10 COOPERATED AND GAVE ME ALL OF THE PAGES, ALL THE
11 WRITING THAT I REQUESTED

12 Q ALL RIGHT, SIR SO THOSE ARE WRITINGS YOU
13 ACTUALLY OBSERVED HIM MAKE?

14 A YES, SIR

15 Q NOW I'M SHOWING YOU STATE'S EXHIBIT 91 WHICH IS
16 ALREADY IN EVIDENCE AND JUST ASK IF YOU CAN IDENTIFY
17 THE CONTENTS OF THAT ENVELOPE?

18 A STATE'S EXHIBIT NUMBER 91 CONTAINS LETTERS AND
19 ENVELOPES THAT I RECEIVED I CAN IDENTIFY EACH OF
20 THESE AS THEY BEAR MY INITIALS AND MY CASE NUMBER

21 Q DID YOU ALSO USE THOSE ITEMS IN YOUR EXAMINATION
22 OF THE TWO QUESTION DOCUMENTS YOU REFERENCED EARLIER?

23 A YES

24 Q ALL RIGHT, SIR SOME OF THOSE LETTERS ARE OUT
25 OF THEIR ENVELOPES STATE'S EXHIBIT NUMBER 94, CAN

002011

1 YOU IDENTIFY THE TWO ITEMS THAT ARE CONTAINED IN THAT
2 ENVELOPE?

3 A YEAH, STATE'S EXHIBIT 94 IS ANOTHER ENVELOPE
4 WHICH CONTAINS MORE LETTERS WHICH I RECEIVED THERE AT
5 THE LABORATORY AT THE SAME TIME, JUST TWO ENVELOPES,
6 AND AGAIN THERE ARE OTHER LETTERS EACH LETTER
7 CONTAINS, TWO OTHER ENVELOPES, EACH ENVELOPE CONTAINS
8 LETTERS ALL OF THESE WERE SUBMITTED TO ME AS KNOWN
9 HANDWRITING FROM BILLY WAYNE COPE

10 Q ALL RIGHT, SIR

11 MR BRACKETT NOW AT THIS POINT I WOULD
12 MOVE STATE'S EXHIBIT 93 AND 94 THE EXEMPLARS AND THE
13 TWO LETTERS THAT ARE IN 94 INTO EVIDENCE AT THIS
14 TIME

15 MR BAITY NO OBJECTION

16 MR GREELEY NO OBJECTION, YOUR HONOR

17 THE COURT BE RECEIVED WITHOUT OBJECTION

18 (STATE'S EXHIBITS 93 & 94 RECEIVED
19 INTO EVIDENCE)

20 Q THE LETTERS THAT WERE, THE 11 LETTERS IN ONE
21 ENVELOPE AND THE TWO LETTERS IN THE OTHER ENVELOPE,
22 WERE YOU ABLE TO VERIFY, YOU SAID THOSE WERE THE
23 KNOWN HANDWRITING SAMPLES, BUT YOU DIDN'T ACTUAL SEE
24 HIM WRITE THOSE, DID YOU?

25 A NO, I DID NOT

002112

1 Q WERE YOU ABLE TO VERIFY THOSE WERE IN FACT WERE
2 HIS HANDWRITING?

3 A YES I LOOKED AT THE LETTERS WHEN I FIRST
4 RECEIVED THEM I HAD NOT GONE TO BILLY WAYNE COPE TO
5 OBTAIN HANDWRITING SAMPLES FROM MYSELF AND I RECEIVED
6 THESE IN THE LABORATORY AND I HAD 11 LETTERS WHICH
7 REPRESENTED APPROXIMATELY 84 TO 87 PAGES IF MY MEMORY
8 SERVES ME CORRECTLY, AND IN LOOKING AT THOSE LETTERS
9 I COULD SEE THAT THESE LETTERS WERE OF COMMON
10 AUTHORSHIP IN OTHER WORDS, ONE PERSON WROTE ALL OF
11 THESE LETTERS ALL RIGHT BUT TO TESTIFY IN COURT
12 THIS IS ACTUALLY HANDWRITING FROM AN INDIVIDUAL I
13 NEEDED MORE SO YOU THAT'S WHEN I WENT TO BILLY
14 WAYNE COPE AND OBTAINED MORE HANDWRITING SAMPLES FROM
15 HIM TO SEE IF I COULD VERIFY AND AUTHENTICATE EACH OF
16 THESE AS ACTUALLY BEING HIS HANDWRITING AND I DID
17 THAT AND THESE ARE HANDWRITINGS FROM BILLY WAYNE
18 COPE

19 Q ALL RIGHT, SIR NOW WHAT DID YOU USE OUT OF ALL
20 THE DOCUMENTS WE'VE JUST GONE THROUGH, THE EXEMPLARS,
21 THE 11 LETTERS AND ONE ENVELOPE, AND THE TWO LETTERS
22 IN THE OTHER ENVELOPE TO EXAMINE THE TWO QUESTION
23 DOCUMENTS THAT ARE AT ISSUE IN THIS CASE? DID YOU
24 USE ALL OF THEM OR JUST THE EXEMPLARS? WHAT DID YOU
25 USE?

002113

1 A I LOOKED AT EACH AND EVERY PAGE OF THE WRITING
2 AND I CAN USE MANY OF THOSE LETTERS IN MAKING MY
3 COMPARISON BACK TO THE TWO QUESTION ITEMS HOWEVER,
4 I RELIED MORE HEAVILY ON THE WRITING THAT I OBTAINED
5 MYSELF FROM BILLY WAYNE COPE

6 Q ALL RIGHT, SIR NOW WERE YOU AFTER YOUR
7 EXAMINATION ABLE TO FORM AN OPINION AS TO THE
8 AUTHORSHIP OF THE TWO QUESTION DOCUMENTS IN THIS
9 CASE?

10 A YES, I WAS

11 Q ALL RIGHT AND HAVE YOU IN ORDER TO PROPERLY
12 EXPLAIN HOW YOU ARRIVED AT YOUR CONCLUSION, DID YOU
13 PREPARE ANY DIAGRAMS OR ILLUSTRATIONS THAT YOU COULD
14 USE THAT WOULD BE HELPFUL IN EXPLAINING YOUR
15 CONCLUSION TO THE JURY?

16 A YES, SIR

17 Q ARE THEY PRESENT IN THE COURTROOM WITH YOU?

18 A THEY ARE

19 Q ALL RIGHT

20 MR BRACKETT YOUR HONOR, I WOULD ASK
21 THAT, I THINK DEFENSE COUNSEL MAY WANT TO TAKE A LOOK
22 AT THEM, BUT I ASK THAT, THEY ARE LARGE, WE NEED TO
23 PULL THEM OUT AND IDENTIFY THEM IN FRONT OF THE JURY
24 I WOULD ASK DEFENSE COUNSEL COME AND EXAMINE THESE

25 (COMPLIES) -

002114

1 Q I HAVE FIVE POSTER BOARDS HERE, AGENT WORSHAM,
2 ARE THESE ARE FIVE POSTER BOARDS YOU PREPARED TO
3 ILLUSTRATE YOUR CONCLUSIONS AND YOUR EXAMINATIONS TO
4 THE JURY?

5 A YES, SIR, THEY ARE

6 MR BRACKETT YOUR HONOR, I ASK THAT
7 THESE FIVE POSTERS BE MARKED AND WHILE WE'RE DOING
8 THAT WE NEED TO SET UP A COUPLE OF EASELS, TO SET
9 THEM UP

10 THE COURT ANY OBJECTION

11 MR BAITY NO OBJECTION

12 MR GREELEY NO OBJECTION, YOUR HONOR

13 THE COURT LET ME ASK YOU THIS ARE THEY
14 JUST FOR ID

15 MR BRACKETT I WOULD LIKE TO PUT THEM IN
16 EVIDENCE

17 THE COURT THEY ARE IN WITHOUT OBJECTION

18 (STATE'S EXHIBITS 95-99 BOARDS RECEIVED
19 INTO EVIDENCE)

20 Q STEP DOWN AND IF YOU NEED TO TAKE ANY OF THOSE
21 EXHIBITS FEEL FREE TO THE ACTUAL DOCUMENTS

22 A (THE WITNESS EXITS THE WITNESS STAND AT 11 54
23 AM)

24 Q THESE ARE THE DIAGRAMS YOU PREPARED STATE'S
25 EXHIBIT 95 THROUGH STATE'S 99 WOULD YOU PLEASE SIR

002115

1 EXPLAIN TO THE JURY EXACTLY HOW YOU GO ABOUT ONCE YOU
2 OBTAINED THE HANDWRITING EXEMPLARS AND THE KNOWN
3 STANDARDS, HOW DO YOU GO ABOUT MAKING A COMPARISON
4 BETWEEN THOSE STANDARDS AND THE QUESTION DOCUMENT
5 THAT'S AT ISSUE IN THE CASE? HOW DO YOU DO IT?

6 A I LOOK AT THE FEATURES THAT ARE REPRESENTED IN
7 THE WRITING AS WELL AS HOW IT'S PLACED ON THE PAPER,
8 THE BASE LINE CHARACTERISTICS WOULD BE REAL OR
9 IMAGERY, HOW IT ADHERES TO THE BASE LINE IF YOU
10 WERE TO WRITE OUT A SENTENCE ON A LINE, HOW YOUR
11 WRITING ADHERES OR HITS THAT LINE OR WRITING ABOVE
12 THAT LINE GOES INTO OR DOWN BELOW, WE LOOK AT THOSE
13 CHARACTERISTICS IN ADDITION, WE LOOK AT HEIGHT
14 RATIO HOW LARGE ARE THE CAPITAL LETTERS COMPARED TO
15 THE LOWER CASE LETTERS WITHIN THE SAME WORD ITSELF
16 THEN WE LOOK, BY LOOKING AT THIS AND ALSO THE SKILL
17 LEVEL OF THE WRITING, IF WE HAVE ENOUGH OF THESE
18 COMBINATIONS OF CHARACTERISTICS AND FEATURES COMING
19 TOGETHER AT ONE TIME THEN WE CAN MAKE A CONCLUSION
20 I CAN OFFER AN OPINION BASED ON MY EXPERIENCE AND
21 TRAINING IN THIS FIELD AND THAT'S WHAT I'VE DONE IN
22 THIS CASE FOR EXAMPLE, STATE'S EXHIBIT NUMBER 95,
23 STATE'S EXHIBIT NUMBER 95 REPRESENTS THREE, EXCUSE
24 ME, FOUR ENVELOPES THE ENVELOPES THAT YOU SEE THERE
25 IS THE EVIDENCE JUST INTRODUCED AS STATE'S EXHIBITS

1 HERE ARE JUST ENLARGEMENTS TO MAKE IT EASIER FOR
2 YOU TO SEE TO COMPARISONS THAT I WAS MAKING IN THIS
3 CASE FOR EXAMPLE, STATE'S EXHIBIT 90 THE ENVELOPE
4 ITSELF I ENLARGED AND PUT HERE YOU STILL SEE THE
5 PLASTIC BAG AND THE SLED NUMBER HERE SOME OF THE
6 WRITINGS FROM THE ENVELOPES FROM BILLY WAYNE COPE
7 WERE USED AND I BLEW THOSE UP I DO NOT HAVE THE
8 EXHIBIT NUMBER ON THEM BECAUSE THIS WAS DONE BEFORE
9 IT WAS INTRODUCED INTO EVIDENCE IN THE CASE SO WHAT
10 I HAVE HERE IS THE KNOWN HANDWRITING OF BILLY WAYNE
11 COPE ON THESE THREE ENVELOPES IN ADDITION TO THIS ONE
12 WHICH IS A QUESTION WRITING, STATE'S EXHIBIT NUMBER
13 90 EVERYTHING THAT I WILL SHOW YOU IN MY EXHIBITS
14 WILL COME FROM THE EVIDENCE THAT I HAVE IN THE CASE
15 AND I CAN DEMONSTRATE THAT IF NEED BE AND SHOW YOU
16 EXACTLY WHERE IT CAME FROM

17 Q ALL RIGHT, SIR HOW, USING YOUR ILLUSTRATIONS
18 AND THE POSTER BOARDS THAT YOU'VE BLOWN UP, WOULD YOU
19 STEP THE JURY THROUGH AN HANDWRITING ANALYSIS THE
20 FEATURES AND THE CHARACTERISTICS THAT YOU LOOK FOR
21 WHEN YOU CONDUCT A HANDWRITING ANALYSIS?

22 A YES, SIR IN MAKING, AFTER BECOMING FAMILIAR
23 WITH HIS WRITING, AFTER I SAT DOWN AND TRIED TO DRAW
24 AND SIMULATE HIS WRITING THAT I FOUND AND BECAME
25 FAMILIAR WITH THE WAY HE MAKES HIS LETTERS I THEN GO

1 IN AND LOOK AT THE QUESTION WRITING IN LOOKING AT
2 THE QUESTION WRITING ON THESE THREE, THESE THREE
3 ENVELOPES OF KNOWN WRITING COMPARING IT BACK TO THE
4 QUESTION WRITING HERE, THE FIRST THINGS I NOTICE WERE
5 THE HEIGHT RATIOS IN THE S'S AND THE FORMATION OF THE
6 S'S NOTICE HOW HIGH THIS S IS HERE THAT SIMILAR S
7 AND I'LL NEVER SAY SAME I WON'T SAY THE SAME S
8 I'LL ALWAYS SAY SIMILAR OR ONE THAT'S REPRESENTED BY
9 THAT BECAUSE YOU NEVER WRITE THE SAME WAY TWICE IF
10 YOU'LL LOOK AT EACH OF THESE S'S THEY ARE ALL
11 DIFFERENT TO A SLIGHT DEGREE BUT THEY ARE ALL SIMILAR
12 TO THE S MADE IN SIMMONS

13 IN ADDITION, I NOTICED THE FORMATION
14 OF THE M'S, THE SHOULDERS OF THE M'S AND HOW FAR DOWN
15 THIS LINE IN BETWEEN COMES DOWN THAT'S ALSO FOUND
16 IN SIMMONS DOWN HERE ON THESE THE S AT THE END OF
17 SIMMONS IN THIS ONE IS SIMILAR TO THE S FOUND HERE
18 THE FORMATION OF THE TWO, HAS A LOOP IN IT, EYELET,
19 THAT'S ALSO FOUND ON THE TWOS REPRESENTED BY THEIR
20 NORMAL WRITING FROM BILLY WAYNE COPE THE N'S, SOME
21 OF THE N'S ARE ALMOST SHOULDERLESS THOSE SIMILAR
22 N'S ARE FOUND ALSO HERE AND HERE SO AS I GO THROUGH
23 I'M PUTTING TOGETHER FEATURE OF HANDWRITING HOW
24 DOES THIS INDIVIDUAL MAKE HIS S'S WHAT'S THE HEIGHT
25 RATIO OF THAT S TO THE REST OF THE WORD

002118

1 S-I-M-M-O-N-S AND I'M COMPARING IT BACK TO THE
2 KNOWN HANDWRITING STANDARDS ALSO I LOOK HOW IT'S
3 LAID OUT NOTICE THE Y HAS A FLAT BASE IT'S ALMOST
4 LIKE A FOUR THAT HAS BEEN ROUNDED OFF THAT'S FOUND
5 HERE IN AMY AND SIMILAR Y TO THAT IS FOUND HERE SO
6 I KEEP GOING THROUGH I LOOK AT THE SPACE IN BETWEEN
7 THIS LINE AND THIS LINE THE Y COMES DOWN AND
8 TOUCHES THE FIVE, OKAY LATER ON WHEN THIS LETTER
9 WAS WRITTEN OR BEFORE THIS LETTER WAS WRITTEN, THE
10 SAME CHARACTERISTICS WAS FOUND RIGHT HERE AND RIGHT
11 HERE THIS Y IS VERY SIMILAR, THIS Y IS DIFFERENT,
12 BUT IT'S IN THE SAME WRITING RANGE I GO THROUGH AND
13 I LOOK AT EACH AND EVERY ONE OF THESE
14 CHARACTERISTICSS DOES HE HAVE A COMMON, HE DOES
15 DOES HE PUT 2 PERIODS AFTER HIS SC IN SOUTH CAROLINA
16 THAT'S REPRESENTED HERE IN DOING THIS, IF I HAVE
17 ENOUGH COMBINATIONS OF DIFFERENT CHARACTERISTICS I
18 HAVE AN OPINION I DID NOT CONSIDER THE DRAWINGS
19 DRAWINGS CAN BE TRACED OVER OR DRAWINGS CAN BE
20 SIMULATED BY ANOTHER PERSON VERY EASILY, BUT WRITING
21 IS VERY HARD TO SIMULATE

22 UPON DOING THIS I REACHED THE
23 CONCLUSION IN COMPARING THIS WRITING ON THIS LETTER
24 AND THE OTHER HANDWRITING STANDARDS THAT I HAD THAT
25 BILLY WAYNE COPE IN MY OPINION AUTHORED OR PREPARED

1 OR WROTE THIS ADDRESS ON THIS LETTER IN ADDITION
2 THIS BW COPE HERE IS ALSO REPRESENTED IN THE KNOWN
3 WRITING THAT I HAVE IN OTHER STANDARDS AND THAT IS
4 ALSO HIS WRITING SO MY OPINION IS HE AUTHORED THIS
5 ENVELOPE

6 Q ALL RIGHT, SIR THAT IS THE ENVELOPE, THE
7 LARGEST ENVELOPE THAT IS DEPICTED ON STATE'S EXHIBIT
8 NUMBER 95?

9 A YES, SIR

10 Q THE ONE THAT SAYS YOU ARE THE BEST I AIN'T
11 LION DID THAT ENVELOPE HAVE A LETTER INSIDE OF IT?

12 A YES, IT DID

13 Q AND WHAT, YOU HAVE GOT A COPY OF THAT LETTER
14 BLOWN UP FOR THE JURY?

15 A I DO INSIDE THAT LETTER, EXCUSE ME, INSIDE
16 THAT ENVELOPE I FOUND THIS LETTER IT'S BLOWN UP,
17 OKAY AGAIN I HAD TO GO BACK AND COMPARE THE WRITING
18 FEATURE IN THIS LETTER TO THE KNOWN HANDWRITING OF
19 BILLY WAYNE COPE YOU NOTICE IN THE EXHIBIT BEFORE
20 HOW THE PRINTING WAS VERY NEAT AND VERY SIMILAR, ALL
21 RIGHT THAT IS WHAT I WOULD CALL A HANDWRITING
22 COMPARISON THAT WOULD NOT REQUIRE A GREAT DEAL OF
23 SKILL TO ANALYZE BECAUSE IT'S READILY SEEN IT'S
24 EASY TO SEE THE SIMILARITIES HERE IN THE OTHER
25 HANDWRITING IT TAKES A HIGHER DEGREE OF SKILL TO

002170

1 DECIPHER OR PULL OUT HANDWRITING AND THAT'S WHY THEY
2 HIRE ME, AS PARDON THE EXPRESSION, THAT'S WHY THEY
3 NEED PEOPLE TRAINED IN THIS AREA TO POINT THEM OUT
4 WHAT I HAVE ON STATE'S EXHIBIT 97 IS KNOWN
5 HANDWRITING EXCERPTS SO I'LL TAKE PAGE OF WRITING,
6 I SEE SOMETHING THAT I THINK WILL ILLUSTRATE GOOD FOR
7 THE JURY, I'LL TAKE THAT OUT AND PULL THAT OUT ALL
8 OF THIS IS KNOWN HANDWRITING OF BILLY WAYNE COPE
9 THIS IS THE LETTER IN QUESTION THAT WAS INSIDE THE
10 ENVELOPE THE ENVELOPE WAS SENT TO DNA FOR
11 PROCESSING AND IN MAKING MY EXAMINATION I LOOKED AT
12 MANY, MANY DIFFERENT FEATURES I WANTED TO POINT OUT
13 A FEW ON THIS

14 FOR EXAMPLE, LET'S START WITH THE
15 FIRST WORD GOD NOTICE THE FORMATION OF THE G IN
16 THE G, EXCUSE ME ONE SECOND, THE G FORMATION ENDS IN
17 A ARROW IF YOU NOTICE THE ARROW IN THE END OF THE
18 GO BOTH IN THE KNOWN WRITING AND ALSO HERE NOTICE
19 THE SIZE OF THE D AND HOW IT IS FORMED THAT SIMILAR
20 CHARACTERISTIC IS ALSO FOUND HERE, SO YOU HAVE THE G
21 AND YOU HAVE A D BUT SPACING IS IMPORTANT TOO IF
22 YOU'LL NOTICE THE O RIGHT HERE AGAINST THE D IS
23 ABUTTED UP AGAINST OR PUSHED UP AGAINST THE D THAT
24 IS ALSO FOUND THAT'S A WRITING CHARACTERISTIC THAT
25 WE LOOK FOR BECAUSE IT'S REPEATED IN THE KNOWN

002121

1 STANDARDS IT'S SOMETHING THIS INDIVIDUAL DOES SO
2 YOU ARE NOT JUST LOOKING AT THE LETTERS BUT YOU ARE
3 LOOKING HOW THEY ARE FORMED, HOW THEY ARE PUT
4 TOGETHER

5 THE WORD TOLD NOTICE THE T CROSS
6 AS HE CROSSES HIS T THE CROSS COMES OVER AND CONNECTS
7 TO THE O IN T-O IN TOLD THAT IS ALSO FOUND IN THE
8 QUESTION LETTER T COMES OVER AND CROSSES OVER THERE
9 SO IT'S REPRESENTED BOTH IN THE KNOWN WRITING AND IN
10 THE QUESTION WRITING

11 THE K IN KILLED IS REPRESENTED HERE IN
12 NOTED THIS IS AGAIN KNOWN WRITING FROM HIM NOTICE
13 HERE THE I-T HE MAKES AN I-T EXCUSE ME
14 NERVOUSNESS I HAVE GOT A LITTLE TREMOR THE BOTTOM
15 OF THE I COMES OVER ALMOST LIKE A L AND THEN IT'S
16 DOTTED IT'S MORE LIKE AN ARCH SHAPE ALL RIGHT
17 THIS SAME CHARACTERISTICS S FOUND LINE 13 OR ONE
18 SIMILAR TO IT IS FOUND IF I SAY SAME I MEAN
19 SIMILAR AS I SAID BEFORE, NOTHING IS EXACTLY THE
20 SAME I'LL FIND IT HERE IN JUST A MOMENT ALL RIGHT
21 LET ME COME BACK TO THE IT I'LL LOCATE THAT FOR A
22 SECOND I RECORDED IT ON THE WRONG LINE EVIDENTLY
23 WHEN I WAS MAKING MY NOTES

24 ALL RIGHT THE M'S THAT YOU SEE HERE
25 IN THE KNOWN HANDWRITING OF BILLY WAYNE COPE NOTICE

1 HOW DEEP THE CHANNEL IS ON THE M BETWEEN THE TWO
2 SHOULDERS, AN ANGULARITY, HOW SHARP THE PEAKS ARE ON
3 THAT LOOK AT THE M IN SCREAM A SIMILAR M IS FOUND
4 THERE ALSO

5 THIS PARTICULAR EXAMPLE OF WRITING
6 FROM BILLY WAYNE COPE SAYS THE LORD, IT SAYS THE
7 LORD'S STREET AND THIS IS REPRESENTED IN THE WRITING
8 AS WELL ON LINE SEVEN WHAT I POINT OUT HERE ON LORD
9 STREET IS THE BASE OF THE L HAS ARCH TO IT ALSO
10 NOTICE THE SIZE OF THE O AND R AND D AND WHAT HAPPENS
11 WHEN HE WRITES THIS WORD, THE R COMES UP SLIGHTLY,
12 RISES UP, AS MORE OF A ROUNDED D AND THEN HE HAS A
13 VERY ANGULAR S THAT SAME CHARACTERISTIC IS NOTED
14 NOT ONLY HERE BUT ALSO HERE IN THE QUESTION, NOT ONLY
15 IN THE KNOWN, BUT ALSO HERE IN THE QUESTION WRITING
16 LORD STREET AND HE COMES UP AND SEE THE HEIGHT
17 CHARACTERISTIC THE R AND THE D AND THE S IT'S
18 ALMOST AS IF THE BASE LINE COMES UP AND THEN DROPS
19 BACK DOWN LIKE THIS

20 Q HOW MANY DIFFERENT CHARACTERISTICS DID YOU FIND?

21 A WELL, I DIDN'T COUNT BUT THERE IS MANY, MANY
22 DIFFERENT CHARACTERISTICS THAT I OBSERVED IN DOING
23 THIS NOTICE THE S FOR EXAMPLE IN SCREAMS YOU FIND
24 THAT IN STREET YOU FIND IT IN SCREAM YOU FIND IT
25 SAW YOU NOTICE THAT THERE IS A SHOULDERLESS N WHEN

1 HE WRITES THE WORD KNEE AND THOSE N'S IF YOU LOOK
2 THROUGHOUT AND FOUND THROUGHOUT HERE ON ENVELOPE,
3 AGAIN ON NOT, IF IT'S FOUND THROUGHOUT THE WRITING
4 IT'S DIFFERENT N'S WHERE HE MAKES A SHOULDERLESS N

5 Q FOR EXAMPLE, MY QUESTION I GUESS IS, YOU JUST
6 SAID THE LORD'S, THE L, IT COMES UP LIKE THIS, AND
7 THAT IS DEMONSTRATED ON THE QUESTION DOCUMENT WHERE?

8 A HERE

9 Q HERE, OKAY, AND THIS IS WHAT YOU SAW HIM WRITE?

10 A YES

11 Q SO THAT WOULD BE ONE INDIVIDUAL CHARACTERISTIC?

12 A YES

13 Q UNIQUE --

14 A WELL, THIS WOULD BE SEVERAL BECAUSE YOU HAVE NOT
15 ONLY THIS BASE LINE BUT YOU ALSO HAVE THE FORMATION
16 OF THE L, THE HEIGHT RATIO OF THE R TO THE ROUNDED
17 OFF D THEN THE APOSTROPHE S WHERE THE S IS VERY
18 ANGULAR

19 Q OKAY SO WITHIN THAT ONE EXAMPLE THERE ARE
20 THREE OR FOUR --

21 A YES

22 Q ---UNIQUE CHARACTERISTICS TO HIS HANDWRITING?

23 A THEY ARE CHARACTERISTICS WHICH ARE DEMONSTRATED
24 IN HIS HANDWRITING

25 Q I SEE

002124

1 A NOW THEY MAY, YOU MAY FIND SOME OF THESE
2 CHARACTERISTIC IN OTHER PEOPLE'S HANDWRITING

3 Q OKAY?

4 A ALL RIGHT, BUT YOU HAVE TO HAVE A, LIKE I SAID,
5 YOU HAVE TO HAVE ENOUGH COMBINATIONS COMING TOGETHER
6 AT ONE TIME IN THE WRITING TO MAKE IT UNIQUE TO HIM

7 Q WHAT ARE THE ODDS THAT YOU ARE GOING TO FIND
8 THESE CHARACTERISTICS PLUS THESE, THESE, THESE,
9 THESE, THESE, THESE, AND ALL OF THESE AND ALL OF
10 THESE IN THE SAME PERSON'S HANDWRITING AND IT NOT BE
11 BILLY COPE?

12 A WELL, BASED ON OF ALL THE HANDWRITING THAT I
13 LOOKED AT AND THIS IS MY OPINION THAT BILLY WAYNE
14 COPE AUTHORED THIS HANDWRITING IT'S A NATURAL
15 HANDWRITING, AND THAT'S ANOTHER THING WE LOOK FOR
16 WHERE IT'S NATURAL OR UNNATURAL WRITING, AND I FOUND
17 ALL THESE CHARACTERISTICS THAT ARE SEEN HERE IN THE
18 KNOWN WRITING

19 Q ALL RIGHT, SIR LET ME ASK YOU THIS, YOU HAVE A
20 COUPLE OTHER BOARDS HERE WITH SOME EXEMPLARS, WHAT
21 ARE THOSE?

22 A THESE ARE JUST FURTHER ILLUSTRATIONS OF THIS
23 SAME THING FOR EXAMPLE, WHEN I WAS DOING THIS
24 PARTICULAR CHART I DIDN'T ILLUSTRATE THE I AND THERE
25 ARE A LOT OF I'S HERE THERE IS ONE, TWO, THREE

1 NOTICE HOW THE FORMATION OF THE I COMES UP OFF THE
2 LINE AND HAS ALMOST AN ARC SHAPE BOTTOM TO IT I
3 WANTED TO FIND OTHER I'S THAT WERE SIMILAR TO THAT
4 THROUGHOUT THE KNOWN WRITING TAKEN FROM BILLY WAYNE
5 COPE SO HERE I HAVE THE I'S IN ADDITION, I WAS
6 LOOKING FOR THE T-H COMBINATION ON THAT AND IF
7 YOU'LL NOTICE ON THE FIRST LINE OF THIS KNOWN WRITING
8 THE CROSS FORMS AN H, THEN THERE IS ALMOST CURSIVE
9 WRITING HERE WHICH IS VERY SIMILAR TO THE WAY THAT IS
10 WRITTEN ON THE QUESTION

11 Q THIS AGAIN IS AN EXEMPLAR YOU SAW HIM WRITE?

12 A YES

13 Q ALL RIGHT, SIR

14 A THIS IS ONE I COLLECTED FOR MYSELF THIS ONE I
15 DON'T NEED I JUST HAD THAT IN CASE THERE WAS OTHER
16 QUESTIONS ABOUT IT

17 Q WHAT DOES IT ILLUSTRATE?

18 A THIS ONE I DIDN'T MARK ANYTHING

19 Q OKAY

20 A IN GOING THROUGH, IN LOOKING AT IT, I NOTICED BY
21 LOOKING AT HIS WRITING I NOTICED THE R WHEN HE
22 MAKES HIS R SUCH AS IN REMEMBER, HE'LL DRAG THE TOP
23 LOOP OF HIS R OVER AND EXTEND IT OVER HE DOES THE
24 SAME THING HERE HE DOES THE SAME THING IN REMEMBER
25 ON THE QUESTION WRITING AND THIS IS JUST AN AT RANDOM

1 AND IF YOU WANT TO TAKE ANY OTHER DOCUMENT THERE IS
2 THAT G THAT I POINTED OUT TO YOU AGAIN THERE IS THE
3 I I POINTED OUT TO YOU AGAIN THE BEFORE, LET ME
4 FIND THAT ONE, NOTICE IN THE QUESTION WRITING ON
5 BEFORE, TOP OF THE F FORMS ALMOST LIKE AN ARC, LIKE A
6 STAFF, AND GOING THROUGH THIS WRITING I FIND IT HERE,
7 HERE THAT'S R AGAIN, SO WHAT I'M DOING IS I'M GOING
8 THROUGH THE KNOWN WRITING AND I'M LOOKING AT ALL
9 THESE DIFFERENT CHARACTERISTICS ARE HIS M'S THE
10 SAME, ARE HIS C'S THE SAME, ARE HIS N'S THE SAME, THE
11 T'S ARE THEY RELATED THE SAME, AND THEY ARE SO THIS
12 PARTICULAR CASE THAT'S HOW I WAS ABLE TO SAY THAT IN
13 MY OPINION BILLY WAYNE COPE AUTHORED THE QUESTION
14 LETTER IN STATE'S EXHIBIT NUMBER 90 AND ADDRESSED AND
15 WROTE THE ENVELOPE IN STATE'S EXHIBIT 95

16 Q SO TURNING BACK TO THIS 97 EXHIBIT YOU HAVE A
17 TOTAL NUMBER OF ABOUT 16, 15-16 DEMONSTRATIONS OF
18 UNIQUE CHARACTERISTICS THAT YOU FOUND?

19 A YES

20 Q ALL RIGHT WAS THAT ALL YOU COULD FIND?

21 A I'M SURE THERE WERE MORE THROUGHOUT, I SPENT
22 WEEKS LOOKING AT THIS RIGHT HERE, AND THERE ARE MANY
23 DIFFERENT CHARACTERISTICS THAT I LOOKING AT IT'S
24 JUST DIFFICULT TO GET UP AND DO TWO YEARS EXPERIENCE
25 IN A SHORT PERIOD OF TIME IN THE COURTROOM BUT THIS

1 IS WHAT I LOOKED AT AND BASED ON MY EXPERIENCE AND MY
2 EDUCATION I ARRIVED AT MY CONCLUSION

3 Q SO YOU FOUND 15 UNIQUE CHARACTERISTICS IN THE
4 KNOWN WRITING THAT WERE REPLICATED IN THE QUESTION
5 WRITING?

6 A YES, SIR

7 Q OKAY NOW AGENT WORSHAM, HOW ABOUT IF I WANTED
8 TO REPLICATE THIS MYSELF IF I WANTED TO DUPLICATE
9 THE HANDWRITING OF BILLY WAYNE COPE, WHAT'S TO STOP
10 ME FROM JUST TAKING OUT MY PAD AND PEN AND LOOKING AT
11 ANOTHER DOCUMENT AND KIND OF USING THAT AS A GUIDE
12 AND WRITING THIS OUT MYSELF, KIND OF JUST LIKE HE
13 DOES HERE?

14 A THAT'S KNOWN AS A SIMULATION IF YOU WANT TO
15 SIMULATE, MAKE YOUR WRITING LOOK LIKE SOMEBODY ELSE'S
16 YOU ARE SIMULATING THAT PERSON'S WRITING, YOU ARE
17 USING IT AS A MODEL WE'RE TRAINED IN OUR FIELD TO
18 RECOGNIZE SIMULATIONS IN DOING A SIMULATION YOU
19 HAVE TO CHANGE YOUR HANDWRITING, YOUR NATURAL
20 HANDWRITING, YOU HAVE TO SACRIFICE THE WAY YOU
21 NORMALLY WRITE TO MAKE IT LOOK LIKE SOMEBODY ELSE'S
22 WRITING, AND WHEN YOU DO THAT YOU COMMIT CERTAIN
23 FEATURES IN THE WRITING LINES, THE WRITE LINE IS
24 THE LINE THAT THE PEN FALLS THAT YOU CAN LOOK AT TO
25 SEE IF THIS IS A SIMULATED WRITING

1 Q WHEN YOU SAY THE WRITE LINE, YOU W-R-I-T-E?

2 A YES

3 Q OKAY?

4 A W-R-I-T-E IF I'M WRITING MY NAME, THIS IS MY
5 WRITE LINE, AND WE LOOK AT THE CHARACTERISTICS IN
6 THAT WRITE LINE FOR EXAMPLE, IF SOMEONE WERE TO TRY
7 TO SIMULATE ANOTHER PERSON'S WRITING, I COULD
8 PROBABLY DEMONSTRATE THAT BETTER USING THE OVERHEAD

9 Q OKAY

10 A LET ME GET A PIECE OF PAPER HERE WHAT I'M
11 PLACING UNDER HERE IS JUST A BLANK SHEET OF PAPER FOR
12 RIGHT NOW AND WHAT I WOULD LIKE TO DO IS HAVE
13 SOMEBODY WRITE SOMETHING ON THIS, TODAY'S NEWS, AND
14 THEN I WILL TRY TO SIMULATE THAT WRITING AND I'LL TRY
15 TO DEMONSTRATE TO YOU WHAT WE LOOK FOR IF A PERSON
16 TRIES TO SIMULATE ANOTHER PERSON'S WRITING NOW WHEN
17 WE DO THIS WE'RE LOOKING AT IT MICROSCOPICALLY I
18 TAKE THE DOCUMENT AND PLACE IT UNDER THE MICROSCOPE
19 THE FIRST THING WE LOOK FOR IN HANDWRITING IS NATURAL
20 WRITING WE LIKE TO IDENTITY NATURAL WRITING
21 COMPARED TO NATURAL WRITING IT'S POSSIBLE THAT A
22 PERSON CAN CHANGE THEIR WRITING SO MUCH IF THEY ARE
23 INTENTIONALLY TRYING TO DECEIVE SOMEONE THAT YOU WILL
24 NOT BE ABLE TO IDENTIFY IT SO YOU CAN DISGUISE YOUR
25 WRITING TO A CERTAIN EXTENT, BUT THERE IS ANOTHER

1 NATURAL WRITING WITHIN THERE THAT IS CROPPING THROUGH
2 THAT YOU BASE YOUR FEATURES ON AND STILL MAKE AN
3 IDENTIFICATION OR REACH AN OPINION

4 Q ALL RIGHT, SIR DO YOU NEED SOMEBODY TO WRITE
5 ON THIS?

6 A YES

7 MR BAITY YOUR HONOR --

8 THE COURT WHY CAN'T YOU DO IT?

9 MR BRACKETT ALL RIGHT I CAN DO IT

10 MR BAITY I THOUGHT HE WAS GOING TO ASK
11 THE JURY TO DO IT

12 THE COURT NO

13 MR BRACKETT NO

14 (MR BRACKETT WRITES TODAY'S NEWS ON
15 THE PAPER)

16 Q IS THAT WHAT YOU WANTED?

17 A YES, SIR

18 Q I'M NOT FAMILIAR WITH HIS HANDWRITING IF I
19 WERE TO SIT DOWN IN THE LAB AND TRY TO SIMULATE THIS
20 HANDWRITING WHAT I WOULD HAVE TO DO, IF YOU'LL WATCH,
21 THE FIRST THING I'M GOING TO DO IS LOOK AT THE T, I'M
22 GOING TO TRY TO IMITATE RATHER A T LIKE THAT, NOW
23 THIS IS MY FIRST ATTEMPT AND OF COURSE I'M A LITTLE
24 BIT NERVOUS WHAT I'M DOING IS I'M LOOKING AT HIS S,
25 HIS APOSTROPHE, HIS Y, THE WAY HE MAKES HIS A, AND

1 THEN I WOULD COME IN WITH NEWS AND IT'S NOT THE WAY I
2 WOULD NORMALLY MAKE NEWS ALL RIGHT SO IF I'M
3 TRYING TO SIMULATE HIS HANDWRITING, OF COURSE, IT
4 WOULD BE A LITTLE MORE SMOOTHER WITH A LITTLE MORE
5 PRACTICE BUT, AND THEN I TOOK THIS SIMULATED WRITING,
6 LET'S SAY I DIDN'T HAVE HIS WRITING AT ALL, I JUST
7 TOOK THE SIMULATED WRITING AND I LOOKED AT IT
8 MICROSCOPICALLY, PULL THAT UP A LITTLE BIT AND SEE IF
9 YOU CAN SEE IT A LITTLE BIT BETTER, I'M LOOKING AT
10 THE WRITE LINE, ALL RIGHT WHAT DO YOU SEE VERY
11 READILY, FIRST OF ALL, IS THE LINE QUALITY THE
12 SMOOTHNESS OF THE LINE, OF THE WRITE LINE ITSELF
13 NOTICE HOW SMOOTH AND NATURAL THIS WRITING IS MINE
14 IS SLOWER AND HEAVIER BECAUSE I'M TRYING TO CHANGE MY
15 HANDWRITING TO MODEL IT AFTER HIS AGAIN YOU SEE
16 THIS THICK HEAVY WRITING HERE ON OCCASION WHEN HE
17 MADE HIS N'S IT'S LIKE AN X HERE WHAT I HAD TO DO
18 IS MAKE THAT FORMATION, ALL OF A SUDDEN I REALIZE I
19 LEFT A LITTLE BIT OFF, SO I WENT BACK AND I PUT ON
20 WHAT YOU CALL WHAT YOU CAN AN ADD WHEN WE SEE SLOW
21 AND HEAVY WRITING LIKE THIS WITH A VERY TREMULOUS
22 LINE, SEE HOW SMOOTH THIS IS THIS IS WHAT WE CALL
23 TREMOR IN THE LINE THEN WE ARE FLAGGED TO KNOW THAT
24 THIS IS PROBABLY A SIMULATE'S WRITING AS OPPOSED TO A
25 NATURAL WRITING ALSO IF I STOP, IF I'M WRITING

002131

1 ALONG AND ALL OF A SUDDEN I STOP AND LOOK UP AT THE
2 MODEL AT HIGH POWER I CAN SEE WHAT WE CALL A
3 HESITATION IN OTHER WORDS, I'M WRITING IN THE LINE
4 AND ALL OF A SUDDEN THERE IS A HEAVIER BLOB OF INK IN
5 THE MIDDLE OF THE LINE WHERE I JUST HESITATED AND TO
6 LOOK UP TO SEE HOW TO MAKE THAT FORMATION AND THEN I
7 START WRITING AGAIN YOU SEE THE HESITATION
8 SOMETIMES I'LL PICK THE PEN OFF THE PAPER, LOOK UP AT
9 THE MODEL, AND THEN CONTINUE MAKING THAT SAME LETTER
10 THAT'S A PEN LIFT WE SEE TREMOR, WE SEE SLOW
11 WRITING, WE PEN LIFTS, WE SEE HESITATION, WE KNOW WE
12 HAVE A SIMULATED WRITING WHEN I EXAMINED THE
13 WRITING IN QUESTION ON THE ENVELOPE IN STATE'S
14 EXHIBIT 89 AND STATE'S EXHIBIT 90, THE ORIGINAL
15 LETTER AND ENVELOPE, I DIDN'T FIND ANY SIGNS OF
16 SIMULATION THIS IS NATURALLY WRITTEN
17 ALSO WE LOOK AT THE PEN PRESSURE THE
18 ENDING STROKES SOMETIMES ARE MUCH LIGHTER AND FINER
19 THAN THE INITIAL HEAVY STROKES AS YOU MAKE THE
20 FORMATION SO WHAT I FOUND IN THIS LETTER WHEN I
21 EXAMINED IT WAS NATURAL WRITING WITHIN THE RANGE OF
22 MR COPE'S HANDWRITING STANDARDS
23 Q ALL RIGHT, SIR WELL, THEN SUPPOSE I DECIDED IF
24 THAT'S NOT GOING TO WORK THAT I WANTED TO DO A TRACE
25 AND I WANTED TO TRACE THIS AND TAKE A KNOWN WRITING

1 SAMPLE, PLACE ANOTHER PIECE OF PAPER OVER IT, AND
2 TRACE THIS ON TO ANOTHER PIECE OF PAPER, WHAT WOULD
3 STOP ME FROM DOING THAT OR HOW WOULD WE KNOW THAT
4 THAT HAD HAPPENED?

5 A THAT WOULD BE EXTREMELY DIFFICULT TO DO IF YOU
6 WERE TO TAKE A PIECE OF PAPER AND PLACE IT, LET'S SAY
7 I WANT TO TRACE THIS WRITING ON THIS PAPER, I WOULD
8 HAVE TO TAKE A PIECE OF PAPER THAT I COULD SEE
9 THROUGH AND THEN START COPYING THE WRITING AS I BEST
10 SEE IT THROUGH HERE NOW THIS IS BLOWN UP, THIS IS
11 ENLARGED, SO IT'S MUCH EASIER FOR ME TO TRACE, BUT
12 NORMAL SIZE WRITING YOU CAN ONLY SEE ABOUT AN INCH
13 AHEAD OF THAT PENCIL WHERE IT'S GOING AND YOU HAVE TO
14 KEEP LOOKING, AND THEN YOU ARE GOING TO FIND THINGS
15 IN THERE THAT YOU CANNOT SEE IN THE TRACE ALL
16 RIGHT NOW PICTORIALY THAT LOOKS VERY GOOD IN
17 OTHER WORDS, IT'S, IT LOOKS LIKE A WELL TRACED, ALL
18 RIGHT, HOWEVER WRITE LINE STILL HAS TREMOR IN IT
19 IT'S STILL A VERY HEAVY LINE

20 Q SIR, CAN YOU MAYBE PUT IT ON THE PRESENTER OVER
21 HERE AND WE'LL SHOW IT BECAUSE IT'S A LITTLE SMALL?

22 A OKAY YOU CAN SEE IT MUCH BETTER HERE NOW
23 WHEN I DID THIS TRACING OVER HERE IT LOOKED PRETTY
24 GOOD, DIDN'T IT IT LOOKED MUCH SMOOTHER THAN THAT
25 WHEN I WROTE G-O-D IT LOOKED GOOD, BUT THEN WHEN YOU

1 PUT IT UNDER THE MICROSCOPE AND BLOW IT UP WHAT DO
2 YOU SEE, SEE AGAIN THE TREMOR TO THE LINE, THE
3 WAVINESS IN THE LINE ALSO YOU CAN SEE EASILY TELL
4 THAT THIS HAS BEEN A SIMULATED OR TRACED SIGNATURE
5 IT'S NOT NATURALLY WRITTEN AND IT WOULD BE VERY
6 DIFFICULT TO DO NOT JUST ONE OR TWO OR THREE WORDS
7 BUT AN ENTIRE LETTER WOULD BE ALMOST IMPOSSIBLE EVEN
8 IF YOU TOOK SCANNINGS FROM DIFFERENT KNOWN WRITINGS
9 OR LETTERS AND PUT THEM ALL TOGETHER AND MAKE A
10 COMPOSITE LETTER, DIFFERENT SCANS FROM THE KNOWN
11 HANDWRITING, AND THEN TRIED TO TRACE IT, YOU GET THE
12 SAME RESULTS IT WOULD BE ALMOST IMPOSSIBLE TO DO
13 IT I COULDN'T DO IT

14 Q OKAY, SIR I THINK I'M GOING ASK YOU TO GO
15 AHEAD AND HAVE A SEAT IF YOU WOULD

16 (THE WITNESS RESUMES THE WITNESS STAND
17 AT 12 26 PM)

18 Q ALL RIGHT, SIR USING THE PRINCIPLES YOU JUST
19 DESCRIBED AND THE MANNER YOU JUST DESCRIBED THEM, DID
20 YOU COME TO, LET ME SEE WHERE DID YOU PUT THEM, AGAIN
21 USING THE PRINCIPLES YOU JUST DESCRIBED DID YOU
22 EXAMINE STATE'S EXHIBIT I BELIEVE THAT'S 90 YES
23 DID YOU EXAMINE STATE'S EXHIBIT 90, THE LETTER THAT
24 BEGINS, SMALL LETTER THAT SAYS I NEED TO SEE YOU IN
25 PERSON AS SOON AS POSSIBLE DID YOU EXAMINE THAT

1 DOCUMENT TO TRY TO DETERMINE AUTHORSHIP?

2 A YES, I DID THIS WAS THE SECOND LETTER THAT I
3 HAD AND THIS SECOND LETTER I EXAMINED AGAIN IN THE
4 SAME METHOD I USE ON THE FIRST WHEN I GOT TO THE
5 SECOND LETTER AND I CAN PROBABLY SHOW THIS BETTER ON
6 THE OVERHEAD TOO, BUT THE SECOND LETTER STARTS OUT
7 DEAR AMY, I NEED TO SEE YOU AS SOON AS POSSIBLE, THAT
8 WRITING TO THAT EXTENT RIGHT THERE HAD BEEN
9 OVERWRITTEN IN OTHER WORDS, A WRITING HAD BEEN
10 PLACED AND THEN WROTE OVER IT AGAIN EITHER FOR
11 EMPHASIS OR WHATEVER PURPOSE I DO NOT KNOW I DID
12 NOT IDENTIFY OR TRY TO IDENTIFY THAT PORTION OF THE
13 WRITING BECAUSE IT WOULD BE EASY TO, FOR SOMEBODY TO
14 COME IN AND DRAW OVER SOMETHING YOU HAVE WRITTEN,
15 OKAY, A NUMBER OF TIMES AND DISGUISE THAT WRITING
16 SO THIS WAS NOT WHAT I WOULD CALL WRITING THAT WAS
17 REALLY SUITABLE FOR COMPARISON IN THIS PARTICULAR
18 CASE, OKAY YOU GOT TO BE VERY CAREFUL WITH
19 HANDWRITING BUT THE REST OF THE WRITING, THERE WAS
20 ENOUGH NATURAL WRITING IN THE REST OF THE WRITING
21 THAT I COULD MAKE A COMPARISON ON

22 IN LOOKING AT THIS WRITING I ARRIVED
23 AT THE CONCLUSION THAT BILLY WAYNE COPE PROBABLY
24 WROTE THIS LETTER

25 Q OKAY WHAT WAS DIFFERENT ABOUT THE WRITING IN

1 THAT THAT MADE IT IMPOSSIBLE FOR YOU TO SAY CERTAINLY
2 HE WROTE THAT LETTER?

3 A WHEN COMPARING THIS BACK TO THE KNOWN STANDARDS
4 OF BILLY WAYNE COPE, THERE IS H IN THIS LETTER ON
5 HILL, I DID NOT FIND THAT PARTICULAR H ALSO IN THE
6 WORD AND, A-N-D, HE WRITES IT AND IT APPEARS TO BE
7 A-M-D AS OPPOSED TO A-N-D I DID NOT A-M-D IN HIS
8 KNOWN HANDWRITING STANDARDS ALSO THIS WAS WRITTEN
9 ALMOST EXCLUSIVELY IN LONG HAND, IN CURSIVE MOST OF
10 THE STANDARDS THAT I HAVE FROM HIM WERE EITHER A
11 COMBINATION OF HAND PRINTING AND CURSIVE OR HAND
12 PRINTING I DID NOT HAVE A GREAT DEAL BUT JUST A
13 SMALL AMOUNT OF HAND PRINTING I SAID HE PROBABLY
14 WROTE THAT BECAUSE THERE ARE FEATURES AND
15 CHARACTERISTICS IN THERE THAT I COULD SHOW THAT, TO
16 COMPARE TO HIS HANDWRITING I COULD NOT IDENTIFY HIM
17 AS HAVING WRITTEN THIS LETTER

18 Q PRIMARILY DUE TO THE LACK OF STANDARDS?

19 A PRIMARILY BECAUSE IT HAD BEEN OVER WRITTEN AND I
20 DIDN'T HAVE THE LONG HAND AND COULDN'T FIND THESE TWO
21 FEATURE, YES

22 Q ALL RIGHT, SIR NOW THE ITEM MARKED STATE'S
23 EXHIBIT 89, WERE YOU ABLE TO COME TO A CONCLUSION AS
24 TO THE AUTHORSHIP OF STATE'S EXHIBIT 89 ALSO
25 REPRESENTED IN STATE'S EXHIBIT 96, THE LETTER THAT

1 BEGINS HERE, AMY, GOD TOLD ME TO TELL YOU THAT I
2 KILLED AMANDA WERE YOU ABLE TO COME TO A CONCLUSION
3 AS TO WHO WROTE THAT LETTER?

4 A STATE'S EXHIBIT 89 AS I TESTIFIED BEFORE HAD
5 FOUR PAGES TO IT THE TWO PAGES OF WRITING THAT
6 STARTS DEAR AMY AND ENDS WITH MUCH LOVE TINK AND THEN
7 HAS CART DRAWINGS THERE AND REFERENCE TO BIBLICAL
8 SCRIPTURE, I IDENTIFIED, IN MY OPINION, I DID
9 IDENTIFY THIS AS HAVING COME FROM BILLY WAYNE COPE
10 AND THIS IS THE ONE THAT I ILLUSTRATED THAT DOES HAVE
11 NATURAL WRITING TO IT IT'S NOT A SIMULATED WRITING
12 IN MY OPINION HE DID WRITE THIS

13 Q WHEN YOU --

14 A GO AHEAD

15 Q I'M SORRY YOU EXAMINED IT DID IT HAVE THAT
16 PURPLE STUFF ON IT?

17 A NO THIS LETTER WHEN I RECEIVED IT WAS JUST A
18 REGULAR WHITE LETTER THIS PURPLE STUFF THAT YOU SEE
19 ON HERE IS NINHYDRIN AFTER I FINISH WITH THE LETTER
20 I PHOTOGRAPH IT AND THEN I HAD IT SENT TO LATENT
21 PRINTS DEPARTMENT AND THIS PURPLE NINHYDRIN THAT THEY
22 SPRAY ON THERE HELPS TO DEVELOP PRINTS THAT MIGHT BE
23 PRESENT ON THE LETTER AND THEY COMPARE THOSE

24 Q ALL RIGHT WAS THERE ANYTHING ELSE YOU WERE
25 ABOUT TO COMMENT AS FAR AS --

1 A YES, SIR IN ADDITION TO THESE TWO PAGES OF
2 WRITING I HAD AGAIN TWO MORE THIS IS TWO PIECES OF
3 PAPER THIS IS THE FRONT OF ONE PAGE THIS IS THE
4 FRONT OF THE OTHER PAGE AND ON THIS AGAIN, THIS
5 WAS, ON THE OUTSIDE COVERING AND FOLDED INTO THIS
6 LETTER WHICH IS PLACED IN THE ENVELOPE, THIS LETTER,
7 THIS COVER SHEET, IT SAYS, THIS IS A COVER SHEET TO
8 PREVENT WANDERING EYES AND AGAIN THIS IS HAND PRINTED
9 AND ITS OVER WRITTEN AND OVER WRITTEN AGAIN AND AGAIN
10 SO I DID NOT EVEN TRY TO IDENTIFY THAT WRITING THEN
11 THERE IS A SERIES OF SCRAWL LINES THERE TO PREVENT, I
12 ASSUME, PEOPLE FROM SEEING THROUGH IT ON THE BACK
13 IT WASN'T ANY WRITING JUST A SERIES OF SCRAWL LINES
14 THIS IS WHAT YOU SEE FROM THE OTHER SIDE

15 Q ALL RIGHT ONE MORE QUESTION FOR YOU YOU
16 SAID YOU HAD 14 YEARS EXPERIENCE AND TRAINING IN
17 HANDWRITING EXAMINATION?

18 A YES, SIR

19 Q ALL RIGHT IF I GAVE YOU STATE'S EXHIBIT 96 AND
20 THE ORIGINAL DOCUMENT THAT YOU HAVE IN FRONT OF YOU
21 IS STATE'S EXHIBIT 90 OR 89, THE ORIGINAL
22 HANDWRITING, AND I GAVE YOU A YEAR IF WITH ALL YOUR
23 EXPERIENCE COULD YOU DO DUPLICATE THIS DOCUMENT SUCH
24 THAT ANOTHER HANDWRITING EXAMINER WOULDN'T BE ABLE TO
25 DETERMINE IF IT HAD BEEN FORGED?

1 A NO, SIR, I COULD NOT

2 Q FIVE YEARS?

3 A I COULDN'T DO THAT, NO, SIR

4 Q THANK YOU VERY MUCH, AGENT WORSHAM PLEASE

5 ANSWER ANY QUESTIONS MR BAITY MAY HAVE?

6 THE COURT DOES THE JURY NEED A BREAK AT
7 THIS TIME NO, OKAY GO AHEAD

8 CROSS EXAMINATION BY MR BAITY

9 Q GOOD MORNING

10 A GOOD MORNING

11 Q GOOD AFTERNOON, MR WORSHAM I'M PHIL BAITY I
12 REPRESENT MR COPE

13 A YES, SIR

14 Q I BELIEVE YOU TESTIFIED THAT YOU HAD BEEN
15 WORKING WITH QUESTION DOCUMENTS SINCE 1994 AND FOR
16 TWO YEARS BEFORE THAT YOU WERE --

17 A ---TRAINING

18 Q ---TRAINING SO FOR A TOTAL OF 12 YEARS YOU'VE
19 BEEN INVOLVED IN THIS?

20 A YES, SIR

21 Q OKAY AND BEFORE THAT I BELIEVE YOU SAID THAT
22 YOU WERE A CHEMIST?

23 A YES, I WORKED IN THE FORENSIC LAB IN TRACE
24 EVIDENCE AND THEN I TRANSFERRED OVER TO THE QUESTION
25 DOCUMENT SECTION WHERE I UNDERWENT MY TRAINING WHILE

1 STILL WITH NORTH CAROLINA LAB

2 Q THIS WAS IN NORTH CAROLINA?

3 A YES, SIR

4 Q OKAY AND I THINK YOU ALSO MENTION THAT YOU DID
5 SOME TEACHING IN HIGH SCHOOL?

6 A YES, SIR

7 Q HAVE YOU EVER DONE ANYTHING ELSE FOR A LIVING?

8 A I'VE DONE MANY JOBS A LOT OF TIMES WE DON'T
9 RECEIVE THE PAY WE NEED I'VE SOLD CARS I'VE DONE
10 WORK WITH FEDEX FOR AWHILE I'VE DONE DIFFERENT
11 THINGS PART-TIME

12 Q BUT I MEAN --

13 A BUT THIS HAS BEEN PREDOMINATELY MY LINE OF WORK
14 IN FORENSIC, YES, SIR

15 Q WHEN DID YOU SELL CARS FOR A LIVING?

16 A A COUPLE YEARS AGO IN RALEIGH, CAR MAX

17 Q OKAY NOW YOU MENTION THAT YOU HAD SOME
18 IN-HOUSE TRAINING IN RALEIGH IN HANDWRITING EXPERTISE
19 AND THEN TWO WEEKS WITH THE SECRET SERVICE AND ONE
20 MONTH INTERNSHIP WITH THE POSTAL SERVICE AND IS THAT
21 THE EXTENT OF YOUR TRAINING IN HANDWRITING ANALYSIS?

22 A YES, SIR

23 Q OR QUESTION DOCUMENT ANALYSIS I SHOULD SAY?

24 A WELL, OF COURSE, WE ATTEND SEMINARS AND GO TO
25 MEETINGS AND THINGS OF THAT NATURE

002140

1 Q DO YOU KNOW WHAT I MEAN BY BOARD CERTIFIED?

2 A YES

3 Q WHAT IS BOARD CERTIFICATION?

4 A BOARD CERTIFICATION, THERE IS A GROUP OF
5 QUESTION DOCUMENT EXAMINERS WHO WANTED TO HAVE A
6 STANDARD SET UP FOR QUALIFIED DOCUMENT EXAMINERS TO
7 HAVE THE OPPORTUNITY TO JOIN THEIR BOARD AND UNDERGO
8 THEIR TESTING TO BECOME BOARD CERTIFIED, YES, SIR

9 Q AND WOULD THIS, WOULD YOU AGREE WITH ME, THAT IF
10 YOU ARE BOARD CERTIFIED YOU HAVE A HIGHER DEGREE OF
11 EXPERTISE OR YOU DEMONSTRATE A HIGHER DEGREE OF
12 EXPERTISE THAN SOMEONE WHO IS NOT?

13 A BOARD CERTIFICATION REQUIRES YOU TO HAVE TWO
14 YEARS TRAINING IT REQUIRES THAT YOU HAVE BEEN
15 TRAINED UNDER A RECOGNIZED DOCUMENT EXAMINER, ALL
16 RIGHT, FOR A TWO YEAR PROGRAM, AND THAT'S WHAT THEY
17 DO I'M NOT A BOARD CERTIFIED DOCUMENT EXAMINER

18 Q MY NEXT QUESTION, I DIDN'T MEAN TO INTERRUPT,
19 BUT?

20 A OKAY

21 Q BUT THE TEST THAT YOU TOOK IN RALEIGH I BELIEVE
22 YOU DESCRIBED THE FBI GAVE YOU, YOU MENTIONED SOME
23 KIND OF TEST, THAT WAS NOT A BOARD CERTIFICATION
24 TEST?

25 A NO

002141

1 Q AND YOU WERE NOT A BOARD CERTIFIED DOCUMENTS
2 EXAMINER?

3 A NO

4 Q ALL RIGHT DURING YOUR 10 OR 12 YEARS OF WORK
5 IN THIS AREA HAVE YOU EVER APPLIED FOR BOARD
6 CERTIFICATION?

7 A NO, I HAVE NOT TOWARD THE END OF MY TRAINING
8 AND THEN AFTER ABOUT FOUR YEARS EXPERIENCE WORKING
9 WITH THE STATE BUREAU OF INVESTIGATION I WAS GETTING
10 READY TO RETIRE AND LOOKING DOWN THE ROAD AT MY
11 RETIREMENT I DIDN'T CHOOSE TO GO THROUGH BOARD
12 CERTIFICATION IT WASN'T REQUIRED BY THE STATE
13 LABORATORY THAT I WORKED AT NOR IS IT REQUIRED BY THE
14 STATE LABORATORY THAT I NOW WORK AT WHAT IS
15 REQUIRED BY THE STATE LABORATORY WHERE I WORK WITH
16 SLED IS THAT I HAVE THE QUALIFICATIONS AND THE
17 TRAINING WHERE IF I CHOOSE TO CAN SUBMIT FOR BOARD
18 CERTIFICATION IF I SO CHOOSE I'M A MEMBER OF THE
19 SOUTHEASTERN ASSOCIATION OF QUESTION DOCUMENT
20 EXAMINERS I AFFILIATE WITH THAT GROUP, ASSOCIATE
21 WITH THAT GROUP, AND ATTEND MANY OF THEIR MEETINGS
22 I DID NOT CHOOSE ON MY OWN TO GO FORTH ON MY SECOND
23 EMPLOYMENT AFTER MY RETIREMENT TO TRY TO GET BOARD
24 CERTIFICATION BECAUSE THE LABORATORY ITSELF TESTS ME,
25 CERTIFIES ME, AND OVER SEES MY WORK

002142

1 Q BUT YOU ARE NOT BOARD CERTIFICATED WITH THEM OR
2 ANY OTHER ORGANIZATION?

3 A I'M NOT BOARD CERTIFIED QUESTION DOCUMENT
4 EXAMINER EVEN THOUGH I MEET THE QUALIFICATIONS TO
5 APPLY IF I SO CHOOSE

6 Q THANK YOU SO IN YOUR EARLIER TESTIMONY YOU
7 MENTION THAT EVERYBODY'S HANDWRITING IS A LITTLE
8 DIFFERENT AND EACH PERSON WHEN THEY WRITE SOMETHING
9 THEY WRITE IT A LITTLE BIT DIFFERENT EACH TIME?

10 A YES, SIR

11 Q OKAY AND NOTHING IS THE SAME FROM ONE DOCUMENT
12 TO THE NEXT IT'S ONLY SIMILAR PERHAPS?

13 A THAT'S CORRECT

14 Q SO WOULD YOU AGREE WITH ME THAT YOUR WORK IS
15 REALLY NOT AN EXACT SCIENCE BUT IT HAS A, IT'S
16 BASICALLY AN OPINION BASED SCIENCE?

17 A YES THE CONCLUSIONS THAT I REACH ARE MY
18 OPINION BASED ON THE HANDWRITING AND FEATURES AND
19 CHARACTERISTICS SUCH AS I DEMONSTRATED

20 Q AND MR WORSHAM, YOU MENTION THAT THESE LETTERS
21 WERE BROUGHT TO YOU, THEY WERE BROUGHT TO YOU IN, OF
22 COURSE, IN AN UNOPENED FORM, IS THAT CORRECT? EXCUSE
23 ME IN OPEN FORM THEY WERE OPEN, THE LETTERS HAD
24 BEEN OPENED AND CONTENTS TAKEN OUT OF THEM, AND
25 EXAMINED BY A NUMBER OF PEOPLE BEFORE YOU GOT THEM,

1 IS THAT CORRECT?

2 A I ONLY KNOW THAT THE ENVELOPES WERE IN FACT OPEN
3 WHEN I RECEIVED THEM SOMEONE HAD OPENED AND READ
4 THE LETTER AND THEY WERE SUBMITTED TO ME IN THAT
5 CONDITION AND PRIOR TO THAT, I HAD NO KNOWLEDGE OF
6 WHERE THEY CAME FROM OR HAD EVER SEEN THEM

7 Q SO YOU DON'T KNOW IF THE ENVELOPE THAT YOU
8 DESCRIBED ACTUALLY CONTAINED THAT LETTER OR SOME
9 OTHER LETTER, DO YOU?

10 A THAT'S CORRECT I DON'T KNOW I ONLY NOW HOW I
11 RECEIVED THEM, HOW THEY WERE ASSOCIATED AT THE TIME I
12 DID RECEIVE THEM

13 Q OKAY AND I BELIEVE YOU ALSO MENTION THAT YOU
14 TOOK SOME HANDWRITING EXEMPLARS FROM MR COPE?

15 A THAT'S CORRECT

16 Q AND MR COPE VOLUNTARILY SUBMITTED AND WAS
17 COOPERATIVE WITH YOU IN YOUR HANDWRITING EXEMPLAR
18 REQUEST?

19 A YES, HE WAS HE WAS VERY COOPERATIVE

20 Q NOW I DON'T WANT TO GET THEM MIXED UP SO LET ME
21 SEE IF I CAN FIND THEM WITH RESPECT TO THE LETTERS,
22 THE QUESTION LETTERS, THERE IS BASICALLY TWO OF THEM,
23 CORRECT?

24 A YES

25 Q AND THIS WOULD BE ONE THAT, WHY DON'T WE CALL

1 THE SMALL LETTER AND THE LARGE LETTER JUST SO WE KEEP
2 THEM TRACK?

3 A ALL RIGHT SURE

4 Q OKAY WITH RESPECT TO THE SMALL LETTER I
5 BELIEVE YOUR TESTIMONY IS THAT YOU BELIEVE THAT
6 MR COPE PROBABLY WROTE THIS LETTER?

7 A YES, SIR

8 Q BUT YOU FOUND SOME PROBLEMS WITH IT?

9 A ABSOLUTELY

10 Q IS THAT CORRECT? LET'S PUT THAT RIGHT THERE

11 A ALL RIGHT

12 Q AND YOU WOULD AGREE WITH ME THAT IT HAS EXAMPLES
13 OF OVERWRITING ON IT?

14 A YES

15 Q AND THERE WAS SOME DIFFERENCES BETWEEN THAT AND
16 THE KNOWN SAMPLES THAT YOU HAD?

17 A YES

18 Q RIGHT AND YOU DID HAVE SOME SAMPLES OF
19 MR COPE'S CURSIVE WRITING IN THE 11 LETTERS THAT YOU
20 EXAMINED, DID YOU NOT?

21 A YES, SIR, I DID

22 Q AND IN, ONLY A PART OF THAT WAS CURSIVE, IS THAT
23 CORRECT?

24 A WELL, COMPLETELY CURSIVE I HAD COMBINATIONS OF
25 CURSIVE

1 Q AND DID YOU SEE ANY OF HIS LETTERS THAT WERE
2 COMPLETELY CURSIVE?

3 A IN THE ENTIRE LETTER?

4 Q YES, SIR

5 A NO, SIR

6 Q WELL, SO THAT'S A DIFFERENCE IN AND OF ITSELF,
7 ISN'T IT, THAT HERE IS A LETTER THAT'S WRITTEN IN
8 COMPLETELY CURSIVE LETTERS AND NO OTHER KNOWN SAMPLE
9 AND I DON'T KNOW HOW MANY PAGES YOU SAID YOU LOOKED
10 AT, HE NEVER DONE THAT BEFORE IN THE SAMPLES THAT YOU
11 LOOKED AT, RIGHT?

12 A THERE ARE TWO DIFFERENT FEATURES THAT I DID NOT
13 FIND, OKAY OF COURSE, IF YOU ARE GOING HAND PRINT
14 OR IF YOU WRITE LONG HAND LONG HAND IS CONNECTING THE
15 LETTERS, SO I WAS ABSENT IN MOST OF THE WRITING MANY
16 OF THOSE CONNECTIVE STROKES THAT YOU MIGHT SEE ON
17 THIS LETTER, TO THAT EXTENT YOU ARE ABSOLUTELY
18 CORRECT IN ADDITION, AS I TESTIFIED EARLIER, THERE
19 WAS AN H THERE AND THE SPELLING OF THE A-M-D AS
20 OPPOSED TO A-N-D, WHEN I SAY M IT'S NOT HIS SPELLING,
21 IT'S JUST THE WAY HE MAKES THE N IN THAT PARTICULAR,
22 AT THAT PARTICULAR TIME THAT LOOKS LIKE AN M, I
23 COULDN'T FIND THOSE AND SO IF I CAN'T FIND IT THEN I
24 DIDN'T HAVE A LOT OF CURSIVE, I BACKED UP, AND I SAID
25 THIS IS A PROBABILITY

002146

1 Q AND DID YOU FIND EXAMPLES OF NOT ONLY
2 OVERWRITING BUT HEAVY WRITING OR PEN LIFTS OR PEN
3 STOPS OR TREMOR IN THIS, A COUPLE OF THEM?

4 A IN THIS PARTICULAR ITEM?

5 Q IN THE LITTLE LETTER, SMALL LETTER?

6 A I DIDN'T NOTE ANY PEN LIFTS OR HESITATION OR
7 UNEVENNESS OF THE LINE WHEN I GOT TO THE
8 OVERWRITING I STOPPED AND THEN LOOKED AT THE NATURAL
9 WRITING THAT WAS THERE AND USED THAT FOR MY
10 COMPARISON

11 Q OKAY AND OF COURSE THE OVERWRITTEN PARAGRAPH
12 IS WHAT 25 PERCENT OF THE LETTER, WOULD YOU AGREE?
13 THE FIRST PART OF IT?

14 A THAT'S APPROXIMATELY RIGHT 20-25 PERCENT

15 Q AND YOU MAKE NO OPINION AS TO THAT BECAUSE THAT
16 JUST SORT OF TAKES YOUR SCIENCE OUT OF IT?

17 A EXACTLY

18 Q OR MAKES IT UNRELIABLE, CORRECT?

19 A WE TRY TO BASE OUR HANDWRITING ON THE BEST
20 EVIDENCE PRESENTED TO US FOR COMPARISON AND WE GO
21 WITH THAT

22 Q SO YOU CANNOT CONFIRM OR GIVE YOUR PROFESSIONAL
23 OPINION THAT MR COPE DID IN FACT WRITE THAT FIRST OR
24 THE SMALL LETTER?

25 A NO

002147

1 Q AND YOU HAVE FOUND SOME DISSIMILARITIES BETWEEN
2 THAT LETTER AND THE KNOWN WRITING SAMPLES THAT WERE
3 PROVIDED TO YOU INCLUDING THE EXEMPLARS THAT YOU
4 ASKED HIM TO EXECUTE WHICH INCLUDED CURSIVE, CORRECT?

5 A THAT'S CORRECT

6 Q AND WITH RESPECT TO BOTH LETTERS, MR WORSHAM,
7 DID YOU CONSIDER THE TYPE OF PAPER THAT IT WAS
8 WRITTEN ON?

9 A WELL, THERE WERE DIFFERENT TYPES OF PAPER IN THE
10 LETTER

11 Q I'M SORRY GO AHEAD

12 A THERE WERE DIFFERENT TYPES OF PAPERS IN MANY
13 DIFFERENT LETTERS, SOME WERE YELLOW, SOME WERE WHITE,
14 SOME WERE SMALLER LIKE THIS, SOME WERE STANDARD SIZE
15 WRITING AS YOU FIND HERE IT WASN'T ALL OF ONE TYPE
16 OF PAPER

17 Q BUT LET'S TAKE THE LARGE LETTER AND THE SMALL
18 LETTER IF I MAY THERE IS THE LARGE ONE, OKAY YOU
19 NOTICE THAT THEY ARE BOTH WRITTEN, AM I NOT CORRECT,
20 ON I GUESS WHAT I WOULD CALL LEGAL PADS, IS THAT
21 CORRECT? AND THERE IS A TRIPLE LINE LEGAL PAD ON THE
22 LARGE LETTER?

23 A YES, SIR

24 Q AND A DOUBLE LINE LEGAL PAD?

25 A YES, SIR

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1 Q ON THE SMALL LETTER?

2 A YES

3 Q AND IT'S WHITE BOTH OF THEM ARE WHITE?

4 A YES

5 Q CORRECT

6 A THEY WERE ORIGINALLY, YES, SIR

7 Q OKAY NOW IN THE KNOWN SAMPLES, THE 11 LETTERS
8 THAT YOU LOOKED AT, AND I'LL JUST GIVE YOU THE WHOLE
9 STACK, DID YOU FIND ANY OF THAT KIND OF PAPER IN ANY
10 OF HIS OTHER LETTERS?

11 A I DIDN'T MAKE A COMPARISON OF THE PAPER I WAS
12 LOOKING AT THE HANDWRITING IN THE STACK THAT HE HAS
13 GIVEN ME I HAD ONE LETTER OR MAYBE MORE, THERE MAY
14 HAVE BEEN ANOTHER ONE, THAT WAS OF A SMALLER SIZE

15 Q DOES IT -- I'M SORRY GO AHEAD

16 A GO AHEAD THIS PAPER THAT'S IN QUESTION THAT I
17 SAID PROBABLY WROTE AND THIS PAPER HAVE A DIFFERENT
18 MARGIN THIS ONE NATURALLY HAS THE DOUBLE RED LINE
19 RUNNING DOWN THE LEFT MARGIN OF IT THIS ONE DID NOT
20 IN FACT HAVE THAT

21 THIS LETTER HAD BEEN TORN FROM A
22 TABLET AND IT ATTACHED AT THE TOP AND IT WAS TORN
23 OUT I CAN'T MAKE A STATEMENT AS TO HOW THIS ONE
24 ORIGINATED

25 Q SO AM I CORRECT, IS IT A TRUE STATEMENT IN

1 SAYING, THAT THE LITTLE LETTER AND THE BIG LETTER ARE
2 WRITTEN ON PAPER THAT IS NOT THE SAME TYPE OF PAPER
3 THAT YOU HAD IN YOUR 11 LETTER WRITING SAMPLE?

4 A THERE ARE TWO OTHER LETTERS I BELIEVE IN AN
5 ENVELOPE, I'D HAVE TO SEE THOSE RIGHT QUICK

6 Q WHICH WOULD BE SIMILAR TO THE ONE THAT'S IN THE
7 KNOWN WRITING SAMPLE?

8 A YES

9 Q MORE OR LESS --

10 A THAT'S CORRECT

11 Q --TORN OUT OF A PAD AS YOU SAY

12 A THAT'S CORRECT

13 Q HAD NO RED MARGIN ON IT, CORRECT?

14 A THAT'S CORRECT

15 Q CORRECT ABOUT THAT?

16 A UH-HUH

17 Q ALL RIGHT

18 A THIS IS THE ONLY PAPER IN THE LETTERS -- EXCUSE
19 ME THIS PAPER THAT I FOUND IN THIS LETTER I DID NOT
20 FIND IN ANY OF THE OTHER LETTERS WHEN I EXAMINED
21 THEM

22 THE COURT LET ME INTERJECT WE ARE
23 USING AN AWFUL LOT OF PRONOUNS WE GOT EXHIBIT
24 NUMBERS SO WHEN SOMEBODY READS THESE LATER THEY CAN
25 READ THIS LATER AND PUT IT TOGETHER I DON'T THINK

1 ANYBODY CAN PUT ANY OF THIS TOGETHER THE JURY CAN
2 UNDERSTAND IT BECAUSE IT'S OPENED UP BUT THIS AND
3 THIS AND THIS AND THIS

4 MR BAITY YES, YOUR HONOR

5 THE COURT IS VERY INAPPROPRIATE UNDER
6 THESE CIRCUMSTANCES

7 MR BAITY LET'S CLEAR THAT UP FOR THE
8 RECORD

9 Q YOU'VE EXAMINED THE DOCUMENTS FROM THE STEAK
10 OUT, STATE'S EXHIBIT NUMBER 94, AND YOU'VE EXAMINED
11 THE KNOWN WRITING SAMPLES THAT MR COPE HAS WRITTEN
12 THAT YOU USED IN YOUR ANALYSIS AND IT'S CONTAINS IN
13 STATE'S EXHIBIT 91?

14 A YES, SIR

15 Q ALL RIGHT AND YOU'VE EXAMINED STATE'S EXHIBIT
16 NUMBER 89 WHICH I HAVE BEEN ERRONEOUSLY CALLING THE
17 LARGE LETTER NUMBER 89, AND YOU'VE EXAMINED THE WHAT
18 I'VE BEEN CALLING THE SMALL LETTER WHICH IS STATE'S
19 EXHIBIT 90?

20 A 90

21 Q ALL RIGHT AND IN YOUR EXAMINATION YOU DID NOT
22 FIND A SIMILARITY BETWEEN THE QUESTION DOCUMENTS,
23 SIMILARITY AS TO THE TYPE OF PAPER, BETWEEN THE
24 QUESTION DOCUMENTS AND THE KNOWN WRITING SAMPLES?

25 A THAT'S CORRECT I FOUND A DISSIMILARITY IT

1 WAS A DIFFERENT TYPE OF PAPER

2 Q AND DID YOU CONSIDER THAT IN MAKING YOUR
3 OPINION?

4 A NO, SIR

5 Q LET ME ASK YOU SOMETHING ELSE IN CONSIDERING, IN
6 CONSIDERING STATE'S EXHIBIT EXHIBIT NUMBER 89, DID
7 YOU CONSIDER THE FACT THAT THE SLANTING OF THE
8 LETTERS VARIED FROM WORD TO WORD OR SENTENCE TO
9 SENTENCE AND THAT THE SIZE OF THE LETTERS VARIED FROM
10 WORD TO WORD OR SENTENCE TO SENTENCE? DID YOU
11 CONSIDER THAT AT ALL?

12 A YES, SIR

13 Q OKAY

14 A AND I FOUND THOSE CHARACTERISTICS IN THE KNOWN
15 WRITING STANDARDS

16 Q WERE THEY AS PRONOUNCED AS THEY WERE IN 89?

17 A THEY WERE MORE PRONOUNCED IN SOME OF THE
18 STANDARDS I HAD

19 Q THIS WAS MORE OF THAT THAN YOU HAD SEEN ANYWHERE
20 ELSE?

21 A NO NO

22 Q WHAT YOU SAW IN 89?

23 A IT WAS MORE PRONOUNCED IN SOME OF THE
24 HANDWRITING STANDARDS AS OPPOSED

25 Q DID YOU CONSIDER THE SYNTAX, THE ACTUAL CONTENT,

1 OR THE WAY THE WORDS WERE STRONE TOGETHER? DID YOU
2 FIND SOME OF THIS WRITING, IS THAT PART OF YOUR
3 ANALYSIS? DO YOU CONSIDER --

4 A YES, SIR, I DID LOOK AT THAT SOME OF THE
5 LETTERS, IF YOU ARE WRITING ON A PIECE OF PAPER AND
6 IF YOU HAVE THE PAPER ON A FLAT SURFACE AND YOU ARE
7 WRITING AND YOU ARE SITTING UP PROPERLY, IT'S GOING
8 TO ADHERE TO THE BASE LINE AND LOOK DIFFERENTLY THAN
9 IF YOU ARE HOLDING A NOTEBOOK ON YOUR KNEES SITTING
10 UP ON THE BED AND WRITING A LETTER OR IF YOU ARE
11 STANDING IT CAN HAVE A DIFFERENT SLANT AND DIFFERENT
12 VARIATION IN THE BASE LINE IN THE WAY THE LETTERS
13 COME TOGETHER I LOOKED AT THAT AND I DID NOTICE
14 THAT RIGHT AWAY WHEN I FIRST GLANCED AT THE DOCUMENT
15 THAT THERE WAS A DIFFERENCE IN THE WAY SOME OF THESE
16 SENTENCES CAME TOGETHER, HOWEVER, IT WAS, THIS SAME,
17 THESE SAME CHARACTERISTIC THAT I JUST DESCRIBED ARE
18 ALSO REPRESENTED IN THE KNOWN WRITINGS FROM BILLY
19 WAYNE COPE

20 Q THAT WASN'T MY QUESTION BUT SINCE YOU ARE THERE
21 LET ME ASK YOU THIS WHEN YOU SEE A WRITING STYLE IF
22 I CAN, IF THAT'S A WORD THAT, THAT YOU UNDERSTAND
23 WHAT I MEAN?

24 A YES, SIR

25 Q THAT VARIES FROM LARGE LETTERS TO SMALL LETTERS

1 THEN THE SLANTS VARY FROM THE TOP OF THE LETTER TO
2 THE BOTTOM AND SO FORTH?

3 A YES

4 Q WOULD THAT INDICATE TO YOU, MR WORSHAM, THAT
5 MAYBE THERE WAS SOME PAUSES OR THERE WERE SOME BREAKS
6 TAKEN DURING THE WRITING OF THAT LETTER?

7 A IT WAS EITHER, IT COULD BE SOME OF THAT OR IT
8 COULD BE POSITIONING OF THE LETTER I WASN'T SO MUCH
9 CONCERNED, EVEN THOUGH I NOTED THAT IMMEDIATELY WHEN
10 I SAW THAT LETTER, BECAUSE IT'S REPRESENTATIVE IN THE
11 KNOWN STANDARDS OF WRITING AND WHAT I HAVE IS I HAVE
12 WRITING FROM AN INDIVIDUAL THAT REPRESENTS THOSE
13 CHARACTERISTICS AND THAT'S WHAT I USED TO MAKE MY
14 COMPARISON, THE KNOWN WRITING OF THE INDIVIDUAL TO
15 THE QUESTION WRITING IF THOSE CHARACTERISTICS ARE
16 THERE IN THE KNOWN WRITING, THAT'S WITHIN HIS RANGE,
17 THAT'S WITHIN HIS WRITING ABILITY, THAT'S WITHIN HIS
18 SKILL LEVEL, THEN I CAN MAKE A CONCLUSION BASED ON
19 THAT I DO NOT THROW IT OUT

20 Q BUT EVEN IF IT WERE HIS, IT WOULD INDICATE A
21 CAUSE OR A BREAK OR A REPOSITIONING OF THE PAPER,
22 OR --

23 A IT COULD

24 Q ---SOMETHING OF THAT SORT?

25 A IT COULD, YES

002154

1 Q OKAY AND WHEN I ASKED YOU A MOMENT AGAIN
2 SYNTAX, SYNTAX, WHAT I'M TALKING ABOUT AND I
3 APOLOGIZE FOR BEING VAGUE ABOUT IT, BUT DID YOU READ
4 THE SENTENCES AND THE ACTUAL CONTENT OF WHAT WAS
5 BEING SAID AND DID IT SEEM TO BE A LITTLE STRANGE
6 THAT HE'S TALKING ABOUT MURDERING HIS DAUGHTER IN ONE
7 SENTENCE AND THEN THE NEXT SENTENCE HOW'S BRIAN AND
8 JAMIE THAT'S WHAT I MEAN BY SYNTAX?

9 A YES, SIR I DID NOTICE THAT, THAT HE COULD BE
10 TALKING ABOUT SOMETHING THAT WOULD BE EARTH SHAKING,
11 MIND SHAKING, AND THEN THE NEXT SENTENCE BE OFF ON
12 ANOTHER TANGENT COMPLETELY UNRELATED LIKE HOW IS
13 BRIAN DOING OR SOMETHING OF THAT NATURE, JAMIE AND
14 BRIAN DOING I DID NOTICE THAT HOWEVER, IN MY
15 EXPERIENCE IN EXAMINING LETTERS THAT'S NOT UNUSUAL

16 Q BUT YOU DIDN'T NOTICE THAT, YOU DIDN'T MAKE ANY
17 NOTE OF THAT IN HIS EARLIER, IN HIS OTHER WRITINGS,
18 DID YOU?

19 A DID I NOTICE HIM DOING THE SAME THING IN HIS
20 OTHER WRITINGS?

21 Q UH-HUH

22 A I DIDN'T NOTICE THAT, NO, SIR

23 Q SO THERE IS A DISSIMILARITY RIGHT THERE?

24 A THERE IS, I'M DOING HANDWRITING ANALYSIS

25 Q WELL, I'M JUST WONDERING IN ADDITION?

002155

1 THE COURT LET HIM FINISH

2 A I'M NOT DOING PHRASEOLOGY AND I'M NOT TRYING TO
3 DEVELOPMENT PERSONALITY YOU CAN'T LOOK AT
4 HANDWRITING IN MY OPINION AND DEVELOP ANY KIND OF
5 PERSONALITY TRAITS BY LOOKING AT THE LETTER I'LL
6 STOP THERE

7 Q ARE YOU THROUGH?

8 A YES, SIR

9 Q GO ON AS LONG AS YOU WANT DID, YOU MENTION
10 THAT WHEN YOU WERE FINISHED WITH DOCUMENTS YOU SENT
11 THEM OFF FOR FINGERPRINTS, SO IS IT FAIR TO THINK
12 THAT YOU DID NOT CONSIDER FINGERPRINTS AT ALL IN YOUR
13 ANALYSIS OF THE AUTHORSHIP OF THIS LETTER?

14 A DID I CONSIDER FINGERPRINT ANALYSIS AS FAR AS
15 AUTHROSHIP, YES, I DID I PROTECTED THIS LETTER SO
16 THAT, FROM CONTAMINATION TO THE BEST OF MY ABILITY
17 THERE IN THE LABORATORY I HANDLED IT WITH GLOVES,
18 OKAY, SO THAT I WOULDN'T TRANSFER ANY OF MY OWN
19 PRINTS ONTO THAT PARTICULAR LETTER I KNEW THAT ONCE
20 THE LETTER WENT TO LATENT PRINTS THAT IT WOULD BE
21 COATED AND IT COULD RUN SOME OF THE INK AND ALTER
22 SOME OF THE ORIGINAL LETTERS SO AT THAT POINT I
23 PHOTOGRAPHED IT TO PRESERVE WHAT I ORIGINALLY HAD AS
24 BEST I COULD

25 Q THAT'S NOT MY QUESTION MY QUESTION IS, IN

1 FORMING YOUR OPINION DID YOU CONSIDER THINGS LIKE
2 FINGERPRINTS?

3 A IN FORMING --

4 Q EVIDENCE LIKE FINGERPRINTS?

5 A NO, SIR

6 Q OKAY DNA?

7 A YES, ON THE ENVELOPE, I KNEW THAT THE ENVELOPE
8 WAS GOING TO BE PROCESSED FOR POSSIBLE DNA
9 EXAMINATION AND SO I HANDLED IT ACCORDINGLY

10 Q YOU HANDLED IT PROPERLY, BUT DID YOU CONSIDER
11 THAT IN FORMING YOUR OPINION, THAT'S MY QUESTION?

12 A OH, NO, SIR I DIDN'T KNOW THE RESULTS OF THE
13 LATENT PRINT EXAMINATION MY OPINION WAS BASED
14 STRICTLY ON THE HANDWRITING PERIOD

15 Q ALL RIGHT NOW GENERALLY SPEAKING, MR WORSHAM,
16 IN CASES OF FORGERY, AND I'M SURE YOU'VE EXAMINED
17 MANY DIFFERENT KINDS OF FORGED DOCUMENTS, WOULD YOU
18 AGREE WITH ME THAT IT'S EASIER TO FORGE A SHORT PIECE
19 OR A SIGNATURE OR A SMALL WRITING AS OPPOSED TO A
20 WHOLE LETTER?

21 A YES, SIR, IN GENERAL I WOULD AGREE WITH THAT
22 STATEMENT IF YOU HAVE A SIGNATURE AND YOU ARE
23 TRYING TO SIMULATE THAT SIGNATURE, YOU CAN PRACTICE
24 AND PRACTICE AND PRACTICE THAT SIGNATURE AND YOU MAY
25 GET IT TO A POINT WHERE THAT YOU CAN PASS THAT

1 SIGNATURE AS THE LEGITIMATE SIGNATURE OF THE
2 INDIVIDUAL HOWEVER, DOCUMENT EXAMINER SHOULD BE
3 ABLE TO EXAMINE THAT AND STILL FIND TRACES OF
4 SIMULATION ON IT

5 Q SO IF I WERE TO, WELL, I GUESS GENERALLY
6 SPEAKING, ISN'T IT TRUE THAT IF THE PERSON WHO IS
7 TRYING TO SIMULATE THE WRITING HAS A SMALL MODEL TO
8 GO BY, THAT'S MUCH BETTER THAN JUST TRYING TO SIT
9 DOWN AND JUST TRY TO IMAGINE HOW OR MIMIC HOW THE
10 PERSON WOULD WRITE?

11 A YES

12 Q NOW IF I WERE TO TELL YOU, MR WORSHAM, THAT I
13 COULD SHOW YOU A MODEL FOR 95 PERCENT OF THE WORDS
14 AND SENTENCES IN THAT QUESTION DOCUMENT AND THAT
15 WOULD BE STATE'S EXHIBIT 89, IF I CAN SHOW YOU
16 SENTENCES AND PHRASES TAKEN FROM KNOWN WRITINGS OF
17 MR COPE, EXHIBIT NUMBER 91, STATE'S EXHIBIT, IF I
18 COULD SHOW YOU MODELS THAT WHEN PUT TOGETHER WOULD
19 CONSTITUTE 95 PERCENT OF THAT LETTER, DOCUMENT NUMBER
20 89, WOULD THAT IN ANY WAY CHANGE YOUR OPINION?

21 A NO, SIR I NOTICED THAT DURING MY EXAMINATION
22 IN LOOKING AT THE KNOWN HANDWRITING STANDARDS THAT
23 THERE ARE MANY PHRASES THAT HAD BEEN REPEATED IN
24 DIFFERENT LETTERS AND I LOOKED AT THOSE

25 Q AND SO YOU SAW HIM, YOU SAW EXAMPLES OF HIM

1 REPEATING THESE PHRASES IN THESE KNOWN WRITINGS?

2 A YES IT WAS SUCH AS --

3 Q HOW? REPEAT?

4 A I CAN'T RECALL EXACTLY OFF THE TOP OF MY HEAD
5 BUT IT WAS THINGS LIKE THE LORD HAS RETURNED HIS
6 SERVANT OR THINGS TO THE NATURE OF STANDING OVER
7 SCREAMING I SAW HER SCREAM WHILE STANDING OVER HER
8 THERE WERE DIFFERENT SENTENCES I FOUND

9 Q SO YOU NOTICED THOSE SENTENCES IN THE KNOWN
10 WRITING?

11 A OH, YES

12 Q DID YOU SEE THEM OVER AND OVER AGAIN OR DID YOU
13 JUST SEE THEM THE ONE TIME?

14 A THEY ARE ON DIFFERENT LETTERS

15 Q YOU'VE SEEN HIM SAY, STANDING OVER HER I SAW HER
16 SCREAM?

17 A WELL, I HAVE TO GO BACK, I DIDN'T --

18 Q ---SEVERAL TIMES?

19 A I DIDN'T COUNT THE NUMBER OF TIMES I SAW THAT
20 SPECIFIC ONE BUT I DID SEE PHRASES THAT WERE REPEATED
21 IN THE LETTERS

22 Q RIGHT BUT I'M ASKING YOU SPECIFICALLY ON THAT?

23 A I'M TELLING YOU I DON'T KNOW

24 Q DID YOU CONSIDER THAT IN YOUR, IN FORMING YOUR
25 OPINION?

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1 A YES I CONSIDER IT TO THE EXTENT THAT IS IT A
2 SIMULATED SIGNATURE, CAN IT BE SUPERIMPOSED ONE UPON
3 THE OTHER TO SEE IF IT HAD BEEN COPIED, AND ALSO THEN
4 I COMPARED IT TO THE KNOWN HANDWRITING STANDARDS

5 Q DID YOU CONSIDER ANY HANDWRITING SAMPLES FROM
6 THE RECIPIENT, THE ALLEGED RECIPIENT OF THAT LETTER?

7 A NO, SIR, I DIDN'T GET ANY HANDWRITING SAMPLES
8 MR BAITY THE COURT'S INDULGENCE, YOUR
9 HONOR I'M ALMOST THROUGH NOTHING FURTHER, YOUR
10 HONOR THANK YOU VERY MUCH

11 THE COURT MR GREELEY

12 MR GREELEY NOTHING, YOUR HONOR I HAVE
13 NO QUESTIONS

14 THE COURT REDIRECT MR BRACKETT
15 REDIRECT EXAMINATION BY MR BRACKETT

16 Q MR BAITY ASKED YOU ABOUT THE SIMILARITIES AND
17 PHRASEOLOGY BETWEEN THE TWO LETTERS?

18 A YES, SIR

19 Q AND YOU SAID YOU CONSIDERED THAT?

20 A I NOTICED THAT WHEN I LOOKED AT THE STANDARDS
21 AND READ THE LETTERS THAT THERE WERE PLACES IN THE
22 LETTERS THAT DID REPEAT SOME OF THE PHRASES IN THIS
23 ONE, YES

24 Q BUT YOU STILL ARE OF THE OPINION THAT BILLY
25 WAYNE COPE IS THE AUTHOR OF THE LETTER DEPICTED IN

1 STATE'S EXHIBIT NUMBER 96?

2 A YES, SIR, I AM

3 Q OKAY AND WHY IS IT THAT THOSE ITEMS DIDN'T
4 AFFECT YOUR OPINION? WHAT, WHY DID YOU DISCARD THAT
5 IN FORMING YOUR OPINION?

6 A I DIDN'T FIND IT TO THE EXTENT THAT UNUSUAL TO
7 FIND REPEATED PHRASES OF THAT NATURE IN LETTERS OF
8 THIS TYPE BASED ON MY EXPERIENCE

9 Q IN ANY OF THESE OTHER LETTERS DID -- BEFORE I
10 LEAVE THAT ISSUE, MR BAITY WAS TALKING TO YOU ABOUT
11 SIMULATING THE HANDWRITING AND HE ASKED YOU IS IT
12 EASIER TO SIMULATE A SIGNATURE, A SMALL LITTLE PIECE
13 OF HANDWRITING, WHY IS IT EASIER TO DO THAT THAN
14 THIS?

15 A IF YOU'RE TRYING TO SIMULATE SOMEBODY'S
16 SIGNATURE YOU HAVE JUST TWO OR THREE WORDS THAT YOU
17 HAVE TO REPRODUCE THAT WILL LOOK LIKE THAT
18 INDIVIDUAL'S SIGNATURE IF YOU ARE GOING TO DO THE
19 ENTIRE LETTER IT WOULD -- I JUST DON'T THINK IT CAN
20 BE DONE WITHOUT BEING DETECTED IT WOULD TAKE
21 POSITIONING, ALIGNMENT, SOMEWAY TO PUT IT ON TO THAT
22 DOCUMENT, AND SOMEBODY WHO COULD, IF POSSIBLE, COPY
23 THAT LETTER ON TO THE DOCUMENT BECAUSE I HAD ORIGINAL
24 WRITING ON THIS I FOUND NO SIGNS OF SIMULATION
25 WHATSOEVER I FOUND THIS ODD WRITING WHERE YOU GO

1 FROM A LARGE SIZE WRITING SUCH AS THE TOP OF THE
2 DOCUMENT TO THE SMALLER SIZE WRITING TO THE WAY IT
3 CONNECTS AND DISCONNECTS, I FOUND THAT IN THE
4 STANDARDS IF IT'S REPRESENTED IN THE STANDARDS IT'S
5 WITHIN HIS ABILITY TO DO IT, AND THEREFORE, I
6 JUSTIFIED THAT FACT

7 Q WHEN YOU ATTEMPTED TO SIMULATE MY HANDWRITING
8 EARLIER YOU TALKED ABOUT PEN LIFTS, HESITATION MARKS,
9 LITTLE BLOBS OF INK, AND YOU LOOK AT THOSE
10 MICROSCOPICALLY, DID YOU SEE ANY OF THOSE, ANYTHING
11 LIKE THAT AT ALL, ANYWHERE IN THIS DOCUMENT, AND DID
12 YOU EXAMINE THE ENTIRE DOCUMENT FOR IT?

13 A I LOOKED AT THIS WRITING FOR HOW NATURAL IT WAS
14 IN ANY WRITING YOU MIGHT FIND A HESITATION OR A PEN
15 LIFT, BUT IF YOU FIND REPEATED PEN LIFTS, AND YOU
16 FIND THAT PEN STROKE OR TREMOR TO THE LINE, THEN YOU
17 MAKE A STATEMENT THAT'S THIS IS SIMULATED WRITING
18 I'M NOT SAYING I DIDN'T FIND ONE HESITATION IN THERE
19 OR I DIDN'T, DID NOT SEE ONE PEN LIFT OR ANYTHING OF
20 THAT NATURE I WASN'T LOOKING THAT AFTER EXAMINED
21 AND DETERMINED IT WAS A NATURAL WRITING AND REPEATED
22 IN THE STANDARD I WAS FINE WITH THAT

23 Q ALL RIGHT OBVIOUSLY THIS IS A VERY
24 INCRIMINATING DOCUMENT, YOU READ THE CONTENT OF IT,
25 MR BAITY INQUIRED ABOUT THAT?

002162

1 A YES, SIR

2 Q AND YOU LOOKED THROUGH ALL THE OTHER LETTERS,
3 WERE THERE ANY OTHER LETTERS THAT HE TALKED ABOUT THE
4 VARIATIONS IN THEMES AND SO FORTH AND THE DISJOINTED
5 NATURE OF THE LETTER, ARE THERE ANY OTHER LETTERS IN
6 THE KNOWN, THE 11 OR 13 OTHER LETTERS THAT ARE OVER
7 HERE, THAT DEAL WITH THIS SUBJECT HERE, THAT TALK
8 ABOUT A CONFESSION OR KILLING HIS DAUGHTER?

9 A OTHER THAN THE TWO THAT I HAD?

10 Q NO, SIR DOES HE EVER CONFESS IN ANY OTHER
11 LETTERS OF KILLING HIS DAUGHTER?

12 A NO, HE DOES NOT

13 Q DOES MOOD AND EMOTION CHANGE THE HANDWRITING?

14 A YES, IT CAN IF YOU ARE VERY UPSET OR, YOU MAY
15 WRITE MORE ERRATICALLY OR VERY FAST AND SCRAWL YOUR
16 SIGNATURE IT WOULD DEFINITELY CHANGE YOUR
17 HANDWRITING IN MANY CASES IF YOU ARE SICK OR IF YOU
18 ARE AGING, YOUR HANDWRITING CHANGES ALSO, BUT THAT'S
19 WITHIN THE RANGE OF HANDWRITING IF I HAVE A SAMPLE
20 OF YOUR WRITING WHERE YOU ARE WRITING AND YOU ARE
21 UPSET AND YOU ARE WRITING SCRAWLED AND UPSET AND MAD
22 LIKE THAT AND THAT'S REPEATED IN THE QUESTION WRITING
23 THAT I HAVE, THEN I CAN LOOK AT IT AND SAY THAT'S
24 WITHIN THAT PERSON'S RANGE OF WRITING AND I CAN STILL
25 MAKE MY COMPARISON

002163

1 Q ALL RIGHT, SIR AND OBVIOUSLY AGAIN YOU READ
2 THE CONTENT OF THIS LETTER AND YOU KNOW, IT'S VERY
3 INCRIMINATING?

4 A YES, SIR

5 Q AND YOU KNOW HOW IMPORTANT YOUR TESTIMONY IS IN
6 THIS CASE AND WHAT IT COULD MIGHT MEAN FOR THE
7 OUTCOME?

8 A YES, SIR

9 MR BAITY OBJECTION

10 THE COURT I SUSTAIN THE OBJECTION JUST
11 DISREGARD THAT LAST QUESTION AND ANSWER

12 Q ARE YOU CERTAIN THAT THIS MAN SEATED OVER HERE
13 BILLY WAYNE COPE AUTHORED THAT LETTER?

14 A IT IS MY OPINION, YES, SIR

15 Q THANK YOU, SIR

16 MR BAITY JUST BRIEFLY

17 RE CROSS EXAMINATION BY MR BAITY

18 Q YOU TOLD US THAT YOU HAVE SEEN IN THE KNOWN
19 WRITINGS FROM MR COPE THAT HE REPEATED A FEW PHRASES
20 FROM TIME TO TIME?

21 A YES, SIR

22 Q CORRECT BUT I BELIEVE YOU'VE ALSO TESTIFIED
23 THAT YOU DON'T RECALL HIM REPEATING STANDING OVER HER
24 I SAW HER SCREAM EXCEPT THE ONE TIME?

25 A WELL, I DIDN'T SAY THAT I SAID I DIDN'T COUNT

1 THE NUMBER, I DIDN'T RECORD HOW MANY TIMES I MIGHT
2 HAVE SEEN THAT PARTICULAR PHRASE, BUT IN GOING
3 THROUGH THE LETTERS THERE WERE PHRASES THAT WERE
4 REPEATED

5 Q WELL, DID YOU EVER SEE IN ANY OF THESE 11
6 LETTERS, DID YOU EVER FIND A SINGLE LETTER THAT WAS
7 COMPOSED ENTIRELY OF SENTENCES AND PHRASES FROM
8 ANOTHER LETTER OR FROM THE OTHER LETTERS, WHERE THE
9 ENTIRE CONTENT OF THE LETTER, THE ENTIRE CONTENT OF
10 LETTER WAS COMPOSED OF REPEATED PHRASES AND
11 SENTENCES?

12 A NO, SIR, I DID NOT

13 Q AND WOULD YOU FIND THAT A LITTLE UNUSUAL IN ANY
14 WRITING?

15 A NO, SIR

16 Q YOU WOULDN'T FIND THAT UNUSUAL?

17 A NO, SIR

18 Q THANK YOU

19 MR BAITY NOTHING FURTHER, YOUR HONOR

20 MR GREELEY NO, YOUR HONOR

21 THE COURT MEMBERS OF THE JURY PANEL,

22 WE'LL BREAK FOR LUNCH UNTIL 2 15 HAVE A PLEASANT

23 LUNCH WE WILL SEE BACK AT 2 15 IT'S A LITTLE OVER

24 AN HOUR EVERYONE ELSE REMAIN SEATED

25 (THE JURY EXITS THE COURTROOM AT 01 07

1 PM)

2 THE COURT BEFORE WE BREAK FOR LUNCH AND
3 I HATE TO SOUND LIKE A SCHOOL MOM, BUT I PITY WHOEVER
4 HAS TO READ THE RECORD, THIS AND THAT AND HOLDING UP
5 THINGS TO THE JURY, THE JURY SEES IT MR BRACKETT
6 ON YOUR REDIRECT YOU NEVER MENTIONED THE NUMBER
7 THERE THAT'S FINE I MEAN THAT'S WHY WE PUT
8 NUMBERS ON THEM I DON'T KNOW HOW ANYBODY IS GOING
9 TO BE ABLE TO TELL WHEN THEY READ THIS RECORD WHAT
10 YOU WERE HOLDING UP IN FRONT OF THE JURY SO I KNOW,
11 I HATE TO SOUND LIKE A SCHOOL MOM, BUT I TALKED ABOUT
12 PRONOUNS AND USE OF PRONOUNS BEFORE, WE ALL KNOW WHAT
13 THEY RELATE TO THAT'S THE LAST I'M GOING TO SAY OF
14 IT BUT IT WAS JUST SO BLATANT, NOT JUST YOU, BUT SO
15 EASY BECAUSE THAT'S OUR PATTERN OF SPEECH, BUT I'M
16 TELLING YOU SOMEBODY READS THIS RECORD, I DON'T KNOW
17 HOW THEY ARE GOING TO UNDERSTAND WHAT YOU ARE TALKING
18 ABOUT

19 MR MORTON JUST FOR SCHEDULING PURPOSES
20 I WAS JUST WONDERING IF WE CAN GET A READ ON HOW MUCH
21 LONGER OR HOW MANY MORE WITNESSES THEY THINK THEY ARE
22 GOING TO HAVE AFTER LUNCH

23 MR BRACKETT WE'LL DISCUSS THAT AT LUNCH
24 BUT WE SHOULD BE ABLE TO FINISH UP TODAY

25 THE COURT I GUESS THEIR QUESTION IS

1 SHOULD THEY BE ON DECK?

2 MR BRACKETT I WOULD THINK YES

3 THE COURT BE ON DECK

4 MR MORTON ALL RIGHT

5 THE COURT OF COURSE, WE GOT MOTIONS AND

6 WE'VE GOT, HAVE SOME PEOPLE ON DECK JUST IN CASE

7 THANK YOU

8 (COURT'S IN RECESS AT 01 09 PM)

9 (COURT RESUMES AT 02 22 PM AND THE
10 DEFENDANTS ARE PRESENT)

11 THE COURT STATE READY

12 MR BRACKETT YES

13 THE COURT THE DEFENSE

14 MR MORTON YES

15 MR GREELEY YES, YOUR HONOR

16 THE COURT BRING IN THE JURY

17 (THE JURY RETURNS TO THE COURTROOM)

18 MR POPE THE STATE CALLS AGENT DARNELL

19 THOMAS DARNELL, AFTER BEING

20 FIRST DULY SWORN WAS EXAMINED AND TESTIFIED AS

21 FOLLOWS

22 DIRECT EXAMINATION BY MR POPE

23 Q IS IT LIEUTENANT DARNELL

24 A YES, SIR

25 Q LIEUTENANT, IF WOULD YOU STATE YOUR NAME AND

1 SPELL YOUR LAST NAME FOR THE COURT REPORTER PLEASE,
2 SIR

3 A MY FULL NAME IS THOMAS EDWARD DARNELL
4 D-A-R-N-E-L-L

5 Q OKAY AND WHERE ARE YOU EMPLOYED?

6 A I WORK FOR THE STATE LAW ENFORCEMENT DIVISION IN
7 COLUMBIA

8 Q AND WHAT IN CAPACITY?

9 A I'M CURRENTLY SERVING AS THE LIEUTENANT OR THE
10 SECTION SUPERVISOR FOR THE LATENT PRINT CRIME SCENE
11 DEPARTMENT

12 Q AND HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

13 A ABOUT 22 YEARS

14 Q AND HOW LONG HAVE YOU BEEN WITH THE STATE LAW
15 ENFORCEMENT DIVISION?

16 A 14 YEARS

17 Q HOW LONG HAVE YOU BEEN THE SUPERVISOR OF THE
18 FINGERPRINT DEPARTMENT?

19 A ABOUT SIX YEARS

20 Q OKAY COULD YOU TELL THE JURY DAY-TO-DAY WHAT
21 YOUR ACTIVITIES CONSIST OF? DO YOU DO ACTUAL TESTING
22 YOURSELF IN ADDITION TO SUPERVISING?

23 A YES, I DO

24 Q AND ALSO AS FAR AS SUPERVISING, HOW MANY AGENTS
25 DO YOU HAVE THAT WORK UNDER YOU?

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1 A CURRENTLY HAVE 14 THAT WORK UNDER MY
2 SUPERVISION

3 Q OKAY SLED IS A FAIRLY LARGE AGENCY FROM LAW
4 ENFORCEMENT STANDPOINT, IS THAT A FAIR STATEMENT?

5 A YES, SIR, IT IS

6 Q AND YOU HAVE AGENTS IN DIFFERENT DEPARTMENTS IN
7 THE LAB, IS THAT CORRECT?

8 A YES, SIR

9 Q LIKEWISE YOU HAVE AGENTS IN THE FIELD OR YOU
10 KNOW, ALMOST ANYTHING YOU CAN IMAGINE LAW
11 ENFORCEMENT, YOU HAVE AGENTS ASSIGNED TO THOSE
12 DIFFERENT AREAS?

13 A THAT'S CORRECT

14 Q AND AT ONE TIME UNDER YOUR SUPERVISION WAS AN
15 AGENT CROOKS, JEFFREY CROOKS, WAS HE ASSIGNED UNDER
16 YOU?

17 A YES, HE WAS

18 Q IS HE NOW SERVING IN ANOTHER CAPACITY I THINK IN
19 THE UPSTATE WITH SLED?

20 A YES, SIR HE IS FIELD INVESTIGATOR IN THE
21 UPSTATE

22 Q OKAY AND ALSO CALL YOUR ATTENTION TO ROD
23 GREEN, IS HE AN AGENT CURRENTLY WORKING UNDER YOU?

24 A YES, HE IS

25 Q AND DID YOU SEND HIM ON ASSIGNMENT YESTERDAY I

1 BELIEVE?

2 A YES, I DID

3 Q OKAY

4 A LAST NIGHT ACTUALLY

5 Q OKAY AND SO HE'S BEEN ON THAT ASSIGNMENT
6 WORKING ON IN ANOTHER SCENE IN ANOTHER AREA, IS THAT
7 CORRECT?

8 A YES, SIR

9 Q OKAY AS PART OF YOUR DUTIES IN SUPERVISING THE
10 WORK THAT TOOK PLACE IN YOUR DEPARTMENT, HAVE YOU
11 REVIEWED THE TESTING THAT WAS DONE IN THIS PARTICULAR
12 CASE?

13 A YES, I HAVE

14 Q OKAY LET ME ASK YOU AS FAR AS YOUR WORK, NOT
15 SO MUCH FROM A MANAGEMENT STANDPOINT, BUT ACTUALLY
16 FINGERPRINT WORK, WHAT BACKGROUND, EDUCATION AND
17 TRAINING HAVE YOU HAD THAT ALLOWS YOU TO ANALYZE
18 FINGERPRINTS OR REVIEW THE WORK OF OTHERS WHO DO?

19 A TO START WITH I WENT TO THE UNIVERSITY OF SOUTH
20 CAROLINA, I GRADUATED IN 1982

21 MR MORTON YOUR HONOR, I STIPULATE

22 MR GREELEY I STIPULATE

23 THE COURT ALL RIGHT

24 MR POPE TENDER HIM AS AN EXPERT IN
25 FINGERPRINT ANALYSIS

1 THE COURT WITHOUT OBJECTION AND BY
2 STIPULATION HE IS QUALIFIED

3 Q LIEUTENANT DARNELL, I CALL YOUR ATTENTION IS IT
4 YOUR KNOWLEDGE THAT A NUMBER OF ITEMS IN THIS
5 PARTICULAR CASE WERE SUBMITTED TO YOUR SUBORDINATES
6 TO DO TESTING IN THIS CASE?

7 A YES, SIR, THAT'S CORRECT

8 Q NOW YOU ACTUALLY DO TESTING YOURSELF ON
9 EVIDENCE, IS THAT CORRECT?

10 A I DO

11 Q IN THIS PARTICULAR CASE THESE ITEMS, IS THERE
12 SOME ASSIGNMENT PROCESS? THESE JUST HAPPENED TO BE
13 ASSIGNED TO THESE OTHER INDIVIDUALS?

14 A YES, SIR BASICALLY HOW IT HAPPENS ONCE THE
15 EVIDENCE COMES IN FROM THE OUTSIDE AGENCIES IT'S
16 ASSIGNED BY THE COMPUTER SYSTEM THAT WE HAVE IN OUR
17 LABORATORY SO IT'S BASICALLY ASSIGNED AT RANDOM

18 Q AND AS PART OF YOUR PROTOCOL THERE IN THE LAB DO
19 YOU HAVE A REVIEW PROCESS? IN OTHER WORDS, IF I WAS
20 THE AGENT AND DID TESTING, DO I THEN HAVE IT REVIEWED
21 BY YOU OR SUPERIOR OR HOW DOES THAT WORK?

22 A YES, SIR, OUR LABORATORY CONDUCTS A 100 PERCENT
23 REVIEW ON EVERY CASE, ON EVERY PIECE OF EVIDENCE, AND
24 EVERY REPORT THAT GOES OUT AND THAT WAS DONE IN THIS
25 CASE

1 Q OKAY I WANT TO CALL YOU, AND AS FAR AS
2 ACTUALLY RECEIVING EVIDENCE, DID YOU OR YOUR AGENCY
3 OR YOUR DEPARTMENT, YOU KNOW, THE FINGERPRINT CRIME
4 SCENE DEPARTMENT, DID YOU GO PHYSICALLY TO THE RICH
5 STREET LOCATION IN THIS CASE?

6 A NO, SIR, WE DID NOT

7 Q DID YOU, IN FACT, DOES YORK COUNTY HAVE A
8 MULTIJURISDICTIONAL FORENSICS UNIT HERE?

9 A YES, SIR, THEY SURE DO

10 Q OKAY SO DO YOU NORMALLY AS PART OF YOUR DUTIES
11 DOES YOUR AGENCY COME UP HERE AND PROCESS THINGS HERE
12 IN YORK COUNTY OFTEN OR SOMETIMES OR?

13 A WE COME HERE FROM TIME TO TIME BUT WE DON'T COME
14 HERE LIKE WE USED TO YEARS AGO, BUT WE DO COME HERE
15 ONCE IN AWHILE

16 Q AND I CALL YOUR ATTENTION BACK ON THIS
17 PARTICULAR CASE IN 2001 WERE YOU CALLED HERE TO DO
18 TESTING PHYSICALLY HERE?

19 A NO, SIR

20 Q OKAY SO THE ITEMS THAT YOU RECEIVED CAME
21 THROUGH THE NORMAL COURSE OF RECEIVING EVIDENCE AT
22 SLED, IS THAT CORRECT?

23 A THAT IS CORRECT, YES, SIR

24 Q AND THE JURY JUST, THEY HEARD BRIEFLY ABOUT THAT
25 YESTERDAY, BUT LAW ENFORCEMENT WOULD COLLECT

1 SOMETHING PACKAGE IT, COULD YOU TELL THEM HOW IT
2 COMES INTO YOUR DEPARTMENT?

3 A YES, SIR ONCE THE OUTSIDE AGENCY AND IN THIS
4 CASE IT WAS ROCK HILL POLICE DEPARTMENT BROUGHT IN
5 THE ITEMS OF EVIDENCE AND ONCE THEY COME INTO THE
6 LABORATORY THEY ENTER THE EVIDENCE CONTROL SECTION
7 AT THAT POINT A TECHNICIAN WILL ENTER THE INFORMATION
8 INTO THE COMPUTER SYSTEM AND THEN THE ITEMS OF
9 EVIDENCE WILL BE ASSIGNED AT RANDOM BY THE COMPUTER
10 SYSTEM IN THIS CASE IT WAS INITIALLY ASSIGNED TO
11 AGENT CROOKS ONCE THOSE ITEMS HAD BEEN ASSIGNED TO
12 AN EXAMINER, THAT EXAMINER MAY BE IN A POSITION TO
13 COME DOWNSTAIRS TO ACTUALLY RECEIVE THE EVIDENCE
14 STRAIGHT FROM THE LOG IN EVIDENCE CONTROL SECTION IF
15 THE EXAMINER IS PRESENT IF THE EXAMINER IS NOT
16 PRESENT, THEN THE EVIDENCE WOULD JUST SIMPLY BE
17 SECURED IN THE EVIDENCE VAULT UNTIL SUCH TIME AS
18 EXAMINER COULD COME AND RETRIEVE THE EVIDENCE

19 Q BASED ON YOUR REVIEW OF THE ITEMS YOU RECEIVED
20 HERE, DID THEY APPEAR TO COME IN IN A NORMAL FASHION?

21 A YES, THEY DID

22 Q I'M GOING TO CALL YOUR ATTENTION NOW TO FIRST TO
23 AGENT CROOKS' REPORT AND WHEN SLED, WHEN YOU
24 RECEIVE EVIDENCE, THE JURY HAS A HEARD A LOT ABOUT
25 NUMBERS IN THE COURTRROM, WE HAVE STATE'S EXHIBIT 42

1 OR STATE'S EXHIBIT SO AND SO, DO YOU HAVE NUMBERS
2 THAT YOU ASSIGN TO ITEMS AT SLED SO YOU CAN KEEP UP
3 WHICH ITEMS YOU HAVE?

4 A YES, WE DO

5 Q OKAY AND I'LL CALL YOUR ATTENTION PARTICULARLY
6 TO WHAT IS LISTED AS YOUR SLED NUMBERS 20 THROUGH 25
7 THAT ARE DESIGNATED VARIOUS BROOM AND BROOM HANDLES
8 AND ITEMS SUCH AS THAT NATURE, DO YOU HAVE THAT
9 REPORT?

10 A YES, SIR, I DO

11 Q OKAY AND COULD YOU TELL ME WHERE THOSE ITEMS
12 TESTED BY AGENT CROOKS FOR POSSIBLE FINGERPRINTS ON
13 ANY OF THE BROOMS OR BROOM HANDLES?

14 A YES, SIR IT DOES APPEAR THAT BASED ON HIS
15 REPORT THAT THESE ITEMS WERE PROCESSED FOR, TO
16 DETERMINE IF THERE WERE ANY FINGERPRINTS OF VALUE ON
17 THOSE ITEMS

18 Q OKAY AND YOU SAID FINGERPRINTS OF VALUE, COULD
19 YOU EXPLAIN TO THE JURY WHAT THAT MEANS?

20 A FINGERPRINTS OF VALUE SIMPLY MEANS THAT WE HAVE
21 TO HAVE, WE BEING FINGERPRINT EXAMINERS, MUST HAVE
22 CERTAIN, A CERTAIN LEVEL OF QUALITY, A CERTAIN NUMBER
23 OF CHARACTERISTICS WITHIN A FINGERPRINT TO BE ABLE TO
24 DETERMINE IF IN FACT IT IS IDENTIFIABLE QUITE
25 OFTEN, AS A MATTER OF FACT, MORE OFTEN THAN NOT WE

1 PROCESS ITEMS OF EVIDENCE AND RECOVER FINGERPRINTS
2 THAT ARE NOT OF VALUE VERSUS THOSE THAT ARE ACTUALLY
3 OF VALUE BUT WHEN I SAY THAT THEY ARE NOT OF VALUE
4 THAT MEANS THAT THE PRINT IS NOT ABLE TO BE
5 IDENTIFIED TO ANYONE ANYONE WHETHER IT BE SOMEONE
6 THAT ACTUALLY HANDLED THE ITEM OR YOU KNOW THE FIRST
7 TIME OR WHETHER SOMEONE HANDLED IT LATER, WE CANNOT
8 IDENTIFY IT TO ANYONE

9 Q OKAY AND MAYBE I GOT A LITTLE AHEAD OF MYSELF
10 WE ALL KIND OF TAKE FOR GRANTED WE KNOW WHAT A
11 FINGERPRINT IS WE SEE CSI OR WHATEVER, BUT WHAT IS
12 IT YOU ARE REALLY DOING, WHAT IS THE FINGERPRINT,
13 WHAT IS IT YOU ARE REALLY LOOKING FOR?

14 A FINGERPRINTS, IF I COULD SORT OF START AT THE
15 BEGINNING SOMEWHAT, FINGERPRINTS ARE FORMED DURING
16 THE 12 WEEK OF GESTATION IN OTHER WORDS, ON THE
17 SURFACE OF YOUR FINGERS, YOUR PALMS, AS WELL AS THE
18 SOLES ON YOUR FEET, YOU HAVE RAISED PORTIONS OF SKIN
19 THAT WE REFER TO AS FRICTION RIDGE SKIN THAT
20 FRICTION RIDGE SKIN CONTAINS TINY PORES THOSE PORES
21 EXUDE PERSPIRATION WHEN THE SURFACE OF THE HAND
22 COMES IN CONTACT WITH AN ITEM THAT IMPRESSION MAY OR
23 MAY NOT BE LEFT BEHIND MAY OR MAY NOT BE LEFT
24 BEHIND MEANS THAT IT DEPENDS ON THE AMOUNT OF
25 PERSPIRATION THAT MIGHT BE EXUDING FROM YOUR PORES

1 NOT EVERYONE PERSPIRES THE SAME AMOUNT IT ALSO
2 DEPENDS ON THE SURFACE THAT'S TOUCHED, HOW IT'S
3 TOUCHED, HOW LONG IT'S TOUCHED IT DEPENDS ON THE
4 WEATHER WEATHER HAS AN EFFECT ON FINGERPRINTS BUT
5 BASICALLY JUST BECAUSE YOU TOUCH AN ITEM DOES NOT
6 NECESSARILY MEAN THAT YOU WILL LEAVE A FINGERPRINT AT
7 ALL IT ALSO MEANS THAT YOU MIGHT LEAVE A
8 FINGERPRINT BUT IT MIGHT NOT BE IDENTIFIABLE YOU
9 KNOW, WE ALL WATCH TELEVISION AND WE ALL KNOW THAT ON
10 THESE TELEVISION SHOWS YOU ALWAYS GET FINGERPRINTS
11 AND YOU ALWAYS IDENTIFY SOMEONE, THAT DOES NOT HAPPEN
12 IN OUR WORLD, AND THAT'S JUST A SORT OF A
13 MISCONCEPTION THAT SOMETIMES THE PUBLIC DOES NOT
14 CLEARLY UNDERSTAND BUT AS I STATED EARLIER MORE
15 OFTEN THAN NOT WE ACTUALLY PROCESS ITEMS OF EVIDENCE
16 AND DON'T GET FINGERPRINTS THAT WE CAN COMPARE VERSUS
17 GETTING PRINTS THAT WE CAN ACTUALLY COMPARE TO A
18 KNOWN INDIVIDUAL

19 Q OKAY SO IF YOU HAVE, IF YOU GET A FINGERPRINT
20 OFF OF SOMETHING THEN THAT LET'S YOU KNOW THAT
21 SOMEHOW SOMEBODY HAS BEEN IN CONTACT, THAT PERSON HAS
22 BEEN IN CONTACT IF YOU CAN IDENTIFY IT, IS THAT
23 CORRECT?

24 A THAT'S CORRECT

25 Q OKAY IF YOU DO NOT RETRIEVE A FINGERPRINT THAT

1 DOES NOT MEAN SOMEBODY COULD NOT HAVE TOUCHED IT?

2 A THAT'S A FAIR STATEMENT, YES, SIR

3 Q IN OTHER WORDS, ON THE BROOM, FOR EXAMPLE, YOU
4 HAD NO FINGERPRINTS THAT YOU COULD MAKE UP OR WORK UP
5 ON ANY OF THEM, IS THAT CORRECT?

6 A BASED ON THE REPORT ALL THE ITEMS HAD, THE
7 RESULT WAS THAT THEY WERE NO VALUE FOR
8 IDENTIFICATION THERE WAS, THERE WASN'T ANYTHING
9 THERE WE COULD COMPARE TO ANYONE IT DOES NOT MEAN
10 THAT A CERTAIN PERSON OR PERSONS DID NOT TOUCH AN
11 ITEM IT JUST SIMPLY MEANS THAT THE PRINTS THAT WERE
12 THERE WERE NOT OF VALUE FOR COMPARISON

13 Q OKAY THANK YOU, SIR AS FAR AS THOSE ITEMS IN
14 THIS PARTICULAR CASE OF EVIDENCE AS FAR AS LIKE
15 PHYSICAL, HARD PHYSICAL, ITEMS LIKE BROOMS AND THINGS
16 OF THAT NATURE, BASED ON YOUR RECORD IS IT ACCURATE
17 THAT THE BROOMS ARE THE ONLY THING THAT YOU RECEIVED
18 FOR FINGERPRINT IDENTIFICATION?

19 A THERE WAS ANOTHER ITEM THAT CAME IN LATER ON,
20 YES, SIR

21 Q OKAY BUT AS FAR AS LIKE CRIME SCENE ITEMS SO
22 TO SPEAK, THE BROOMS ARE THE ONLY THING YOU RECEIVED
23 IN THAT REGARD?

24 A YES, SIR

25 Q AND I'LL CALL YOUR ATTENTION NOW TO THAT LATER

1 ITEM, WAS THAT THE ONE THAT MR GREEN REVIEWED OR
2 TESTED, IS THAT CORRECT?

3 A I BELIEVE SO, YES, SIR

4 Q AND AGAIN I'M GOING TO CALL YOUR ATTENTION TO
5 YOUR NUMBER AND THEN I WILL CALL THIS STATE'S EXHIBIT
6 89 WHICH IS THE LETTER WITH THE PURPLE, THE PURPLE
7 MATERIALS THAT ARE ON THIS LETTER, WHAT IS THIS
8 PURPLE MATERIAL? HAVE YOU LOOKED, YOU'VE LOOKED AT
9 THIS BEFORE THE JURY CAME IN?

10 A YES, I HAVE

11 Q OKAY WHAT IS THAT PURPLE MATERIAL?

12 A THE PURPLE IS A CHEMICAL PROCESS THAT WE USE
13 WHEN WE PROCESS POROUS ITEMS FOR THE PURPOSE OF
14 DETECTING OR ATTEMPTING TO DETECT FINGERPRINTS IN
15 THIS CASE WE USE WHAT WE CALL NINHYDRIN THAT'S
16 SPELLED N-I-N-H-Y-D-R-I-N NINHYDRIN IS A CHEMICAL
17 THAT REACTS WITH THE AMNIO ACIDS THAT ARE IN YOUR
18 PERSPIRATION THE AMNIO ACIDS ONCE THEY CAME IN
19 CONTACT WITH THIS NINHYDRIN IT WILL TURN THE PRINT
20 PURPLE AT THAT POINT AND THEN WE HAVE TO HAVE THOSE
21 PRINTS PHOTOGRAPHED FOR PRESERVATION

22 Q AND THIS PARTICULAR ITEM BASED ON YOUR RECORDS
23 ITEM 89 WHICH AGAIN I APOLOGIZE, YOUR ITEM 36, IS
24 THAT CORRECT?

25 A YES, ITEM 36

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1 Q YOU DID RECEIVE THIS IN YOUR LAB OR AGENT GREEN
2 DID FOR PROCESSING, IS THAT CORRECT?

3 A YES YES, SIR

4 Q OKAY AND IN PARTICULAR YOU WERE ASKED TO
5 COMPARE THIS ITEM FOR KNOWN PRINTS OF MR COPE IN
6 THIS CASE, IS THAT CORRECT?

7 A THAT IS CORRECT, YES, SIR

8 Q AND DID YOU IN FACT AFTER USING THE NINHYDRIN
9 REQUEST OR YOUR AGENCY REQUESTED FURTHER PRINTS, IS
10 THAT CORRECT?

11 A YES, SIR

12 Q AND BASED ON THE RESULTS OF THAT TESTING WHAT
13 WERE YOUR RESULTS AS FAR AS IT REGARDS TO MR COPE ON
14 THIS PARTICULAR ITEM?

15 A ON, IS THAT STATE'S --

16 Q STATE'S EXHIBIT 89?

17 A ON STATE'S 89 THERE WERE NUMEROUS IDENTIFIABLE
18 FINGERPRINTS THAT WERE DOCUMENTED AND THEY WERE ALL
19 FOUND NOT TO BE IDENTIFIED WITH MR COPE OF THE ONES
20 THAT WERE IDENTIFIABLE

21 Q OKAY AND IF YOU WOULD, WITH THE COURT'S
22 PERMISSION, IF YOU COULD STEP DOWN OUR PRESENTER
23 CAME FROM THE SAME PLACE AS OUR JAM BOX SO I'M NOT
24 ABLE TO USE IT RIGHT NOW BUT IF YOU WOULD STEP DOWN,
25 IF YOU COULD SHOW THE JURY FOR EXAMPLE WHAT YOU MEAN

1 BY ONE OF THE IDENTIFIABLE PRINTS AND SOMETHING THERE
2 BECAUSE I NOTICE THERE IS A NUMBER OF THINGS IN
3 PURPLE HERE, SOME THAT LOOK LIKE FINGERPRINTS OFF TV
4 AND SOME THAT LOOK DIFFERENT CAN YOU EXPLAIN USING
5 SOME OF THESE AND EXPLAIN TO THE JURY, YOU ARE
6 PROBABLY GOING TO HAVE TO TAKE OPPORTUNITY TO SHOW
7 THEM THE DIFFERENCE AND WHAT YOU ARE TALKING ABOUT
8 A AS YOU CAN SEE ON STATE'S EXHIBIT 89 IT'S QUITE
9 A LARGE AREA OF PURPLE AND BEAR IN MIND WHAT I STATED
10 ABOUT THE NINHYDRIN THAT IT REACTS WITH THE AMNIO
11 ACIDS THEREFORE I WOULD BE ABLE TO SAY THAT THIS
12 DOCUMENT WAS HANDLED QUITE A BIT JUST BECAUSE OF
13 AMOUNT OF PURPLE THAT YOU HAVE THERE THE LITTLE
14 LABELS THAT YOU SEE HERE, THE ONE INCH LABELS, THOSE
15 ARE ACTUALLY NEXT TO PRINTS THAT WE DETERMINED TO BE
16 IDENTIFIABLE AND THE LABELS ARE THERE BECAUSE WE
17 HAD TO PHOTOGRAPH THOSE PARTICULAR PRINTS, JUST BELOW
18 MY THUMB, WE HAD TO PHOTOGRAPH THOSE PRINTS TO BE
19 ABLE TO PRESERVE THEM AND WE WANTED TO DEVELOP THEM
20 TO ACTUAL SIZE, OKAY THAT'S THE PURPOSE OF THE ONE
21 INCH LABEL NOW THERE ARE NUMEROUS AREAS AND YOU CAN
22 SEE PRETTY MUCH ALONG THE EDGE HERE WHERE MY INDEX
23 FINGER IS YOU CAN SEE LOTS OF OTHERS SMUDGED, WHAT I
24 WOULD CALL SMUDGED AREAS, OF RIDGE DETAILS OR
25 FINGERPRINT AND THESE AREAS WERE ALL DETERMINED TO

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1 BE NOT OF VALUE FOR COMPARISON YOU'VE ALSO GOT SOME
2 ON THE BACK SIDE OF THE LETTER IN THE VERY BOTTOM
3 CORNER, QUITE A FEW ACTUALLY, QUITE A FEW AREAS THAT
4 WERE FOUND NOT TO BE IDENTIFIABLE WHICH DOESN'T
5 REALLY SURPRISE ME OFTEN WITH PAPER THAT GETS
6 HANDLED QUITE A BIT IT'S NOT UNUSUAL TO SEE THAT MUCH
7 REACTION WITH THE CHEMICAL ONCE WE TREAT IT PRETTY
8 MUCH THE SAME, THE SAME ON EVERY OTHER PIECE OF THAT
9 DOCUMENT

10 HERE AGAIN YOU CAN SEE THE LITTLE ONE
11 INCH LABELS THAT ARE MARKING OTHER IDENTIFIABLE AREAS
12 AND THEN YOU GOT OTHER AREAS ALONG THE EDGE ONCE
13 AGAIN THAT ARE, ONCE AGAIN, NOT IDENTIFIABLE, MEANING
14 THAT WE COULD NOT COMPARE THOSE TO ANYONE THERE
15 JUST WASN'T ENOUGH QUALITY THERE

16 Q THANK YOU, SIR YOU CAN HAVE A SEAT NOW I
17 NOTICE ACCOMPANIED TO STATE'S EXHIBIT 89 WAS THE
18 ENVELOPE I BELIEVE THAT WAS SENT TO DNA, DO YOU HAVE
19 ANY KNOWLEDGE OF THAT?

20 A NOT FIRST HAND KNOWLEDGE, BUT I KNOW WE DIDN'T,
21 I'M NOT SURE WE GOT IT IN OUR LAB FOR PROCESSING

22 Q THAT WAS GOING TO BE MY QUESTION I NOTICED IT
23 DOES NOT HAVE THE PURPLE ON IT SO THIS HAS NOT BEEN
24 PROCESSED WITH NINHYDRIN?

25 A IT DOESN'T APPEAR TO HAVE BEEN, NO, SIR

1 Q ALL RIGHT THANK YOU, SIR MR DARNELL, FROM A
2 FINGERPRINT STANDPOINT THE ITEMS THAT YOU RECEIVED
3 AND YOUR HONOR, I'M GOING TRY TO GIVE STATE'S EXHIBIT
4 TO THESE NUMBERS TOO, THE ITEMS THAT YOU RECEIVED OR
5 YOUR DEPARTMENT RECEIVED FOR FINGERPRINT PROCESSING
6 IN THIS CASE WERE STATE'S EXHIBIT 58, 59, 60, 61, 62,
7 63 WHICH ARE THE BROOMS YOU DID NOT RECEIVE WHAT
8 WOULD BE A STATE'S EXHIBIT, I MEAN YOUR EXHIBIT TEN
9 WHICH IS STATE'S EXHIBIT 57 YOU DID NOT RECEIVE A TEN
10 WHICH IS THE BLUE BROOM THAT WAS SWABBED AND SENT TO
11 DNA, YOU DON'T HAVE ANY REFLECTION OF STATE'S EXHIBIT
12 TEN?

13 A NO, SIR, I DON'T

14 Q I'M SORRY SLED NUMBER TEN, STATE'S EXHIBIT
15 NUMBER 57?

16 A RIGHT, THE FIRST SLED ITEM NUMBER THAT I HAVE IS
17 ITEM 20 WHICH IS SLED'S ITEM NUMBER

18 Q AND OF THOSE ITEMS AGAIN NOTHING OF VALUE FOR
19 IDENTIFICATION?

20 A THAT'S CORRECT, YES, SIR

21 Q AND THE ONLY OTHER ITEM THAT WAS PROCESSED BY
22 YOUR DEPARTMENT WOULD HAVE BEEN YOUR ITEM 36 THAT WE
23 JUST REFERRED TO AS STATE'S EXHIBIT 89, IS THAT
24 CORRECT?

25 A YES, SIR, IT IS

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1 Q OKAY AND NONE OF THE ITEMS THERE WERE YOU ABLE
2 TO IDENTIFY ANY PRINTS ON THAT -- I MEAN, YOU HAD
3 PRINTS THAT WERE IDENTIFIABLE, BUT YOU COULD NOT
4 IDENTIFY THEM WITH ANYBODY, IS THAT CORRECT?

5 A THAT IS CORRECT

6 Q ALL RIGHT, SIR ANSWER ANY QUESTIONS THAT MR
7 MORTON MAY HAVE

8 CROSS EXAMINATION BY MR MORTON

9 Q LIEUTENANT DARNELL, I'M JIM MORTON

10 A HOW ARE YOU, SIR

11 Q IT'S BEEN A LONG TIME IS IT FAIR TO SAY THAT
12 IN YOUR EXPERIENCE AS A FINGERPRINT EXAMINER THAT
13 THERE ARE PLENTY OF TIMES IN BURGLARY CASES WHERE
14 FINGERPRINTS ARE LIFTED FROM THE ENTRY POINT OR
15 EXTERIOR OR INTERIOR OF A HOUSE THAT CAN BE
16 IDENTIFIED?

17 A IF YOU ARE ASKING FOR A PERCENTAGE OF TIME, I
18 DON'T HAVE THAT, BUT YES, WE HAVE PROCESSED
19 BURGLARIES WHERE THERE HAVE BEEN PRINTS LIFTED AT THE
20 POINTS OF ENTRY, YES, SIR

21 Q NOW YOU WERE NOT ASKED TO COME TO THIS CRIME
22 SCENE OR YOUR DEPARTMENT WAS NOT?

23 A THAT'S CORRECT, WE WERE NOT

24 Q Y'ALL, YOUR DEPARTMENT AT SLED AS OTHER CRIME
25 SCENE DEPARTMENTS AT SLED ARE SOMETIMES CALLED BY

1 LOCAL AGENCIES TO COME OUT AND HELP THEM PROCESS THE
2 SCENE?

3 A YES, SIR

4 Q BUT YOU WEREN'T ASKED TO DO THAT IN THIS
5 PARTICULAR CASE?

6 A NO, SIR, WE WERE NOT

7 Q OKAY ABOUT, JUST AS A LITTLE OVERVIEW AND
8 CORRECT ME IF I'M WRONG, BUT SOME SURFACES ARE BETTER
9 ABLE TO LIFT IDENTIFIABLE PRINTS FROM THAN OTHERS,
10 CORRECT?

11 A YES, SIR, THAT IS CORRECT

12 Q FOR INSTANCE POROUS SUBJECTS, POROUS ITEMS SUCH
13 AS WOOD OR WINDOW SILLS OR DOORS ARE NOT AS GOOD FOR
14 LIFTING PRINTS AS SAY PLASTIC OR I MEAN, WOULD YOU
15 AGREE WITH THAT? THAT WOOD, ANYTHING THAT IS POROUS
16 IS HARDER TO GET A PRINT FROM THAN SOMETHING THAT IS
17 POSSIBLY METAL?

18 A IT'S SOMEWHAT DIFFICULT TO TRY AND SAY WHAT
19 PARTICULAR SURFACE WOULD BE BETTER THAN OTHERS, BUT I
20 CAN SAY THAT GENERALLY THE SURFACE, IF IT'S A SMOOTH
21 SURFACE, IF IT'S NOT CORROGATED, IF IT'S NOT
22 SCRATCHED IN SOME MANNER, IF IT'S A PRISTINE, SMOOTH
23 CLEAN SURFACE, THOSE TYPES OF SURFACES ARE WHAT YOU
24 WOULD REFER TO AS THE BEST SURFACES IN MY YEARS OF
25 EXPERIENCES I CAN TELL YOU THAT I HAVE DEVELOPED

1 PRINTS ON SURFACES THAT QUITE FRANKLY SURPRISE ME,
2 BUT SOMETIMES UNTIL YOU ACTUALLY TRY, IT'S DIFFICULT
3 TO SAY THAT THERE WOULD BE A PRINT THERE OR NOT

4 Q OFTEN TIMES, FOR INSTANCE, DOOR HANDLES ARE A
5 METAL SURFACE, BUT TO BE FAIR SOMETIMES WHEN PEOPLE
6 USE THE DOOR HANDLE, THE FINGERPRINTS BECOME SMUDGED
7 AND YOU CAN'T IDENTIFY THEM BECAUSE OF THE SMUDGING
8 CHARACTERISTIC, IS THAT FAIR TO SAY?

9 A YES, THAT WOULD BE FAIR TO SAY ESPECIALLY WITH
10 DOOR HANDLES AS YOU ARE REFERRING TO YOU KNOW, AS I
11 MENTION EARLIER IN MY TESTIMONY THAT WHEN YOU LEAVE A
12 PRINT IT SOMETIMES DEPENDS ON HOW YOU HANDLE AN ITEM,
13 HOW LONG IT'S TOUCHED, YOU KNOW, HOW SOMEONE HANDLES
14 THE ITEM, AND OF COURSE IN DOOR HANDLES THAT'S
15 SOMETHING THAT WE'D ALL BE TOUCHING AND IT WOULD
16 CERTAINLY HAVE AN EFFECT ON THE CONDITION OF PRINTS
17 THAT MIGHT OR MIGHT NOT BE PRESENT

18 Q BUT SOMETIMES YOU CAN LIFT A PRINT FROM A DOOR
19 HANDLE OR SCREEN DOOR OR SOMETHING LIKE THAT, IS THAT
20 FAIR TO SAY?

21 A SOMETIMES YOU CAN, YES, SIR

22 Q NOW WHAT ABOUT GLASS?

23 A GLASS --

24 Q ---AS A SURFACE?

25 A GLASS IS A GOOD SURFACE HERE AGAIN IF IT'S

1 NICE, SMOOTH, LACK OF DUST, YOU KNOW, LACK OF GRIT
2 AND GRIME, THOSE KINDS, GLASS IS ACTUALLY A VERY GOOD
3 SURFACE IN ANY OPINION QUITE OFTEN YOU CAN TAKE A
4 PIECE OF GLASS AND HOLD IT UP IN THE DAYLIGHT AND
5 SOMETIMES YOU CAN ACTUALLY SEE PRINTS ON THE GLASS

6 Q WHAT ABOUT PLASTIC? WHAT ABOUT THIS WATER
7 PICTURE, FOR EXAMPLE? IF, I MEAN, IF I WERE TO GRAB
8 THIS WATER PITCHER, MY PRINTS, WOULD IT BE FAIR TO
9 SAY MAYBE SMUDGED ON THERE, AND YOU MIGHT NOT BE ABLE
10 TO LIFT A PRINT, BUT QUITE POSSIBLY YOU MIGHT BE ABLE
11 TO LIFT A PRINT

12 A SURE

13 Q IS THAT A GOOD, BETTER SURFACE THAN SAY WOOD OR
14 POROUS SURFACE?

15 A I WOULD SAY IF YOU ARE ASKING ABOUT THAT
16 PITCHER, I WOULD SAY THAT THAT WOULD BE A GOOD
17 SURFACE HERE AGAIN IF YOU CAN COMPARE IT TO WOOD,
18 IF IT'S A NICE SMOOTH WOOD SURFACE SUCH AS THIS RAIL,
19 THIS IS ACTUALLY NOT A BAD SURFACE HERE IN MY
20 OPINION IF YOU GET A, SOME OLDER WOOD THAT MIGHT
21 HAVE PAINT ON IT THAT MIGHT BE CHIPPING AWAY, THAT
22 KIND OF A THING, IT MIGHT NOT BE QUITE AS GOOD AS
23 THIS TYPE OF WOOD ACTUALLY THIS ISN'T A BAD SURFACE
24 FOR PRINTS HERE

25 Q OKAY ABOUT WHAT A PLASTIC FLASHLIGHT HOW

1 WOULD YOU RATE THAT AS SURFACE FROM WHICH TO GET
2 FINGERPRINTS?

3 A HERE AGAIN IF IT WAS, WITHOUT SEEING THIS
4 FLASHLIGHT, YOU KNOW, I COULD SAY THAT -- YOU KNOW,
5 IT COULD BE SUITABLE, YOU KNOW IT'S SOMETIMES
6 DIFFICULT, YOU KNOW, TO SAY IF SOMETHING IS SUITABLE
7 OR NOT WITHOUT ACTUALLY TRYING SOMETIMES, BUT HERE
8 AGAIN IF IT'S A NICE SMOOTH FLASHLIGHT, I WOULD SAY
9 IT WOULD BE A FAIR STATEMENT TO SAY IT WOULD BE A
10 GOOD SURFACE

11 Q Y'ALL WEREN'T ASKED, I DON'T BELIEVE, TO
12 FINGERPRINT A RED FLASHLIGHT IN THIS CASE?

13 A NO, SIR I DON'T THINK WE WERE, NO, SIR

14 Q HOW ABOUT BATTERIES IN A FLASHLIGHT WOULD THAT
15 BE A GOOD SURFACE?

16 A YES, SIR I HAVE HAD CASES OF MY OWN WHERE I
17 DEVELOPED PRINTS ON BATTERIES THAT WERE INSIDE
18 FLASHLIGHTS ONCE WE TOOK THE FLASHLIGHT APART

19 Q OKAY ON THIS DOCUMENT 89 I BELIEVE THAT Y'ALL
20 WERE ABLE TO IDENTIFY SOME PRINTS ON AND WHICH YOU
21 INDICATED THE PRINTS DID NOT COME BACK TO MATCH
22 MR BILLY COPE, IS THAT RIGHT?

23 A YES, SIR OF THE ONES THAT WERE IDENTIFIABLE
24 THAT IS CORRECT, YES

25 Q WERE YOU ASKED TO COMPARE THOSE PRINTS WITH AMY

1 SIMMONS OR WITH ANYBODY ELSE?

2 A WELL, THERE WERE NO OTHER FINGERPRINTS STANDARDS
3 SUBMITTED BASED ON THE REPORT AND BASED ON THE
4 RESULTS THAT I HAVE BEFORE ME I CAN SAY THAT THERE
5 WERE CERTAIN PRINTS THAT WERE RUN ON OUR FINGERPRINT
6 COMPUTER FOR THE PURPOSE OF ATTEMPTING TO IDENTIFY
7 ANYONE ELSE

8 Q AND DID YOU KNOW THE RESULTS OF THAT?

9 A THERE WERE NO IDENTIFICATIONS EFFECTED BASED ON
10 THE ENTRIES THAT WERE MADE

11 Q OKAY WERE YOU SUBMITTED, WE'VE ALREADY
12 PROACHED THIS LINE KIND OF IN THIS CASE, BUT WERE YOU
13 SUBMITTED A PLASTIC DILDO IN THIS CASE TO DO
14 FINGERPRINTS ON?

15 A NO, SIR, WERE NOT

16 Q I BELIEVE THAT'S ALL, LIEUTENANT DARNELL THANK
17 YOU VERY MUCH

18 THE COURT MR GREELEY

19 MR GREELEY NO, I HAVE NO QUESTIONS,
20 YOUR HONOR

21 THE COURT REDIRECT

22 MR POPE BRIEFLY, YOUR HONOR
23 REDIRECT EXAMINATION BY MR POPE

24 Q MR DARNELL, YOU WERE ASKED ABOUT ASSESSING
25 SURFACES AND DIFFERENT ITEMS THAT YOU COULD TEST OR

1 NOT TEST YOU GO TO CRIME SCENE, BEFORE YOU START
2 TESTING ANYTHING, WHAT DO YOU DO WHEN YOU ARRIVE AT
3 THE CRIME SCENE?

4 A WELL, THE FIRST THING I DO WHEN I GET TO A CRIME
5 SCENE IS I DO A WALK THROUGH AND TRY TO DETERMINE
6 WHAT MIGHT BE OF VALUE TO US AS PART OF THIS CRIME
7 YOU CAN'T GO INTO A SCENE AND BOX EVERYTHING UP YOU
8 HAVE TO USE YOUR TRAINING AND YOUR EXPERIENCES TO TRY
9 AND DETERMINE WHAT MIGHT HAVE BEEN PART OF THIS CRIME
10 SCENE AND WHAT MIGHT NOT HAVE BEEN PART OF THIS CRIME
11 SCENE AND THEN YOU MAKE, YOU HAVE TO MAKE THAT CALL
12 AS A CRIME SCENE EXAMINER AND THEN YOU BEGAN TO
13 COLLECT THINGS, BOX THINGS UP, BAG THEM UP OR
14 WHATEVER, AND YOU BRING THEM BACK FOR PROCESSING

15 Q IF THERE ARE THINGS THAT ARE THERE YOU ASSESS
16 YOU KNOW LIKE MR MORTON WAS ASKING ABOUT, DOOR KNOBS
17 OR DOOR JAMBS OR WINDOWS OR THINGS, IF YOU DECIDED
18 YOU WOULD ASSESS THEM BASED ON ALL THESE INDICATIONS
19 YOU SAID ABOUT HOW, WHAT KIND OF SURFACE IT WAS AND
20 HOW CLEAN IT WAS AND THINGS OF THAT NATURE TO
21 DETERMINE WHETHER YOU WOULD TEST IT ON THE SCENE?

22 A YES, SIR, ABSOLUTELY IF I GO TO A SCENE AND I
23 FIND AN ITEM THAT I FEEL LIKE IS A VERY IMPORTANT
24 PART OF THIS SCENE, I MAY CHOOSE TO COLLECT THAT ITEM
25 AND BRING IT BACK TO THE LABORATORY TO PROCESS IT IN

1 A CONTROLLED ENVIRONMENT, AND THEN AGAIN THERE MAY BE
2 SOME AREAS OF THAT SCENE THAT I MAY CHOOSE TO PROCESS
3 ON THE SCENE HERE AGAIN I'M HAVING TO ASSESS THE
4 SCENE AS IT IS, AS IT APPEARS TO ME ONCE I GET THERE,
5 AND DETERMINE WHAT MIGHT BE PROBATIVE HERE JUST AS
6 AN EXAMPLE, IF A CRIME WAS TO OCCUR IN THIS
7 COURTROOM, YOU KNOW, I CAN'T GO AROUND AND DUST EVERY
8 SQUARE INCH OF THIS COURTROOM I HAVE TO DETERMINE
9 AND USE MY EXPERIENCES TO DECIDE IN MY OPINION WHAT
10 IS IMPORTANT AND WHAT IS GOING TO ASSIST IN
11 ATTEMPTING TO SOLVE A CRIME

12 Q YOU SAID DUST, I THINK WE KNOW FROM TV BUT WHAT
13 DO YOU MEAN WHEN YOU TALK ABOUT DUST?

14 A THE FINGERPRINT, THE BLACK POWDER THAT GOES
15 EVERYWHERE WHEN YOU DUST IT THE POWDER IS NOTHING
16 MORE THAN A GRAPHITE TYPE POWDER AND WE TAKE A
17 FIBERGLASS TYPE BRUSH AND WE DUST A CERTAIN AREA OF
18 THE SCENE LOOKING FOR FINGERPRINTS AND JUST KEEP IN
19 MIND TOO, THAT FINGERPRINTS ARE ABOUT 98 TO 99
20 PERCENT MOISTURE, SO WE HAVE TO BE REAL CAREFUL
21 WHENEVER WE GO THROUGH THE SCENE AND DUST FOR PRINTS,
22 BUT DUSTING IS THE BLACK POWDER THAT WE'RE PROBABLY
23 ALL SOMEWHAT FAMILIAR WITH

24 Q EVEN IN THE OLD DAYS THAT IS ACTUALLY WHAT YOU
25 STILL USE?

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1 A BLACK POWDER IS STILL A METHOD OF CHOICE

2 MR POPE BEG THE COURT'S INDULGENCE

3 Q LET ME SHOW YOU SUB ITEM OF STATE'S EXHIBIT

4 NUMBER 54, IT APPEARS TO BE A RED FLASHLIGHT

5 RECOVERED FROM THE HOME, IS THAT THE KIND OF POWDER

6 THAT YOU WERE TALKING ABOUT?

7 A IT CERTAINLY APPEARS TO BE, YES, SIR

8 Q OKAY HAD YOU NO INVOLVEMENT IN RECEIVING THAT

9 ITEM, IS THAT CORRECT?

10 A NO, SIR, I DID NOT

11 Q ALL RIGHT THANK YOU, SIR

12 A UH-HUH

13 MR POPE NOTHING FURTHER

14 RECROSS EXAMINATION BY MR MORTON

15 Q AGENT DARNELL, IN ASSESSING THE CRIME SCENE IF

16 YOU WERE CALLED TO THE SCENE OF A MURDER AND RAPE AND

17 I'M GOING TO SHOW YOU AND ASK YOU

18 MR POPE I THINK THERE IS ONE ALREADY

19 IN I HAVE NO OBJECTION TO USE THIS FOR

20 DEMONSTRATIVE PURPOSES BUT I THINK THERE IS ONE

21 ALREADY IN

22 MR MORTON I THINK THERE IS ONE TOO,

23 YOUR HONOR I JUST DIDN'T WANT TO, I CAN TAKE TIME

24 TO LOOK FOR IT, BUT I JUST ---

25 THE COURT GO AHEAD AND USE THAT AT THIS

1 POINT

2 MR POPE NO OBJECTION

3 Q THIS IS A PHOTOGRAPH OF THE BODY OF THE VICTIM
4 YOU'LL NOTICE A POCKETBOOK LYING ON THE BED BESIDE
5 HER DO YOU THINK THAT POCKET BOOK WOULD HAVE BEEN
6 SUITABLE FOR AT LEAST TRYING TO GET A PRINT OFF OF
7 IT?

8 A LOOKING AT THIS PHOTOGRAPH I CAN SAY THAT IT
9 WOULD PROBABLY BE NOT YOUR BEST SURFACE, BUT IT WOULD
10 BE A SURFACE THAT IF I, IF YOU ARE ASKING MY OPINION,
11 I WOULD TRY TO PROCESS IT, BUT IT'S NOT THE, IT'S NOT
12 YOUR BEST SURFACE IT APPEARS TO BE A GRAINY VINYL
13 TYPE SURFACE WHICH QUITE OFTEN DOES NOT RENDER VERY
14 GOOD RESULTS WHEN FINGERPRINT PROCESSING

15 Q BUT IF YOU HAD BEEN CALLED YOU WOULD HAVE TESTED
16 THAT POCKETBOOK YOURSELF?

17 A WITH NOT HAVING MUCH INFORMATION HERE AND JUST
18 LOOKING AT THIS PHOTOGRAPH AND SEEING WHAT I SEE, I
19 PROBABLY WOULD HAVE COLLECTED IT AND PROCESSED IT

20 Q THAT'S ALL I HAVE THANK YOU

21 MR GREELEY NO, YOUR HONOR

22 THE COURT YOU CAN STEP DOWN AND BE
23 EXCUSED WE APPRECIATE YOUR TIME I UNDERSTAND THAT
24 YOU WANT TO SET SOMETHING UP FOR THE NEXT WITNESS

25 MR POPE I WANT TO LAY HANDS ON THIS

1 THING TO SEE IF I CAN GET IT TO WORK, BUT IF I CAN
2 HAVE FIVE MINUTES

3 THE COURT I'M GOING TO LET YOU GO TO THE
4 JURY ROOM FOR JUST A MINUTE THEY TRIED OVER LUNCH
5 TO GET THIS AND HAD A LITTLE TROUBLE, SO HOPEFULLY
6 THEY GOT IT WORKING

7 (THE JURY EXITS THE COURTROOM AT 03 01
8 PM AND COURT IS IN RECESS)

9 (COURT RESUMES AT 03 14 PM THE
10 DEFENDANTS ARE PRESENT)

11 THE COURT WE READY

12 MR POPE THE STATE IS READY, YOUR HONOR

13 THE COURT MR IVEY, WOULD YOU GET THE
14 JURY

15 (THE JURY RETURNS TO THE COURTROOM AT
16 03 16 PM)

17 MR POPE THE STATE WOULD CALL DR
18 STEPHEN LAMBERT TO THE STAND PLEASE

19 STEPHEN LAMBERT, AFTER BEING FIRST
20 DULY SWORN EXAMINED AND TESTIFIED AS FOLLOWS

21 DIRECT EXAMINATION BY MR POPE

22 Q DR LAMBERT, IF YOU WOULD STATE YOUR NAME AND
23 SPELL YOUR LAST NAME FOR THE COURT REPORTER PLEASE?

24 A STEPHEN J LAMBERT L-A-M-B-E-R-T

25 Q AND COULD YOU TELL THIS JURY WHERE YOU ARE

1 EMPLOYED?

2 A WITH THE SOUTH CAROLINA LAW ENFORCEMENT
3 DIVISION

4 Q AND WHAT IS YOUR OCCUPATION THERE?

5 A AT SLED I'M A DNA ANALYST AND ALSO A SEROLOGIST

6 Q COULD YOU TELL THE JURY WHAT IS SEROLOGY? WHAT
7 IS THAT?

8 A SEROLOGY IS THE STUDY OF BODY FLUIDS
9 PARTICULARLY FORENSIC SEROLOGY ARE FLUIDS THAT ARE
10 LEFT AT A CRIME SCENE THAT'S BLOOD, SEMEN, SALIVA
11 WHAT WE DO IS IDENTIFY THOSE FLUIDS AND THEN
12 DETERMINE IF THERE IS ENOUGH TO DO A DNA ANALYSIS ON
13 THOSE

14 Q SO IS IT FAIR TO SAY YOU KIND OF WEAR YOUR
15 SEROLOGY HAT AT FIRST WHEN YOU FIRST DEAL WITH THE
16 EVIDENCE AND THEN DNA IF APPROPRIATE EVIDENCE IS
17 THERE?

18 A THAT'S CORRECT

19 Q OKAY IN A GIVEN DAY WHEN YOU ARE NOT STUCK
20 HERE WITH ME, IN A GIVEN DAY IS YOUR ENTIRE WORK DAY
21 DEVOTED TO TESTING SEROLOGY DNA EVIDENCE?

22 A YES, SIR

23 Q OKAY AND WHAT TYPE OF BACKGROUND OR EDUCATION
24 AND TRAINING DO YOU HAVE THAT ALLOWS YOU TO PERFORM
25 THESE TESTS?

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1 A I HAVE A BACHELOR'S DEGREE IN CHEMISTRY I HAVE
2 PH D IN BIOCHEMISTRY FROM THE UNIVERSITY OF SOUTH
3 CAROLINA IN 1990 AT THAT POINT I BECAME EMPLOYED AT
4 SLED AND WHEN I BECAME EMPLOYED THERE I ATTENDED THE
5 FBI'S DNA ANALYSIS CLASS IN QUANTICO, VIRGINIA, THE
6 FBI ACADEMY I GOT GRADUATE CREDIT FROM THE
7 UNIVERSITY OF VIRGINIA FOR THAT CLASS IT'S A MONTH
8 LONG CLASS AFTER THAT I REMAIN ANOTHER THREE MONTHS
9 AS A VISITING SCIENTIST IN THE FBI'S DNA LAB AND
10 VALIDATED PROCEDURES THEY USE IN THEIR LABORATORY
11 ONCE I CAME BACK TO SLED I WAS TRAINED IN THE
12 ANALYSIS OF FORENSIC EVIDENCE AND HOW TO DO SEROLOGY
13 BY THE ANALYST AT SLED LABORATORY I ATTENDED
14 NUMEROUS SYMPOSIA AND CLASSES SINCE MY EMPLOYMENT AT
15 SLED

16 Q AND HOW LONG HAVE YOU BEEN WITH SLED?

17 A SINCE 1990

18 Q OKAY AND HOW LONG HAVE YOU BEEN DOING SEROLOGY
19 AND DNA?

20 A I DID DNA EVER SINCE 1990, SO THAT'S GOING ON 15
21 YEARS NOW SEROLOGY I'VE BEEN DOING FOR ABOUT THE
22 LAST 8 YEARS WE USED TO HAVE TWO SEPARATE
23 DEPARTMENTS AND WE HAVE COMBINED THEM ABOUT 8 YEARS
24 AGO

25 Q OKAY IN YOUR TESTING YOU ACTUALLY AND I THINK

1 I JUMPED AHEAD A LITTLE BIT ON THIS AS PART OF YOUR
2 JOB WHAT IS THE FORENSIC NATURE OF YOUR JOB? WHAT
3 DOES THAT MEAN WHEN YOU RECEIVE EVIDENCE FROM LAW
4 ENFORCEMENT?

5 A WHAT HAPPENS IS THAT DURING THE COMMISSION OF A
6 CRIME THERE MAY BE BODY FLUIDS LEFT AT THE CRIME
7 SCENE THAT COULD BE TAKEN WITH THE PERSON WHO COMMITS
8 THE CRIME OR LEFT DURING THE COMMISSION OF THE CRIME
9 WHAT HAPPENS IS THOSE ARE COLLECTED EITHER A RAPE
10 EXAM AT THE HOSPITAL OR WHEN A CRIME SCENE IS
11 ACTUALLY PROCESSED BY A CRIME SCENE TECHNICIAN THEY
12 COLLECT THOSE SAMPLES, THEY BRING THEM BACK TO SLED,
13 THEY ARE EXAMINED TO SEE WHETHER OR NOT THEY HAVE A
14 BODY FLUID ON THEM, AND ONCE WE IDENTIFY THAT BODY
15 FLUID, WE DO DNA ON IT

16 Q AND HAVE YOU HAD THE OPPORTUNITY ONCE YOU DONE
17 TESTING TO ACTUALLY TESTIFY AS AN EXPERT IN COURTS
18 HERE IN THE STATE OR IN FEDERAL COURT?

19 A YES, IN STATE COURTS

20 Q OKAY AND HOW MANY TIMES HAVE YOU TESTIFIED IN
21 THE PAST AS AN EXPERT IN DNA OR SEROLOGY?

22 A OVER 70 TIMES

23 MR POPE YOUR HONOR, AT THIS TIME I
24 WOULD TENDER DR LAMBERT AS AN EXPERT IN FORENSIC
25 SEROLOGY AND FORENSIC DNA ANALYSIS

1 THE COURT ANY VOIR DIRE

2 MR WOOD NO, WE'LL STIPULATE

3 MR GREELEY NO, YOUR HONOR

4 THE COURT I FIND HE'S QUALIFIED

5 Q DR LAMBERT, IN THE DAYS OF CSI I FEEL LIKE SOME
6 OF THESE QUESTIONS MAYBE REDUNDANT BUT I'M GOING TO
7 ASK FOR YOU TO EXPLAIN DNA AND IN CONJUNCTION WITH
8 THAT, DID YOU ASSIST IN PREPARATION OF A POWERPOINT
9 THAT WOULD HELP YOU TO EXPLAIN TO THE JURY BOTH THE
10 STRUCTURE OF WHAT IT IS YOU DO AND ULTIMATELY THE
11 TESTING IN THIS PARTICULAR CASE?

12 A YES, I DID

13 Q OKAY

14 MR POPE WITH THE COURT'S PERMISSION,
15 YOUR HONOR, I WOULD ASK THAT DR LAMBERT BE ABLE TO
16 STEP DOWN THE QUESTIONS I WOULD PROFFER THE
17 QUESTION THEN WE'LL STEP THROUGH THAT EXPLANATION

18 THE COURT THAT WILL BE FINE, YES, SIR

19 Q DOCTOR, FIRST IF YOU COULD, IF YOU COULD EXPLAIN
20 TO THE JURY WHAT DNA ACTUALLY IS?

21 A OKAY DNA STANDS FOR DEOXYRIBONUCLEIC ACID
22 WHICH IS WHY WE SHORTENED IT DOWN TO DNA IT'S A
23 CHEMICAL IT'S A MOLECULE IT'S PRESENT IN
24 VIRTUALLY IN EVERY SINGLE CELL IN YOUR BODY AND IT
25 CONTAINS WITHIN THAT MOLECULE A CODE THAT'S BEEN

1 DECIPHERED OVER THE LAST 30 OR 40 YEARS THAT ALLOW US
2 TO READ THE LANGUAGE THAT THE BODY HAS PUT INTO THE
3 DNA MOLECULE IT CONTAINS YOUR GENERIC INFORMATION
4 YOU GET, IT'S PRESENT IN VIRTUALLY EVERY NUCLEIC CELL
5 IN YOUR BODY IT'S NOT IN RED BLOOD CELLS, BUT WE
6 HAVE PLENTY OF WHITE BLOOD CELLS IN OUR BLOOD STREAM
7 SO WE ARE ABLE TO GET A DNA PRINT FROM BLOOD YOU
8 GET HALF OF IT FROM YOUR MOTHER AND HALF OF IT FROM
9 YOUR FATHER THE MOMENT YOU ARE CONCEIVED SO EVEN AS A
10 SINGLE CELL YOU HAVE A COMPLETE DNA MOLECULE AND THAT
11 MOLECULE IS PASSED ON TO ALL THE REST OF THE CELLS
12 THAT IN YOUR BODY SO THAT'S COPIED IN EVERY SINGLE
13 CELL IN YOUR BODY IT'S PACKAGED INTO A 46
14 CHROMOSOMES IN THE HUMAN YOU GET 22 FROM YOUR MOM,
15 22 FROM YOUR DAD, AND THEN THERE IS THE SEX
16 CHROMOSOME YOU GET ONE FROM YOUR MOM AND ONE FROM
17 YOUR DAD AND THAT DETERMINES WHETHER YOU ARE A MALE
18 OR A FEMALE, SO THOSE ADD UP TO 46

19 IT'S UNIQUE FOR EVERYONE WITH THE
20 EXCEPTION OF IDENTICAL TWINS EVEN BROTHERS AND
21 SISTERS ARE GOING TO HAVE DIFFERENT DNA FULL BROTHERS
22 AND FULL SISTERS WILL HAVE DIFFERENT DNA ONLY
23 IDENTICAL TWINS HAVE THE SAME DNA BECAUSE THEY START
24 OUT FROM THAT SAME EGG THAT SPLINTS INTO TWO EGGS AND
25 THEN FORMS TWO COMPLETE HUMAN BEINGS THIS IS WHAT A

1 DNA MOLECULE LOOKS LIKE IT'S KIND OF DIFFICULT TO
2 TELL FROM THIS PICTURE, BUT IF YOU IMAGINE A LADDER,
3 JUST A STRAIGHT UP AND DOWN LADDER WITH RUNGS IN IT,
4 AND IF YOU TAKE THE TOPS OF THAT LADDER AND IT WAS
5 FLEXIBLE, YOU COULD TWIST IT AROUND ON ITSELF LIKE A
6 RUBBER BAND, THAT'S KIND OF THE STRUCTURE THAT YOU
7 GET WITH DNA IT'S A DOUBLE HELIX

8 ONE OF THE THINGS ABOUT DNA IS THAT
9 THE UPRIGHTS VIRTUALLY ALWAYS STAY TOGETHER THOSE
10 RUNGS OF THE LADDER WILL COME APART AND IT CAN UNZIP
11 AND WHAT WE DO IS WE UNZIP THE DNA DURING OUR
12 ANALYSIS TO DETERMINE A PERSON'S DNA TYPE THAT'S
13 PART OF THE PROCESS

14 Q NOW YOU REFER TO YOUR ANALYSIS AND MENTALLY
15 TAKING YOU BACK TO YOUR LAB, CAN DNA TESTING BE DONE
16 ON DRIED STAINS?

17 A YES, A VAST MAJORITY OF THE TESTING WE DO ARE ON
18 DRIED STAINS IF YOU GO IN A HOSPITAL AND DO A DNA
19 TEST THEY ARE PROBABLY GOING TO DRAW IT OUT OF YOUR
20 ARM AND PERFORM A LIQUID BLOOD OR SOME OTHER SAMPLE
21 LIKE THAT AT CRIME SCENES QUITE OFTEN BLOOD
22 SPLATTER ON THE FLOOR, IT'S ON WALLS, THE SEMEN
23 STAINS ON THE COMFORTER IT'S ON WHATEVER MOST OF
24 THOSE ARE DRIED, SO WE'RE USED TO WORKING ON DRIED
25 STAINS IT'S STILL PRESENT AND ACTUALLY IN A DRIED

1 STATE IT'S A LOT MORE STABLE, BECAUSE WHEN IT IS WET
2 THERE IS A LOT OF BACTERIA THAT CHEW UP THE DNA
3 SAMPLE, SO WE ACTUALLY PREFER IT TO BE DRY

4 Q SO THAT DOESN'T PREVENT YOU FROM BEING ABLE TO
5 DO TESTING THE FACT THAT IT IS IN FACT DRIED?

6 A NO

7 Q AND WHAT, YOU TALKED ABOUT BLOOD, IS THERE OTHER
8 ITEMS THAT WOULD CONTAIN DNA THAT YOU COULD TEST?
9 OTHER ITEMS THAT YOU WOULD RECEIVE?

10 A CERTAINLY ANY TISSUE THAT'S IN THE BODY,
11 THAT'S SKIN CELLS, SALIVA CELLS WHEN I SAY SALIVA
12 THESE ARE CELLS OFF THE INSIDE OF YOUR MOUTH THAT
13 KIND OF SLUFF OFF INTO YOUR SALIVA THERE WOULD BE
14 CELLS FROM THE VAGINAL LINING THAT WOULD HAVE DNA IN
15 THEM, SPERM CELLS, AND THEY ARE ALL GOING TO BE THE
16 SAME THROUGHOUT THE INDIVIDUAL, A PERSON'S BLOOD IS
17 GOING TO MATCH THEIR DNA IN THEIR SEMEN IT'S GOING
18 TO MATCH THE DNA THAT'S IN THEIR HAIR FOLLICLES THAT
19 GETS PULLED OUT IN THE HAIR ROOT, AND SO THERE IS A
20 VARIETY OF SAMPLES WE TEST

21 Q AND IN YOUR LAB AT SLED HOW LONG HAVE THEY
22 ACTUALLY BEEN DOING DNA TESTING?

23 A WE'VE BEEN DOING DNA SINCE 1991 WAS THE FIRST
24 DNA TEST THAT WE DID IT WAS A SLIGHTLY DIFFERENT
25 TEST THAN THEN TEST WE DO NOW BECAUSE IT'S PROGRESSED

1 OVER THE YEARS, BUT THE TEST THAT WE DO NOW WE PUT ON
2 LINE IN PROBABLY 1999-2000

3 Q AND THE TEST THAT YOU DO NOW, WHAT TYPE OF TEST
4 IS THAT?

5 A THAT'S THE STR DNA TEST AND STR STANDS FOR SHORT
6 TANDEM REPEAT IT'S A PLACE ON YOUR DNA THAT'S VERY
7 DIFFERENT FROM PERSON TO PERSON THAT'S THE PART OF
8 THE DNA THAT WE WANT TO TEST

9 Q OKAY AND I CALL YOUR ATTENTION TO THE NEXT
10 SLIDE YOU SAID STR IS SHORT TANDEM REPEAT AND THAT
11 PCR, WHAT IS THAT?

12 A PCR IS THE TOOL BY WHICH WE TEST THOSE STR
13 PORTIONS OF THE DNA PCR STANDS FOR POLYMERASE CHAIN
14 REACTION AND WHAT IT IS A TEST THAT WAS DEVELOPED
15 BACK IN PROBABLY MID TO LATE 80'S THAT'S ENABLED US
16 TO LOOK AT A TINY AMOUNT OF DNA WITHOUT LOOKING AT
17 THE ENTIRE REST OF THE MOLECULE YOU SEE THE DNA IS
18 LOCATED IN A CELL YOU SEE THE CELL NUCLEUS, LET ME
19 SEE IF I CAN GET MY LASER POINTER TO WORK DNA IS IN
20 THE CELL NUCLEUS AND IT'S STORED IN THESE
21 CHROMOSOMES YOU'VE PROBABLY SEEN PICTURES OF
22 CHROMOSOMES BEFORE IF YOU WERE TO UNRAVEL THE DNA
23 OUT OF ITS CHROMOSOMES IT WOULD GO ON FOR MILLIONS
24 AND MILLONS OF BASE PAIRS IN A SINGLE CHROMOSOME
25 WITHIN THIS WHOLE CHROMOSOME THE VAST MAJORITY OF IT

1 FOR EVERYONE IN THIS ROOM IS GOING TO BE THE SAME
2 WE'RE ALL PART OF THE HUMAN FAMILY WE'RE ALL
3 RELATED TO EACH OTHER ULTIMATELY AND THE VAST
4 MAJORITY OF THE DNA, EACH CHROMOSOME IS THE SAME, BUT
5 THERE ARE PARTS THAT MAKE US DIFFERENT AND THOSE ARE
6 THE PARTS THAT WE WANT TO TEST WE'LL SAY A
7 DIFFERENCE RESIDED IN THIS PART OF THE DNA THAT WOULD
8 BE THE AREA THAT WE'RE GOING TO TARGET FOR PCR SO PCR
9 IS A TOOLS THAT LET'S US FOCUS IN ON THAT SMALLER
10 AREA OF DNA AND WITHOUT HAVING TO LOOK AT THE ENTIRE
11 DNA MOLECULE

12 Q OKAY AND THEN LET ME ASK YOU THIS PCR/STR
13 DNA TESTING IS THAT UNIQUE TO THE SLED LAB FROM A
14 FORENSIC STANDPOINT? ARE YOU THE ONLY LAW
15 ENFORCEMENT LABORATORY THAT DOES THAT TYPE OF
16 TESTING?

17 A NO THE FBI DOES THIS TESTING, EVERY SINGLE
18 STATE LAB IN THE UNITED STATES DOES THIS TESTING NOW
19 THE CANADIAN RCMP DOES THIS TESTING THE EUROPEANS
20 USE VIRTUALLY THE SAME TESTS THAT WE DO, SO IT'S A
21 UNIVERSAL TEST AT THIS POINT EVERYBODY IS DOING THE
22 SAME TEST

23 Q LET ME TAKE IT A STEP FURTHER IS THIS TESTED
24 USED IN PLACES OTHER THAN FORENSIC AND OTHER THAN LAW
25 ENFORCEMENT THIS TYPE OF TEST?

1 A YES IT COULD BE USED IN IDENTIFICATION OF WAR
2 DEAD THIS IS THE EXACT SAME TEST THAT THEY WOULD
3 USE TO IDENTIFY SOMEBODY THAT WAS KILLED ON THE
4 BATTLE FIELD YOU COULD USE IT TO DO PATERNITY
5 TESTING YOU COULD USE IT TO DO MISSING PERSONS
6 TESTING LET'S SAY THEY FIND A SKELETON SOMEWHERE
7 AND THEY WANT TO COMPARE IT BACK TO MOM AND DAD
8 BECAUSE YOU GET HALF YOUR DNA FROM YOUR MOM AND HALF
9 OF IT FROM YOUR DAD, YOU CAN DEVELOP A PRINT FROM A
10 SKELETON, A PRINT FROM THE PARENTS AND DETERMINE
11 WHETHER OR NOT THAT PARTICULAR OFFSPRING

12 Q ALL RIGHT COULD YOU NOW EXPLAIN TO THE JURY
13 EXACTLY, YOU RECEIVE EVIDENCE JUST LIKE EVERYBODY
14 ELSE AT SLED, YOU RECEIVE PORTIONS OF EVIDENCE, IS
15 THAT CORRECT?

16 A THAT'S CORRECT

17 Q OKAY AND WE'LL TOUCH ON SEROLOGY AT SOME
18 POINT, BUT FROM A DNA STANDPOINT WHAT DO YOU ACTUALLY
19 DO WHEN YOU HAVE A STAIN OR A PIECE OF EVIDENCE THAT
20 YOU ARE GOING TO ATTEMPT TO IDENTIFY?

21 A OKAY WHEN WE GET EVIDENCE INTO, WELL, I HAVE
22 ANOTHER SLIDE LATER ON IF I CAN GET TO THAT I'LL
23 TRY AND BACK UP TO IT WHEN WE GET AN ITEM AT SLED
24 WHAT WE'RE GOING TO DO IS WE'RE GOING TO PURIFY THE
25 DNA FROM THAT ITEM LET'S SAY THAT IT'S A CUTTING

1 FROM A CRIME SCENE FROM AN ITEM OF FURNITURE THERE
2 IT IS WE GET BASICALLY TWO KINDS OF SAMPLES THAT
3 ARE SUBMITTED TO THE LAB SOME OF THEM MAYBE BLOOD
4 STANDARDS FROM A VICTIM OR SUSPECT THAT ARE COLLECTED
5 AT AUTOPSY OR COLLECTED AT THE HOSPITAL WE ALSO
6 RECEIVE CUTTINGS THAT MAY HAVE BEEN COLLECTED BY THE
7 PEOPLE WHO DID THE CRIME SCENE AND SUBMITTED THOSE TO
8 SLED THERE COULD BE SWABS TAKEN FROM SWABS OFF THE
9 WALL THERE COULD BE SWABS TAKEN FROM A RAPE EXAM,
10 SO WE'VE GOT THIS MATERIAL WITH BIOLOGICAL FLUID ON
11 IT WE'RE GOING TO EXTRACT THE DNA FROM THAT BY
12 PLACING THIS MATERIAL INTO A SOLUTION THAT'S GOING TO
13 BREAK DOWN THE CELL WALLS AND OPEN IT UP TO WHERE THE
14 DNA CAN GO INTO THE LIQUID ONCE IT GOES INTO THE
15 LIQUID WE EXTRACT THE DNA FROM ALL THE OTHER STUFF
16 THAT'S IN THE CELL FROM THE LIPIDS, FROM THE
17 CARBOHYDRATES AND PROTEINS, GET IT AWAY FROM ALL OF
18 THAT TO WHERE WE GOT PURIFIED DNA AND THEN WE GOT TO
19 FIGURE OUT HOW MUCH WE HAVE WE'RE GOING TO
20 QUANTITATE IT IN SOME CASES WE MAY NOT HAVE ENOUGH
21 TO TEST AND SOME CASES WE MAY HAVE SOME THAT THE
22 BACTERIA HAVE GOTTEN TO AND THEY CHEWED IT UP TO
23 WHERE WE DON'T HAVE ENOUGH DNA TO ACTUALLY DO A DNA
24 TEST ON BUT ONCE WE DETERMINE THAT WE HAVE GOT
25 ENOUGH DNA AND IT IS OF HIGH ENOUGH QUALITY WE'RE

1 GOING TO GO ON TO THE NEXT STEP AND THAT'S THE PCR
2 REACTION WHERE WE ZERO IN ON THAT SPOT THAT MAKES US
3 DIFFERENT FROM EACH OTHER

4 Q AND YOU SAY IS THAT WHERE THE AMPLIFICATION THAT
5 YOU TALKED ABOUT TAKES PLACE?

6 A YES

7 Q THAT'S WHAT WE KIND OF---

8 A RIGHT

9 Q WOULD YOU MIND SHOWING THE JURY WHEN YOU TALK
10 ABOUT AMPLIFICATION?

11 A LET ME BACK UP THROUGH ALL THESE SLIDES WE
12 JUST WENT THROUGH OKAY, THIS IS THE PCR REACTION
13 AND WHAT HAPPENS, THE WHOLE PURPOSE OF THIS IS TO
14 AMPLIFY TO MAKE USING THE SAME PROCESSES THAT THE
15 BODY USES TO START OFF IN A SINGLE CELL AND GROW UP
16 TO MILLIONS AND BILLONS OF CELLS, WE ARE GOING TO USE
17 THE SAME PROCESS THAT THE BODY USES TO MAKE NEW DNA
18 EXCEPT WE'RE GOING TO DO IT IN A TEST TUBE WHAT
19 HAPPENS IS YOU'VE GOT YOUR DNA---

20 Q EXCUSE ME DOES IT MAKE DIFFERENT DNA WHEN YOU
21 ARE TESTING?

22 A WHAT IT DOES IS IT MAKES A COPY OF THE PERSON'S
23 DNA, WE'LL SAY WE'RE DOING A STANDARD, A BLOOD
24 STANDARD FROM MYSELF FOR INSTANCE WHAT WE'RE GOING
25 TO DO IS ZERO IN ON THAT PART OF THE DNA THAT MAKES

1 US DIFFERENT FROM EACH OTHER AND WE'RE GOING TO MAKE
2 AN EXACT COPY OF MY DNA BUT WE'RE GOING TO MAKE
3 MILLIONS AND BILLIONS OF COPIES OF THAT SO NOW I END
4 UP WITH MORE OF THAT COPY OF THE ORIGINAL DNA THAT WE
5 STARTED OFF WITH SO WHEN I ANALYZE IT NOW ALL I SEE
6 ARE THE COPIES AND THEN I DON'T SEE UP HERE THE OTHER
7 DNA SO WE START WITH A, FOR INSTANCE, A SINGLE COPY
8 OF DNA AND THIS IS THE PART OF THE DNA THAT WE WANT
9 TO AMPLIFY AND WE SEPARATE IT OUT ACCORDING TO
10 DENATURING IT AND TO DO THAT THAT SEPARATES THE
11 STRANDS WHAT HAPPENS IS IT'S HEATED UP AND THEY
12 SPLIT APART ONCE IT SPLITS APART WE HAVE PIECES OF
13 DNA ADDED TO THIS MIXTURE, THEY ARE GOING TO SEEK OUT
14 THOSE SPOTS THAT MAKE US DIFFERENT FROM EACH OTHER
15 WHAT THEY DO IS THEY BIND TO THAT DNA AND ONCE THEY
16 BIND TO IT, THERE IS CHEMICALS THAT ARE IN THIS
17 MIXTURE THAT ARE VERY SIMILAR TO THE CHEMICALS THAT
18 WE HAVE IN OUR BODY THAT ARE GOING TO MAKE NEW COPIES
19 OF DNA SO YOU SEE WE STARTED OFF WITH A SINGLE COPY
20 OF DNA UP HERE AT THE TOP AND NOW AT THE END OF THIS
21 FIRST CYCLE WE'VE GOT TWO COPIES OF DNA WELL, WE'RE
22 NOT GOING TO STOP FOR JUST A SINGLE CYCLE, WE'RE
23 GOING TO CONTINUE, WE'LL SAY WE START WITH ONE, WE GO
24 THROUGH A SINGLE THERMOCYCLE, WE END UP WITH TWO WE
25 GO THROUGH ANOTHER THERMOCYCLE WE END UP WITH FOUR

1 COPIES OF DNA GO THROUGH ANOTHER THERMOCYCLE WE END
2 UP WITH 8 COPIES OF DNA IF WE WERE TO CONTINUE THIS
3 FOR 32 CYCLES IT'S GOING TO MAKE OVER A BILLION
4 COPIES OF THE DNA ON THAT WE'RE ORIGINALLY TARGETING
5 SO THE FELLOW THAT CAME UP WITH THIS TECHNIQUE WON
6 THE NOBLE PRIZE FOR DEVELOPING IT

7 Q OKAY ONCE YOU HAVE GONE THROUGH THAT CYCLE AND
8 YOU HAVE GOT ENOUGH OF THE AREA YOU WANT TO LOOK AT
9 AND YOU GOT YOU SAY THAT MANY COPIES TO LOOK AT, THEN
10 WHAT IS YOUR NEXT STEP?

11 A THE NEXT STEP IS ONCE WE DEVELOP THIS DNA PRINT
12 WE'VE ACTUALLY GONE IN AND HAVE DEVELOPED THE
13 LOCATIONS THAT MAKE US DIFFERENT FROM EACH OTHER, WE
14 AMPLIFIED THOSE TO WHERE WE CAN LOOK AT THOSE
15 INDEPENDENT OF THE REST OF THE DNA, SO WE HAVE GOT A
16 DNA TYPE AT THIS POINT SO WE'LL GO THROUGH THIS TO
17 THE POINT WHERE WE DO THE PCR I PUT THE REQUISITE
18 CHEMICALS IN THE TUBE, THE DNA THAT I WANT TO AMPLIFY
19 THAT CAME FROM EITHER THE EVIDENCE OR FROM THE
20 STANDARD I'VE GOT THE PRIMERS THAT ARE GOING TO
21 POINT IT OUT TO WHERE THEY WANT TO MAKE THE NEW
22 TARGET AND I'VE GOT THE CHEMICALS THAT ARE REQUIRED
23 TO MAKE NEW DNA, SO THE FIRST CYCLE I'VE GOT A SINGLE
24 COPY IT GOES INTO THERMOCYCLER WHICH IS BASICALLY
25 JUST A HOT GLOB THAT HEATS IT UP, COOLS IT DOWN,

1 HEATS IT UP, COOLS IT DOWN, AND GOES THROUGH THESE
2 REPETITIVE CYCLES TO MAKE NEW DNA, SO AFTER A SINGLE
3 CYCLE I'VE GOT TWO COPIES, AFTER 25 TO 30 CYCLES, I'M
4 GOING TO HAVE MILLION-FOLD INCREASE OF DNA
5 THIS IS WHAT WE'VE BEEN AMPLIFYING AND THIS IS THE
6 TERM THAT WE USED BEFORE, THIS IS SHORT TANDEM
7 REPEATS THESE ARE THE PARTS OF THE DNA THAT MAKE US
8 DIFFERENT FROM EACH OTHER WE HAVEN'T TALKED MUCH OF
9 THAT LANGUAGE OF DNA BUT THERE ARE FOUR LETTERS IN
10 DNA LANGUAGE A-G-T-C AND THEY APPEAR IN SEQUENCE
11 ALONG THIS STRAND OF DNA UNTIL ALL OF A SUDDEN WE
12 REACH THIS POINT WHERE IT'S REPEATED A WORD OVER AND
13 OVER AGAIN, A-A-T-G, A-A-T-G, AND IT'S REPEATED SEVEN
14 TIMES, THAT'S WHAT'S REFERRED TO AS A SHORT TANDEM
15 REPEAT, AND THESE PLACES APPEAR NUMEROUS TIMES
16 THROUGHOUT THE ENTIRE HUMAN DNA AND THEY DISCOVERED
17 THAT THEY ARE VERY DIFFERENT FROM PERSON TO PERSON
18 BASED ON THE NUMBER OF REPEATS ON ONE STAND OF YOUR
19 DNA, ON ONE OF YOUR CHROMOSOMES YOU MAY HAVE SEVEN
20 REPEATS ON THE OTHER CHROMOSOME YOU MAY HAVE EIGHT
21 REPEATS YOU MAY HAVE GOT THIS SEVEN FROM YOUR MOM
22 OR YOUR DAD YOU GOT THE EIGHT FROM YOUR MOM OR YOUR
23 DAD IF WE DID MOM AND DAD'S DNA TYPE WE COULD TELL
24 WHICH ONE YOU GOT IT FROM, AND SO THIS PERSON'S DNA
25 TYPE AT THIS SPOT IS A 7-8 AND THEY DIFFER ON ACCOUNT

1 OF THEIR LENGTH SO WHAT WE WANT TO DO IS LOOK AT
2 MORE THAN ONE LOCATION WE MAY BE ABLE TO, MOST OF
3 THE PEOPLE IN THIS ROOM IF WE JUST LOOKED AT ONE
4 SPOT, WE CAN PROBABLY TELL, MOST OF US, APART FROM
5 EACH OTHER NOW THERE ARE A FEW OF US THAT WOULD
6 LOOK EXACTLY THE SAME AT ONE SPOT AND IT'S JUST A
7 COMPLETELY RANDOM THING THAT THE WAY THAT THESE ARE
8 PASSED ON FROM GENERATION TO GENERATION, SO WE DON'T
9 WANT TO JUST LOOK AT ONE SPOT WE WANT TO LOOK AT
10 MORE THAN ONE SPOT WE HAVE ONE TEST THAT LOOKS AT A
11 TOTAL OF NINE LOCATIONS AND THEN ANOTHER TEST ADDED
12 TO THAT CAN LOOK UP AT 13 LOCATIONS AND THAT'S
13 IMPORTANT BECAUSE ONCE WE REACH THAT LEVEL OF THE
14 NUMBER OF SCR'S THAT WE'RE LOOKING AT WE'RE CONFIDENT
15 THAT THE DNA PRINT THAT WE'RE LOOKING AT WOULD BE
16 UNIQUE TO THAT INDIVIDUAL

17 Q SO, DR LAMBERT, YOU LOOK AT EACH INDIVIDUAL
18 AREAS AND DECIDE HOW YOURS MAY DIFFER FROM MINE ON
19 ONE AREA, THEN YOU GO LOOK AT ANOTHER AREA ON
20 CHROMOSOME AGAIN?

21 A RIGHT

22 Q OKAY AND YOU ARE GOING TO, YOU SAID YOU HAD
23 THE ABILITY TO DO THAT ON HOW MANY DIFFERENT SPOTS
24 THAT YOU USE?

25 A A TOTAL OF 13 ON SOME OF THESE ITEMS WE DID

1 NINE LOCATIONS, SOME OF THEM WE DO 13, AND THAT JUST
2 DEPENDS IF IT CAME FROM A VICTIM WE WOULD ONLY DO
3 NINE IF WE HAVE A TOTAL OF 13 FROM A SUSPECT WE DO
4 13

5 Q OKAY AND DID YOU BRING SOMETHING TO INDICATE
6 THE AREAS THAT YOU ACTUALLY LOOKED?

7 A SHOULD BE THE NEXT SLIDE HERE'S THE DIFFERENT
8 LOCATIONS ON ALL THE CHROMOSOMES YOU SEE TOTAL OF
9 22 CHROMOSOMES AGAIN WE GOT THOSE TIMES TWO FOR 44
10 PLUS X AND Y WOULD GIVE US 46, SO THIS IS THE HUMAN
11 GENOME AS IT WERE THIS IS AN, ON NUMBER TWO WE'VE
12 ONE OF THESE LOCATIONS IT'S TURNED T-POX, SO WE TEST
13 THAT ONE ON CHROMOSOME NUMBER THREE WE HAVE THE
14 LOCATION D-3-S-1-3-5-8 ON CHROMOSOME FOUR F-G-A
15 SO THEY ARE KIND OF SCATTERED OUT THROUGH THE WHOLE
16 HUMAN GENOME AND IF YOU WERE TO COUNT THEM UP THERE
17 SHOULD BE 13 PLUS ON THE X AND Y CHROMOSOMES WE'VE
18 GOT ANOTHER SPOT THAT WE CAN LOOK AT SO WE CAN TELL
19 WHETHER OR NOT THE SAMPLE CAME FROM A MAN OR A
20 FEMALE THOSE ARE THE SEX CHROMOSOMES AND IF WE HAVE
21 A SAMPLE NOT ONLY CAN WE TELL ITS DNA PROFILE, BUT WE
22 CAN ALSO TELL IT'S AMELOGOME PROFILE THAT'S A-M-E-L
23 AND THAT TELLS US WHETHER OR NOT IT'S MALE OR FEMALE
24 Q OKAY WHEN YOU ACTUALLY DO THE TESTING AND THE
25 MACHINE THAT YOU GET RESULTS, HOW DOES THAT DISPLAY

1 OUT TO YOU? IS THERE A COMPUTER SOFTWARE YOU USE?
2 A YES, WE DO WE USE AN INSTRUMENT CALLED THE
3 GENETIC ANALYZER AND THIS IS WHAT THE FINAL PRODUCT
4 OF THE ANALYSIS LOOKS LIKE THIS IS A DNA PROFILE
5 USING THE PROFILER PLUS KIT WHICH IS A DNA KIT THAT
6 WE PURCHASED TO DO THIS KIND OF TESTING WE TAKE THE
7 SAMPLE THAT WE'VE PURIFIED, WE PLACE IT WITH
8 CHEMICALS IN THIS KIT, THE PRIMERS, AND THEY ARE
9 GOING TO AMPLIFY THESE DNA REGIONS, SO AT THE
10 D-3-S-1-3-5-8 THIS PERSON IS A 15-17 THAT MEANS
11 THEY HAVE 15 REPEATS ON ONE OF THEIR CHROMOSOMES AND
12 17 ON THE OTHER CHROMOSOME THE NEXT IS A 15-18
13 V-W-A THIS IS A COMPLETE SEPARATE CHROMOSOMAL
14 LOCATION ANOTHER AT F-G-A AND WE'RE ABLE TO DO THIS
15 IN ONE SINGLE REACTION AND GET ALL OF THIS
16 INFORMATION AT ONCE THIS IS ONE, TWO, THREE, FOUR,
17 FIVE, SIX, SEVEN, EIGHT, NINE LOCATIONS THAT ARE
18 AMPLIFIED AT ONCE, AND THIS PERSON IS A MALE BECAUSE
19 THEY ARE X-Y INDIVIDUAL WE'VE GOT A Y A FEMALE
20 WOULD JUST DISPLAY THE X
21 Q ONCE YOU HAVE THESE RESULTS, HOW WOULD YOU PUT
22 SOME SIGNIFICANCE TO IT? IN OTHER WORDS, YOU HAVE A
23 RESULT, HOW DO YOU USE THAT FOR IDENTIFICATION
24 PURPOSES?
25 A ULTIMATELY WHAT WE'RE GOING TO DO IS WE'RE GOING

1 TO COMPARE STANDARDS TO EVIDENCE STANDARDS CAME
2 FROM AN INDIVIDUAL AND WE KNOW THE ORIGIN OF THOSE
3 STANDARDS YOU MAY GET ONE FROM THE VICTIM LOCATED
4 AT AUTOPSY YOU MAY GET ONE FROM A VICTIM COLLECTED
5 AT A RAPE EXAM FROM A SUSPECT COLLECTED AT THE
6 HOSPITAL OR AT THE POLICE STATION THOSE ARE THE
7 KNOWN STANDARDS WE'RE GOING TO COMPARE THOSE TO
8 EVIDENCE SO IF THIS WAS A PIECE OF EVIDENCE AND IT
9 DISPLAYED THIS DNA PRINT AND I DEVELOPED A SIMILAR
10 DNA PRINT THAT MATCHED ON EVERY SINGLE ONE OF THOSE
11 LOCATIONS, THEN I WOULD DECLARE THAT TO BE A MATCH
12 BETWEEN THIS EVIDENCE HERE AND THE KNOWN STANDARD
13 Q OKAY AND ONCE YOU DETERMINE THAT SOMETHING IS
14 A MATCH, IS THERE A FURTHER STEP YOU TAKE IN
15 DETERMINING HOW LIKELY IT IS THAT THAT WOULD MATCH?
16 A THAT'S CORRECT WE'RE INTERESTED IN CALCULATING
17 THE FREQUENCY OF THESE DNA PROFILES IN THE
18 POPULATION IF WE WERE JUST GOING TO DO ONE OR TWO
19 OF THESE THEY MAY BE FAIRLY FREQUENT MAYBE ONE OUT
20 OF EVERY THOUSAND PEOPLE WOULD HAVE THIS D-3 AND THIS
21 D-8 SINCE WE'VE DONE A COMPLETE TOTAL OF NINE HERE
22 THE PROBABILITY OF SELECTING SOMEBODY UNRELATED AT
23 RANDOM IN THE POPULATION GETS QUITE SMALL TYPICALLY
24 THIS WOULD GIVE YOU ESTIMATE IN THE TRILLIONS ALL THE
25 WAY UP TO QUADRILLIONS OR QUINTILLIONS SO IT WOULD

1 TAKE ONE OUT OF EVERY QUINTILLION INDIVIDUAL WOULD BE
2 EXPECTED TO HAVE THIS DNA PROFILE IF YOU WERE TO
3 RANDOMLY PICK SOMEBODY OUT OF THE POPULATION

4 Q OKAY AND WHEN YOU SAID LIKE, FOR EXAMPLE, I
5 WON'T TRY TO ARTICULATE THE V-W-A, IT'S SIMPLE, THAT
6 WOULDN'T, 15-18?

7 A RIGHT

8 Q FOR EXAMPLE, SO YOU WOULD KNOW HOW OFTEN SOMEONE
9 IN THE POPULATION IN ANY OF THE POPULATION WOULD HAVE
10 15-18

11 A THAT'S CORRECT

12 Q FOR EXAMPLE, TWO OUT OF TEN MAY OR WHATEVER THE
13 CASE MAYBE, IS THAT CORRECT?

14 A THAT'S CORRECT WHAT HAPPENED IS THERE HAVE
15 BEEN DATABASES THAT HAVE BEEN COLLECTED OF
16 INDIVIDUALS AND THEY COLLECT A GROUP OF 200 CAUCASIAN
17 INDIVIDUALS AND A GROUP OF 200 AFRICAN AMERICAN
18 INDIVIDUALS, 200 HISPANIC INDIVIDUALS, AND WHAT THEY
19 DO IS THEY DEVELOP DNA PRINTS ON ALL OF THOSE PEOPLE
20 AND THEN THEY LOOK AND SEE HOW COMMON THESE PROFILES
21 APPEAR IN THOSE POPULATIONS AND THEN THE PROBABILITY
22 LET'S SAY OF THIS APPEARING IN THE POPULATION WOULD
23 BE ONE OUT OF EVERY TEN PEOPLE WOULD HAVE THAT
24 WELL, COUPLED WITH PROBABILITY THAT MAYBE ONE OUT OF
25 EVERY TEN PEOPLE WOULD HAVE THIS ONE, THAT'S ONE

1 TIMES TEN TIMES, ONE TIMES TEN WOULD BE ONE OUT OF A
2 HUNDRED PEOPLE WOULD HAVE THIS COMBINATION TIMES
3 ANOTHER TEN WOULD BE ONE IN A THOUSAND PEOPLE AND ON
4 DOWN THE LINE AND YOU CAN SEE THE --

5 Q SO THE MORE AREAS THAT YOU LOOK AT, THE MORE
6 UNIQUE THE PROFILE BECOMES, IS THAT RIGHT?

7 A THAT'S CORRECT

8 Q OKAY IN DOING THIS TESTING, I DON'T THINK I
9 ASKED YOU THIS EARLIER, HAVE YOU GOT ANY FIELD OVER
10 THE YEARS THAT YOU'VE BEEN TESTING, HOW MANY OF THESE
11 TESTS YOU PERFORM?

12 A THOUSANDS AND THOUSANDS

13 Q OKAY AND HAVE THERE BEEN TIMES IN YOUR
14 CAPACITY IN DNA TESTING AT SLED THAT YOU'VE ACTUALLY
15 EXCLUDED INDIVIDUALS BASED ON YOUR TEST?

16 A YES

17 Q OKAY IS THAT OFTEN YOU EXCLUDE INDIVIDUALS
18 BASED ON YOUR TEST?

19 A MOST OF THE TIME WE INCLUDE THE INDIVIDUAL, BUT
20 THERE IS NUMEROUS TIMES WE'VE EXCLUDED FOLKS THAT'S
21 PROBABLY TEN PERCENT OF THE TIME THAT INDIVIDUAL'S
22 EXCLUDED

23 Q AND THE STEPS THAT YOU'VE TAKEN THAT YOU
24 INDICATED YOU TAKE AND TEST THE DNA, IS THAT SET OUT,
25 YOU DON'T JUST GO IN THE LAB AND SAY TODAY I'LL DO IT

1 THIS WAY AND TOMORROW I'LL DO IT THAT WAY, IS THAT
2 SET OUT THERE AT YOUR LAB PROTOCOLS THAT YOU FOLLOW?

3 A YES, IT IS WE HAVE A PROTOCOL THAT HAS BEEN
4 DEVELOPED IN OUR LABORATORY, WE FOLLOW THAT PROTOCOL
5 IT'S BEEN VALIDATED, WE KNOW THAT THIS PROTOCOL
6 WORKED BECAUSE THERE HAVE BEEN NUMEROUS STUDIES TO
7 SHOW THAT IT WILL WORK AND IT'S REPRODUCIBLE, AND
8 FURTHERMORE, WE RUN CONTROLS EVERY TIME WE RUN A TEST
9 TO ENSURE THAT THE TEST'S PERFORMED CORRECTLY WE
10 RUN A PERSON OF KNOWN DNA TYPE EVERY SINGLE TIME WE
11 RUN A TEST IF WE GET THE CORRECT TYPE, WE KNOW THAT
12 THE TEST WORK WE RUN A CONTROLLED, IT DOESN'T HAVE
13 ANY DNA IN IT, IF THAT CONTROL GIVES US A DNA
14 PROFILE, THEN WE'VE GOT A PROBLEM AND WE REPEAT THE
15 TEST SO THE COMBINATION OF THE PROTOCOL AND
16 CONTROLS INSURE THAT WE GET A GOOD QUALITY RESULT

17 Q AND YOU HAVE CERTAIN PROTOCOLS THAT YOU WORK
18 WITH THAT, DO YOU ALSO HAVE CONTROLS AS FAR AS FOR
19 EXAMPLE LIKE YOUR OWN DNA I ASSUME YOU HAVE DNA
20 TOO, CORRECT?

21 A YES, SIR

22 Q IS THERE A TESTING OR PROCEDURE TO MAKE SURE
23 SOMEHOW THAT YOU DON'T TAINT THE EVIDENCE OR SHOW UP
24 IN THE EVIDENCE?

25 A THAT'S CORRECT USING PCR WE CAN AMPLIFY A

1 TINY, TINY AMOUNT OF DNA IT ESTIMATED ABOUT 150
2 CELLS IS ALL THAT WE NEED TO GET A DNA PRINT, SO
3 THAT'S VIRTUALLY SMALLER THAN YOU CAN SEE I'VE
4 GOTTEN DNA PRINT DEFINITELY OFF OF THINGS THAT I
5 CAN'T SEE SO BECAUSE OF THAT THERE IS A POSSIBILITY
6 THAT EVEN I COULD CONTAMINATE THE DNA THAT I'M
7 WORKING WITH I'VE DEVELOPED MY DNA PRINT IF I SEE
8 AN UNKNOWN PATTERN SHOW UP IN A DNA SAMPLE THEN I'M
9 GOING TO COMPARE THAT BACK TO MYSELF OR OTHER
10 INDIVIDUALS IN THE LAB TO INSURE THAT THERE IS NOT A
11 CONTAMINATION EVENT, THAT WHAT REALLY WHAT I'M SEEING
12 IS THE PROFILE THAT WAS PRESENT ON THAT SAMPLE

13 Q OKAY WHAT WE'LL DO NOW IF YOU WOULD CLICK TO
14 THE NEXT SLIDE I WANT TO SWAP HATS FOR YOU A SECOND
15 IF YOU'LL HAVE A SEAT THANK YOU GET THE LIGHTS
16 PLEASE, MA'AM

17 YOU INDICATED TO THE JURY A LITTLE BIT EARLIER THAT
18 THERE WERE A NUMBER OF THINGS YOU DO AND ONE OF WHICH
19 IS SEROLOGY YOU INDICATED SEROLOGY KIND OF ALMOST
20 NOW IT'S BECOME KIND OF A PRECURSOR TO THE WORK IN
21 DNA, IS THAT ACCURATE?

22 A THAT'S CORRECT

23 Q OKAY AND AGAIN YOU WERE TELLING THE JURY
24 SEROLOGY IS WHAT TESTING OF FLUIDS?

25 A OF BODY FLUIDS

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1 Q IN PARTICULAR WHAT IS IT YOU ARE LOOKING FOR AND
2 STEPS AS FAR AS SEROLOGY, YOU RECEIVE EVIDENCE AS THE
3 JURY HEARD YESTERDAY, YOU RECEIVE EVIDENCE FROM
4 EVIDENCE PROCESSING THERE AT SLED, IS THAT CORRECT?

5 A YES

6 Q NOW SOME EVIDENCE IF IT'S DIRECTLY DNA TYPE
7 EVIDENCE WOULD COME DIRECTLY TO YOU ALSO, IS THAT
8 CORRECT?

9 A YES, IT WOULD

10 Q OKAY AND WHEN YOU RECEIVE THE EVIDENCE FROM A
11 SEROLOGY STANDPOINT, NOT AGAIN GETTING INTO DNA YET,
12 BUT SEROLOGY STANDPOINT WHAT WOULD YOU BE LOOKING
13 FOR?

14 A FROM A SEROLOGY STANDPOINT, I'VE GOT A STAIN ON
15 AN ITEM AND I WANT TO DETERMINE WHETHER OR NOT IT
16 COULD BE BLOOD AND IF IT IS BLOOD IF IT'S HUMAN
17 BLOOD, SO THERE IS PRESUMPTIVE TESTS THAT WE CAN DO
18 WITH SEROLOGY THAT WOULD DETERMINE WHETHER OR NOT
19 IT'S BLOOD I WANT TO KNOW WHETHER OR NOT IT'S
20 SEMEN, WHETHER OR NOT IT IS HUMAN SEMEN WE HAVE A
21 TEST THAT WE CAN PERFORM TO DETERMINE THE PRESENCE OF
22 HUMAN SEMEN, SO WE CAN CONFIRM THAT IT IS SEMEN
23 BEFORE WE GO ON TO DO THE DNA TEST AND WE HAVE A
24 THAT'S A PRESUMPTIVE TEST FOR THE PRESENCE OF SALIVA
25 WE TEST FOR SALIVARY AMYLASE AND IF THERE IS AN

1 INDICATION OF THE PRESENCE OF SALIVARY AMYLASE AND
2 THAT IS AN INDICATION THAT THERE WAS SALIVA ON THAT
3 SAMPLE THESE ARE THE KIND OF THINGS WE DO IN
4 SEROLOGY BEFORE IT GOES ON TO DNA

5 Q AND DID YOU IN FACT GENERATE A REPORT AS TO THE
6 SEROLOGY COMPONENT OF YOUR WORK?

7 A YES

8 Q AND DO YOU HAVE THAT THERE WITH YOU?

9 A YES, SIR

10 Q AND REFERRING NOW TO STATE'S EXHIBIT NUMBER 28
11 AND WE'LL REFER TO A NUMBER OF EXHIBITS DID YOU
12 HAVE AN OPPORTUNITY WHILE THE JURY WAS OUT TO LOOK AT
13 ACTUALLY MANY OF THESE PHYSICAL EXHIBITS?

14 A YES, I DID

15 Q OKAY AND OF COURSE, ON STATE'S EXHIBIT 28
16 ALREADY IN EVIDENCE IS THE ADULT SEXUAL ASSAULT KIT,
17 YOU DON'T ACTUALLY RECEIVE THE PHYSICAL KIT IN ITS
18 ENTIRETY, IS THAT CORRECT?

19 A THAT'S CORRECT

20 Q OKAY YOU RECEIVE WHAT FROM IT, CERTAIN ITEMS?

21 A WHEN IT COMES INTO SLED IT CONTAINS ITEMS THAT
22 GO TO OUR TRACE LAB, IT CONTAINS ITEMS THAT GO TO THE
23 TOXICOLOGY LAB AND DNA, SO WHEN THE OFFICER BRINGS IT
24 IN IT'S OPENED UP, THOSE SAMPLES ARE TAKEN OUT, AND
25 DIRECTED TO THE DIFFERENT DEPARTMENTS AND THIS BOX

1 ITSELF GOES BACK WITH THE OFFICER WHO BROUGHT IT

2 Q OKAY AND AS FAR AS THE ITEMS THAT YOU RECEIVE
3 AND I'M REFERRING TO YOUR REPORT, DO YOU HAVE SLED
4 NUMBERS AGAIN THAT ARE ATTACHED TO YOUR ITEMS, IS
5 THAT CORRECT?

6 A YES

7 Q OKAY AND OUT OF THE SEXUAL ASSAULT KIT YOU
8 RECEIVED A NUMBER OF ITEMS AND SOME OF WHICH YOU
9 CHECKED TO SEE IF SEMEN AND/OR BLOOD WERE PRESENT, IS
10 THAT CORRECT?

11 A THAT'S CORRECT

12 Q OKAY I'M GOING TO CALL YOUR ATTENTION TO
13 WHAT'S, AND PLEASE THE COURT, THIS WOULD BE ITEMS
14 CONTAINED IN STATE'S EXHIBIT 28, BUT I WILL REFER TO
15 YOUR SLED NUMBER FOR A NUMBER OF THESE ITEMS YOU
16 RECEIVED ITEM 1 6 VAGINAL, ORAL, RECTAL SMEARS THAT
17 WERE RETRIEVED BY DR MAYNARD THE PATHOLOGIST, THAT
18 IS CORRECT?

19 A YES

20 Q AND WHAT WERE THE RESULTS OF YOUR TESTING ON
21 THAT?

22 A WHAT WE'RE LOOKING AT WITH SMEARS, THESE ARE
23 LITTLE GLASS MICROSCOPE SLIDES WHEN THEY PERFORM
24 THE RAPE EXAM THEY TAKE A SWAB FROM A PARTICULAR
25 ORIFICE, THE ORAL, VAGINAL OR RECTAL ORIFICE, THEY

1 TAKE THAT SLIDE, THE SWAB AND SMEAR THAT ON THE
2 SLIDE, ALLOW THAT TO DRY, AND SUBMIT IT TO US AND
3 WHAT WE'RE ABLE TO DO IS USE A STAIN THAT STAINS
4 SPERM IN SUCH A WAY THAT WE CAN IDENTIFY IT UNDER THE
5 MICROSCOPE WE TAKE THE SMEARS, LOOK AT THEM UNDER
6 THE MICROSCOPE, AND IN THIS CASE I DID NOT SEE ANY
7 SPERMATOZOA ON EITHER THE VAGINAL, RECTAL, OR ORAL
8 SMEARS

9 Q OKAY ALSO IN THAT SAME PACKAGE DID YOU HAVE
10 VAGINAL, ORAL, AND RECTAL SWABS AND WHAT ARE THEY?

11 A THOSE ARE JUST THE SWABS THAT ARE TAKEN, Q-TIP
12 SWABS POINT THAT ARE TAKEN FROM THOSE ORIFICES, THAT
13 ARE ALLOWED TO DRY, AND THEN THEY ARE SUBMITTED TO
14 THE LABORATORY

15 Q WHAT WERE YOUR RESULTS ON THAT?

16 A ON THOSE PARTICULAR SWABS WE WEREN'T PHYSICALLY
17 LOOKING THROUGH A MICROSCOPE FOR THE PRESENCE OF
18 SPERM, BUT WE HAVE ANOTHER TEST THAT INDICATES THE
19 PRESENCE OF SEMEN ON ALL THREE OF THOSE SWABS NO
20 SEMEN WAS IDENTIFIED

21 Q OKAY ALSO DID YOU HAVE A SPOT, REFERRING TO
22 YOUR ITEM 1 10, OF SWAB THAT DR MAYNARD HAD TAKEN OF
23 SUSPECTED SEMEN?

24 A YES, I DID

25 Q AND WHAT WAS YOUR RESULT ON THAT TEST?

1 A NO SEMEN WAS IDENTIFIED ON THAT SWAB

2 Q I'LL REFER YOU TO, AND I BELIEVE THIS DOES HAVE
3 AN INDIVIDUAL NUMBER, IT'S YOUR ITEM 1 2 I'M SORRY
4 1 12?

5 A YES, SIR

6 Q AND THAT WAS INDICATED AS BITE MARK FROM RIGHT
7 BREAST FROM A SEROLOGY STANDPOINT FIRST, AND THAT'S
8 INDICATED AS STATE'S EXHIBIT 28 4 THE SWAB MARK
9 FROM THE RIGHT BREAST DID YOU IDENTIFY FROM SEROLOGY
10 STANDPOINT ANY SUBSTANCE THERE?

11 A YES, I DID ON THAT ITEM WE TESTED FOR THE
12 PRESENCE OF SALIVARY AMYLASE AND WE HAVE A TEST THAT
13 WOULD INDICATE STRONGLY IT'S PRESENCE IT WAS
14 POSITIVE FOR SALIVARY AMYLASE BUT SINCE AMYLASE SHOWS
15 UP IN SEVERAL OTHER BODY FLUIDS IN LOWER AMOUNTS, WE
16 CAN'T CONCLUSIVELY SAY THAT IT'S SALIVARY AMYLASE,
17 BUT IT WAS CONSISTENT WITH BEING SALIVARY AMYLASE
18 SO IN THAT RESPECT IT WAS CONSISTENT WITH HAVING A
19 MOUTH OR SALIVA PLACED ON THE BREAST

20 Q AND ULTIMATELY AS WE'LL DISCUSS, YOU DID FURTHER
21 DNA TESTING ON THAT ITEM?

22 A YES

23 Q OKAY NOW THERE ARE ALSO OTHER ITEMS INCLUDING
24 YOUR ITEM 1 14 1 CUTTING FROM HER PANTIES, FROM THE
25 VICTIM'S PANTIES, THAT CAME IN THAT KIT DID YOU

1 HAVE AN OPPORTUNITY TO TEST THAT ALSO FOR SEMEN?

2 A YES, I DID

3 Q OKAY AND WHAT WERE THE RESULTS OF THAT?

4 A NO SEMEN WAS IDENTIFIED ON THE PANTIES

5 Q OKAY CALL YOUR ATTENTION NEXT TO YOUR EXHIBIT
6 2 4 WHICH WOULD BE STATE'S EXHIBIT, PORTIONS OF
7 STATE'S EXHIBIT 33, THAT IS INDICATED AS THE SUSPECT
8 KIT FROM MR BILLY WAYNE COPE, DID YOU RECEIVE ITEMS
9 FROM THAT ALSO?

10 A YES, I DID

11 Q OKAY AND PARTICULARLY I'LL CALL YOUR ATTENTION
12 TO THE ANALYSIS THAT YOU DID ON THE ITEMS YOU
13 RECEIVED THERE THERE WAS NO SEROLOGY ANALYSIS, IT
14 WAS DNA THAT WAS ULTIMATELY DONE THERE, IS THAT
15 CORRECT?

16 A THAT'S CORRECT

17 Q I NOW CALL YOUR ATTENTION TO WHAT'S BEEN MARKED
18 AND AGAIN, FOR EXAMPLE, HERE THESE ARE MARKED AS
19 STATE'S EXHIBIT 56 1 1, 1 2, AND 1 3 AND THESE ARE
20 ACTUALLY AS WE HEARD YESTERDAY CUTTINGS FROM THE
21 BLACK PANTS OF THE VICTIM, DO YOU EVER ACTUALLY
22 RECEIVE THOSE BLACK PANTS?

23 A NO, SIR, IN THIS CASE I DIDN'T JAN BRYSON IN
24 OUR PROCESSING UNIT PROCESSED THOSE PANTS FOR
25 POSSIBLE SEMEN STAINS AND SUBMITTED THEM ALL TO OUR

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1 LABORATORY

2 Q SO AT THE POINT YOU RECEIVE THEM AGAIN LOOKING
3 AT 56 1 3, 1 2, AND 1 1, THIS IS WHAT YOU WOULD
4 RECEIVE?

5 A THAT'S CORRECT

6 Q OKAY SO YOU WOULD ACTUALLY GET THE CUTTING
7 ITSELF?

8 A YES

9 Q OKAY AND WHAT WERE THE RESULTS OF ANY TESTING
10 YOU HAD ON THE THREE ITEMS, FROM A SEROLOGY
11 STANDPOINT, ON THE THREE ITEMS CUT FROM THE BLACK
12 PANTS

13 MR GREELEY OBJECTION, YOUR HONOR, ON
14 THE GROUNDS PREVIOUSLY STATED IN THIS MATTER

15 THE COURT OVERRULED

16 A ON THE FIRST CUTTING THERE WAS NO SEMEN THAT WAS
17 IDENTIFIED IT WAS, LATER DNA ANALYSIS WAS PERFORMED
18 ON THAT ON THE SECOND CUTTING SEMEN WAS IDENTIFIED
19 ON THAT CUTTING

20 Q AND THAT SECOND CUTTING WOULD BE YOUR NUMBER
21 6 1 2 WE WOULD BE 56 1 2, IS THAT CORRECT?

22 A THAT'S CORRECT

23 Q OKAY AND HOW ABOUT 6 1 3?

24 A NO SEMEN WAS IDENTIFIED ON THAT SAMPLE EITHER

25 Q LIKEWISE I'LL CALL YOUR ATTENTION TO CUTTINGS

1 THAT YOU WOULD HAVE ALSO RECEIVED FROM MRS BRYSON
2 CONCERNING THE PINK SHIRT, YOUR DESIGNATION OF 6 3 1
3 AND 6 3 2 STATE'S EXHIBIT 56 3 1 AND 56 3 2 FIRST
4 REFERRING TO THE CUTTING FROM THE PINK SHIRT 56 3 1,
5 WHAT WAS YOUR RESULTS FROM SEROLOGY IN THAT?

6 A THAT WAS SUBMITTED TO BE TESTED FOR THE PRESENCE
7 OF SEMEN AND A PRESUMPTIVE INDICATION OF SEMEN IN
8 PROCESSING, HOWEVER, THERE WAS NO SEMEN IDENTIFIED ON
9 THAT CUTTING ON THE SHIRT

10 Q OKAY AND NOW AGAIN FROM A SEROLOGY STANDPOINT
11 6 3 2, WHAT WERE THE RESULTS OF YOUR TESTING THERE?

12 A THAT WAS SUBMITTED PRESUMPTIVELY POSITIVE FOR
13 HUMAN BLOOD HUMAN BLOOD WAS IDENTIFIED ON THAT
14 CUTTING

15 Q OKAY AND ON THAT PARTICULAR ITEM DID YOU DO
16 FURTHER DNA TESTING ON THAT ALSO?

17 A YES

18 Q OKAY NOW I'M GOING TO REFER YOU TO THE CUTTING
19 FROM THE GREEN BLANKET AGAIN THAT WAS RETRIEVED BY
20 MRS BRYSON AND I HAVE IT AS YOUR ITEM 7 8 1, STATE'S
21 EXHIBIT ITEM CAME OFF STATE'S EXHIBIT 53, AND WHAT
22 WERE THE RESULTS IN THE CUTTING FROM THE GREEN
23 BLANKET THAT YOU TESTED?

24 A ON THAT CUTTING NO SEMEN WAS IDENTIFIED

25 Q DID YOU ALSO RECEIVE WHAT I BELIEVE TO BE

1 STATE'S EXHIBIT 80 WHICH WAS TWO CUTTINGS FROM THE
2 MATTRESS FROM THERE AT THE SCENE, DID YOU ALSO DO
3 TESTING ON THOSE FROM A SEROLOGY STANDPOINT?

4 A YES, SIR THOSE ARE MY ITEMS 17 AND 18 AND NO
5 SEMEN WAS IDENTIFIED ON THOSE ITEMS

6 Q OKAY NOW I BELIEVE, NOW LOOKING AT THE ITEM
7 THAT YOU HAVE WITH THAT ONE FINAL EXCEPTION I GUESS
8 STATE'S EXHIBIT 65, A WHITE WASH CLOTH, YOU RECEIVED
9 THREE CUTTINGS FROM WHITE CLOTH, IS THAT CORRECT?

10 A YES, THAT'S MY ITEM 14 1, 2, AND 3

11 Q OKAY AND FROM THE CUTTING -- BEG THE COURT'S
12 INDULGENCE YOUR 14 1, 14 2, 14 3, IS THAT CORRECT?

13 A YES

14 Q WHICH 65 1, 65 2, 65 3 THE RESULTS OF, THE
15 SEROLOGY RESULTS OF THE CUTTING FROM THE WHITE WASH
16 CLOTH WERE WHAT?

17 A IT WAS POSITIVE FOR THE PRESENCE OF SEMEN ON ALL
18 THREE OF THOSE CUTTINGS

19 Q THEN DID YOU DO FURTHER DNA TESTING ON THAT?

20 A YES, I DID

21 Q OKAY SIR, NOW YOU RECEIVED A NUMBER OF ITEMS
22 FOR DNA TESTING, IS THAT CORRECT?

23 A YEAH

24 Q OR YOU RECEIVED THIS NUMBER OF ITEMS BUT THEN
25 CERTAINLY YOU WENT FURTHER AND DID DNA TESTING --

1 A YES, SIR

2 Q ---IS THAT CORRECT YOU INDICATED TO THE JURY
3 THAT, I GUESS IT'S KIND OF LIKE HANDWRITING AND
4 FINGERPRINTS, YOU NEED KNOWN STANDARDS TO BE ABLE TO
5 COMPARE SOMETHING TO, IS THAT CORRECT?

6 A THAT'S CORRECT TO DETERMINE THE IDENTITY OF
7 THE ITEM WE HAVE TO HAVE SOMETHING TO COMPARE IT TO

8 Q OKAY IN THIS PARTICULAR CASE DID YOU DEVELOP
9 KNOWN STANDARDS FROM, BEGINNING FIRST WITH IT STATE'S
10 EXHIBIT 28 12, AMANDA COPE, DID YOU DEVELOP A KNOWN
11 DNA PROFILE FROM THAT ITEM, YOUR 1 4?

12 A YES, I DID

13 Q OKAY AND ALSO STATE'S EXHIBIT 33 4 YOUR ITEM
14 I BELIEVE LOOKS 2 4, IS THAT CORRECT?

15 A THAT'S CORRECT THAT'S THE BLOOD STANDARD FROM
16 BILLY WAYNE COPE

17 Q OKAY AND ALSO STATE'S EXHIBIT 100, DID YOU
18 HAVE AN OPPORTUNITY TO RETRIEVE A BLOOD SAMPLE FROM
19 THE ITEM THAT WOULD HAVE BEEN DESIGNATED L-O-2-80-56
20 ITEM NUMBER THREE FOR JAMES SANDERS, DID YOU RETRIEVE
21 A BLOOD SAMPLE FROM THAT ITEM ALSO OR FROM THE TUBE
22 THAT'S REPRESENTED BY THIS ITEM?

23 A YES, I DID

24 Q OKAY

25 MR POPE YOUR HONOR, I BELIEVE 100 WAS

1 FOR IDENTIFICATION, SANDERS SAMPLE, 100 FOR
2 IDENTIFICATION, I MOVE INTO EVIDENCE ALSO

3 MR GREELEY OBJECTION BASED ON MY
4 PREVIOUS GROUNDS

5 THE COURT OVERRULED

6 MR WOOD WITHOUT OBJECTION, YOUR HONOR

7 THE COURT IN WITHOUT OBJECTION FROM COPE
8 AND OVER OBJECTION FROM SANDERS

9 (STATE'S EXHIBIT 100 RECEIVED IN
10 EVIDENCE)

11 Q CALLING YOUR ATTENTION TO 1 4 YOUR 1 4,
12 STATE'S EXHIBIT 28 12, ON THAT PARTICULAR ITEM WHAT
13 IS ACTUALLY PHYSICALLY CONTAINED INSIDE THIS
14 ENVELOPE?

15 A WHAT WE DO IS WHEN WE RECEIVE A BLOOD TUBE AT
16 SLED, IT'S JUST LIKE WHEN YOU GO TO THE DOCTOR AND
17 HAVE BLOOD DRAWN, THEY PUT IT INTO A LITTLE GLASS
18 TUBE, WHAT WE ULTIMATELY LIKE TO DO IS FREEZE THAT
19 TUBE YOU CAN'T FREEZE A LIQUID WITHOUT IT BREAKING
20 THAT GLASS TUBE, SO WHAT WE DO IS WE TAKE THE BLOOD,
21 WE PLACE IT ON CLOTH, COTTON SHEETING, WHICH IS
22 STERILE, AND ALLOW THAT BLOOD TO DRY ON THAT COTTON
23 SHEETING AND THEN WE FOLD THAT UP AND PLACE IT IN A
24 COIN ENVELOPE SIMILAR TO WHAT SOLICITOR HAS, AND
25 WE'RE ABLE TO FREEZE THAT AT THAT POINT WE CAN'T

1 FREEZE AND PRESERVE LIQUID BLOOD, BUT WE CAN FREEZE
2 THE CLOTH, SO THAT'S THE FIRST THING WE DO IS WE
3 PLACE IT ON CLOTH AND YOU SEE THE BLOOD ON THE CLOTH
4 AND IT'S GOT THE NAME OF THE INDIVIDUAL AND THE CASE
5 NUMBER ON THE CLOTH TO IDENTIFIED IT

6 Q I'VE NOTICED EACH OF THESE THREE ITEMS HAS A
7 PINK OR PURPLE LABEL THAT APPEARS TO HAVE BEEN PEELED
8 PERHAPS FROM SOMETHING AND PLACED ON HERE, WHAT ARE
9 THOSE ITEMS?

10 A YES, SIR YOU SEE THE PURPLE LABEL HERE, THAT
11 IS EXACTLY WHAT IS ON THE PURPLE TOP BLOOD TUBE,
12 THAT'S REMOVED USUALLY WHEN THESE ARE SENT TO THE
13 LAB, SOMEONE HAS WRITTEN THE NAME OF THE INDIVIDUAL,
14 MAYBE THE TIME THAT IT WAS DRAWN, AND MAYBE THEIR
15 INITIALS, SOME IDENTIFYING INFORMATION ON THAT
16 SINCE WE'RE GOING TO TOSS THE GLASS TUBE, WE REMOVE
17 THE LABEL THAT HAS THE IDENTIFYING INFORMATION AND
18 PLACE THAT ON THE COIN ENVELOPE

19 Q OKAY AND SO THESE, THE PURPLE TUBES YOU TALK
20 ABOUT WOULD COME FROM WHEREVER THE BLOOD DRAW TAKEN
21 PLACE FROM A SEXUAL ASSAULT KIT OR SUSPECT KIT OR A
22 DOCTOR BUT THE PURPLE TUBE WOULD BE HOW YOU RECEIVE
23 IT INITIALLY?

24 A YES

25 Q AND LIKEWISE FOR BOTH MR COPE AND MR SANDERS,

1 THERE IS A SIMILAR ITEM IN EACH OF THESE ENVELOPES?

2 A YES

3 Q THAT REPRESENTS THAT ALSO I CALL YOUR
4 ATTENTION, WE PREVIOUSLY DISCUSSED THIS STATE'S
5 EXHIBIT 28 4 WHICH IS DESIGNATED AS THE BITE OR SUCK
6 MARK FROM THE RIGHT BREAST AND YOU INDICATED FROM A
7 SEROLOGY STANDPOINT THAT THAT WAS CONSISTENT WITH THE
8 CHEMICAL MAKE UP OF SALIVA?

9 A IT GAVE A CHEMICAL CHARACTERISTIC THAT'S
10 CONSISTENT WITH SALIVARY AMYLASE

11 Q AND ACTUALLY CONTAINED IN THIS ITEM THERE IS A
12 PICTURE HERE, IT'S A SWAB THAT WOULD HAVE, THAT YOU
13 WOULD HAVE DONE YOUR TESTING OFF OF, IS THAT CORRECT?

14 A THAT'S CORRECT WHEN THE, WHEN IT WAS COLLECTED
15 THAT SWAB WAS MOISTENED WITH STERILE WATER OR SALINE
16 OR SOMETHING TO GET IT MOIST TO WHERE IT CAN LIFT OFF
17 THE BODY FLUID APPARENTLY THERE WAS A SPOT SEEN
18 THAT THEY THOUGHT WAS NECESSARY TO COLLECT SO THEY
19 GOT THE SWAB, COLLECTED THAT, AND NOW THE CELLULAR
20 MATERIAL IS ON THE SWAB, IT'S DRIED OUT, AND SENT TO
21 THE LAB FOR ME TO TEST

22 Q AND SO I NOTICE LIKE THE END OF THAT SWAB, THAT'S
23 CONTAINED IN IT APPEARS TO BE TORN UP, YOU ACTUALLY
24 REMOVE PARTS OF IT WHEN YOU DO YOUR TESTING?

25 A YES

002229

1 Q NOW I ALSO CALL YOUR ATTENTION AND WE'VE
2 DISCUSSED THESE ITEMS BRIEFLY ALSO YOU RECEIVE
3 WHAT'S MARKED AS YOUR 6, WOULD IT ASSIST YOU IF STEP
4 DOWN, WITH THE COURT'S PERMISSION

5 THE COURT CERTAINLY

6 A YES, SIR

7 Q IF YOU WOULD LIKE, YOU CAN PUT YOUR REPORT HERE,
8 DOCTOR?

9 A OKAY YES, SIR THIS IS ONE OF THE CUTTINGS
10 FROM THE BLACK PANTS WHAT WE DO IS MAKE WE A SMALL
11 CUTTING FROM THAT, TAKE A PORTION OF IT, AND TEST IT
12 FOR THE PRESENCE OF SEMEN AND IF IT'S POSITIVE, THEN
13 IT GOES ON TO DNA SOMETIMES SAMPLES ARE
14 QUESTIONABLE ABOUT THEIR NATURE IT APPEARS TO BE A
15 STAIN THAT MAY OR MAY NOT BE SEMEN AND WE GO AHEAD
16 AND DO DNA ON IT ANYWAY

17 Q AND OF COURSE THIS ITEM MRS BYRSON INDICATED
18 ABOUT RECOVERED FROM THE PANTS, YOU DON'T RECEIVE THE
19 PANTS, IS THAT CORRECT?

20 A THAT'S RIGHT

21 Q OKAY AND THEN SHE HAD EXPLAINED ABOUT MARKING
22 THE STAIN, THIS SPOT WE SEE THERE, IS THAT WHERE
23 YOU'VE ACTUALLY REMOVED A PIECE FROM WITHIN THE
24 CENTER OF THE STAIN?

25 A YES, THAT'S MY CUTTING

002230

1 Q AND REFERRING, THAT WOULD BE UNDER STATE'S
2 EXHIBIT 56, YOUR NUMBER 6 1 1, 6 1 2, AND THAT'S A
3 SIMILAR SITUATION?

4 A YES

5 Q OKAY THEN 6 1 3 AGAIN THAT WAS A SAMPLE THAT
6 YOU TOOK FROM THERE, IS THAT CORRECT?

7 A THREE CUTTINGS FROM THE BLACK PANTS, YES

8 Q OKAY NOW REFERRING YOU TO THE PINK SHIRT, YOU
9 ACTUALLY RECEIVED TWO CUTTINGS FROM THE PINK SHIRT
10 I BELIEVE THE FIRST ONE YOU SAID NO SEMEN WAS
11 IDENTIFIED, IS THAT CORRECT?

12 A THAT'S CORRECT

13 Q SO AT THAT POINT DID YOU DO FURTHER DNA TESTING
14 ONCE YOU HAVE THE SEMEN IDENTIFIED?

15 A NOT ON THAT PARTICULAR SAMPLE, NO

16 Q NOW I REFER YOU NOW TO 6 3 2 THE CUTTING FROM
17 THE PINK SHIRT AND DID YOU IN FACT DO DNA TESTING
18 ULTIMATELY ON THAT ITEM?

19 A YES, I DID AND YOU CAN SEE THE TRIANGULAR
20 CUTTING THAT I MADE ON THE BLOOD SAMPLE TO DO DNA ON
21 IT

22 Q AND THAT'S IN THAT AREA?

23 A RIGHT, AND IT WAS IDENTIFIED AS HUMAN BLOOD

24 Q NOW REPRESENTING THIS ITEM THAT'S IN EVIDENCE AS
25 STATE'S EXHIBIT 34 I BELIEVE, THE DILDO, DID YOU

1 PHYSICALLY RECEIVE THIS ITEM UP IN DNA?

2 A NO

3 Q WHAT DID YOU ACTUALLY RECEIVE FROM MRS BRYSON?

4 A JAN BRYSON MADE A SWAB OF THAT ITEM AND
5 SUBMITTED THE SWAB FOR DNA ANALYSIS THAT WOULD
6 REPRESENT WHATEVER CELLS WERE ON THE OUTSIDE OF THE
7 DILDO

8 Q OKAY AND LIKEWISE THE WHITE WASH CLOTH, YOU
9 DID NOT PHYSICALLY RECEIVE THE WASH CLOTH ITSELF
10 WHICH IS STATE'S EXHIBIT 65, MARKED AS YOUR ITEM 14,
11 YOU WOULD HAVE THE 1, 2 AND 3, IS THAT CORRECT?

12 A THAT'S CORRECT

13 Q OKAY AND ON EACH OF THESE YOU TESTED INITIALLY
14 AND INDICATED THAT IT WAS SEMEN, IS THAT CORRECT?

15 A YES

16 Q OKAY AND EACH OF THESE ITEMS DID YOU ALSO DO
17 DNA TESTING ON THOSE?

18 A YES, I DID

19 Q OKAY FINALLY I'M GOING TO CALL YOUR ATTENTION
20 TO STATE'S EXHIBIT, YOUR SWAB NUMBER IS 35 I BELIEVE,
21 IT'S UNDER STATE'S EXHIBIT 89, THIS IS FROM THE
22 ENVELOPES SAYS I AIN'T LYING, DID YOU HAVE AN
23 OPPORTUNITY TO SWAB THE ENVELOPE SEAL FROM THIS
24 PARTICULAR ITEM?

25 A YES, I DID

1 Q OKAY AND DID YOU MAKE A COPY OF THIS THAT YOU
2 HAVE IN YOUR OWN MATERIALS TO RECOGNIZE THIS AS WHAT
3 YOU ACTUALLY SWAB FROM?

4 A YES, I DID

5 Q AND IT ALSO HAS BEEN SEALED?

6 A YES, AND I'VE GOT MY INITIALS ON THE EVIDENCE
7 TAPE

8 Q OKAY THANK YOU BEFORE WE GO INTO THE RESULTS
9 THE NUMBER OF ITEMS I'LL WALK THROUGH, IS THAT ALL
10 THE DNA TESTING THESE FEW ITEMS THAT YOU DID IN THIS
11 ENTIRE CASE?

12 A THERE WERE PROBABLY SEVERAL OTHER ITEMS THAT I
13 ENDED UP TESTING THAT --

14 Q AS A MATTER OF FACT, YOU RECEIVED A LARGE NUMBER
15 OF ITEMS IN THIS CASE?

16 A YES, I DID

17 Q OKAY NOW YOU HAD INDICATED OF DEVELOPING KNOWN
18 SAMPLES IN WHICH TO TEST, DID YOU ALSO RECEIVE FROM
19 LAW ENFORCEMENT OVER A PERIOD OF I GUESS ACTUALLY
20 YEARS EVEN, DID YOU RECEIVE FOR A PERIOD OF TIME A
21 NUMBER OF KNOWN INDIVIDUAL SAMPLES FOR YOU TO DEVELOP
22 PROFILES ON AND TO TEST?

23 A YES, I DID

24 Q OKAY LIKEWISE IN THIS PARTICULAR CASE YOU ALSO
25 RECEIVED SWABBINGS, NOW YOU DID NOT PHYSICALLY

1 RECEIVE OF THE BROOMS IN THIS PARTICULAR CASE, IS
2 THAT CORRECT?

3 A THAT'S CORRECT

4 Q WOULD YOU RECEIVE SWABBINGS FROM MRS BRYSON?

5 A YES

6 Q OKAY AND CALLING YOUR ATTENTION TO, MAKE SURE
7 I HAVE YOUR RIGHT NUMBER ON THIS, I THINK IT WOULD BE
8 YOUR 20 THROUGH 25 WHICH I THINK WAS INDICATED A
9 SWABBINGS FROM THE BROOMS, IS THAT WHAT YOU REFLECT?

10 A I'VE GOT A BROOM AS ITEM 20, 21 IS A DUST PAN,
11 22 IS A YELLOW DUST MOP, 23 IS A BROOM WITH A GREEN
12 HANDLE, 24 IS A WALKING CANE, 25 IS A BROOM WITH A
13 RED HANDLE

14 Q OKAY AND THESE ITEMS, YOU NEVER PHYSICALLY,
15 UNTIL YOU CAME UP HERE TODAY, YOU NEVER SAW THESE
16 ITEMS UNTIL YOU JUST RECEIVED A SWAB, IS THAT
17 CORRECT?

18 A THAT'S CORRECT

19 Q AND OF THOSE ITEMS THAT I AM REFERING TO YOUR 20
20 THROUGH 25, IN THOSE ITEMS DID YOU DEVELOP ANY DNA
21 RESULTS OF ANY DNA RESULT SUFFICIENT TO GIVE ANY
22 PROFILE OR ANY FINDING FROM THOSE ITEMS?

23 A FROM EACH ONE OF THESE ITEMS WHAT WE'RE TRYING
24 TO DO IS WHEN YOU HANDLE SOMETHING ESPECIALLY IF YOU
25 HANDLE IT VIGOROUSLY, YOU MAY HAVE EPITHELIAL CELLS

1 OFF YOUR HAND OR DERMAL OFF OF YOUR HANDS THAT WILL
2 END UP ON THIS ITEM AND IF WE CAN GET ENOUGH OF IT,
3 WE CAN GET A DNA PRINT HOWEVER, AN ITEM THAT'S
4 HANDLED LIKE THAT USUALLY HAS A LOW PROBABILITY OF
5 GIVING UP DAN IT USUALLY TAKES SOMETHING A LITTLE
6 MORE VIGOROUSLY THAN JUST SWEEPING THE FLOOR AND I
7 WASN'T ABLE TO DEVELOP A FULL PRINT ON ANY OF THESE
8 BY ANY MEANS AND WHAT PRINTS I WAS ABLE TO GET OFF A
9 FEW OF THE ITEMS REALLY WASN'T SUFFICIENT FOR
10 INTERPRETATION

11 Q OKAY AND SO ON THAT SWAB THAT WE LISTED THERE,
12 THERE REALLY JUST WERE NOT ENOUGH RESULTS, I MEAN
13 THERE IS NO GREAT VOLUME OF FLUIDS OR SEMINAL FLUIDS
14 OR BLOODS OR ANYTHING THAT YOU COULD DO ANY TESTING
15 ON THOSE ITEMS?

16 A THAT'S CORRECT

17 Q NOW I CALL YOUR ATTENTION TO I BELIEVE IT'S
18 GOING TO BE LISTED AS YOUR ITEM 10 1 AND 10 2 WHICH
19 ACTUALLY ALSO HAD 10 4 THAT WERE SWABS FROM THE BLUE
20 BROOM IN THIS CASE WHICH IS INDICATED AS STATE'S
21 EXHIBIT STATE'S EXHIBIT 57 NOW DID YOU HAVE
22 SOMEWHAT OF A DIFFERENT RESULT ON THAT PARTICULAR
23 ITEM?

24 YES, I DID I GOT A DNA PRINT OFF OF THAT
25 BROOM THAT WAS CONSISTENT WITH BEING A MIXTURE MORE

1 THAN ONE INDIVIDUAL, POSSIBLY EVEN BEING MULTIPLE
2 INDIVIDUALS IF I WAS TO HANDLE AN ITEM AND THEN
3 PASS IT AROUND THE ROOM, WE'D ALL GET OUR DNA ON
4 THAT WHEN I DEVELOP A DNA PRINT I'M ABLE TO TELL
5 THAT MORE THAN ONE PERSON IS ON THAT ITEM WE SAW
6 THIS, THE SPIKES ON THE CHART A MINUTE AGO, YOU GET
7 ONE FROM YOUR MOM, ONE FROM YOUR DAD, SO TWO IS
8 USUALLY WHAT WE EXPECT TO SEE SOMETIMES ONE IF MOM
9 AND DAD GIVE YOU THE SAME SPIKE, THE SAME PEAK I
10 CAN TELL I'VE GOT A MIXTURE IF I START SEEING THREE,
11 FOUR, FIVE PEAKS AND THAT'S WHAT I SAW ON THE BROOM
12 I'VE GOT A MIXTURE OF MORE THAN ONE INDIVIDUAL ON MY
13 ITEM 10 1 WHAT WE DO ONCE WE DEVELOP PRINTS LIKE
14 THOSE WE SEE IF AN INDIVIDUAL CAN BE EXCLUDED AS
15 CONTRIBUTING TO THAT BROOM AMANDA COPE COULD NOT BE
16 EXCLUDED FROM BEING A CONTRIBUTOR OF THAT MIXTURE,
17 BUT AGAIN SHE WASN'T THE PRIMARY CONTRIBUTOR OF THE
18 MIXTURE

19 Q OKAY AND WHEN YOU SAY MIXTURE AT THIS POINT
20 WAS THERE SEMEN OR BLOOD OR ANYTHING, YOU KNOW, MAJOR
21 THAT YOU WERE SEEING ON THIS PARTICULAR ITEM?

22 A THOSE PARTICULAR ITEMS THEY WEREN'T TESTED
23 FOR -- WELL, JUST A SECOND LET ME MAKE SURE I'M
24 SPEAKING CORRECTLY THOSE WERE JUST SUBMITTED FOR
25 DNA ANALYSIS WHAT THEY DID WAS THEY SWABBED THOSE

1 WITH HOPES OF PICKING UP THE CELLS OFF OF THE BROOM
2 SO THERE WAS --

3 Q ---THAT COULD BE?

4 A NO BODY FLUID THAT WAS ON IT

5 Q OKAY SO WHAT YOU ARE TALKING EPITHELIAL OR
6 SKIN?

7 A DERMAL CELLS, RIGHT

8 Q AND IN FAIRNESS ALTHOUGH SHE WAS INCLUDED THERE
9 WAS NOT, BASED ON YOUR EXPERIENCE, THE VOLUME OF DNA
10 YOU WOULD EXPECT TO SEE SAY FOR EXAMPLE IF SHE HAD
11 BEEN ASSAULTED WITH THAT BROOM, YOU DIDN'T SEE THAT
12 VOLUME WHEN YOU TALK ABOUT HER BEING A MINOR
13 CONTRIBUTOR?

14 A THAT'S CORRECT WE'VE BEEN ABLE IN THE PAST TO
15 HAVE ITEMS THAT HAVE BEEN INSERTED INTO A PERSON THAT
16 WE WERE ABLE TO GET A FULL DNA PROFILE, OR STRONG DNA
17 PROFILE FROM THOSE ITEMS, SO THIS WASN'T REALLY
18 CONSISTENT WITH THAT

19 Q OKAY JUST AGAIN IN FAIRNESS TO ASK YOU, CAN
20 DNA BE WIPED OFF OR REMOVED IF I CHOOSE TO CLEAN AN
21 ITEM?

22 A CERTAINLY

23 Q I NOW CALL YOUR ATTENTION I BELIEVE THERE WERE
24 ALSO SOME HAIRS THAT YOU RECOVERED, I THINK THAT WERE
25 RECOVERED FROM MR COPE'S CLOTHES, I'M REFERRING TO

1 YOUR ITEM 39 2 1?

2 A OKAY

3 Q I BELIEVE THAT THOSE HAIRS WERE IN FACT, THE
4 HAIRS RECOVERED FROM MR COPE WERE CONSISTENT WITH
5 MR COPE, IS THAT CORRECT?

6 A THEY MATCHED BILLY COPE, YES

7 Q AND LIKEWISE YOU HAD A NUMBER OF ITEMS OR HAIRS
8 THAT WERE RECOVERED I THINK OFF OF AMANDA COPE'S
9 BODY I'M REFERRING TO YOUR 1 3 1 AND AN ITEM NUMBER
10 THREE AND FROM YOUR RESULTS, THE HAIRS THAT WERE
11 FOUND ON HER BODY THEY WERE CONSISTENT WITH AMANDA
12 COPE, IS THAT ACCURATE ALSO?

13 A I GOT DNA PRINTS FROM ITEM 1 3 1 THAT WAS
14 CONSISTENT WITH COMING FROM AMANDA COPE FROM ITEM
15 NUMBER THREE IT WAS ALSO CONSISTENT WITH COMING FROM
16 AMANDA

17 Q OKAY ALSO YOU RECEIVED IN THE SEXUAL ASSAULT
18 KIT THE FINGERNAIL SCRAPES WHICH IS YOUR 1 11, WERE
19 THEY ALSO FOUND, THAT WOULD HAVE BEEN TAKEN FROM THE
20 VICTIM AMANDA COPE'S FINGERNAILS, WERE THEY FOUND TO
21 BE CONSISTENT WITH AMANDA COPE?

22 A YES, THEY WERE, AND THAT'S NOT UNUSUAL THE WAY
23 WE COLLECT THESE SCRAPINGS IS WE SCRAPE UNDER THE
24 FINGERNAIL HOPING TO COLLECT IF THE VICTIM HAS
25 SCRATCHED SOMEBODY OR CAME IN CONTACT WITH SOMEBODY

1 COLLECT CELLS FROM WHOEVER THAT PERSON IS QUITE
2 OFTEN THEY COLLECT CELLS FROM THE VICTIM SO THAT CAME
3 BACK TO MATCH HER

4 Q OKAY I WANT TO MAKE SURE YOU HAD A FEW ITEMS,
5 FOR EXAMPLE, THERE WAS A HAIR THAT WAS FOUND ON THE
6 VICTIM ALSO THAT WAS INSUFFICIENT FOR DNA ANALYSIS SO
7 THAT MEANS YOU COULD DO NOTHING FURTHER WITH THAT
8 ITEM, IS THAT CORRECT? I'M REFERRING TO YOUR ITEM
9 FOUR?

10 A I DIDN'T ATTEMPT DNA ON IT WHAT HAPPENED TO
11 ITEM NUMBER FOUR IS THAT IT DID NOT HAVE A ROOT TO
12 DO THE TYPE OF DNA TESTING THAT WE DO IS THAT WHEN A
13 HAIR IS PULLED IT SOMETIMES PULLS UP SOME OF THE ROOT
14 MATERIAL AND WE TEST THE ROOT IF IT'S JUST A HAIR
15 SHAFT, IT DOESN'T HAVE A ROOT, IT'S MAYBE CLIPPED,
16 CUT, OR BREAKS OFF, I CAN'T DO ANY TESTING ON THAT

17 Q AND THERE WAS ALSO I THINK THE NEXT ONE WAS A
18 FIBER, THEY THOUGHT WAS A HAIR, WAS A FIBER, IS THERE
19 ANY DNA YOU CAN GET FROM A FIBER?

20 A NO, SIR FIBER IS MAN MADE POLYESTER OR NYLON
21 OR WHATEVER

22 Q SO AT THAT JUNCTURE ONCE YOU RECOGNIZE IT BEING
23 A FIBER, YOU DON'T DO ANY TESTING ON THAT?

24 A THAT'S CORRECT

25 Q OKAY I'M GOING TO CALL YOUR ATTENTION NOW TO

1 THE RESULTS, AND I SAY RESULTS YOU GOT A NUMBER OF
2 RESULTS BACK EXCLUDING ITEMS OR NOT DEVELOPING
3 PROFILES BECAUSE AN ABSENCE OF MATERIALS TOO, BUT
4 THERE ARE A NUMBER THAT YOU DID FIND CERTAIN MATCHES
5 IN THIS CASE, IS THAT CORRECT?

6 A YES, I DID

7 Q OKAY I CALL YOUR ATTENTION TO WHAT WOULD BE
8 YOUR 6 1 2 DESIGNATED AS THE BACK LEFT OF THE PANTS
9 AND TELL WHAT RESULTS YOU HAD INDICATED SEMEN IF YOU
10 COULD EXPLAIN THE RESULTS ON THAT ITEM PLEASE

11 A OKAY

12 MR GREELEY OBJECTION SUBJECT TO MY
13 FORMAL GROUNDS

14 THE COURT OVERRULED

15 Q ONCE WE IDENTIFIED IT AS SEMEN I PERFORMED DNA
16 ANALYSIS ON THIS PARTICULAR ITEM THE DNA PROFILE
17 THAT WAS DEVELOPED FROM THE SEMEN ON THIS ITEM
18 MATCHED JAMES SANDERS AND THE PROBABILITY OF
19 SELECTING SOMEONE AT RANDOM FROM THE POPULATION THAT
20 WOULD HAVE THAT DNA PROFILE UNRELATED TO HIM IS 1 AND
21 1 3 QUINTILLION A QUINTILLION WOULD BE 1 3 FOLLOWED
22 BY 18 ZEROS, SO IF YOU COUNT OUT IT'S A BILLION,
23 TRILLION, QUADRILLION, QUINTILLION, SO IT'S AN
24 EXTREMELY RARE DNA PROFILE AND IT MATCHES JAMES
25 SANDERS?

1 Q AND UNDERSTAND THAT ONE AND ONE THREE
2 QUINTILLION, YOU SAY THAT THIS MATCHES HIM, TO FIND
3 SOME OTHER INDIVIDUAL TO HAVE THE SAME PROFILE YOU'D
4 HAVE TO GO THROUGH 1 POINT 3 QUINTILLION PEOPLE TO DO
5 IT --

6 A THAT'S APPROXIMATELY THE ESTIMATE OF HOW
7 FREQUENTLY THAT PROFILE WOULD APPEAR IN THE
8 POPULATION

9 Q HOW MANY QUINTILLION ON THE PLANT?

10 A NONE WE ARE SOMEWHERE BETWEEN SIX AND SEVEN
11 BILLION RIGHT NOW, SO THIS IS RARER THAN THE
12 POPULATION OF THE PLANET IN BILLION FOLD SO YOU CAN
13 SAY WITHIN A DEGREE OF SCIENTIFIC CERTAINTY THAT THIS
14 SEMEN ON THOSE PANTS CAME FROM JAMES SANDERS

15 Q AND NOW I'M REFERRING YOUR ITEM 1 12 THE BITE
16 MARK TO THE RIGHT BREAST, WHAT IF ANY RESULTS WERE
17 YOU ABLE TO DETERMINE THERE I THINK YOU INDICATED
18 INITIALLY THE CHEMICAL COMPOSITIONS CONSISTENT WITH
19 SALIVA AND YOU EXPLAINED THE DISTINCTION THERE, BUT
20 WHAT AS FAR AS DNA WERE YOU ABLE TO DETERMINE

21 A ON THE --

22 MR GREELEY OBJECTION, RENEW MY MOTION
23 ON PREVIOUS GROUNDS

24 THE COURT OVERRULED

25 A ON THE DNA PROFILE COLLECTED FROM THE BITE MARK

1 FROM AMANDA'S RIGHT BREAST, IN THIS PARTICULAR SAMPLE
2 WE'RE TESTING FOR CELLS THAT ARE LEFT BEHIND IN THE
3 SALIVA, SLOUGHED OFF IN YOUR SALIVA YOU HAVE CELLULAR
4 MATERIAL IF THE MOUTH COMES IN CONTACT WITH AN ITEM
5 YOU MAY LEAVE YOUR DNA PRINT THERE IN THIS
6 PARTICULAR CASE THAT SALIVA ON HER BREAST MATCHED
7 JAMES SANDERS IN THE PROBABILITY OF SELECTING AN
8 UNRELATED INDIVIDUAL AT RANDOM IN THE POPULATION THAT
9 WOULD HAVE THAT PROFILE IS 1 AND 3 6 QUADRILLION
10 NOW THAT'S A DIFFERENT NUMBER THAN THE PREVIOUS
11 NUMBER BECAUSE I DIDN'T GET A COMPLETE DNA PROFILE
12 I GOT MOST OF A PROFILE, ALMOST 100 PERCENT OF A
13 PROFILE, BUT THERE WERE A COUPLE OF THOSE S-T-R
14 LOCATIONS THAT DIDN'T COME UP AND THE REASON BEING IS
15 THAT APPEARED THAT, ESPECIALLY WITH A SALIVA SAMPLE,
16 THERE IS BACTERIA IN YOUR SALIVA, AND BACTERIA THAT
17 WOULD CAUSE YOUR DNA TO DEGRADE AND SO THOSE LARGER
18 S-T-R LOCATIONS WENT AWAY AND I MISSED A COUPLE OF
19 THEM IN TESTING THAT AND SO THAT'S WHY THE NUMBER
20 WENT DOWN A LITTLE BIT, BUT WE STILL GOT PLENTY TO
21 INDICATE THAT JAMES SANDERS WITHIN A DEGREE OF
22 SCIENTIFIC CERTAINTY WAS THE SOURCE OF THAT SAMPLE
23 Q NOW AGAIN YOU RECEIVED THE SWAB FROM THE DILDO
24 AND YOU RECEIVED ACTUALLY PHYSICAL SWABS THAT
25 INDICATES THAT WAS A MIXTURE, CAN YOU EXPLAIN WHAT

1 YOUR RESULTS WERE IN THAT REGARD?

2 A ON THAT PARTICULAR ITEM I SAW THE MAJOR
3 CONTRIBUTOR TO THAT ITEM IS A FEMALE THAT I DID NOT
4 HAVE A BLOOD STANDARD FOR IT DID NOT MATCH AMANDA
5 AS THE MAJOR CONTRIBUTOR AND THERE WAS ALSO THE
6 PRESENCE OF A MINOR CONTRIBUTOR WHO IS A MALE ON THAT
7 ITEM THAT WAS CONSISTENT WITH COMING FROM BILLY WAYNE
8 COPE THE PROFILE FROM THE FEMALE, SINCE I HAVE
9 BILLY WAYNE COPE'S PROFILE AND AMANDA'S PROFILE, I
10 COMPARED THOSE AND SAW THAT IN FACT SHE SHARED PEAK
11 AT EVERY ONE OF THE S-T-R LOCATIONS WHICH INDICATES
12 THAT SHE'S THE BIOLOGICAL DAUGHTER OF BILLY WAYNE
13 COPE THE MAIN PROFILE ON THIS ITEM WAS CONSISTENT
14 WITH BEING THE MOTHER OF AMANDA COPE, SO THE MAJOR
15 PROFILE MATCHED THE FEMALE AGAIN IT WAS CONSISTENT
16 WITH BEING THE MOTHER OF AMANDA COPE THE MINOR
17 PROFILE MATCHED BILLY WAYNE COPE AS BEING THE FATHER,
18 BUT BECAUSE WE'RE A COMBINATION OF OUR MOTHER AND
19 FATHER, IF AMANDA COPE'S DNA PROFILE WAS ON THERE
20 PRESENT, WE WOULDN'T BE ABLE TO DETECT IT BECAUSE IT
21 WOULD BE MASKED BY THE MOTHER AND FATHER'S PROFILES
22 BUT AGAIN THE MAJOR PROFILE BY FAR WAS THE FEMALE
23 WHICH WAS CONSISTENT WITH BEING THE MOTHER

24 Q SO IF YOU HAVE A MIXTURE OF MOTHER AND FATHER
25 THEN ARGUABLY YOU COULD NEVER DO A TRUE PROFILE OF

1 THE CHILDREN BECAUSE IT WOULD BE WITHIN THAT?

2 A IT DEPENDS ON HOW MUCH THEY DONATED TO THE
3 SAMPLE IF THEY WERE MINOR, MINOR CONTRIBUTORS YOU
4 PROBABLY WOULDN'T BE ABLE TO TELL WHETHER THEY WERE
5 IN THAT SAMPLE OR NOT IF THEY WERE MAJOR
6 CONTRIBUTORS TO THAT SAMPLE THEN WE WOULD BE ABLE TO,
7 I WOULD HAVE BEEN ABLE TO QUOTE A STATISTIC, BUT THE
8 MAJOR CONTRIBUTOR WAS CONSISTENT WITH BEING AMANDA
9 COPE'S MOTHER

10 Q THANK YOU I'LL NOW REFER TO YOUR 14 1 THROUGH
11 3 THE ITEMS CUT FROM THE WHITE WASH CLOTH?

12 A OKAY ON THESE THREE ITEMS WE IDENTIFIED SEMEN
13 ON THE WASH CLOTH DID A DNA PROFILE THAT WAS
14 MATCHED BILLY WAYNE COPE AND THE PROBABILITY OF
15 SELECTING AN UNRELATED INDIVIDUAL AT RANDOM FROM THE
16 POPULATION THAT MATCHED THE SEMEN ON THAT WASH CLOTH
17 WAS ONE OUT OF EVERY 15 BILLION INDIVIDUALS

18 Q OKAY NOW REFER YOU FINALLY TO THE SWAB, YOUR
19 ITEM 35, THE SWAB FROM THE ENVELOPE FLAP, IF YOU CAN
20 TELL THE JURY WHAT THE RESULTS IN THE DNA TESTING OF
21 THAT ENVELOPE FLAP?

22 A OKAY I RECEIVED THE ENVELOPE, I SWABBED THE
23 GUMMED AREA OF THE ENVELOPE WITH A Q-TIP TO EXTRACT
24 DNA FROM THAT I DEVELOPED A DNA PRINT THAT MATCHED
25 BILLY WAYNE COPE AND AGAIN THE PROBABILITY OF

1 SELECTING AN UNRELATED INDIVIDUAL AT RANDOM THAT
2 MATCHED THE DNA PROFILE FROM THE GUM FLAP FROM THE
3 ENVELOPE IS ONE OUT OF EVERY 300 TRILLION
4 INDIVIDUALS

5 Q YOU CAN HAVE A SEAT PLEASE

6 MR POPE BEG THE COURT'S INDULGENCE

7 Q GOING BACK, YOU WERE TESTING EPITHELIAL CELLS ON
8 THE ENVELOPE FLAP BASED ON WHERE YOU SUSPECT TO FIND,
9 IS THAT CORRECT?

10 A THAT'S CORRECT

11 Q OKAY AND THEN GOING BACK, ON THE WHITE WASH
12 CLOTH YOU TESTED SEMEN ON THAT WASH CLOTH, SO YOU DID
13 A SEROLOGY TEST FIRST THEN IDENTIFIED THE SEMEN, AND
14 THEN YOU DID THE DNA TEST, IS THAT CORRECT?

15 A THAT'S CORRECT

16 Q OKAY AND LIKEWISE I THINK IT WAS THE ITEM ON
17 THE BLACK PANTS THAT MATCHED MR SANDERS, THAT YOU
18 HAD A SEMEN TEST AND THEN YOU HAD THE DNA RESULT FROM
19 THAT, IS THAT CORRECT?

20 A YES

21 Q OKAY NOW EITHER FROM MR COPE OR MR SANDERS
22 YOU HAD INDICATED HOW YOU RECEIVED ITEMS FROM SUSPECT
23 KITS, YOU KNOW, THERE MAY BE BLOOD OR HAIRS OR
24 DIFFERENT THINGS TO GO TO DIFFERENT PARTS AT SLED,
25 YOU DON'T RECEIVE ANY SEMEN FROM EITHER DEFENDANT IN

1 ANY SUSPECT THAT COULD ACCIDENTALLY TEST FOR SEMEN,
2 DO YOU?

3 A NO

4 Q SEMEN DOESN'T COME TO YOU, WHEN THEY COLLECT
5 BLOOD OR HAIR OR ANYTHING, THEY DON'T COLLECT SEMEN
6 TO PUT IT ON?

7 A THAT'S CORRECT

8 Q OKAY ANSWER ANY QUESTIONS THE DEFENSE MAY
9 HAVE

10 THE COURT MR WOOD

11 CROSS EXAMINATION BY MR WOOD

12 Q GOOD AFTERNOON, DR LAMBERT

13 A GOOD AFTERNOON

14 Q HOW ARE YOU, SIR?

15 A DOING GOOD

16 Q GOOD DR LAMBERT, IN ORDER FOR TO YOU TEST
17 ITEMS OF EVIDENCE THOSE ITEMS HAVE TO BE SUBMITTED TO
18 YOU BY THE LOCAL LAW ENFORCEMENT AGENCY THAT IS
19 INVESTIGATING THE CASE, IS THAT RIGHT?

20 A UNLESS SLED PERFORMED THE CRIME SCENE,
21 EVERYTHING COMES FROM THE LOCAL AGENCIES

22 Q SO IN THIS CASE THE LOCAL LAW ENFORCEMENT AGENCY
23 DID THE CRIME SCENE IN ORDER FOR YOU TO TEST AN ITEM
24 THAT LOCAL LAW ENFORCEMENT AGENCY WOULD HAVE TO
25 SUBMIT THE ITEM TO SLED, IS THAT ACCURATE?

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1 A THAT'S CORRECT

2 Q NOW IF THEY DON'T SEND YOU AN ITEM IN EVIDENCE
3 THEN IT DOESN'T GET TESTED, IS THAT A FAIR STATEMENT?

4 A THAT'S CORRECT

5 Q NOW WHEN YOU PERFORM THESE TESTS YOU WEAR
6 GLOVES, CORRECT?

7 A YES

8 Q AND DO YOU THAT TO PREVENT CONTAMINATION?

9 A THAT'S CORRECT

10 Q AND THAT'S ALSO BECAUSE THESE DNA TESTS ARE SO
11 SENSITIVE IT JUST TAKES A FEW CELLS TO GET A RESULT,
12 IS THAT A FAIR STATEMENT?

13 A SOMEWHERE AROUND 150 CELLS WILL TYPICALLY GIVE
14 YOU A RESULT NOW IF IT'S MIXED IN WITH SOMETHING
15 WHERE IT IS THOUSANDS AND MILLIONS OF CELLS, YOU MAY
16 NOT GET A RESULT FROM THAT 150 CELLS BECAUSE THE
17 MILLIONS OF CELLS WILL WASH OUT THE SMALL AMOUNT OF
18 DNA

19 Q NOW THERE IS A LAB TESTS THAT CAN BE RUN DOWN AT
20 SLED THAT INDICATE THE SOURCE OF THE CELLULAR DNA, IS
21 THAT CORRECT?

22 A DNA TYPING, RIGHT WHEN YOU SAY SOURCE DO YOU
23 MEAN---

24 Q I MEAN SALIVA?

25 A THAT'S CORRECT, THAT WOULD BE SEROLOGY TESTING

1 Q AND CAN YOU DETECT SEMEN, CORRECT?

2 A YES

3 Q AND VAGINAL FLUID?

4 A THERE IS NOT A TEST THAT WE PERFORM THAT
5 SPECIFIC FOR VAGINAL FLUID, NO

6 Q AND HUMAN BLOOD, RIGHT?

7 A YES

8 Q AS TO WHAT'S BEEN MARKED STATE'S EXHIBIT 57, THE
9 BLUE BROOM, I THINK IN YOUR REPORTS IT'S REFERENCED
10 AS ITEM 10, YOU TESTED A SWAB FROM THIS UPPER PORTION
11 OF THE BROOM HANDLE, IS THAT RIGHT? RIGHT UP HERE?

12 A THERE WERE THREE SWAB -- EXCUSE ME THERE WERE
13 TWO SWABS TAKEN FROM THE BROOM AND ONE HAIR THAT WAS
14 INSUFFICIENT FOR ANALYSIS SWAB 10 1 I'M PRETTY SURE
15 IS FROM THE TOP PART OF THE BROOM AGAIN I DIDN'T
16 TAKE THESE SWABS AND 10 2 AGAIN IS FROM THE UPPER
17 PORTION OF THE BROOM ONE WAS FROM THE HANDLE, ONE
18 WAS FROM THE BROOM ITSELF

19 Q WHAT IS THE SOURCE OF THE DNA ON ITEM TEN?

20 A I DID NOT ANALYZE TO DETERMINE THE SOURCE OF
21 THAT DNA

22 Q BUT IT'S NOT FROM BLOOD, IS THAT FAIR TO SAY?

23 A NO, IF IT WAS BLOOD I WOULD HAVE TESTED IT

24 Q OKAY AND IT'S NOT FROM SEMEN?

25 A THAT'S CORRECT

1 Q SO THE DNA THAT YOU FOUND ON THE BLUE HANDLED
2 BROOM IS CONSISTENT WITH EPITHELIAL CELLS OR CELLS
3 FROM SOMEONE'S HAND THAT WOULD HAVE USED THAT BROOM?

4 A THAT'S ONE THING THAT IT WOULD BE CONSISTENT
5 WITH

6 Q AND THERE WAS DNA FOUND ON THE WHITE WASH CLOTH
7 THAT'S UP ON THAT SCREEN IT WAS CONSISTENT WITH
8 MR COPE, CORRECT?

9 A FROM SEMEN ON THAT WASH CLOTH, YES

10 Q NOW WHEN YOU TESTED THAT WASH CLOTH FOR SEMEN
11 THAT RESULT DOESN'T INDICATE WHEN THAT SEMEN GOT ON
12 THE WASH CLOTH, DOES IT?

13 A NO

14 Q AND IT DOESN'T INDICATE WHAT THE MANNER THAT
15 THAT SEMEN CAN BE PLACED ON THAT WASH CLOTH, DOES IT?

16 A THAT'S CORRECT

17 Q AND IN FACT, THE SEMEN COULD HAVE BEEN ON THAT
18 WASH CLOTH FOR DAYS, WEEKS, EVEN MONTHS, BEFORE
19 NOVEMBER 29, 2001, CORRECT?

20 A THAT'S CORRECT

21 Q NOW AS FAR AS THE ENVELOPE YOU'VE DETECTED
22 MR COPE'S DNA ON THE FLAP OF THE ENVELOPE, IS THAT
23 CORRECT?

24 A YES, SIR

25 Q NOW THAT DNA RESULT THAT DOES NOT INDICATE WHEN

1 MR COPE'S SALIVA WAS PLACED ON THAT ENVELOPE, IS
2 THAT RIGHT?

3 A THAT'S CORRECT

4 Q AND THE FACT THAT BILLY'S DNA WAS ON THAT
5 ENVELOPE FLAP DOESN'T INDICATE WHO WROTE THE LETTER
6 THAT WAS PLACED IN THAT ENVELOP, IS THAT A FAIR
7 STATEMENT?

8 A I'M JUST TESTING THE DNA I'M NOT THE
9 HANDWRITING EXPERT

10 Q NOW THE LETTER THAT WAS CONTAINED IN THAT
11 ENVELOPE THAT WAS NOT SUBMITTED TO YOU FOR DNA
12 TESTING, IS THAT CORRECT?

13 A THAT'S CORRECT

14 Q AND BECAUSE IT WASN'T SUBMITTED TO YOU, OF
15 COURSE, YOU COULDN'T TEST IT FOR DNA?

16 A THAT'S CORRECT

17 Q NOW DR LAMBERT, IF SOMEONE WERE TO CHOKE
18 ANOTHER PERSON, VIOLENTLY STRANGLE THEM, LEAVES MARKS
19 ON THE NECK, COULD A SWAB BE TAKEN FROM THAT BRUISING
20 AND POSSIBLY THERE BE DNA MATERIAL FROM THE PERSON
21 WHO DID THE CHOKING ON THAT SWAB?

22 A COULD BE I'VE NEVER HAD A CASE SUBMITTED IN
23 THAT FASHION WHERE I RECEIVED EPIDERMAL CELLS OFF OF
24 ANOTHER PERSON'S BODY BUT IT THEORETICALLY COULD BE

25 Q IF THAT WAS DONE AND THAT SWAB WAS SENT TO YOU

1 AND YOU TESTED IT AND YOU COULD DETECT DNA, IT WOULD
2 BE A PRETTY IMPORTANT PIECE OF EVIDENCE, WOULDN'T IT?

3 A IF THAT WAS DETECTED, YES

4 Q IN THIS CASE THERE WAS NO SWAB SUBMITTED FROM
5 THE NECK OF AMANDA COPE, IS THAT RIGHT?

6 A THAT'S CORRECT

7 Q NOW IF SOMEONE WERE INVOLVED IN A VIOLENT,
8 BRUTAL, BLOODY RAPE THEY MAY HAVE BLOOD OR DNA
9 UNDERNEATH THEIR FINGERNAILS, IS THAT RIGHT?

10 A DEPENDS ON HOW IT'S COMMITTED BUT THAT WOULD BE
11 A POSSIBILITY YOU ARE TALKING ABOUT THE SUSPECT
12 WOULD HAVE --

13 Q THE SUSPECT, YES, SIR

14 A THAT WOULD BE A POSSIBILITY IF IT WAS COLLECTED
15 SOON ENOUGH AND AGAIN IT DEPENDS ON HOW THE RAPE
16 OCCURRED

17 Q NOW BILLY COPE'S FINGERNAIL SCRAPINGS WERE NOT
18 SUBMITTED TO YOU FOR TESTING, IS THAT RIGHT?

19 A I DIDN'T RECEIVE ANY SCRAPINGS FROM BILLY COPE

20 Q NOW DR LAMBERT, I'M JUST GOING TO GO THROUGH
21 SOME ITEMS OF EVIDENCE AND I'M GOING USE THE NUMBERS
22 ON YOUR REPORT AND ON A COUPLE OF THEM I'M GOING TO
23 USE THE COURT'S EXHIBIT NUMBER, OKAY, BUT SO THAT YOU
24 CAN FOLLOW ALONG, I'M GOING TO USE THE NUMBERS RIGHT
25 OFF OF YOUR REPORT?

1 A OKAY

2 Q YOU TESTED ITEMS 6 1 1 AND THOSE WERE THE BLACK
3 PANTS RECOVERED FROM AMANDA COPE, IS THAT RIGHT?

4 A THAT'S CORRECT

5 Q AND NONE OF BILLY COPE'S DNA WERE ON THE SAMPLE
6 THAT WAS SUBMITTED TO YOU, IS THAT RIGHT?

7 A THAT'S CORRECT

8 Q NOW ITEM 6 3 1 THAT WAS A PINK SHIRT THAT WAS
9 FROM THE VICTIM'S BODY, THAT'S AMANDA SHIRT, NONE OF
10 MR COPE'S DNA SHOWED UP ON THAT SHIRT, IS THAT
11 RIGHT?

12 A THE CUTTING THAT I TESTED WAS 6 3 2 AND IT
13 MATCHED AMANDA

14 Q OKAY THE GREEN BLANKET 7 8 1 THE BEDDING FROM
15 AMANDA'S BED THAT WAS SUBMITTED TO YOU AND IT WAS
16 TESTED FOR DNA, CORRECT?

17 A THAT'S CORRECT

18 Q AND NONE OF BILLY COPE'S DNA WAS ON THAT
19 BLANKET, IS THAT RIGHT?

20 A THAT'S CORRECT

21 Q NOW TWO CUTTINGS FROM THE MATTRESS, I BELIEVE
22 THAT'S ITEM 17 AND 18, THEY WERE TESTED FOR DNA,
23 CORRECT?

24 A THEY WERE TESTED FOR SEROLOGY AND LET ME REFER
25 BACK TO THE GREEN BLANKET, DNA TESTING WAS NOT

1 PERFORMED ON THAT, SEROLOGY TESTING WAS PERFORMED,
2 AND NO SEMEN WAS IDENTIFIED ON EITHER THE BLANKET OR
3 FROM THE MATTRESS, SO IT DIDN'T GO ON TO DNA

4 Q AND NONE OF MR COPE'S BLOOD WAS DETECTED ON
5 THOSE CUTTINGS, IS THAT FAIR TO SAY?

6 A THAT'S CORRECT

7 Q GOING TO YOUR ITEM 21 1 AND 20 2, STATE'S
8 EXHIBIT 58, IT'S A RED HANDLED BROOM, ANY BLOOD
9 RECOVERED FROM THAT BROOM, SIR?

10 A NO, I THINK IT WAS JUST EPITHELIAL CELLS THAT
11 WERE RECOVERED

12 Q 22 1, IT'S A YELLOW HANDLED DUST MOP, STATE'S
13 EXHIBIT 60, NO BLOOD RECOVERED FROM THAT DUST MOP?

14 A SKIN CELLS WERE WHAT WERE SUBMITTED, SO NO BLOOD
15 WAS SUBMITTED OFF THAT ITEM

16 Q AND SO IT'S FAIR TO SAY THAT NO BLOOD WAS
17 RECOVERED FROM THIS HANDLE, IS THAT CORRECT?

18 A IT WAS EXAMINED IN OUR PROCESSING LAB AND NO
19 BLOOD WAS FOUND ON IT

20 Q LET'S LOOK AT ITEM 62, THAT'S -- EXCUSE ME,
21 STATE'S EXHIBIT 62, THAT'S A WALKING CANE IT'S YOUR
22 ITEM 24 1 AND 24 2 SUBMITTED TO YOU AND IT'S FAIR
23 TO SAY THAT NO BLOOD WAS FOUND ON THIS CANE, IS THAT
24 RIGHT?

25 A THAT'S CORRECT

1 Q ITEM 23 1 AND 23 2, STATE'S EXHIBIT 61, FAIR TO
2 SAY NO BLOOD DETECTED ON THIS ITEM, IS THAT CORRECT?

3 A THAT'S CORRECT

4 Q LAST ONE, DR LAMBERT THAT IS STATE'S EXHIBIT
5 63, ITEM 25 1 AND 25 2

6 A NO BLOOD WAS DETECTED

7 Q THANK YOU, SIR NOW LET'S TALK ABOUT YOUR ITEM
8 11 1 1, THAT IS THE DILDO THAT'S IN EVIDENCE?

9 A OKAY

10 Q NOW YOU CAN'T TELL THE JURY THAT THAT DILDO WAS
11 EVER PLACED INTO AMANDA COPE'S BODY, IS THAT CORRECT?

12 A THAT'S CORRECT

13 Q AND THE REASON YOU CAN'T EXCLUDE AMANDA COPE AS
14 A MINOR CONTRIBUTOR FROM THE SWAB YOU TOOK OFF OF
15 THAT DILDO IS BECAUSE OF THE MIXTURE OF SOMEONE'S
16 PARENTS DNA IS ON AN ITEM, NONE THEIR CHILDREN CAN
17 EVER BE EXCLUDED AS MINOR CONTRIBUTORS, ISN'T THAT
18 CORRECT?

19 A THAT'S CORRECT, UNLESS THERE WAS AN OBVIOUS
20 DIFFERENCE IN THE AMOUNT OF THE SAMPLE ON THE ITEM
21 AS FAR AS MINOR CONTRIBUTORS, NO, NOT AN EXTREME
22 MINOR CONTRIBUTOR WE WOULD NEVER BE ABLE TO EXCLUDE
23 ANY CHILDREN, MALE OR FEMALE

24 Q FOR EXAMPLE, LET'S SAY MY GRANDMOTHER, MY
25 GRANDFATHER, THEY WERE FARMERS, AT THE END OF A HARD

1 DAY GRANDPA PUT A PLUG OF TOBACCO, GRANDMA, ALTHOUGH
2 SHE WOULDN'T WANT ME TO ADMIT IT IN COURT, PUT A
3 LITTLE SNUFF IN THEY ARE SITTING ON THE FRONT
4 PORCH, SPITTOON THERE BETWEEN THEM, BRAND NEW
5 SPITTOON, NEVER BEEN USED, AND THEY BOTH SPIT IN THAT
6 SPITTOON, THEY HAD TEN CHILDREN, MY DAD WAS ONE OF
7 THOSE CHILDREN, IF YOU TESTED THAT SALIVA MY DAD
8 COULD NOT BE EXCLUDED AS A MINOR CONTRIBUTOR, IS THAT
9 CORRECT?

10 A ASSUMING HE MATCHED THE MINOR CONTRIBUTOR,
11 THAT'S CORRECT

12 Q IN FACT NONE OF THESE TEN CHILDREN, NATURAL
13 CHILDREN OF THOSE TWO PARENTS, COULD EVER BE EXCLUDED
14 AS MINOR CONTRIBUTORS TO THAT SALIVA, IS THAT
15 CORRECT?

16 A THAT'S CORRECT

17 Q SO IT DOESN'T COME TO A BIG SURPRISE, I MEAN IT,
18 ISN'T IT A BIG SURPRISE THAT AMANDA COPE CANNOT BE
19 EXCLUDED AS A MINOR CONTRIBUTOR OF A MIXTURE OF HER
20 PARENT'S DNA?

21 A THAT'S CORRECT

22 Q NOW IF ON NOVEMBER 29 OF 2001 MARY SUE COPE HAD
23 BEEN PREGNANT AND SHE DIDN'T HAVE A CHILD UNTIL
24 JANUARY FIRST OF 2002, HAD A BABY BOY, THAT BABY
25 BOY'S DNA, EXCEPT FOR THE FACT THAT HE WASN'T BORN

1 YET, COULD BE NOT EXCLUDED FROM THE MIXTURE OF HIS
2 PARENTS' DNA, IS THAT FAIR?

3 A FROM A MIXTURE OF THE PARENTS' DNA, THAT'S
4 CORRECT

5 Q OKAY BECAUSE WHEN BOTH PARENTS CONTRIBUTE TO A
6 SAMPLE PARENTS GIVE DNA TO CHILDREN AND THOSE
7 CHILDREN CAN'T BE EXCLUDED?

8 A THAT'S CORRECT

9 Q NOW IF A FOREIGN OBJECT IS STUCK INTO A
10 MENSTRUATING FEMALE'S VAGINA WOULDNT IT BE HIGHLY
11 PROBABLE THAT VAGINAL FLUID OR BLOOD WOULD BE
12 DETECTED ON THAT OBJECT?

13 A THAT'S CORRECT, UNLESS IT WAS CLEANED AFTER IT
14 WAS PLACED IN THE INDIVIDUAL YOU WOULD EXPECT TO
15 SEE BLOOD

16 Q NOW DR LAMBERT, WHAT STEPS WOULD HAVE TO BE
17 TAKEN TO MAKE A BLOODY BROOM HANDLE THAT HAD BEEN
18 STUCK IN MENSTRUATING FEMALE'S VAGINA, WHAT STEP
19 WOULD HAVE TO BE TAKEN TO CLEAN THAT OFF SO THAT YOUR
20 LAB COULD NOT DETECT DNA?

21 A YOU WOULD PROBABLY HAVE TO USE SOME SORT OF
22 BLEACH OR DETERGENT ON IT AND CLEAN IT PRETTY VERY
23 VIGOROUSLY TO REMOVE, AGAIN WE'RE TALKING ABOUT 150
24 CELLS, AND THOSE ARE MICROSCOPIC, SO YOU'D HAVE TO DO
25 A PRETTY VIGOROUS JOB OF CLEANING IT UP

1 Q AND WOULD THOSE SAME STEPS HAVE TO BE TAKEN TO
2 CLEAN OFF A DILDO THAT HAD BEEN STUCK INTO A
3 MENSTRUATING FEMALE'S VAGINA?

4 A THAT'S CORRECT

5 Q NOW WOULD YOU BE ABLE TO TEST THOSE SWABS AND
6 DETECT THE PRESENCE OF ANY CLEANING SOLUTIONS?

7 A I DON'T TEST FOR THE PRESENCE OF CLEANING
8 SOLUTIONS

9 Q NOW, DR LAMBERT, WOULD YOU AGREE WITH ME THAT
10 NOT A TRACE OF BILLY COPE WAS FOUND ON HIS DAUGHTER?

11 A THAT'S CORRECT

12 Q NOT ON HER CLOTHES?

13 A THAT'S CORRECT

14 Q NOT ON HER BED LINENS?

15 A THAT'S CORRECT

16 Q ISN'T IT ALSO TRUE THAT JAMES SANDERS' SALIVA
17 WAS FOUND ON AMANDA COPE'S BODY?

18 A YES, IT WAS

19 Q AND HIS SEMEN WAS FOUND ON AMANDA COPE'S PANTS?

20 A THAT'S CORRECT

21 Q AND YOU HAVE INDICATED IN YOUR REPORT THAT THE
22 PROBABILITY OF RANDOMLY SELECTING AN UNRELATED
23 INDIVIDUAL HAVING A DNA PROFILE MATCHING JAMES
24 SANDERS, MATCHING THIS MAN RIGHT HERE, IS 1 AND 1 3
25 THREE QUINTILLION NOW THAT TERM QUINTILLION, HOW

1 MANY ZEROS ARE AFTER THAT?

2 A 18

3 Q 18 ZEROS IT'S A BIG NUMBER?

4 A YES

5 MR WOOD BEG THE COURT'S INDULGENCE

6 Q THANK YOU, DR LAMBERT

7 THE COURT JURY NEED A BREAK ONE SAYS

8 YEAH, THAT'S ENOUGH WE'LL TAKE A SHORT BREAK

9 (THE JURY EXITS THE COURTROOM AT 04 41
10 PM)

11 (COURT RESUMES AT 04 54 PM, THE
12 DEFENDANTS ARE PRESENT, AND THE JURY RETURNS TO THE
13 COURTROOM)

14 THE COURT MR GREELEY

15 MR GREELEY MAY IT PLEASE THE COURT
16 CROSS EXAMINATION BY MR GREELEY

17 Q MR LAMBERT, GOOD AFTERNOON

18 A GOOD AFTERNOON

19 Q IT'S NICE TO PUT A FACE WITH THE VOICE?

20 A SURE

21 Q YOU BEGAN WITH SLED IN 1990?

22 A YES, SIR

23 Q YOU WERE KIND ON THE FRONTIER OF DNA ANALYSIS
24 WITH SLED THEN, IS THAT CORRECT?

25 A THAT'S CORRECT

1 Q WHEN DID--- WAS IT 1990 OR 1991 OR 1992 THAT
2 SLED DEVELOPED THEIR OWN DNA LAB DOWN THERE?

3 A THEY HAD ALREADY STARTED WHEN I WAS HIRED BUT WE
4 DIDN'T OUR FIRST CASE UNTIL '91 SO I WAS THERE
5 THROUGH ALL THE VALIDATION AND THE PURCHASE OF
6 EQUIPMENT AND SET UP OF THE LAB AND THINGS LIKE THAT

7 Q AND YOU ASSISTED WITH THAT, IS THAT CORRECT?

8 A YES, SIR

9 Q AND DID YOU HELP WITH THAT FIRST CASE IN '91?

10 A IT WASN'T MY CASE

11 Q BUT YOU ASSISTED IN SETTING UP OF THEIR LAB?

12 A YES, SIR

13 Q AND YOU BELIEVE THAT YOU ALSO SPENT TIME AT THE
14 FEDERAL BUREAU OF INVESTIGATION IN THEIR DNA LAB UP
15 IN VIRGINIA IN 1990?

16 A AS A VISITING SCIENTIST, YES, PERFORMING
17 RESEARCH IN THEIR LAB TO DEVELOP TECHNIQUES THAT THEY
18 ENDED UP USING IN THEIR LABORATORY

19 Q OKAY HOW LONG WERE YOU THERE DOING THAT?

20 A THREE MONTHS

21 Q AND WHEN SOUTH CAROLINA LAW ENFORCEMENT DIVISION
22 SET UP -- WHEN Y'ALL SET UP YOUR LAB, YOU USED A LOT
23 OF THE FBI PROTOCOL, DID YOU NOT?

24 A QUITE A BIT OF IT THERE WAS SOME PLACES THAT
25 WE DIFFERED FROM THEM, BUT MOST OF IT WAS BASICALLY

1 THE SAME

2 Q OKAY THE FIRST SOFTWARE THAT YOU GOT, IT WAS
3 THE SAME SOFTWARE THAT THE FBI WAS USING, WAS IT NOT?

4 A YES, IT WAS

5 Q OKAY NOW YOU WERE FAMILIAR WITH THE SOFTWARE?
6 WERE YOU FAMILIAR WITH IT, DID YOU WORK WITH IT IN
7 WASHINGTON?

8 A YES

9 Q OKAY ARE YOU FAMILIAR WITH THE ASPECT THAT,
10 THE NAME OF THE SOFTWARE GIVEN BY THE FBI BACK IN
11 1990, THEIR CODE NAME FOR THEIR SOFTWARE WAS PC GOD?

12 A THAT'S WHAT I'VE BEEN TOLD KEITH MUNSON
13 DEVELOPED IT, KEITH NEVER TOLD ME THAT, BUT THAT'S
14 WHAT THEY CALLED IT

15 Q OKAY AND ARE YOU FAMILIAR WITH THE ASPECT OF
16 THAT SOFTWARE BACK IN 1990 THAT ACTUALLY THAT
17 SOFTWARE DID HAVE A OPERATOR OVERRIDE FUNCTION TO IT
18 IN REGARDS TO RESULTS?

19 A THIS IS -- THAT'S CORRECT THIS IS ON A TEST
20 THAT WE DON'T PERFORM ANYMORE THAT I DIDN'T PERFORM
21 IN THIS CASE, BUT HISTORICALLY SPEAKING, YES

22 Q SO BACK THEN THE SOFTWARE COULD HAVE BEEN
23 OVERRIDDEN, THE RESULT COULD HAVE BEEN OVERRIDDEN BY
24 THE OPERATOR OF A MACHINE BACK THEN?

25 A THAT'S CORRECT AND WHAT WE DID WE WERE PLACING

1 LOCATIONS, WHEN YOU SAW THIS PICTURE UP HERE OF THE
2 DNA PRINT YOU SAW PEAKS, BACK THEN WE HAD THOSE PEAKS
3 WERE EXPRESSED ON A TWO DIMENSION JELL SO YOU SAW
4 BANDS THAT LOOKED KIND OF LIKE A FOOTBALL AND THE
5 COMPUTER DID ITS BEST TO INTERPRET THAT TWO
6 DIMENSIONAL DATA AND PUT THE MARK ON THE BAND AND IF
7 IT PUT IT IN THE WRONG PLACE WE WOULD MOVE IT TO THE
8 CENTER OF THE BAND YOU KNOW, YOU GOT THE FOOTBALL
9 WITH THE END OF IT, YOU MOVE IT TO THE CENTER OF THE
10 FOOTBALL SOMETIMES THE COMPUTER ALGORITHM PUT IT UP
11 CLOSER TO THE SEAMS THAN IT DID TO THE MIDDLE OF THE
12 FOOTBALL SO THAT WAS WHY WE HAD THE OVERRIDE BECAUSE
13 IT WOULDN'T MAKE SENSE TO HAVE THE COMPUTER CALL IT
14 WRONG

15 Q Y'ALL AREN'T USING THAT SOFTWARE ANYMORE, ARE
16 YOU?

17 A NOPE

18 Q AS TIME GOES ON TECHNOLOGY CHANGES, IS THAT
19 CORRECT?

20 A YES

21 Q WHEN DID YOU GET THE SOFTWARE THAT YOU USE AT
22 SLED, WHAT YEAR DID YOU GET THAT?

23 A WHICH SOFTWARE IS THAT?

24 Q THE ONE LET'S SAY IN THIS CASE?

25 A WHICH PARTICULAR SOFTWARE ARE YOU?

1 Q IS THERE A SOFTWARE CALLED GENOTYPER?

2 A GENOTYPER THAT'S CORRECT

3 Q OKAY

4 A WE STARTED WITH A MAC VERSION OF GENOTYPER BACK
5 IN '99 AND HAVE SINCE PURCHASED A, WE WENT TO WINDOWS
6 NT, WE GOT RID OF THE MAC, AND WE'RE RUNNING WINDOWS
7 NT AND I THINK THAT'S PROBABLY A 2001-2002 VERSION OF
8 THE SOFTWARE

9 Q AND SO YOU GOT 2001 VERSION OF WHAT YOU FIRST
10 STARTED WITH WITH GENOTYPER IN 1999?

11 A THAT'S CORRECT

12 Q YOU HAVEN'T UPDATED IT SINCE 2001?

13 A NO

14 Q IT COSTS MONEY EVER TIME YOU DO THAT, DOESN'T
15 IT?

16 A YES, SIR

17 Q THIS CAN BE COMPLICATED STUFF, CAN'T IT?

18 A IT'S COMPLICATED, YES

19 Q RIGHT AND THAT'S WHY YOU HAVE YOUR POWER POINT
20 PRESENTATION TO MAKE IT MORE UNDERSTANDABLE TO FOLKS
21 WHO ARE NOT EDUCATED AS YOURSELF AND TRAINED AS
22 YOURSELF, IS THAT CORRECT?

23 A IT MAKES IT EASIER TO VISUALIZE IT, YES, SIR

24 Q NOW WHAT IS, I MAY SAY THIS INCORRECTLY PLEASE
25 CORRECT ME IF I DO, ELECTROTHEROGRAM, DID I SAY THAT

1 CORRECTLY?

2 A UH-HUH

3 Q WHAT IS AN ELECTROTHEROGRAM?

4 A ELECTROTHEROGRAM, WHEN WE SAW SEVERAL SLIDES AGO

5 WE SAW THOSE PEAKS WITH THE 15-17 15-18 THAT'S THE

6 FINAL OUTPUT OF THE DNA IF YOU HIT THAT BUTTON---

7 Q I WANT TO SEE IF I CAN GO BACK TO IT AND I HOPE

8 I'M GOING IN THE CORRECT WAY

9 A I CAN'T TELL YOU IF YOU ARE THERE IT IS

10 Q THERE IT IS

11 A THAT IS AN ELECTROTHEROGRAM THAT'S THE FINAL

12 DATA THAT WE RECEIVE AND THAT'S WHAT THE DNA PRINT

13 LOOKS LIKE

14 Q AND THAT'S WHAT THE GENOTYPER SOFTWARE DOES, IS

15 THAT CORRECT?

16 A THAT'S CORRECT

17 Q NOW IF YOU WOULD CAN YOU SEE IT OKAY?

18 A I KNOW WHAT'S ON IT THAT'S FINE

19 Q OKAY THERE IT IS OVER HERE ON THE RIGHT SIDE

20 OF THIS ELECTROTHEROGRAM, WHAT ARE THESE NUMBERS HERE

21 WHERE IT HAS 1500, 1,000, 500?

22 A ON THE Y AXIS GOING UP

23 Q YES

24 A THESE ARE RFU THAT STANDS FOR RELATIVE

25 FLUORESCENT UNITS MEASURE HOW MUCH INTENSITY OF A

1 PEAK COMES OFF AND IT'S ULTIMATELY THE MEASURE OF THE
2 QUANTITY OF THE PEAK BECAUSE ASSOCIATED WITH THAT
3 PEAK IS FLUORESCENCE, SO THOSE RELATIVE FLUORESCENCE
4 UNITS TELL ME HOW MUCH DNA IS COMING OFF AT THAT
5 POINT

6 Q OKAY

7 A SO THE HIGHER THE PEAK THE MORE DNA

8 Q AND I NOTICE THAT ON THE RIGHT SIDE HERE ON ALL
9 OF THESE THAT YOU HAVE SHOWED THE JURY, IT IS SET AT
10 A MINIMUM OF 500?

11 A JUST FOR THE -- FOR THAT DIAGRAM, YES IT
12 DEPENDS ON WHAT YOUR HIGHEST PEAK IS THAT DETERMINES
13 WHAT THAT SCALE IS SO THAT YOU ARE ABLE TO SEE IT

14 Q OKAY SO ON THE ONE ON THE TOP YOU HAVE 1550,
15 THE ONE IN THE MIDDLE IS A 1,000 AND THAT WOULD BE
16 BECAUSE THE PEAKS AREN'T AS HIGH?

17 A THE PEAKS IN THE MIDDLE AREN'T AS HIGH AS IT
18 ADJUSTS THAT SCALE SO YOU CAN SEE THEM

19 Q AND THE ONE ON THE BOTTOM IS 1500 SO THAT WOULD
20 BE SIMILAR AS FAR AS PEAK HEIGHT TO THE TOP ONE, IS
21 THAT CORRECT?

22 A THAT'S CORRECT

23 Q NOW THE BASE LINE, AND THAT'S MY TERM FOR IT,
24 I'M NOT SURE WHAT Y'ALL CALL IT, I'M GOING TO CALL IT
25 THE BASE LINE DOWN HERE, THAT CAN GO UP OR DOWN, IS

1 THAT CORRECT?

2 A YES

3 Q AND ACTUALLY THE OPERATOR WHO IS RUNNING THESE
4 PROGRAMS IS ABLE TO SET THE MACHINE TO THE, I THINK
5 YOU SAID THE Y AXIS OR THE, HOW, WHERE THOSE ARE
6 SUPPOSED TO--I MEAN NOT WHERE THEY ARE SUPPOSED TO
7 REGISTER BUT WHAT THE UNIT WILL BE, IS THAT CORRECT?

8 A WHAT IS SET AND THIS IS SET IN OUR PROTOCOL IS
9 THAT ANY PEAK THAT'S BELOW 75 OF THOSE RELATIVE
10 FLUORESCENT UNITS HASN'T MEASURED ENOUGH TO WHERE WE
11 ARE CONFIDENT THAT IT'S A PEAK AND SO WE DON'T CALL
12 IT ANYTHING BELOW THAT, IF YOU WERE TO BLOW UP THE
13 BASE LINE COMPLETELY TO WHERE YOU COULD SEE IT, IT
14 WOULD LOOK LIKE GRASS, AND IF SOMETHING IS WITHIN
15 THAT GRASS WE DON'T HAVE ANY CONFIDENCE THAT IT'S A
16 PEAK IF IT'S DOWN IN THE 75 RFU RANGE AND BELOW WE
17 DON'T CALL IT ANYTHING ABOVE 75 WE CALL IT

18 Q NOW SUCH AS IN THIS SITUATION AND I BELIEVE, IS
19 THIS AN ACTUAL ELECTROTHEROGRAM THAT YOU RAN IN THIS
20 CASE OR IS THIS JUST AN EXAMPLE?

21 A THIS IS AN EXAMPLE

22 Q ALL RIGHT HERE YOUR LOWEST LEVEL IS 500, IS
23 THAT CORRECT, THAT'S SHOWING?

24 A THAT'S CORRECT

25 Q AND YOU DON'T MEASURE ANY PEAKS THAT ARE BELOW

1 75, IS THAT CORRECT?

2 A THAT'S CORRECT

3 Q SO IN RUNNING A TEST IF THIS WAS AN ACTUAL TEST
4 THERE MAY BE MEASURABLE PEAKS BELOW 500 AND BETWEEN
5 75 THAT YOU WOULD CONSIDERED TO BE MEASURABLE, IS
6 THAT CORRECT?

7 A IF THEY WERE THERE THEY WOULD SHOW UP

8 Q OKAY SO THE BASE LINE WOULD GO DOWN
9 AUTOMATICALLY?

10 A NO, THEY WOULD BE ABOVE 75

11 Q THEY WERE ABOVE 75, BUT YOU GOT IT SET AT 500
12 HERE?

13 A NO, THAT'S NOT A BASE LINE THE BASE LINE IS AT
14 THE VERY BOTTOM

15 Q THE BASE IS AT THE VERY BOTTOM, OKAY AND SO
16 THE BASE LINE ALWAYS COMES AT THE VERY BOTTOM?

17 A YES, SIR

18 Q ALWAYS OKAY BUT YOU MENTIONED TO THE JURY
19 THOUGH BELOW THIS LINE?

20 A BELOW 75 RFU AND YOU CAN'T REALLY SEE 75 ON THAT
21 SCALE BECAUSE IT'S GOING TO BE DOWN BETWEEN 500 AND
22 WHERE THE LINE INSECTS WITH THE Y AXIS WHICH WOULD BE
23 ZERO

24 Q SO THIS DOESN'T SHOW ANYTHING BELOW 75?

25 A IF IT WAS THERE IT WOULD SHOW UP

1 Q ANYTHING --

2 A I DON'T THINK I GOT A PEAK ON THE
3 ELECTROTHEROGRAM THAT'S IN THAT RANGE

4 Q BUT WOULDN'T WE HAVE GRASS EVEN ON THIS ONE IF
5 THIS WAS AN ACTUAL RUN OF SOME CELL OR SOME LOCATION?

6 A IF WE CHANGED OUR Y AXIS TO WHERE IT WAS ZERO TO
7 100 YOU WOULD SEE WHAT I WAS TALKING ABOUT WITH THE
8 GRASS THE FACT THAT IT'S SET WITH ZERO TO 1500
9 MEANS THAT THAT GRASS HAS GOTTEN MUCH SMALLER BECAUSE
10 YOU'RE LOOKING AT BUILDINGS INSTEAD OF GRASS

11 Q OKAY SO WE CAN'T SEE THE GRASS BUT THE GRASS
12 EXISTS?

13 A RIGHT

14 Q AND THE GRASS IS ACTUAL LOCATIONS AS WELL?

15 A NO, NOT NECESSARILY IT COULD JUST BE, THAT'S
16 THE BASE LINE AND THIS IS TRUE FOR ANY INSTRUMENTAL
17 ANALYSIS, YOU HAVE GOT A CERTAIN BASE LINE THAT'S
18 ASSOCIATED WITH A DETECTOR PICKING UP THESE
19 FLUORESCENT PEAKS AS THEY COME OFF WELL, THERE IS
20 JUST NATURAL CHATTER UNTIL YOU GET THE PEAK AND THEN
21 THE PEAK IS GOING TO GO UP 500, A 1,000 RFU, THEN IT
22 GOES BACK DOWN TO WHERE IF YOU HAVE A SAMPLE WITH
23 ABSOLUTELY NO DNA IN IT, YOU ARE STILL GOING TO HAVE
24 THE CHATTER

25 Q OKAY

002267

1 A THAT'S JUST A FUNCTION OF THE INSTRUMENTAL
2 ANALYSIS IN THE DETECTOR

3 Q NOW YOU TALKED ABOUT THESE LOCATIONS AND YOU SAY
4 THAT YOU LIKE TO COMPARE 9 TO 13 LOCATIONS?

5 A THAT'S CORRECT

6 Q IS THAT CORRECT? AND 9 LOCATIONS IF IT'S A
7 VICTIM AND 13 LOCATIONS IF YOU HAVE A SUSPECT?

8 A IT DEPENDS, DEPENDS ON THE NATURE OF THE SAMPLE

9 Q IS THAT THE STANDARD PROTOCOL FOR SLED?

10 A YES

11 Q OKAY AND IN A REGULAR DNA CELL, AGAIN I DON'T
12 KNOW IF I AM SAYING IT CORRECTLY, IN THAT REGULAR DNA
13 HOW MANY LOCATIONS ARE THERE?

14 A MILLIONS AND MILLIONS OF LOCATIONS THERE IS
15 APPROXIMATELY OF THOSE LADDER RUNGS THERE IS A
16 BILLION LADDER RUNGS 99 9 PERCENT OF THOSE LADDER
17 RUNGS ARE THE SAME FOR EVERYBODY IN THIS ROOM,
18 EVERYBODY ON THE PLANET, BECAUSE WE'RE ALL HUMANS
19 WE'RE ALL RELATED TO EACH OTHER, SO WE DON'T LOOK AT
20 ALL OF THE LOCATIONS

21 Q SO WE ONLY HAVE 9 LOCATIONS OR 13 LOCATIONS OUT
22 OF MILLIONS OR BILLIONS THAT ARE DIFFERENT?

23 A NO, NOT MILLIONS, I DON'T KNOW THAT THERE WOULD
24 BE MILLIONS OR BILLIONS THAT ARE DIFFERENT I KNOW
25 THAT THERE IS APPROXIMATELY 30,000 STR LOCATIONS THAT

1 WOULD BE DIFFERENT

2 Q OKAY

3 A BUT WE LOOK AT 13 OF THOSE AND THE REASON THAT
4 WE STOPPED AT 13 OR 9 IS BECAUSE WE'RE GETTING NUMBER
5 THE QUADRILLIONS AND QUINTILLIONS WE DON'T NEED TO
6 GO BEYOND THAT

7 Q WELL, YOU'VE PICKED 13 OUT OF, WHAT DID YOU SAY
8 36,000, THAT Y'ALL DID ON THAT?

9 A 30,000 IS WHAT THE ESTIMATE IS FOR THOSE STRS

10 Q SO YOU ARE USING 13 OUT OF 36,000 THAT YOU HAVE
11 SO IDENTIFIED?

12 A 30,000

13 Q 30,000 AND THERE MAY BE MORE --

14 A COULD BE MORE

15 Q ---THAT HAVEN'T BEEN IDENTIFIED?

16 A COULD BE MORE, COULD BE LESS, I THINK THAT'S AN
17 ESTIMATE

18 Q I MEAN HAS SCIENCE REACHED THE POINT TO WHERE IT
19 ABSOLUTELY KNOWS HOW MANY ARE THE SAME, HOW MANY ARE
20 NOT?

21 A THAT'S PROBABLY STILL UNDER DEBATE SINCE THEY
22 ARE STILL DOING THE HUMAN GENOME PROJECT AND SORTING
23 THROUGH ALL OF THAT DATA WE KNOW THAT THESE 13 ARE
24 VERY, VERY DIFFERENT FROM INDIVIDUAL TO INDIVIDUAL

25 Q OUT OF THE 30,000 OR SO?

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1 A RIGHT

2 Q AND YOU'VE IDENTIFIED 30,000 THAT ARE DIFFERENT?

3 A THAT'S THE ESTIMATE

4 Q OKAY AND SO WHAT YOUR PERCENTAGES ARE BASED

5 UPON WHEN YOU GIVE A RATIO OR A PERCENTAGE OR A

6 PROBABILITY IS IT'S BASED UPON FOCUSING IN ON NINE

7 OUT OF POTENTIALLY 30,000 OTHER SITES?

8 A THAT'S RIGHT

9 Q IS THAT CORRECT? NOW YOU HAD TALKED ABOUT THE
10 WAY THAT YOU DUPLICATE?

11 A AMPLIFY

12 Q AMPLIFY THEN -- WELL, I MEAN, IT'S ESSENTIALLY
13 A DUPLICATION?

14 A THAT'S CORRECT

15 Q YOU HOPE IT'S A DUPLICATION?

16 A YES, SIR

17 Q THAT'S THE GOAL?

18 A YES, SIR

19 Q OKAY TO ME IT SEEMS SIMILAR TO CLONING, IS IT?

20 A I GUESS IN THEORY AS A COMPARISON IT'S SIMILAR
21 TO CLONING

22 Q I MEAN YOU ARE TAKING A PART OF A DNA, TAKEN A
23 PART OF DNA AND YOU ARE REPLICATING IT?

24 A THAT'S RIGHT

25 Q AND THIS IS DONE BY A MACHINE?

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1 A THIS IS DONE IN A TEST TUBE, THE MACHINE JUST
2 FACILITATES THE CHEMICAL REACTION THAT'S GOING ON IN
3 THE TEST TUBE

4 Q OKAY SO THE MACHINE IS THE FACILITATOR, YOU
5 PUT IT IN A TEST TUBE, AND THEN THE TEST TUBE BEGINS
6 TO REPLICATE AND I THINK IT'S A THERMOMETER,
7 WHAT'S --

8 A THERMOCYCLER

9 Q THERMOCYCLER AND YOU DO IT IN CYCLES AND EACH
10 CYCLE IT MULTIPLIES?

11 A YES, SIR

12 Q EXPEDIENTIALLY?

13 A THAT'S CORRECT

14 Q OKAY AND AFTER YOU MULTIPLY IT EXPEDIENTIALLY
15 YOU'VE GOT THIS VERY LARGE NUMBER OF WHAT YOU BELIEVE
16 TO BE THE ORIGINAL?

17 A THAT'S CORRECT

18 Q AND IT'S THE SAME IN EVERY WAY?

19 A IT MIGHT NOT BE THE SAME IN EVERY WAY IN
20 SAMPLES THAT START OFF WITH A SMALL AMOUNT OF
21 STARTING SAMPLE, LET'S SAY IF YOU'VE GOT A COLLECTION
22 OF MARBLES THAT ARE IN A BARREL AND YOU'VE GOT FIVE
23 DIFFERENT COLORS OF MARBLES, AND YOU SCOOP YOUR HAND
24 IN AND TAKE OUT SOME OF THOSE MARBLES, YOU MAY NOT
25 GET EVERY SINGLE COLOR OF MARBLE WITHIN THREE OR FOUR

1 SAMPLES AND THAT HAPPENS WITH DNA TOO IF IT'S A
2 SMALL AMOUNT THAT'S LEFT ON AN ITEM AND YOU SAMPLE
3 THAT, THEN MAYBE ONE OF THESE PEAKS DROPS OUT BECAUSE
4 WE DIDN'T GET ENOUGH OF THAT PEAK SO NOT EVERY
5 SINGLE TIME YOU ARE GOING TO GET THE EXACT GENOTYPE
6 OR THE EXACT DNA PRINT OF WHO YOU ARE TRYING TO TEST
7 IT DEPENDS ON THE SAMPLE QUANTITY

8 Q DO YOU KNOW IF YOU DON'T GET THE EXACT SAMPLE?

9 A USUALLY IT'S GOING TO BE DOWN ON THE RANGE OF
10 THAT Y AXIS IT WILL BE DOWN BELOW 150 TO 75 WE
11 DON'T HAVE A LOT OF CONFIDENCE IN THE NUMBERS IN THAT
12 RANGE AND WE QUOTE OUR RESULTS ACCORDINGLY WHEN
13 SAMPLES ARE IN THAT RANGE

14 Q BUT YOU DON'T ABSOLUTELY KNOW WHETHER OR NOT YOU
15 HAVE DUPLICATED IT EXACTLY?

16 A WHEN IT'S UP IN THE UPPER RANGE WE'VE GOT
17 CONFIDENCE THAT THE GENOTYPE THAT WE DEVELOP THE DNA
18 PRINT --

19 Q RIGHT?

20 A ON THE ELECTROTHEROGRAM IS THE PERSON'S
21 ELECTROTHEROGRAM BECAUSE WE REPEAT THESE THINGS OVER
22 AND OVER AGAIN AND WE GET THE SAME RESULT

23 Q AND SO BASICALLY WHEN IT COMES DOWN TO IT, WHAT
24 YOU USED TO RUN YOUR TESTS IS A COPY OF WHAT YOU ARE
25 GIVEN IN THE LAB?

1 A THE EVIDENCE THAT'S SUBMITTED TO THE LAB, THAT'S
2 CORRECT WE'VE NOW AMPLIFIED THE DNA PROFILE, IT'S
3 GOT FLUORESCENT TAGS ATTACHED TO IT SUCH THAT WE CAN
4 GENERATE AN ELECTROTHEROGRAM

5 Q SO IF YOU RECEIVE BLOOD FROM SUSPECT A AND YOU
6 BEGAN TO DO THE DNA ANALYSIS OF IT, YOU ARE ACTUALLY
7 NOT ANALYZING SUSPECT A'S BLOOD, BUT YOU ARE
8 ANALYZING WHAT THE LAB HAS DONE IN DUPLICATING OR
9 COPYING HIS BLOOD, IS THAT CORRECT?

10 A IT'S WHAT THE ENZYME HAS DONE IN MAKING NEW DNA,
11 THAT'S CORRECT, INSIDE THE TUBE

12 Q NOW IN REGARDS TO, I'M GOING TO TRY AND TAKE IT
13 BACK, THERE WERE THREE CUTTINGS FROM AMANDA COPE'S
14 BLACK PANTS THAT YOU RECEIVED, IS THAT CORRECT?

15 A THAT'S CORRECT

16 Q OKAY AND CORRECT ME IF I'M WRONG BUT AT THE
17 TIME WHEN THEY CAME THROUGH SEROLOGY THEY WERE CUT IN
18 SEROLOGY BY AGENT BRYSON, IS THAT CORRECT?

19 A JAN BRYSON MADE THE CUTTINGS AND SUBMITTED THEM
20 TO OUR LAB

21 Q AND THEN SHE SUBMITTED IT TO YOU?

22 A THAT'S CORRECT

23 Q YOU DIDN'T GET THE WHOLE PAIR OF PANTS, DID YOU?

24 A NO

25 Q SO SHE MADE THE CUTTINGS AND SUBMITTED THEM TO

1 YOU WITH THE BELIEF THAT IT MAY CONTAIN SEMEN?

2 A SHE DID A PRESUMPTIVE TEST FOR SEMEN WHICH THEY
3 WERE POSITIVE FOR

4 Q AND THEY WERE POSITIVE FOR HOWEVER, ONCE Y'ALL
5 RAN YOUR TESTS ONLY ONE OF THE CUTTINGS WAS POSITIVE
6 FOR SEMEN, IS THAT CORRECT?

7 A THAT'S CORRECT

8 Q OKAY THE OTHER TWO WERE NOT POSITIVE FOR
9 SEMEN, IS THAT CORRECT?

10 A THAT'S CORRECT

11 Q AND IT WAS ON THAT ONE CUTTING THAT YOU COMPARED
12 TO THE REPRODUCTION OF MY CLIENT'S BLOOD?

13 A THAT'S -- WELL, I DEVELOPED DNA PRINTS FROM EACH
14 ONE OF THOSE THE DNA PROFILE DEVELOPED FROM 6 1 2
15 MATCHED YOUR CLIENT

16 Q RIGHT?

17 A JAMES SANDERS

18 Q IT MATCHED THE REPRODUCTION FROM HIS BLOOD THAT
19 HAD BEEN DONE IN THE FULL DNA TESTING?

20 A THAT'S CORRECT

21 Q OKAY NOW IN REGARDS TO SALIVA, I'M NOT SURE
22 WHERE IT IS, HERE WE GO IN REGARDS TO THE SALIVA,
23 IN YOUR DIRECT TESTIMONY YOU DID MENTION TO MR POPE
24 THAT YOU HAD A MATCH FOR MY CLIENT IN REGARDS TO
25 THAT?

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1 A THAT'S CORRECT

2 Q ONCE AGAIN THAT WOULD BE, YOU FOUND A MATCH TO
3 MY CLIENT'S, THE REPRODUCTION OF MY CLIENT'S BLOOD?

4 A THAT'S CORRECT

5 Q NOW THERE WAS ALSO, I BELIEVE THAT IT WAS
6 ACTUALLY FOUND TO BE A MIXTURE SUBSTANCE, IS THAT
7 CORRECT?

8 A THAT'S CORRECT IT WAS A MIXTURE BETWEEN HIM
9 AND AMANDA COPE IT WAS SWABBED OFF OF HER BREAST,
10 SO WE WOULD EXPECT TO SEE SKIN CELLS FROM HER HE
11 WAS THE MAJOR CONTRIBUTOR TO THAT SAMPLE SO I WAS
12 ABLE TO CALL IT A MATCH TO HIM

13 Q OKAY BUT YOU DON'T KNOW THE SOURCE OF
14 HER---YOU CAN'T SAY THROUGH ANY SCIENTIFIC STANDARD
15 OR DEGREE AS TO WHAT THE SOURCE OF HER DNA CELLS WERE
16 IN THE SALIVA?

17 A IT WAS A MIXTURE OF -- WELL, IT WAS, SALIVA WAS
18 INDICATED ON THAT SAMPLE

19 Q RIGHT

20 A SO OTHER THAN THAT, I'M NOT SURE WHAT THE DNA
21 CAME FROM IT COULD BE A MIXTURE OF HER SALIVA IN
22 THAT TOO

23 Q IN GENOTYPER OR ANY OF YOUR OTHER SOFTWARE THAT
24 Y'ALL ARE CURRENTLY USING OR THAT YOU USED IN THIS
25 CASE, IS THERE AN OPERATOR OVERRIDE FUNCTION LIKE

002275

1 THERE USED TO BE IN THE EARLY 90'S WITH THE FBI?

2 A YES, WE CAN CLICK OFF A PEAK LET'S SAY, AND WE
3 DON'T THE ELECTROTHEROGRAM UP THERE, BUT LET'S SAY
4 THERE WAS A PEAK THAT FELL IN A PARTICULAR POSITION
5 RELATIVE TO ANOTHER PEAK IT'S A PHENOMENON KNOWN AS
6 STUTTER IF IT'S A SMALL ENOUGH PROPORTION TO THE
7 BIG PEAK WE CAN CLICK THAT OFF BECAUSE WE WOULD
8 EXPECT TO SEE A PEAK THERE BUT IT COULD BE A SPIKE
9 BECAUSE BY ELECTRONIC DIVERGENCES ONE OF THE THINGS
10 RUNNING OR A PIECE OF DUST GOING THROUGH THE
11 CAPILLARY WHEN IT'S RUNNING, WE CAN CLICK THAT OFF

12 Q BUT YOU DO HAVE THE CAPABILITY OF ALTERING THE
13 RESULTS OF THE MACHINE?

14 A I CAN INTERPRET THE RESULTS THE MACHINE GIVES
15 US THE MACHINE IS ONLY AS SMART AS THE MACHINE
16 WE'RE TRAINED TO INTERPRET DNA PROFILES SO WE CLICK
17 OFF THE SAMPLES THAT ARE RUN, YES

18 Q OKAY BUT MY QUESTION WAS YOU HAVE THE
19 CAPABILITY OF ATERING WHATEVER YOU SEE ON THE
20 MACHINE?

21 A NOT ALTERING WE INTERPRET THE DATA

22 Q YOU CHANGE THE GRAPH THOUGH, DON'T YOU?

23 A I CLICK OFF A PEAK, YES, THAT'S CORRECT

24 Q AND THAT'S CHANGING A GRAPH?

25 A YES

1 Q OKAY IN TESTING THE BED LINENS NO SEMEN WAS
2 FOUND IN THE BED LINENS, WERE THEY?

3 A NOT IN THE CUTTINGS THAT WERE SUBMITTED TO ME,
4 NO

5 Q NO SEMEN WAS FOUND ON THE CUTTINGS FROM THE
6 GREEN BLANKET?

7 A THAT'S CORRECT

8 Q THE ONLY PLACE THAT SEMEN WAS FOUND WAS IN ONE
9 SPOT ON AMANDA COPE'S PANTS, IS THAT CORRECT?

10 A THERE WAS SEMEN ON THE WASH CLOTH ALSO, BUT WITH
11 RESPECT TO YOUR CLIENT JAMES SANDERS THE ONLY SEMEN
12 WAS ON HER PANTS

13 Q AND THAT WAS IN THAT ONE SPOT ON HER PANTS?

14 A THAT'S CORRECT WELL, THE OTHER SPOT, JUST TO
15 CLARIFY, 6 1 1 HAD, JUST A MINUTE, LET ME REFER TO MY
16 NOTES I MISSPOKE 6 1 3 GAVE ME A MINOR DNA PRINT
17 THAT SHOWED SOME BANDS, SOME PEAKS, THAT WERE SIMILAR
18 TO JAMES SANDERS, BUT IT WASN'T A COMPLETE PROFILE
19 AND DIDN'T MAKE A COMPLETE CALL ON THAT SAMPLE, BUT
20 IT'S CONSISTENT WITH BEING A MIXTURE I CAN'T
21 EXCLUDE HIM FROM CONTRIBUTING TO THAT OR HER FROM
22 CONTRIBUTING TO THAT SAMPLE, BUT IT WASN'T A COMPLETE
23 PROFILE

24 Q AND IT WASN'T SEMEN, WAS IT?

25 A NO IT WAS NOT IDENTIFIED AS SEMEN

1 Q OKAY AND IT WAS ON THE BACK OF HER PANTS?

2 A I'M NOT SURE OF THE LOCATION IT'S 6 1 3

3 Q OKAY AND YOU JUST SAID THAT YOU CAN'T EXCLUDE
4 MR SANDERS?

5 A THAT'S CORRECT

6 Q BUT YOU CAN'T SAY THAT THAT IS ACTUALLY HIS
7 REPRODUCED DNA THAT Y'ALL DID?

8 A THAT'S CORRECT

9 MR GREELEY THAT'S ALL I HAVE
10 THE COURT REDIRECT

11 MR POPE JUST BRIEFLY, YOUR HONOR
12 REDIRECT EXAMINATION BY MR POPE

13 Q QUICK ON THE CUTTINGS JUST TO CLARIFY 6 1 1 IS
14 DESIGNATED AS CUTTING FROM BLACK PANT FROM BACK
15 CENTER AND ON THAT ITEM THERE WAS NO SEMEN IDENTIFIED
16 AND YOU ACTUALLY IDENTIFIED AMANDA COPE ON THAT FROM
17 THE BACK CENTER OF THE PANTS, IS THAT CORRECT?

18 A THAT'S CORRECT

19 Q AND 6 1 2 THAT'S IDENTIFIED AS BACK LEFT OF THE
20 PANTS, THAT WAS THE ONE THAT SEMEN WAS IDENTIFIED TO
21 MR SANDERS AND EPITHELIAL CELLS FROM AMANDA COPE, IS
22 THAT CORRECT?

23 A THAT'S CORRECT

24 Q AND THEN 6 1 3 I THINK IS THE LAST ONE MR
25 GREELEY WAS ASKING YOU ABOUT WAS THE BLACK PANTS FROM

1 THE FRONT LEFT, ON THAT NO SEMEN WAS IDENTIFIED BUT
2 THAT'S WHERE YOU ARE SAYING THERE WAS A MIXTURE THAT
3 MR SANDERS COULDN'T BE EXCLUDED, BUT YOU DIDN'T CALL
4 IT AND ASSIGN IT NUMBER, A PERCENTAGE NUMBER, OR THE
5 ONE IN MILLION NUMBERS WE'VE HEARD CONCERNING THOSE,
6 IS THAT CORRECT?

7 A THAT'S CORRECT

8 Q OKAY FINALLY ON THE, MR WOODS WAS ASKING YOU
9 ABOUT THE ENVELOPE AND YOU WERE DESCRIBING TO THE
10 JURY, WHEN YOU RECEIVED THE ENVELOPE YOU DID A SWAB
11 AND WHERE DID YOU DO A SWAB FROM?

12 A ON THE PORTION THAT YOU WOULD EXPECT TO FIND
13 SALIVA ON THE ENVELOPE, IT'S ON THE GUM LABEL PART OF
14 THE ENVELOPE I JUST TOOK A Q-TIP SWAB AND RAN IT UP
15 AND DOWN THAT AREA TO COLLECT ANY CELLS THAT THERE
16 WERE

17 Q WHY DON'T YOU DO A SWAB OF LIKE THE FLAT BACK
18 PORTION OR THE FRONT PORTION OR OTHER PLACES THAT
19 MIGHT NOT HAVE SALIVA?

20 A THOSE WOULD JUST BE PART OF THE ENVELOPE THAT
21 YOU WOULD EXPECT TO GET CELLS FROM I GUESS IF YOU
22 HANDLED IT BUT WE HAVEN'T HAD MUCH LUCK IN GETTING
23 DNA PRINTS OFF OF HANDLED PAPER IF YOU LICK A
24 PAPER, ESPECIALLY IF YOU LICK A GUM LABEL, YOU ARE
25 GOING TO PUT A LOT OF YOUR CELLULAR MATERIAL OFF YOUR

1 TONGUE ON THAT GUM PART, AND WE DON'T HAVE
2 PARTICULARLY LUCK IN GETTING IT JUST OFF OF PAPER

3 Q SO THEN FOR EXAMPLE THE LETTER THAT WAS
4 CONTAINED WITHIN THIS ITEM, THIS IS STATE'S EXHIBIT
5 89 THAT ALREADY HAS NINHYDRIN ON IT, YOU WOULD MAKE A
6 DECISION AT THE LAB THAT PERHAPS BASED ON YOUR
7 RESULTS THAT THAT WOULD GO TO FINGERPRINTING VERSUS
8 YOU TRYING TO SWAB A SHEET OF PAPER?

9 A THAT'S CORRECT UNLESS THERE WAS A STAIN ON
10 THAT THAT LOOKED LIKE IT WAS BLOOD OR SALIVA OR
11 SOMETHING THAT WOULD ALERT THEM TO SEND IT TO US WE
12 WOULDN'T DO ANY TESTING ON JUST PAPER

13 Q DR LAMBERT, I APPRECIATE YOUR TIME THANK YOU

14 THE COURT MR WOOD

15 MR WOOD NOTHING FURTHER FROM MR COPE,
16 YOUR HONOR

17 MR GREELEY NOTHING FURTHER

18 THE COURT YOU CAN STEP DOWN AND BE
19 EXCUSED WE APPRECIATE YOUR TIME THANK YOU

20 MR POPE YOUR HONOR, I THINK THAT WILL
21 BE IT FOR THE DAY

22 THE COURT MEMBERS OF THE JURY, WE'LL
23 STOP FOR THE DAY AND START BACK AT NINE MORNING

24 THE JUROR I DON'T BELIEVE IT

25 THE COURT HAVE A GOOD EVENING

1 (THE JURY EXITS THE COURTROOM)

2 THE COURT WHERE ARE WE AS FAR AS
3 SCHEDULING

4 MR POPE YOUR HONOR, WE HAVE ONE
5 STIPULATION ISSUE OUTSTANDING WITH THE TRACE EVIDENCE
6 AND WE'VE BEEN TRYING TO WORK BACK AND FORTH ON THAT
7 ONCE WE HAVE THAT STIPULATION RESOLVED, OTHER THAN
8 PROBABLY THE OPPORTUNITY TO CONFIRM WITH THE COURT
9 REPORTER TO GO THROUGH THE EVIDENCE AGAIN AND MAKE
10 SURE, AS YOU KNOW SO MANY NUMBERS FLYING AROUND, MAKE
11 SURE WHAT WE BELIEVE TO BE IN IS IN I THINK TALKING
12 TO MY CO-COUNSEL WE'LL REST ONCE WE ADDRESS THOSE
13 ISSUES, BUT AGAIN ONCE WE GET THIS CLOSE TO EVENING,
14 WE ALWAYS LIKE TO WAIT TIL THE MORNING TO DO THAT IF
15 POSSIBLE

16 THE COURT MR MORTON, ANYTHING BEFORE WE
17 LEAVE FOR THE DAY

18 MR MORTON NO, SIR

19 MR GREELEY NO, YOUR HONOR

20 THE COURT WE'LL SEE YOU AT NINE IN THE
21 MORNING MR BRACKETT

22 MR BRACKETT I JUST WANT TO KNOW IF WE
23 CAN GET THOSE STIPULATIONS WORKED BECAUSE WE NEED TO
24 KNOW ABOUT THE WITNESSES FOR TOMORROW

25 MR MORTON WE'RE WORKING ON THEM RIGHT

002281

1 NOW

2 MR GREELEY CAN WE MAKE IT 9 15 I HAVE
3 MY FLIGHT

4 THE COURT WE'LL MAKE IT 9 15 BUT THE
5 JURY, THEY WILL JUST HAVE TO WAIT A FEW MINUTES
6 THAT'S MY -- I'M SORRY WE WON'T START UNTIL 9 15
7 BUT IF YOU WILL BE HERE AT NINE TO GET THAT WORKED
8 OUT OR NOW WORK IT OUT I'LL JUST APOLOGIZE TO THE
9 JURY THEY WILL JUST GET HERE EARLY ALL RIGHT
10 THANK YOU

11 (COURT'S IN RECESS AT 05 28 PM)

12

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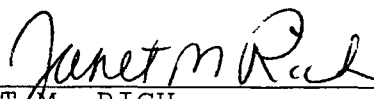
24

25

002282

1
2
3 I, JANET RICH, OFFICIAL COURT REPORTER FOR THE
4 SIXTEENTH CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
5 HEREBY CERTIFY THAT THE FORGOING IS A TRUE, ACCURATE,
6 AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
7 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL
8 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE
9 CIRCUIT COURT FOR YORK COUNTY, SOUTH CAROLINA, ON THE
10 15TH DAY OF SEPTEMBER 2004

11 I DO FURTHER CERTIFY THAT I AM NEITHER KIN,
12 COUNSEL, NOR INTEREST TO ANY PARTY HERETO

13
14
15
16
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20
21
22
23
24
25

JANET M RICH

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1 IN THE CIRCUIT COURT OF YORK COUNTY, SOUTH CAROLINA
2 STATE OF SOUTH CAROLINA
3 VERSUS

4 BILLY WAYNE COPE &
5 JAMES EDWARD SANDERS

6 INDICTMENT NUMBERS 2002-GS-46-3232-3234
7 2003-GS-46-1843-1844
 2004-GS-46-2614-2618
 2004-GS-46-196-199

8 HEARD AT THE MOSS JUSTICE CENTER,
9 1675 YORK HIGHWAY, YORK, SOUTH CAROLINA, ON
10 THURSDAY, SEPTEMBER 16TH, 2004, BEFORE THE
 HONORABLE JOHN C HAYES, III AND A JURY

11 APPEARANCES

12 TOMMY POPE
13 KEVIN BRACKETT
14 WILLY THOMPSON
15 16TH CIRCUIT SOLICITOR'S OFFICE
16 1675 YORK HIGHWAY
17 YORK, SC 29745
18 REPRESENTING THE STATE

19 JAMES MORTON
20 DAVID WOOD
21 MICHAEL SMITH
22 MORTON & GETTYS
23 1051 OAKLAND AVENUE
24 ROCK HILL, SC 29732

25 A PHILIP BAITY
 POST OFFICE BOX 275
 FORT MILL, SC 29715
 REPRESENTING BILLY WAYNE COPE

 LELAND GREELEY
 128 E MAIN STREET SUITE 102
 ROCK HILL, SC 29732
 REPRESENTING JAMES EDWARD SANDERS

 REPORTED BY JANET M RICH
 CIRCUIT COURT REPORTER
 1992 DOWNEY STREET
 ROCK HILL, SC 29732

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I N D E X

MOTION & STIPULATION

MOTIONS

CHARLES HONTIS

DIRECT EXAMINATION 41

CROSS EXAMINATION 93

REDIRECT EXAMINATION 110

SAUL KASSIN

DIRECT EXAMINATION 116

IN CAMERA EXAMINATION 135

DIRECT EXAMINATION 158

IN CAMERA EXAMINATION 174

DIRECT EXAMINATION 209

CROSS EXAMINATION BY

MR BRACKETT 247

MR GREELEY 259

REDIRECT EXAMINATION 270

RECROSS EXAMINATION 270

B J BARROWCLOUGH

DIRECT EXAMINATION 272

CROSS EXAMINATION 283

REDIRECT EXAMINATION 289

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I N D E X

CHARLENE BLACKWELDER

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002287

1 (COURT RESUMES AT 09 20 AM ON SEPTEMBER 16, 2004)

2 THE COURT MR BRACKETT, ANYTHING BEFORE
3 WE GET THE JURY IN

4 MR BRACKETT YES, YOUR HONOR I JUST
5 WANTED TO GO OVER SOME EVIDENTIARY ISSUES, AND THE
6 STATE AND THE DEFENSE HAVE ENTERED INTO A STIPULATION
7 ON A VARIETY OF FACTS WHICH IS CONTAINED IN WHAT IS
8 NOW MARKED AS STATE'S EXHIBIT 102 IT'S A TWO PAGE
9 DOCUMENT THAT'S BEEN SIGNED BY THE SOLICITOR, MR
10 MORTON FOR MR COPE, AND MR GREELEY FOR MR SANDERS
11 WE WOULD PUBLISH THAT TO THE JURY AT THE APPROPRIATE
12 TIME THERE ARE ALSO TWO PHOTOGRAPHS THAT WERE
13 REFERENCED IN CROSS EXAMINATION, THEY'VE BEEN MARKED
14 82 1 AND 83 1, THE STATE WOULD MOVE TO INTRODUCE
15 THOSE INTO EVIDENCE AT THIS TIME, THEY WERE
16 IDENTIFIED BY THE WITNESS, AND I DON'T BELIEVE THAT
17 THERE WAS ANY OBJECTION

18 THE COURT ANY OBJECTION

19 MR MORTON NO, SIR, NO OBJECTION

20 MR GREELEY NO, SIR

21 THE COURT THOSE WILL BE IN EVIDENCE

22 MR BRACKETT AND FINALLY ITEMS 57
23 THROUGH 63 WHICH ARE THE BROOMS AND MOPS THAT HAVE
24 BEEN TESTED AND TESTIFIED TO, I BELIEVE THE
25 FOUNDATION HAS BEEN LAID FOR THOSE, AND THE STATE

1 WOULD SEEK TO INTRODUCE THOSE IN EVIDENCE THEY ARE
2 MARKED FOR IDENTIFICATION RIGHT NOW

3 MR MORTON NO OBJECTION

4 MR GREELEY NO OBJECTION

5 THE COURT THEY ARE IN EVIDENCE WITHOUT
6 OBJECTION

7 MR BRACKETT SO FINALLY, THAT WOULD
8 LEAVE EVERY ITEM THAT IS MARKED AS A STATE'S EXHIBIT
9 IS IN EVIDENCE EXCEPT, 1, 2, 3, 7, 10, 13, 14 WHICH
10 WERE ALL VARIOUS ITEMS FROM THE PRE-TRIAL HEARING
11 FROM TWO OR THREE WEEKS AGO, ITEMS SUCH AS WARRANTS,
12 MR BAKER'S REPORT, THERE ARE A NUMBER OF DIFFERENT
13 THINGS THAT WERE NOT, ADMINISTRATIVE ORDER THAT WE
14 HAD INTRODUCED, THOSE ARE NOT GERMANE TO THIS, SO
15 THOSE ARE NOT IN EVIDENCE AND THEN ITEM 86 WHICH IS A
16 EVIDENCE PROCESSING SHEET THAT WAS NOT INTRODUCED
17 INTO EVIDENCE, BUT TO SHOW MR MORTON, THOSE ARE THE
18 ITEMS THAT ARE NOT IN EVERYTHING ELSE IS IN

19 MR MORTON WE WOULD MOVE TO INTRODUCE
20 THOSE THINGS FROM THE PREVIOUS HEARING, I WANT TO
21 MAKE IT A PART OF THE RECORD

22 THE COURT WE'RE NOT IN YOUR CASE YET
23 IF YOU WANT TO MOVE THEM IN EVIDENCE

24 MR MORTON I DIDN'T WANT TO, OBVIOUSLY
25 FOR THE RECORD APPELLATE PURPOSES AND FOR YOUR

1 RULING, I WANTED THE COURTS TO UNDERSTAND THAT YOU
2 HAD CONSIDERED THOSE THINGS AND RULED AGAINST ME AND
3 SO FORTH

4 THE COURT WELL, I DON'T RECALL ALL OF
5 THEM TO BE HONEST WITH YOU, BUT MY RULINGS ARE
6 WHATEVER THEY WERE AND IF YOU WANT TO INTRODUCE THEM
7 I KIND OF DON'T KNOW WHERE WE ARE PROCEDURALLY THEY
8 HAVEN'T INTRODUCED THEM THEY WERE INTRODUCED FOR
9 THE COURT AT AN EARLIER HEARING, SO THEY ARE NOT PART
10 OF THIS RECORD

11 MR GREELEY BUT THEY ARE PART OF THE
12 PRE-TRIAL RECORD AND THEY ARE IN EVIDENCE

13 THE COURT THEY ARE IN EVIDENCE THEY
14 WILL BE IN EVIDENCE IF THIS CASE GOES UP ON APPEAL
15 THEY ARE IN EVIDENCE REGARDING MY EARLIER RULINGS,
16 BUT THEY ARE JUST NOT IN EVIDENCE TO GO TO THE JURY
17 IF YOU WANT TO PUT THEM IN EVIDENCE DURING YOUR CASE
18 YOU CERTAINLY HAVE A RIGHT TO OFFER THEM AND LET THE
19 COURT RULE AT THAT TIME

20 MR MORTON YOUR HONOR, I UNDERSTAND
21 ONE THING THAT WE BROUGHT UP DURING THE TRIAL THAT,
22 WHEN I RENEWED MY MOTION FOR, TO SUPPRESS THE
23 STATEMENTS BASED ON LACK OF PROBABLE CAUSE I DON'T
24 KNOW -- I INTRODUCED EVIDENCE THAT MRS BLACKWELDER
25 HAD NOT SERVED THE UNLAWFUL NEGLECT WARRANTS ON MR

1 COPE IN THE MORNING BUT RATHER LATER IN THE AFTERNOON
2 WHEN HE RETURNED FROM THE MOSS JUSTICE CENTER PER HER
3 INCIDENT REPORT, AND I DON'T THINK I ACTUALLY
4 INTRODUCED HER INCIDENT REPORT I DON'T KNOW IF
5 IT'S, IT'S OBVIOUSLY HEARSAY, BUT FOR THE PURPOSES OF
6 YOUR RULING I WOULD LIKE TO INTRODUCE THAT AS,
7 IDENTIFY IT IF I COULD

8 MR BRACKETT I THINK I SAW IT IN THERE
9 THE BOX TO HER LEFT IS A BOX OF EVERYTHING THAT SORT
10 OF MARKED AS AN EXHIBIT, EITHER COURT'S EXHIBIT OR
11 DEFENSE EXHIBIT OR STATE'S EXHIBIT, BUT IN NOT
12 EVIDENCE TO GO TO THE JURY I TRIED TO SEGREGATE
13 THAT OUT AND I BELIEVE I SAW THAT

14 THE COURT THAT'S IN THE RECORD

15 MR BRACKETT I BELIEVE IT IS, YOUR
16 HONOR

17 THE COURT MR GREELEY

18 MR GREELEY I HAVE NOTHING

19 THE COURT WHAT DOES THE STATE HAVE THIS
20 MORNING, THE STIPULATION AND THAT'S IT?

21 MR BRACKETT YES, SIR

22 THE COURT WE'LL BRING THEM IN AND DO THE
23 STIPULATION AND THEN I'LL EXCUSE THEM WHILE WE DO
24 MOTIONS AND THINGS WE NEED TO DO AND THEN WE'LL BRING
25 THEM BACK IN AND GO FORWARD ALL RIGHT BRING IN

1 THE JURY

2 (STATE'S EXHIBIT 102 STIPULATION, 82 1 &
3 83 1 PHOTOS, AND 57-63 MOPS AND BROOMS ALL RECEIVED
4 INTO EVIDENCE)

5 (THE JURY RETURNS TO THE COURTROOM AT
6 09 24 AM)

7 THE COURT GOOD MORNING MR BRACKETT
8 MR BRACKETT PLEASE THE COURT, YOUR
9 HONOR AT THIS TIME THE STATE WOULD SEEK TO PUBLISH
10 STATE'S EXHIBIT 102 WHICH IS A VARIETY OF
11 STIPULATIONS THAT HAVE BEEN ENTERED INTO BETWEEN THE
12 DEFENSE AND THE STATE IN THIS CASE OR BOTH OF THESE
13 CASES THE STATE, BILLY WAYNE COPE, AND JAMES
14 SANDERS HEREBY AGREE TO THE FOLLOWING FACTUAL
15 STIPULATIONS NONE OF THE ITEMS TESTED FOR
16 FINGERPRINTS IN THIS CASE YIFLDED A MATCH TO EITHER
17 BILLY WAYNE COPE OR JAMES SANDERS

18 THE HAIRS RECOVERED FROM BILLY WAYNE
19 COPE'S CLOTHING IN SUSPECT COLLECTION KIT ARE
20 CONSISTENT WITH BILLY WAYNE COPE'S KNOWN HAIR
21 STANDARD THE HAIRS RECOVERED FROM AMANDA COPE'S
22 BODY AND ROOM ARE CONSISTENT WITH AMANDA COPE'S KNOWN
23 HAIR STANDARDS THESE HAIRS ARE NOT CONSISTENT WITH
24 BILLY WAYNE COPE OR JAMES SANDERS

25 ON DECEMBER 21, 2001 -- I'M SORRY

002292

1 DECEMBER 2, 2001, BILLY WAYNE COPE ASKED A DETENTION
2 CENTER OFFICER TO CONTACT JERRY WALDROP OF THE ROCK
3 HILL POLICE DEPARTMENT HE STATED THAT HE WISHED TO
4 SPEAK WITH HIM FURTHER BILLY WAYNE COPE DID NOT
5 REQUEST TO SPEAK WITH AN ATTORNEY AT THIS TIME

6 ITEM NUMBER 34 1 1 CONTAINED IN STATE'S
7 EXHIBIT NUMBER 54 CONTAINED A HAIR FROM A GRAY CLOTH
8 THAT WAS SENT TO SLED DNA FOR TESTING ANYTHING THAT
9 REMAINED WAS NOT TESTED

10 THE STIPULATION WAS ENTERED INTO BY THOMAS
11 E POPE AS SOLICITOR FOR THE 16TH CIRCUIT AND AGREED
12 TO BY JAMES MORTON ON BEHALF OF BILLY WAYNE COPE AND
13 LELAND GREELEY ON BEHALF OF JAMES SANDERS

14 THE COURT ALL RIGHT

15 MR GREELEY YOUR HONOR, I JUST WANT THE
16 RECORD TO REFLECT WE ARE JUST CORRECTING A
17 SCRIBBLER'S ERROR ON THE DATE FROM DECEMBER 21 TO
18 DECEMBER 2

19 THE COURT I NOTICED MR BRACKETT SORT OF
20 PAUSED, SO I FIGURED IT MUST BE SOMETHING, A
21 TYPOGRAPHICAL ERROR WE CALL THEM SCRIBBLER'S
22 ERRORS WE BELIEVE THEY ARE MORE IMPORTANT THAN MOST
23 PEOPLE, SO WE CALL THEM SCRIBBLER'S ERRORS, BUT IT'S
24 A TYPO

25 MR GREELEY THAT'S JUST WHAT I LEARNED

1 I DIDN'T SAY THAT

2 (LAUGHTER)

3 MR BRACKETT IF THERE WAS A LATIN FOR IT
4 WE WOULD USE THAT THAT WOULD BE THE EXTENT OF THE
5 STIPULATION AND THAT WOULD BE THE STATE'S CASE

6 THE COURT ALL RIGHT NOW THE STATE IS
7 RESTING, THAT IS, YOU'VE HEARD THE STATE'S EVIDENCE
8 NOW I KNOW YOU JUST CAME IN BUT THIS IS LIKE THE
9 FOOTBALL AND BASEBALL GAME, THIS IS ONE OF THOSE
10 POINTS WHERE WE HAVE TO TAKE UP MATTERS OF LAW BEFORE
11 WE PROCEED INTO THE REST OF THE TRIAL, SO I'M GOING
12 TO LET YOU GO BACK TO THE JURY ROOM WHILE WE TAKE UP
13 SOME LEGAL MATTERS

14 (THE JURY EXITS THE COURTROOM AT 09 29
15 AM)

16 THE COURT THE STATE HAS RESTED
17 ANYTHING ON BEHALF OF MR COPE, MR MORTON

18 MR MORTON YES, SIR, YOUR HONOR AT
19 THIS POINT WE MOVE FOR A DIRECTED VERDICT ON ALL THE
20 CHARGES TAKING THE EVIDENCE IN THE LIGHT MOST
21 FAVORABLE TO THE STATE THERE IS NO HYPOTHESIS BY
22 WHICH THE JURY COULD COME TO A VERDICT ON THE CHARGES
23 AGAINST MR COPE

24 I WOULD SPECIFICALLY ADDRESS THE
25 CONSPIRACY CHARGE, YOUR HONOR THE EVIDENCE, AS I

002294

1 REMEMBER THE EVIDENCE, WAS UPON QUESTIONING OF THE
2 OFFICERS REGARDING WHAT EVIDENCE THEY HAD TO LINK MR
3 COPE AND MR SANDERS, THE EVIDENCE AS I UNDERSTAND IT
4 WAS THAT BECAUSE THEY COULD NOT FIND ANY SIGNS OF
5 FORCED ENTRY AND BECAUSE MR SANDERS' DNA WAS ON HIS
6 DAUGHTER'S LEG THAT THAT WAS EVIDENCE OF A
7 CONSPIRACY I DON'T THINK I HAVE TO TELL THE COURT
8 THAT OBVIOUSLY A CONSPIRACY REQUIRES AN AGREEMENT, A
9 MEETING OF THE MINDS I UNDERSTAND IT CAN BE TACIT,
10 I UNDERSTAND IT CAN BE IMPLIED, BUT IT CANNOT BE MERE
11 SPECULATION, IT CANNOT BE CONJECTURE, IT CANNOT BE
12 JUST BASED ON THESE FACTS YOU HEARD IN PREVIOUS
13 TESTIMONY OUTSIDE THE PRESENCE OF THE JURY AT LEAST
14 FOUR VICTIM WOMEN COME IN THIS COURTROOM AND TESTIFY
15 THAT IN AND AROUND THIS PERIOD OF TIME IN AND AROUND
16 THIS SAME AREA, THEIR HOMES WERE ALSO ENTERED, THERE
17 WERE NO SIGNS OF FORCED ENTRY, THEY WERE SEXUALLY OR
18 PHYSICALLY ASSAULTED AS WELL THE FACT THAT THE
19 POLICE COULD NOT FIND ANY SIGNS OF FORCED ENTRY DOES
20 IN NO WAY ALLUDE TO THE FACT THAT THERE WAS ANY KIND
21 OF AN AGREEMENT, ANY KIND OF MEETING OF THE MINDS
22 BETWEEN MR SANDERS AND MR COPE THERE ARE PLENTY
23 OF WAYS TO GET IN THAT HOUSE AS MRS DAVIS'S WAS
24 ENTERED A KNOCK ON THE DOOR THE OTHER WOMEN WHO
25 TESTIFIED THEY WERE, THERE WERE JUST NO SIGNS OF

1 FORCED ENTRY OF ANY PEOPLE IN THEIR HOUSE THAT'S A
2 COMMON WAY FOR PEOPLE TO GET IN THE HOUSE THE MERE
3 FACT THAT THERE WAS, THAT THE POLICE SAY THERE WAS NO
4 SIGNS OF FORCED ENTRY AND HIS DNA WAS ON HER LEG, MR
5 SANDERS' DNA WAS ON AMANDA'S LEG, AND THAT MR COPE
6 WAS HOME, IN NO WAY, SHAPE, OR FORM CAN IT BE, CAN IT
7 BE PROVEN, CAN IT BE PROVEN AT THIS STAGE, AT THE
8 DIRECTED VERDICT STAGE, THAT THERE IS ANY EVIDENCE,
9 NO EVIDENCE WHATSOEVER TO PROVE AN AGREEMENT, MEETING
10 OF THE MINDS, CONSPIRACY OF ANY TYPE BETWEEN MR COPE
11 AND MR SANDERS AND AGAIN WHILE I UNDERSTAND THAT
12 THE STATE WILL STAND UP AND SAY THAT THERE IS AN
13 IMPLIED AGREEMENT, THERE IS STILL, THERE HAS TO BE
14 MORE THAN SPECULATION THERE HAS TO BE MORE THAN
15 CONJECTURE THERE HAS TO BE MORE THAN SUSPICION
16 THERE HAS TO BE MORE THAN A THEORY THERE HAS TO BE
17 MORE THAN A THING WE HAVEN'T HEARD ANYTHING, NOT
18 ONE IOTA, NOT ONE SINGLE PIECE OF EVIDENCE, THAT CAN
19 LEAD THIS COURT TO CONCLUDE IN MY OPINION THAT THERE
20 IS ANY TYPE OF A CONSPIRACY BETWEEN MR COPE AND MR
21 SANDERS I ASKED MR CABANISS ANY TESTIMONY FROM
22 ANY, ANY FRIENDS, FAMILY, PHONE RECORDS, E-MAILS,
23 COMPUTERS, THERE IS NOT EVEN ANY INDICATION,
24 TESTIMONY, DIRECT, CIRCUMSTANTIAL, OR OTHERWISE THAT
25 THESE MEN EVER EVEN SEEN EACH OTHER, HAVE KNOWN EACH

1 OTHER, HAVE SPOKEN TO EACH OTHER, AND I DON'T KNOW
2 HOW IT CAN BE PROVEN THAT THERE WAS AN AGREEMENT
3 WHICH AS THE HONORABLE RALPH KING ANDERSON WOULD SAY
4 IS THE NEXUS OF THE CRIME OF CONSPIRACY THERE HAS
5 TO BE AN AGREEMENT THERE HAS TO BE A MEETING OF THE
6 MINDS, TACIT, IMPLIED, OR OTHERWISE THERE HAS TO BE
7 SOME KIND OF MEETING BETWEEN THIS MAN'S MIND AND THIS
8 MAN'S MIND TO GO IN AND COMMIT CRIMINAL SEXUAL
9 CONDUCT, AND IT'S IMPOSSIBLE TO PROVE IF YOU CANNOT
10 PROVE ANY KIND OF CONNECTION BETWEEN THE TWO OTHER
11 THAN THE FACT THAT MR COPE WAS AT HOME AND THAT MR
12 SANDERS' DNA WAS FOUND ON HIS DAUGHTER'S BODY, SO ON
13 THOSE GROUNDS, YOU KNOW, I WOULD MOVE AT THIS POINT
14 AS A DIRECTED VERDICT ON ALL THE CHARGES BUT
15 OBVIOUSLY MY EMPHASIS IS ON DIRECTED VERDICT AS TO
16 THE CONSPIRACY CHARGE

17 THE COURT I DON'T NEED TO HEAR FROM THE
18 STATE I'M GOING TO DENY THE MOTION I FEEL AS TO
19 THE MURDER AND THE CRIMINAL SEXUAL CONDUCT AND THE
20 UNLAWFUL NEGLECT THERE IS AMPLE DIRECT EVIDENCE

21 MR MORTON I DIDN'T MENTION UNLAWFUL
22 NEGLECT, YOUR HONOR I WANT TO MAKE THAT PART OF THE
23 RECORD

24 THE COURT I THOUGHT YOU WERE INCLUDING
25 UNLAWFUL NEGLECT

002297

1 MR MORTON OKAY THANK YOU

2 THE COURT AS TO THE CONSPIRACY I FIND
3 THAT THERE IS SOME DIRECT EVIDENCE AND SUBSTANTIAL
4 CIRCUMSTANTIAL EVIDENCE I THINK THAT YOU RECITED
5 PRETTY WELL MOST OF THE EVIDENCE, BUT ALSO WE HEARD
6 THE ONE YOUNG GIRL, ONE OF THEM TESTIFIED YESTERDAY
7 THAT IN ADDITION TO THE FACTS THAT YOU RELATED THAT
8 AMANDA HAD CHAINED THE DOOR, AND I'M NOT GOING TO TRY
9 TO OUTLINE ALL THE EVIDENCE BECAUSE THAT'S NOT MY
10 JOB, BUT I JUST WANT TO SHOW YOU THAT THERE IS AT
11 LEAST SOME CIRCUMSTANTIAL EVIDENCE THAT SOMEBODY TOOK
12 THAT CHAIN FROM WHERE AMANDA HAD IT WITH THE DOOR
13 CHAINED AND REMOVED THE CHAIN AT SOMETIME OVER THE
14 NIGHT AND ALSO THE ONLY EVIDENCE IN THE RECORD IS
15 THAT MR COPE WAS PRESENT OVER THE NIGHT AND THERE IS
16 SOME EVIDENCE THAT MR SANDERS WAS IN THAT HOUSE
17 SOMETIME OVER THE NIGHT, SO I FIND AS TO ALL, AS TO
18 THE MURDER, CSC, AND UNLAWFUL NEGLECT, THERE IS AMPLE
19 DIRECT EVIDENCE CONCERNING THOSE THREE

20 AS TO THE CONSPIRACY THERE IS DIRECT
21 EVIDENCE AND THERE IS SUBSTANTIAL CIRCUMSTANTIAL
22 EVIDENCE ALL RIGHT, MR GREELEY, ON BEHALF OF MR
23 SANDERS

24 MR GREELEY ON BEHALF OF MR SANDERS,
25 YOUR HONOR, AND IN LIGHT OF YOUR RULING IN REGARDS TO

1 MR MORTON'S MOTION ESPECIALLY FOR THE CONSPIRACY, I
2 WON'T BE LONG YOUR HONOR, THE CASE LAW SAYS OF
3 COURSE THAT IN A CIRCUMSTANTIAL CASE AND I WOULD
4 SUBMIT TO THE COURT THAT IN REGARDS TO MR SANDERS
5 THIS IS A CIRCUMSTANTIAL CASE

6 THE COURT I ALWAYS HATE TO INTERRUPT BUT
7 I THINK THE DNA IS BEYOND CIRCUMSTANTIAL SO I JUST
8 THINK THERE IS SOME NON-CIRCUMSTANTIAL, SOME DIRECT
9 EVIDENCE OF AT LEAST HIM BEING IN THE HOUSE NOW AS
10 OPPOSED TO HIM, I GUESS IT IS CIRCUMSTANTIAL AS TO
11 WHETHER OR NOT WHOEVER LEFT THEIR SEMEN AND DNA IN
12 THERE ACTUALLY DID ANYTHING ELSE OTHER THAN THAT,
13 BUT --

14 MR GREELEY I WOULD RESPECTFULLY STATE
15 TO THE COURT THAT I WOULD AGREE WITH THE COURT THAT
16 THE DNA EVIDENCE MAY BE DIRECT EVIDENCE IN REGARDS TO
17 THE ASPECT THAT MR SANDERS AND MISS COPE MAY AT SOME
18 TIME COME IN CONTACT WITH ONE ANOTHER THE FACT THAT
19 THE ALLEGED SEMEN WAS FOUND ON HER PANTS AND SALIVA
20 ON THE BREAST IS, THESE ARE LOCATIONS OF MOBILITY
21 THERE IS NO EVIDENCE, I WOULD SUBMIT TO THE COURT,
22 THAT EITHER CIRCUMSTANTIALLY PLACES MR SANDERS IN
23 THAT HOUSE UNLESS THE ASSUMPTION IS MADE THAT ANY
24 CONTACT CAME IN THAT HOUSE

25 THE COURT I UNDERSTAND WHAT YOU ARE

002299

1 SAYING

2 MR GREELEY OKAY SO IN LIGHT OF THAT I
3 WOULD STATE TO THE COURT THAT I SUBMIT THAT THE STATE
4 WOULD HAVE TO SHOW SUBSTANTIAL CIRCUMSTANTIAL
5 EVIDENCE AT THIS STAGE IN A LIGHT MOST FAVORABLE TO
6 THEM WHEREBY MR SANDERS' GUILT COULD LOGICALLY BE
7 DEDUCED IN THE SCHLUP CASE IT TALKED ABOUT HOW YOU
8 CAN'T TAKE IT TO THE JURY BASED UPON MERE SUSPICION
9 AND SO I WOULD ASK THE COURT TO GRANT OUR MOTION FOR
10 DIRECTED VERDICT IN REGARDS TO ALL FOUR INDICTMENTS
11 WHICH IS 2004-GS-46-196, 197, 198, AND 199 IN THIS
12 CASE I WOULD JOIN IN AND REITERATE THE GROUNDS THAT
13 MR MORTON STATED IN REGARDS TO THE CONSPIRACY COUNT,
14 THAT THERE WAS NO EVIDENCE WHATSOEVER OF THESE TWO
15 MEN HAVING ANY CONTACT, EVEN ASSOCIATION, OR KNOWING
16 EACH OTHER IN THIS CASE AND WHEN I TALK ABOUT THE
17 LIGHT MOST FAVORABLE TO THE STATE I WOULD SUBMIT TO
18 THE COURT THAT IT HAS TO BE VIEWED, SINCE IN THESE
19 CIRCUMSTANCES WE HAVE TO LOOK AT ALL THE STATE'S
20 EVIDENCE IN A LIGHT MOST FAVORABLE TO THE STATE OF
21 ALL THE STATE'S EVIDENCE IN DOING A LIGHT MOST
22 FAVORABLE TO THE STATE I WOULD SUBMIT TO THE COURT
23 THAT WHAT IS NOT ALLOWED IS TO POINT TO ONE PIECE OF
24 EVIDENCE AND SAY, WELL, WE'RE NOT GOING TO INCLUDE
25 ANY OF THE OTHER STATE'S EVIDENCE IN OUR ARGUMENT,

1 WE'RE JUST GOING TO LOOK AT EACH INDIVIDUAL PIECE,
2 YOU HAVE TO LOOK AT ALL OF THE STATE'S EVIDENCE IN
3 THE LIGHT MOST FAVORABLE TO THE STATE, AND I WOULD
4 SUBMIT TO THE COURT THAT IN DOING THAT WHEN YOU
5 CONSIDER THAT MOST OF THE EVIDENCE IN THIS CASE THAT
6 THEY'VE PRESENTED SHOWS STATEMENTS OF ONE OF THE
7 DEFENDANTS AS TO WHAT HE DID, HOW HE CARRIED IT OUT,
8 AND THE FACT THAT THERE WAS NO PRESENCE EVER
9 MENTIONED OF MY CLIENT IN REGARDS TO THE ACTUAL CRIME
10 THAT WAS COMMITTED AND FOR WHICH WE ARE IN COURT
11 ABOUT, THAT THE SEMEN ON HER PANTS AND THE SALIVA ON
12 HER BREAST MERELY RAISE A SUSPICION OF MR SANDERS'
13 INVOLVEMENT, AND I WOULD SUBMIT TO THE COURT THAT IN
14 REGARDS TO EACH OF THOSE, THE MURDER WHICH IS
15 INDICTMENT 196, CRIMINAL SEXUAL CONDUCT TWO COUNTS
16 WHICH IS THE ANAL PENETRATION AND THE VAGINAL
17 PENETRATION OF AMANDA COPE WHICH IS 197 AND 198, AND
18 THE CONSPIRACY WHICH IS 199, I WOULD ASK FOR A
19 DIRECTED VERDICT IN FAVOR OF MY CLIENT OF NOT GUILTY
20 ON EACH AND EVERY ONE OF THOSE INDICTMENTS

21 THE COURT LET ME JUST ASK THIS,
22 REGARDLESS OF WHEN IT HAPPENED, IF HE HAD HIS MOUTH
23 ON HER BREAST, THAT CERTAINLY IS AN ASSAULT, BUT I
24 MEAN, I DON'T KNOW THAT IT'S CRIMINAL SEXUAL CONDUCT
25 BECAUSE THERE WAS NO PENETRATION IF AT ANY TIME HE

002301

1 HAD INTERCOURSE WITH THIS GIRL, IF HE DID, THAT'S
2 CRIMINAL SEXUAL CONDUCT

3 MR GREELEY IF AT ANY TIME, I AGREE
4 THE COURT SO AT LEAST AS TO THOSE
5 THERE'S PERHAPS MORE CIRCUMSTANTIAL EVIDENCE AS TO
6 THOSE THAN THERE MAY BE TO THE OTHERS

7 MR GREELEY OKAY I WOULD SUBMIT TO THE
8 COURT THAT THERE IS, THE EVIDENCE AS TO PENETRATION
9 IS NOT IN THIS CASE FROM MY CLIENT THE REASON BEING
10 IS BECAUSE BASED UPON THE FACTS THAT THE STATE GAVE,
11 EVERY ORIFICE OF THE CHILD DID NOT HAVE ANY EVIDENCE
12 WHATSOEVER OF SEMEN OR OF A SEX, ACTUAL SEX ACT FROM
13 A PENIS THE EVIDENCE SHOWS A PENETRATION OF SOME
14 SORT HERE IT MAY HAVE BEEN A PENIS, IT MAY NOT, BUT
15 WHEN WE'RE LOOKING AT THE EVIDENCE AS TO WHAT IT
16 SHOWS, IT DOESN'T SHOW THAT

17 IN REGARDS TO THE COURT'S INQUIRY ABOUT
18 THE BREAST, I AGREE WITH THE COURT WE HAVE A MINOR
19 HERE, AND MY UNDERSTANDING OF THE CASE, OF THE
20 STATUTORY LAW, IS THAT THAT WOULD BE DIRECT EVIDENCE
21 IF MY CLIENT WAS CHARGED WITH LEWD ACT ON A CHILD
22 WHICH HE IS NOT IN THIS CASE WE'RE NOT HERE ABOUT
23 THAT ALLEGATION WE'RE HERE ABOUT THE ALLEGATION OF
24 THE HORRENDOUS PENETRATION OF AMANDA'S ANUS AND
25 RECTUM AND HER VAGINA WITH SOME OBJECT AND SO I

002202

1 WOULD SUBMIT TO THE COURT THAT, YES, THE SALIVA WOULD
2 BE A DIRECT EVIDENCE AS TO A CHARGE OF LEWD ACT IN
3 REGARDS TO MY CLIENT, BUT WE'RE NOT HERE ON THAT
4 CHARGE AND YES

5 THE COURT MR BRACKETT, LET ME HEAR FROM
6 YOU I'M LOOKING AT THE INDICTMENTS AND THE
7 ALLEGATIONS ARE THAT THE SEXUAL BATTERY OCCURRED WHEN
8 JAMES EDWARD SANDERS PENETRATED HER VAGINA IN ONE AND
9 ANUS IN THE OTHER

10 MR BRACKETT YES, SIR

11 THE COURT WHAT EVIDENCE IS THERE OF
12 THAT?

13 MR BRACKETT THE TESTIMONY OF DR
14 MAYNARD TAKES CARE OF THIS, YOUR HONOR HE TESTIFIED
15 THAT THE BRUISE TO THE BREAST, HE COULD AGE IT BASED
16 ON THE BODY'S RESPONSE

17 THE COURT I'M TALKING ABOUT PENETRATION
18 I'M NOT -- GO AHEAD I'M GOING TO LET YOU GO THROUGH
19 BUT I'M GOING --

20 MR BRACKETT YES, SIR WELL, HE SAID HE
21 COULD AGE THE WOUND BY THE BODY'S RESPONSE TO IT
22 THAT THE BODY GOES THROUGH A SERIES OF STAGES IN
23 RESPONDING TO SOME SORT OF ASSAULT TO IT AND AT
24 CERTAIN POINTS DIFFERENT THINGS HAPPEN AND HE WAS
25 ABLE TO MICROSCOPICALLY INSPECT THE VARIOUS WOUNDS

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1 THAT SHE RECEIVED AND HE SAID ON A NUMBER OF
2 OCCASIONS ALL THE WOUNDS, INCLUDING THE SUCK MARK ON
3 HER BREAST ON WHICH THE SALIVA WAS FOUND, WERE
4 CONTEMPORANEOUS NOW WE KNOW SHE WAS IN THAT HOUSE,
5 THROUGH EVERYBODY'S TESTIMONY, EVEN IF, NOBODY'S
6 DISAGREED THAT SHE WAS IN THAT HOUSE PRETTY MUCH FROM
7 ABOUT SIX O'CLOCK THAT NIGHT UNTIL ONE O'CLOCK IN THE
8 MORNING WHEN SHE WENT TO BED, 1 20 WHEN SHE WENT TO
9 BED, SO THERE IS NO QUESTION THAT THAT HAD TO HAPPEN
10 AT SOME POINT THAT NIGHT WHEN HE SAID THAT IT WAS
11 ABOUT, WITHIN A FOUR HOUR TIME PERIOD THAT THAT HAD
12 OCCURRED, SO THE SUCK MARK HAD TO BE MADE
13 CONTEMPORANEOUS WITH THE STRANGLE MARKS AND THE OTHER
14 INJURIES, THE MASSIVE CONTUSIONS TO HER HEAD, THE
15 INTERNAL INJURIES THAT SHE EXPERIENCED IN HER
16 ABDOMEN, ALL THOSE WERE CONTEMPORANEOUS, AND THE JURY
17 COULD CONCLUDE THAT AND RESPECTING WHAT MR GREELEY
18 SAID, YOU DON'T TAKE THE EVIDENCE IN ISOLATION THEY
19 COULD BELIEVE SOME THINGS AND NOT BELIEVE OTHER
20 THINGS THEY COULD COMPLETELY BELIEVE MR COPE
21 DIDN'T KNOW ANYTHING ABOUT IT IN WHICH CASE THE
22 ENTIRE THING WOULD HAVE HAD TO HAVE BEEN PERPETRATED
23 BY MR SANDERS IF THEY BELIEVE THAT MR COPE WAS
24 NOT GUILTY AT ALL, THEN THAT ONLY LEAVES MR SANDERS
25 TO HAVE COMITTED THIS CRIME BECAUSE WE DO KNOW,

002304

1 UNDISPUTED TESTIMONY FROM DR MAYNARD, IS THAT THAT
2 SUCK MARK OCCURRED THAT NIGHT HIS SALIVA IS ON THAT
3 SUCK MARK HE WAS IN THAT HOUSE THAT NIGHT THAT IS
4 A SEXUAL ASSAULT THE SEXUAL ASSAULT TO HER PERSON,
5 THE INJURIES TO HER VAGINA, AND TO HER ANUS ALL
6 OCCURRED CONTEMPORANEOUS WITH THE SUCK MARK ON HER
7 BREAST SO

8 THE COURT LET ME FOLLOW THROUGH WITH
9 YOUR LOGIC ON THAT, SO IF THEY BELIEVE MR COPE AND
10 FIND HIM NOT GUILTY OF CRIMINAL SEXUAL CONDUCT THEN
11 THEY CAN FIND MR SANDERS GUILTY OF CRIMINAL SEXUAL
12 CONDUCT IF THEY FIND MR COPE GUILTY OF CRIMINAL
13 SEXUAL CONDUCT THEN UNDER YOUR LOGIC THEY WOULD HAVE
14 TO FIND MR SANDERS NOT GUILTY OF CRIMINAL SEXUAL
15 CONDUCT, IS THAT CORRECT?

16 MR BRACKETT NO, SIR THEY COULD --
17 THE COURT WELL, YOU TOLD ME A MINUTE AGO
18 THEY COULD DISBELIEVE THAT HE WAS INVOLVED, THAT MR
19 COPE WAS INVOLVED

20 MR BRACKETT THEY COULD ALSO BELIEVE
21 THAT THERE WAS NO FORCED ENTRY INTO THAT HOUSE AND
22 THAT THE CHAIN WAS ON THE DOOR AND SOMEBODY HAD TO
23 LET MR SANDERS IN AND IN THAT INSTANCE IT WAS A
24 CONSPIRACY

25 THE COURT I'M NOT GOING TO SAY YOU ARE

1 AVOIDING THE QUESTION, MAYBE YOU JUST DON'T
2 UNDERSTAND IT MY POINT IS YOU GOT TWO CHARGES
3 AGAINST HIM INVOLVING PENETRATION

4 MR BRACKETT YES, SIR

5 THE COURT IF THEY BELIEVE, IF THEY FIND
6 MR COPE GUILTY OF THAT, THAT DOESN'T MEAN HE DIDN'T
7 DO IT, BUT YOUR ARGUMENT WAS THAT THEY COULD BELIEVE
8 MR COPE DID NOT DO IT AND FIND MR SANDERS, SO
9 THEREFORE MR SANDERS HAD TO ISN'T THE FLIP FOR
10 THAT, I HATE TO USE THE WORD FLIP-FLOP, WE'RE HEARING
11 TOO MUCH OF THAT ANYWAY, ISN'T THE FLIP OF THAT IF
12 THEY FIND THAT MR COPE DID THE PENETRATION THEN
13 BASED ON YOUR THEORY THERE IS NO EVIDENCE THAT MR
14 SANDERS DID PENETRATION OTHER THAN HE MAY HAVE BEEN
15 PRESENT

16 MR BRACKETT NO, SIR, I DON'T BELIEVE
17 THAT COULD BE THE CASE I THINK THEY COULD PRECLUDE
18 THE FACT THAT THEY ACTED TOGETHER

19 THE COURT ACTING TOGETHER FOR
20 PENETRATION, THAT'S WHY YOU AND I ARE NOT JIVING
21 I'M TALKING ABOUT EVIDENCE OF PENETRATION

22 MR BRACKETT YES, SIR THE STATE'S
23 THEORY AND THE STATE BELIEVES THAT THE EVIDENCE SHOWS
24 THAT THIS WAS ONE ASSAULT THAT OCCURRED ON THIS GIRL
25 AND IT EITHER HAPPENED WITH THESE GENTLEMEN TOGETHER

1 OR EITHER ONE OF THEM SEPARATELY AND THE JURY COULD
2 REACH THAT CONCLUSION THEY EITHER WORKED TOGETHER
3 OR JUST HE DID IT OR MAYBE HE JUST CAME IN AND
4 PERPETRATED THE SEXUAL ASSAULT AND LEFT AND THE
5 MURDER WAS COMMITTED AFTERWARDS THEY COULD COME TO
6 A VARIETY OF CONCLUSIONS REASONABLY UNDER THE
7 EVIDENCE THAT'S BEEN PRESENTED I DON'T KNOW WHAT
8 THEY ARE ULTIMATELY GOING TO BELIEVE OR DISBELIEVE
9 MY ARGUMENT IS SIMPLY THAT THEY ARE ENTITLED AND
10 WE'RE ENTITLED IN THE LIGHT MOST FAVORABLE TO THE
11 STATE TO THE QUESTION, TO ASK THE QUESTION OF, COULD
12 A JURY CONCLUDE THIS UNDER THE EVIDENCE THAT'S BEEN
13 PRESENTED, AND IF A JURY COULD REASONABLY COME TO
14 THIS CONCLUSION THEN WE SURVIVE A DIRECTED VERDICT
15 THE COURT I UNDERSTAND THAT THAT'S WHY
16 I KEEP ASKING, WHAT EVIDENCE IS THERE OF PENETRATION
17 OF AMANDA COPE EITHER ANUS OR VAGINA BY MR SANDERS,
18 EITHER DIRECT OR CIRCUMSTANTIAL?
19 MR BRACKETT THE EVIDENCE IS AS DR
20 MAYNARD SAID THAT THE SUCK MARK OCCURRED
21 CONTEMPORANEOUS WITH THE STRANGULATION AND THE
22 INJURIES TO HER VAGINA AND TO HER ANUS AND --
23 THE COURT WELL, I DENY THE MOTION
24 OKAY ANYTHING ELSE BEFORE WE GET THE JURY IN?
25 WE'LL TAKE A SHORT BREAK SO EVERYONE CAN GET

1 REFRESHED

2 MR MORTON YES, SIR I WANT AND I THINK
3 I HAVE TO DO THIS AT THIS TIME THE COURT EARLIER
4 DENIED MY MOTION TO INCLUDE THE OTHER BAD ACTS IN
5 THIS CASE I WANT TO RENEW THAT MOTION FOR THE COURT
6 REGARDING THE OTHER BAD ACTS THAT HAVE BEEN
7 PERPETRATED BY MR COPE I BELIEVE THEY ARE MORE
8 THAN GENERALLY SIMILAR IN NATURE I BELIEVE THE
9 EVIDENCE IS REplete WITH THE SIMILARITIES OBVIOUSLY
10 IT'S CLEAR AND CONVINCING I BELIEVE THAT IT MEETS
11 THE STANDARD OF 404 AND OF LYLE, AND I BELIEVE THAT
12 WE SHOULD BE ALLOWED IN THE DEFENSE CASE TO INTRODUCE
13 EVIDENCE THAT MR SANDERS PERPETRATED THESE OTHER BAD
14 ACTS OF A VERY CLOSE SIMILARITY OF THESE OTHER
15 VICTIMS IN AND AROUND THIS SAME AREA IN AND AROUND
16 THE SAME TIME AS WE PRESENTED TO THE COURT AT THE
17 BEGINNING OF THIS CASE I BELIEVE BEFORE THE JURY WAS
18 SWORN

19 THE COURT WELL, I DENY THAT MOTION I
20 FEEL COMFORTABLE WITH THE RULING THE COURT MADE
21 EARLIER

22 MR MORTON YOUR HONOR, SECONDARILY, I
23 WOULD INTEND TO INTRODUCE EVIDENCE BASED ON THE
24 STATE'S TESTIMONY FROM SEVERAL OF ITS WITNESSES THAT
25 IT IS VERY UNCOMMON, THAT IT IS VERY RARE, COUPLE OF

1 THE OFFICERS TESTIFIED THAT IN THEIR 28-30 YEARS OF
2 EXPERIENCE THEY HAVEN'T SEEN CASES IN WHICH THERE WAS
3 NO SIGNS OF FORCE ENTRY I HAVE FOUR VICTIMS WHO
4 LIVE WITHIN A MILE OF AMANDA COPE, WHO WITHIN A SIX
5 WEEK PERIOD TESTIFIED AND THE EVIDENCE WILL SHOW AND
6 MRS BLACKWELDER AND THE INVESTIGATION OF THE ROCK
7 HILL POLICE WILL SHOW, THAT THERE WAS NO SIGNS OF
8 FORCED ENTRY INTO THESE WOMEN'S HOUSES

9 THE COURT YOU TALKING ABOUT THE SAME
10 FOUR WOMEN?

11 MR MORTON YES, SIR I HAVE AT LEAST
12 THOSE FOUR THAT THERE WERE NO SIGNS OF FORCED
13 ENTRY, YET SOMEHOW, SOMEBODY ENTERED THIS HOUSE,
14 ENTERED THEIR HOMES, ENTERED THEIR RESIDENCES, AND
15 PHYSICALLY OR SEXUALLY ASSAULTED THEM SUCH THAT THAT
16 TESTIMONY IS CRUCIAL TO THE DEFENSE TO SHOW THAT
17 THEIR CREDIBILITY IS IN QUESTION BECAUSE THEY ARE
18 COMING UP HERE SAYING THAT OH, 28-30 YEARS THEY
19 HADN'T SEEN IT, AND HOW RARE IT IS, BUT WE KNOW OF
20 FOUR CASES WITHIN A SIX WEEKS IN THAT AREA WHERE NO
21 FORCED ENTRY WAS FOUND AND I THINK I SHOULD BE ABLE
22 TO PROVE WITHOUT SAYING IT WAS MR SANDERS IF THE
23 COURT RULES THAT I CAN'T SAY IT WAS MR SANDERS AS
24 ANOTHER BAD ACT, JUST AS EVIDENCE THAT THEIR
25 CREDIBILITY IS IN QUESTION, THAT THEIR TESTIMONY IS

1 SUBJECT TO INTERPRETATION BECAUSE WE CAN SHOW THAT
2 THIS HAPPENED TO ME TOO TWO WEEKS LATER, FIVE
3 BLOCKS DOWN THE STREET, I CAME HOME, THERE WERE NO
4 SIGNS OF FORCED ENTRY ADMITTEDLY BY THE POLICE, THAT
5 HAPPENS IT'S NOT RARE, IT'S NOT UNCOMMON, AND WE
6 HAVE, WE HAVE AT LEAST FOUR DOCUMENTED CASES OF IT
7 HAPPENING AT THIS TIME, AND I THINK WE SHOULD BE ABLE
8 TO SHOW THAT TO REFLECT ON THE CREDIBILITY OF THE
9 POLICE AND THEIR TESTIMONY THAT THAT JUST DOESN'T
10 HAPPEN

11 THE COURT ANY OBJECTION TO THAT?

12 MR BRACKETT YES, SIR

13 THE COURT THAT'S ALL I WANTED TO HEAR
14 ANY OBJECTION, MR SANDERS

15 MR GREELEY MY OBJECTION WOULD BE
16 COUCHED IN TERMS OF---

17 THE COURT JUST, DO YOU HAVE AN
18 OBJECTION?

19 MR GREELEY YES

20 THE COURT ALL RIGHT I'M NOT GOING TO
21 ALLOW THAT NUMBER ONE, I ALREADY RULED BASICALLY ON
22 THE SAME MOTION ALTHOUGH IN A DIFFERENT CONTEXT BUT
23 YOU KEEP TALKING ABOUT THE SAME GENERAL AREA, THE
24 LADY THAT LIVED OUT NEAR EBINPORT SCHOOL I CAN'T EVEN
25 FIND IN THE SAME GENERAL AREA PLUS --

1 MR MORTON NO, SIR, I WOULD NOT, IF --
2 THE COURT LET ME FINISH AND THEN YOU CAN
3 TELL ME WHERE I'M WRONG SO YOU ARE NOT TALKING
4 ABOUT HER OF COURSE, THAT WAS A PATIO DOOR THAT
5 SHE, APPARENTLY WAS OPEN ONE LADY, IF I RECALL,
6 ANSWERED A KNOCK ON THE DOOR WITH AN, OF A REQUEST BY
7 SHE SAID IT WAS MR SANDERS TO USE THE PHONE OR
8 DISABLED CAR OR SOMETHING, THAT'S COMPLETELY
9 DISSIMILAR TO ANYTHING IN THIS CASE ONE WAS A GIRL
10 IN A BOARDING HOUSE THAT WAS OCCUPIED BY A NUMBER OF
11 INDIVIDUALS AND I DON'T REMEMBER THERE BEING ANY
12 EVIDENCE THAT YOU PRESENTED THAT ANYBODY SEARCHED
13 THAT HOUSE FOR ANY FORCED ENTRY, THAT NOBODY KNOWS
14 HOW IN THE WORLD, WHETHER SOMEBODY LET HIM IN,
15 WHETHER THERE WAS AN UNLOCKED DOOR, WHETHER HE, THERE
16 IS JUST NO EVIDENCE ONE WAY OR THE OTHER ON THAT
17 AND I CAN'T REMEMBER THE FOURTH ONE WHO IS THE
18 FOURTH ONE?

19 MR MORTON ALICIA LOWERY WHO CAME HOME
20 THE COURT THE DOOR WAS AJAR AND SHE
21 OPENED THE DOOR AND HE CAME IN

22 MR MORTON YES, SIR

23 THE COURT SO I FIND THAT'S DISSIMILAR
24 TOO I DENY YOUR MOTION

25 MR MORTON WHICH COULD HAVE HAPPENED

1 AND, I SUBMIT IF I COULD, ANY OF THOSE THINGS COULD
2 HAVE HAPPENED IN THIS CASE JUST LIKE THEY HAVE IN
3 THOSE CASES THOSE CASES WERE ALL QUOTE NO SIGNS OF
4 FORCED ENTRY JUST LIKE THIS CASE, AND SO I'M NOT
5 DOING IT TO INTRODUCE EVIDENCE OF GUILT AS TO MR
6 SANDERS I'M INTRODUCING IT TO SHOW THAT WHEN THE
7 POLICE TESTIFIED THAT THEY DON'T HAVE THAT KIND OF
8 THING HAPPEN, IT HAPPENED WITHIN THE MONTH OF
9 DECEMBER SEVERAL TIMES IN THAT SAME AREA

10 THE COURT WELL, I DENY, I SUSTAIN TWO
11 OBJECTIONS FROM BOTH THE STATE AND MR SANDERS AND
12 RATHER THAN MAKE AN ADDITIONAL PROFFER I THINK I
13 REMEMBER MOST OF THE EVIDENCE I HAD FORGOTTEN MS
14 LOWERY BUT I DO REMEMBER NOW SHE DID COME IN AND
15 SHE WAS ALONE AND HER DOOR WAS CRACKED OR SOMETHING
16 AND THAT -- ANYWAY, SO I DON'T THINK YOU NEED TO MAKE
17 ANOTHER PROFFER I FIND THE PROFFER YOU MADE
18 EARLIER, UNLESS YOU HAVE SOMETHING ADDITIONAL, THAT
19 I'M RELYING ON THAT PROFFER

20 MR MORTON ALL RIGHT, SIR IN THAT
21 REGARD I THINK IT IS ESSENTIAL THAT WE BE ABLE TO PUT
22 THAT EVIDENCE UP, THAT IT WILL HELP US PROVE A MOTIVE
23 ON MR SANDERS' PART, THAT WITHOUT BEING ABLE TO DO
24 THAT THE DEFENSE OF MR COPE IS SEVERELY PREJUDICED
25 AND I HAVE TO MOVE FOR A SEVERANCE I HAVE TO RENEW

1 MY MOTION FOR A SEVERANCE OF THESE DEFENDANTS

2 THE COURT WHICH MOTION -- YOU JUST
3 COUPLED TWO THERE WHICH ARE YOU --

4 MR MORTON I'M SORRY OF COURSE, THE
5 PRIOR BAD ACT EVIDENCE

6 THE COURT I RULED ON THAT AND I RULED ON
7 THE FORCED ENTRY, BUT IT SEEMED LIKE YOU COUPLED TWO
8 THERE

9 MR MORTON WELL, I WAS -- I DID AND I
10 APOLOGIZE

11 THE COURT LET'S MAKE THEM ONE AT A TIME
12 SO I CAN RULE ON THEM ONE AT A TIME

13 MR MORTON ONE AT A TIME WAS RENEW MY
14 MOTION FOR A SEVERANCE BASED ON THE JUDGE'S NOT
15 ALLOWING ME TO INTRODUCE OTHER BAD ACT EVIDENCE
16 AGAINST MR SANDERS

17 THE COURT THAT MOTION IS DENIED

18 MR MORTON I ALSO MOVE FOR A SEVERANCE
19 BASED ON THE FACT THAT HIS HONOR WILL NOT ALLOW ME TO
20 INTRODUCE EVIDENCE OF OTHER CRIMES IN THIS AREA IN
21 THIS TIME AS HAS BEEN PROFFERED TO SHOW THAT THERE IS
22 FORCED ENTRY WHICH IS MUCH MORE COMMON THAN THE
23 POLICE ADMITTED TO I THINK I SHOULD BE ABLE TO
24 INTRODUCE THAT TO REFLECT ON THEIR CREDIBILITY I
25 THINK IT GOES TO SHOW MOTIVE THAT THIS TYPE THING

1 GOES ON JUST BECAUSE YOU DON'T FIND FORCED ENTRY
2 DOESN'T MEAN SOMEBODY HADN'T COME IN YOUR HOUSE AND
3 PHYSICALLY ASSAULTED AND RAPED YOU WITHOUT POINTING A
4 FINGER AT HIM I THINK I SHOULD BE ABLE TO DO THAT
5 AND IF THE COURT DOESN'T ALLOW ME TO DO IT I MOVE FOR
6 A SEVERANCE AGAINST MR SANDERS

7 THE COURT THE MOTION IS DENIED MR
8 GREELEY, YOU'VE ALREADY -- ANYTHING FURTHER? I THINK
9 YOU ALREADY MADE YOUR MOTION

10 MR GREELEY YES, SIR THIS IS MORE OF A
11 LOOKING FORWARD MECHANICS THING GIVEN THE DYNAMICS
12 OF THIS CASE WHICH HAVE BEEN MOST INTERESTING, OF
13 COURSE, I'M NOT ENTITLED TO DISCOVERY EXCEPT FROM THE
14 STATE AND I RECEIVED ALL THE DISCOVERY FROM THE STATE
15 AND SO UP TO THIS POINT I HAD INFORMATION I'M NOT
16 ENTITLED TO DISCOVERY FROM MR COPE AND HAVE NOT
17 RECEIVED ANY I HAVEN'T RECEIVED ANY INFORMATION
18 THAT THEY MAY HAVE GIVEN THE STATE THE ONLY REASON
19 I SAY THIS IS BECAUSE AT SOME POINT IN TIME I AM
20 GOING TO HAVE TO CROSS WITNESSES AND I DON'T KNOW IF
21 THERE IS GOING TO BE SOME DOCUMENTARY EVIDENCE, LIKE
22 FOR AN EXPERT OR WHATEVER, BUT I MIGHT HAVE TO TAKE,
23 I MIGHT NOT BE JUMPING UP AS QUICKLY AS I HAVE IN THE
24 PAST AND I MIGHT HAVE TO HAVE A CHANCE TO REVIEW AND
25 I'M NOT EVEN TALKING ABOUT GIVING THE JURY A BREAK,

1 BUT JUST TO REVIEW AT MY DESK CERTAIN THINGS BEFORE I
2 GET UP

3 THE COURT MR MORTON

4 MR MORTON ' YES, SIR WE GAVE THE
5 REPORT, WE GAVE THE STATE A REPORT ON THE HANDWRITING
6 AS TO THE FIRST LETTER I DON'T KNOW IF WE GAVE MR
7 GREELEY A COPY OF THAT OR NOT

8 MR GREELEY NO

9 MR BRACKETT WE DID GET A REPORT AND MY
10 UNDERSTANDING WAS IS THAT THEY PROBABLY WEREN'T GOING
11 TO CALL THAT FELLOW AS A WITNESS I DID NOT PROVIDE
12 A COPY OF THAT TO --

13 MR MORTON WELL, WE ---

14 THE COURT LET'S DO THIS DO YOU OBJECT
15 TO MR GREELEY HAVING A COPY?

16 MR MORTON NO, SIR

17 THE COURT WE'LL GET HIM A COPY THE FIRST
18 OPPORTUNITY

19 MR BRACKETT THAT IS THE ONLY REPORT WE
20 HAVE RECEIVED FROM ANY EXPERT WE'LL HAVE THE SAME
21 ISSUE AS MR GREELEY, WOULD LIKE A LITTLE TIME TO
22 DIGEST WHAT'S SAID BECAUSE THIS EXPERT TESTIMONY JUST
23 CAN'T BE DEALT WITH ON THE FLY

24 THE COURT : OKAY

25 MR MORTON THAT'S ALL I HAVE

1 THE COURT MR COPE, CAN YOU HEAR ME

2 MR COPE YES, SIR

3 THE COURT ALL RIGHT WE HAVE REACHED
4 THE POINT IN THE TRIAL WHERE YOU HAVE THE RIGHT TO
5 PRESENT A DEFENSE IF YOU WISH BUT YOU DO NOT HAVE TO
6 YOU ARE PRESUMED INNOCENT OF ALL OF THESE CHARGES AND
7 THE STATE MUST PROVE EACH ELEMENT OF EACH OF THESE
8 CHARGES BEYOND A REASONABLE DOUBT BEFORE YOU COULD BE
9 CONVICTED AND FOUND GUILTY, SO YOU DON'T HAVE PROVE A
10 THING BUT YOU HAVE A RIGHT TO PRESENT A DEFENSE IF
11 YOU WISH YOU CAN CALL WITNESSES, PLACE THEM ON THE
12 STAND, AND PRESENT WHATEVER EVIDENCE YOU WISH YOU
13 ALSO HAVE A RIGHT TO TESTIFY BUT YOU ALSO HAVE A
14 RIGHT TO REMAIN SILENT IF YOU TESTIFY, THE STATE
15 WILL BE ABLE TO CROSS EXAMINE YOU, MR GREELEY ON
16 BEHALF OF MR SANDERS WILL BE ABLE TO CROSS EXAMINE
17 YOU, AND THEY WILL BE ABLE TO ASK YOU ABOUT THINGS
18 THAT ARE RELEVANT TO THE QUESTIONS BEFORE THE COURT
19 AT THIS TIME, AND ALSO THEY, THE STATE, WILL BE ABLE
20 TO ASK YOU CONCERNING THREE FELONY CHARGES IN 1999
21 WITHOUT GOING INTO THE SUBSTANCE, THAT IS, THE
22 UNDERLYING REASONS FOR THOSE CHARGES BUT YOU HAVE A
23 RIGHT TO TESTIFY YOU HAVE AN ABSOLUTE RIGHT TO
24 REMAIN SILENT IF YOU EXERCISE THE RIGHT TO REMAIN
25 SILENT I WILL TELL THE JURY THAT YOU HAVE EXERCISED

1 THAT RIGHT AND THAT THEY CANNOT USE THAT AGAINST YOU
2 IN ANY FASHION WHATSOEVER I WILL TELL THEM THAT YOU
3 ARE, REMIND THEM THAT YOU ARE PRESUMED INNOCENT AND
4 THAT THE STATE MUST PROVE YOUR GUILT BEYOND A
5 REASONABLE DOUBT I WILL TELL THEM THEY CANNOT
6 FACTOR IN YOUR EXERCISE OF YOUR CONSTITUTIONAL RIGHT
7 TO REMAIN SILENT IN ANY WAY IN THEIR DELIBERATION
8 THEY CAN'T USE IT IN THEIR OWN MIND, AND THEY CAN'T
9 DISCUSS IT, THEY CAN'T EVEN MENTION IT IN THE JURY
10 ROOM THAT YOU HAVE CHOSEN TO EXERCISE THAT RIGHT DO
11 YOU UNDERSTAND ALL THAT?

12 MR COPE YES, SIR

13 THE COURT DO YOU HAVE ANY QUESTIONS
14 ABOUT IT?

15 MR COPE NO, SIR

16 THE COURT MR MORTON, HAVE YOU EXPLAINED
17 ALL THAT TO HIM?

18 MR MORTON YES, SIR I'M NOT TRYING TO
19 BE JUDGE, BUT I KNOW IT'S HIS DECISION TO MAKE ABOUT
20 TESTIFYING

21 THE COURT THAT'S MY NEXT BUT I WANTED TO
22 KNOW IF YOU EXPLAINED IT TO HIM

23 MR MORTON I'M SORRY

24 THE COURT THAT'S THE NEXT THING MR
25 MORTON HAS HEARD ME, I ASSUME, DO THIS BEFORE, AND

1 THE NEXT THING THAT I AM GOING TO CALL TO YOUR
2 ATTENTION IS THAT IS YOUR RIGHT IT'S NOT MR
3 MORTON'S, MR WOODS' MR SMITH'S OR MR BAITY'S
4 IT'S NOT YOUR FAMILY'S IT'S NO ONE BUT YOURS IT'S
5 NOT MINE, IT'S NOT THE STATE'S, IT'S NOT MR
6 GREELEY'S OR MR SANDERS IT IS MR BILLY WAYNE
7 COPE'S RIGHT AND YOU CAN GET WHATEVER ADVICE YOU
8 WANT YOU CAN TALK TO ANYBODY, YOU CAN LISTEN TO
9 ANYBODY, AND YOU CAN DIGEST WHATEVER YOU WISH IN
10 MAKING YOUR DECISION, BUT ULTIMATELY IT IS BILLY
11 WAYNE COPE AND BILLY WAYNE COPE'S DECISION ONLY YOU
12 UNDERSTAND THAT

13 MR COPE YES, SIR

14 THE COURT ALL RIGHT THANK YOU I HAVE
15 TO TALK TO MR SANDERS ABOUT THE SAME THING AND THEN
16 WE'LL TAKE A SHORT BREAK AND THEN WE'LL COME BACK
17 ALL RIGHT MR SANDERS, CAN YOU HEAR ME

18 MR SANDERS YES, SIR

19 THE COURT MR SANDERS, WE'VE REACHED THE
20 POINT IN THE TRIAL REGARDING YOUR CHARGES JUST LIKE
21 MR COPE'S, THAT YOU HAVE A RIGHT TO PRESENT A
22 DEFENSE IF YOU WISH YOU DO NOT HAVE TO YOU ARE
23 PRESUMED INNOCENT OF THIS CHARGE AND YOU DO NOT HAVE
24 TO PROVE YOUR INNOCENCE THE STATE MUST PROVE YOUR
25 GUILT BEYOND A REASONABLE DOUBT THE STATE MUST

1 PROVE EACH ELEMENT OR EVERY ELEMENT OF EACH OFFENSE
2 BEYOND A REASONABLE DOUBT BEFORE YOU COULD BE
3 CONVICTED AND FOUND GUILTY AS TO A PARTICULAR CHARGE
4 YOU DO NOT HAVE TO PROVE ANYTHING HOWEVER YOU HAVE
5 A RIGHT TO PRESENT A DEFENSE IF YOU WISH YOU CAN
6 CALL SUCH WITNESSES AS YOU WISH TO TESTIFY ON YOUR
7 BEHALF YOU ALSO HAVE A RIGHT TO TESTIFY IF YOU WISH
8 AND YOU ALSO HAVE AN ABSOLUTE RIGHT TO REMAIN SILENT
9 IF YOU TESTIFY, DO YOU HAVE ANY PRIOR BAD, I MEAN
10 IMPEACHMENT

11 MR BRACKETT YES, SIR

12 MR GREELEY YES, WE DO, AND I'M FAMILIAR
13 WITH THOSE

14 THE COURT OKAY WELL, LET ME MAKE SURE
15 HE IS FAMILIAR WITH THOSE THE STATE WILL BE ABLE TO
16 ASK YOU, IF YOU TESTIFY, THEY WILL BE ABLE TO CROSS
17 EXAMINE YOU, JUST LIKE YOU'VE SEEN GOING ON HERE WITH
18 THE OTHER WITNESSES, THEY WILL BE ABLE TO ASK YOU
19 RELEVANT QUESTIONS RELEVANT TO THE ISSUES BEFORE US
20 THEY WILL ALSO BE ABLE TO ASK YOU ABOUT ANY PRIOR
21 CRIMINAL CONDUCT YOU MAY HAVE AND I NEGLECTED TO
22 INCLUDE WITH THIS MR COPE SO I WILL ASK MR COPE TO
23 LISTEN AT THIS TIME TOO, THAT IF THE CRIMINAL, PRIOR
24 CRIMINAL RECORD OF EITHER OF YOU, IF IT IS
25 INTRODUCED, WILL BE ONLY FOR WHAT WE CALL IMPEACHMENT

1 PURPOSES AND I WILL TELL THE JURY THAT I WILL TELL
2 THE JURY THAT THEY CANNOT CONSIDER ANY PRIOR OFFENSES
3 AS BEING AN INDICATION IN ANY WAY OF YOUR GUILT IN
4 REGARD TO THESE OFFENSES THAT THEY CAN USE IT ONLY
5 REGARDING YOUR CREDIBILITY, YOUR BELIEVABILITY MR
6 COPE, I APOLOGIZE I DIDN'T GO OVER THAT DO YOU
7 UNDERSTAND THAT

8 MR COPE YES, SIR

9 THE COURT OKAY ANY RECORD IF ANY DO
10 YOU HAVE ON MR SANDERS

11 MR BRACKETT WE HAVE NOT SAT DOWN WITH
12 MR GREELEY AND GONE THROUGH SPECIFICALLY THOSE ITEMS
13 AS OF YET WE JUST HADN'T GOTTEN TO THAT

14 MR GREELEY I HAVE A COPY OF HIS RAP
15 SHEET

16 MR BRACKETT HE HAS HAD A COPY OF HIS
17 RAP SHEET AND PRIOR TO HIM ---

18 THE COURT HOW AM I GOING TO TELL HIM
19 WHAT Y'ALL ARE GOING TO ASK HIM THEN?

20 MR BRACKETT WE CAN GET HIS RAP SHEET
21 OUT NOW

22 THE COURT WELL MR SANDERS, WHILE THEY
23 ARE DOING THAT, AS I JUST TOLD MR COPE, THAT IF THEY
24 DO INTRODUCE ANY OF YOUR PAST RECORD IT WILL ONLY BE
25 FOR WHAT WE CALL IMPEACHMENT PURPOSES, THAT IS, TO

1 SHOW THAT YOU ARE LESS LIKELY TO BE TELLING THE
2 TRUTH, THAT IS, BELIEVABILITY AS OPPOSED TO SOMEONE
3 WHO HAS NOT COMMITTED SUCH AN OFFENSE BUT YOU HAVE
4 A RIGHT TO REMAIN SILENT, THAT IF YOU EXERCISE THAT
5 RIGHT TO REMAIN SILENT I WILL INSTRUCT THE JURY, JUST
6 LIKE I TOLD MR COPE, THAT THEY CANNOT USE THAT
7 AGAINST YOU IN ANY FASHION WHATSOEVER I WILL TELL
8 THEM THAT YOU ARE PRESUMED INNOCENT OF THESE CHARGES
9 THE STATE HAS THE BURDEN OF PROVING YOUR GUILT BEYOND
10 A REASONABLE DOUBT, AND I WILL TELL THE JURY THAT
11 THEY CANNOT DISCUSS IN THE JURY ROOM THE FACT THAT
12 YOU CHOSE TO EXERCISE THAT CONSTITUTIONAL RIGHT, YOUR
13 RIGHT TO REMAIN SILENT, AND I WILL TELL THEM THEY
14 CANNOT FACTOR IT INTO THEIR DELIBERATIONS IN ANY WAY
15 WHATSOEVER DO YOU UNDERSTAND ALL THAT

16 MR SANDERS YES, SIR

17 THE COURT DO YOU HAVE ANY QUESTIONS
18 ABOUT ANY OF IT

19 MR SANDERS NO, SIR

20 THE COURT MR GREELEY, HAVE YOU
21 DISCUSSED THAT WITH HIM

22 MR GREELEY I HAVE, YOUR HONOR

23 THE COURT YOU BELIEVE HE UNDERSTANDS IT

24 MR GREELEY I DO

25 THE COURT JUST LIKE I TOLD MR COPE, MR

1 SANDERS, IT'S MR SANDERS' DECISION IT IS NOT MR
2 GREELEY'S, OF COURSE IT'S NOT MR MORTON'S, MR
3 COPE'S, NOR MINE, THE SOLICITOR'S IT IS JAMES
4 EDWARD SANDERS' DECISION YOU CAN GET SUCH ADVICE AS
5 YOU WISH BUT ULTIMATELY IT'S UP TO YOU TO DETERMINE
6 WHETHER TO TESTIFY OR NOT YOU UNDERSTAND THAT

7 MR SANDERS YES, SIR

8 THE COURT DO YOU HAVE ANY QUESTIONS
9 ABOUT ANY OF THAT

10 MR SANDERS NO, SIR

11 THE COURT YOU MAY BE SEATED MR COPE,
12 DO YOU HAVE ANY FOLLOW UP QUESTIONS

13 MR COPE NO, SIR

14 THE COURT ALL RIGHT, MR BRACKETT

15 MR BRACKETT WE'RE GETTING A COPY OF THE
16 RAP SHEET

17 THE COURT WE'RE GOING TO TAKE A SHORT
18 BREAK AND WHEN WE COME BACK, MR SANDERS, I'LL GO
19 OVER THOSE IMPEACHMENT OFFENSES AND ALSO ASK EACH OF
20 YOU AND MR COPE WHETHER Y'ALL, WHAT Y'ALL INTEND TO
21 DO OF COURSE, MR COPE GOES FIRST, SO REALLY YOU
22 DON'T HAVE TO TELL ME ANY TIME RIGHT NOW WHETHER YOU
23 ARE GOING TO EXERCISE YOUR RIGHT TO REMAIN SILENT OR
24 TESTIFY BECAUSE MR COPE WILL PRESENT HIS CASE FIRST
25 WE'LL TAKE A SHORT BREAK LET ME KNOW WHEN Y'ALL GOT

1 THAT TOGETHER

2 MR BRACKETT YES, SIR

3 (COURT'S IN RECESS AT 10 04 AM)

4 (COURT RESUMES AT 10 17 AM)

5 THE COURT COUNSEL AND DEFENDANTS HERE

6 MR BRACKETT, DO YOU HAVE THOSE OFFENSES NOW?

7 MR BRACKETT YES, SIR, YOUR HONOR

8 THERE ARE THREE COUNTS OF BREAKING AND ENTERING FROM
9 1998 AND '99, THEY ARE FROM THE STATE OF NORTH
10 CAROLINA AND WE HAVE A CERTIFIED CONVICTION FOR
11 THOSE AND TWO COUNTS OF BREAKING AND ENTERING
12 LARCENY FROM 1994 THOSE ARE ALSO FROM NORTH
13 CAROLINA AND IN ADDITION TO THAT HE HAS A 1999
14 CONVICTION IN SOUTH CAROLINA FOR SHOPLIFTING WHICH
15 ALL OF THOSE WE WOULD SUBMIT ARE ADMISSIBLE

16 THE COURT MR GREELEY

17 MR GREELEY WE UNDERSTAND THAT WE'RE
18 NOT CHALLENGING THAT RECORD

19 THE COURT MR SANDERS, YOU UNDERSTAND
20 THAT IF YOU TESTIFY THEY CAN ASK YOU ABOUT THOSE AND
21 THEY CAN'T ASK YOU ABOUT THE PARTICULARS OF IT, THEY
22 CAN'T ASK YOU WHAT YOU DID AND DIDN'T DO, THEY CAN
23 JUST ASK YOU WERE YOU CONVICTED OF THOSE AND I WOULD
24 TELL THE JURY THAT IF YOU DO TESTIFY AND THEY DO ASK
25 THOSE, ABOUT THOSE OFFENSES, THEY CAN SIMPLY USE

1 THOSE IN CONSIDERATION OF YOUR BELIEVABILITY, YOUR
2 CREDIBILITY, OR TRUTHFULNESS, NOT ANYTHING TO DO WITH
3 WHETHER OR NOT YOU COMMITTED THESE OFFENSES DO YOU
4 UNDERSTAND THAT?

5 MR SANDERS YES, SIR, YOUR HONOR

6 THE COURT THANK YOU YOU CAN BE SEATED

7 MR MORTON YOUR HONOR, AND I BELIEVE HIS
8 RECORD GOES BACK FURTHER THAN THAT I THINK KEVIN
9 WAS KIND OF STICKING WITH THE TEN YEAR RULE IS THAT
10 CORRECT?

11 MR BRACKETT YES, SIR

12 MR MORTON HE HAS OTHER PRIOR
13 HOUSEBREAKING AND BREAKING AND ENTERING CONVICTIONS
14 THAT I JUST WANT TO NOT PRECLUDE MYSELF, WE WOULD TRY
15 TO INTRODUCE THOSE IF HE TOOK THE STAND, IF THE COURT
16 ALLOWED US TO DO SO, UNDER THE RULES

17 THE COURT I NEVER HAD THIS SITUATION TO
18 BE QUITE CANDID WITH YOU, SO I WILL JUST GO AHEAD AND
19 TELL MR SANDERS, YOU UNDERSTAND THAT MR MORTON IS
20 NOW TELLING ME ON BEHALF OF MR COPE THAT HE
21 UNDERSTANDS YOU HAVE A RECORD THAT EXTENDS BACK
22 BEFORE 1994 AND THAT HE'S GOING TO ASK THE COURT TO
23 BE ALLOWED ON HIS CROSS EXAMINATION TO GO INTO THOSE
24 ADDITIONAL OFFENSES, I HAVEN'T RULED ON THAT YET, BUT
25 YOU UNDERSTAND THAT HE'S INTENDING TO DO THAT IF YOU

1 TAKE THE STAND YOU UNDERSTAND THAT?

2 MR SANDERS YES, SIR

3 THE COURT MR GREELEY, ARE YOU AWARE OF
4 THOSE OFFENSES?

5 MR GREELEY I AM, YOUR HONOR

6 THE COURT ALL RIGHT MR MORTON, YOU
7 READY TO GO FORWARD?

8 MR MORTON YES, SIR

9 THE COURT ALL RIGHT LET'S BRING IN THE
10 JURY

11 (THE JURY RETURNS TO THE COURTROOM AT
12 10 20 AM)

13 THE COURT MEMBERS OF THE JURY PANEL, THE
14 STATE HAS RESTED, THAT IS, YOU HEARD THE STATE'S
15 EVIDENCE UNDER CERTAIN CIRCUMSTANCES THE STATE
16 WOULD HAVE A RIGHT TO PRESENT EVIDENCE AT A LATER
17 TIME CALLED REPLY EVIDENCE, BUT FOR ALL INTENSIVE
18 PURPOSES YOU HEARD THE STATE'S CASE SO THEREFORE
19 THE DEFENSE HAS A RIGHT, BUT NO OBLIGATION, TO
20 PRESENT A DEFENSE IF THEY WISH SO I'LL CALL ON MR
21 BAITY ON BEHALF OF MR COPE

22 MR BAITY YOUR HONOR, WE WOULD CALL
23 CHARLES R HONTS PH D TO THE STAND

24 CHARLES HONTS, BEING FIRST DULY SWORN
25 TESTIFIES AS FOLLOWS

1 MR BAITY MAY IT PLEASE THE COURT, YOUR
2 HONOR

3 THE COURT CERTAINLY
4 DIRECT EXAMINATION BY MR BAITY

5 Q COULD YOU PLEASE STATE YOUR FULL NAME AND
6 ADDRESS?

7 A YES IT'S CHARLES ROBERT HONT'S H-O-N-T-S I
8 LIVE AT 3105 SWEETWATER DRIVE IN BOISE, IDAHO

9 Q BY WHOM ARE YOU EMPLOYED?

10 A BOISE STATE UNIVERSITY

11 Q AND IN WHAT CAPACITY ARE YOU EMPLOYED AT BOISE
12 STATE UNIVERSITY?

13 A I'M PROFESSOR OF PSYCHOLOGY AT BOISE STATE
14 UNIVERSITY

15 Q ALL RIGHT DR HONT'S, WHAT IS YOUR ACADEMIC
16 TRAINING?

17 A I HAVE A BACHELOR OF SCIENCE IN PSYCHOLOGY FROM
18 VIRGINIA TECH AND A MASTER OF SCIENCE ALSO IN
19 PSYCHOLOGY FROM VIRGINIA TECH AND THEN I WENT TO THE
20 UNIVERSITY OF UTAH AND DID MY DOCTRINAL WORK AT
21 UNIVERSITY OF UTAH AND FINISHED THERE IN 1986

22 Q YOU'VE BEEN ON BOTH SIDES OF THE COUNTRY WHERE
23 ARE YOU ORIGINALLY FROM?

24 A I'M ORIGINALLY FROM SOUTHWEST VIRGINIA I GREW
25 UP IN A SMALL TOWN CALLED EAGLE ROCK

1 Q WHAT KIND OF TRAINING HAVE YOU HAD IN YOUR FIELD
2 IN ADDITION TO YOUR FORMAL ACADEMIC TRAINING?

3 A WELL, I'VE HAD TRAINING IN SEVERAL RELATED
4 AREAS, ONE AREA THAT I'VE HAD TRAINING IN IS IN
5 POLYGRAPH TESTING AND WAS ORIGINALLY TRAINED AS A
6 POLYGRAPH EXAMINER IN 1976 AND WORKED AS A PRACTICING
7 POLYGRAPH EXAMINER FOR ABOUT FIVE YEARS BEFORE I WENT
8 BACK TO GRADUATE SCHOOL I'VE ALSO RECEIVED TRAINING
9 IN INTERVIEWING CHILDREN AND ASSESSING CREDIBILITY OF
10 CHILDREN

11 Q WHAT POSITIONS IF ANY HAVE YOU HELD IN INDUSTRY
12 AND OTHER UNIVERSITIES?

13 A WELL, I DID WORK AS A POLYGRAPH EXAMINER FOR
14 SEVERAL DIFFERENT EMPLOYERS DURING THAT FIVE YEAR
15 PERIOD AND DID INVESTIGATIONS AND RAN TESTS
16 PARTICULARLY IN THE OIL INDUSTRY IN 1980 I WENT
17 BACK TO GRADUATE SCHOOL AND HAVE HELD ONE SORT OF
18 ACADEMIC POSITION OR ANOTHER SINCE THEN

19 I WORKED AS GRADUATE OF RESEARCH AND
20 TEACHING ASSISTANT AS A GRADUATE STUDENT AND THEN WAS
21 A POST DOC AT THE UNIVERSITY OF UTAH FOR TWO YEARS
22 WORKING ON MONEY PROVIDED BY THE U S DEPARTMENT OF
23 JUSTICE FOLLOWING THAT, THAT WOULD HAVE BEEN 1998
24 THROUGH 1990, I WORKED FOR THE U S GOVERNMENT AT THE
25 DEPARTMENT OF DEFENSE POLYGRAPH INSTITUTE WHICH IS

1 THE FEDERAL TRAINING CENTER FOR POLYGRAPH EXAMINERS
2 WE TRAIN ALL THE U S FEDERAL POLYGRAPH EXAMINERS FOR
3 MILITARY THE SERVICES, THE FBI, THE SECRET SERVICE,
4 CUSTOMS, TREASURY I WAS A RESEARCH TEAM LEADER AND
5 ALSO I GAVE INSTRUCTION AT THE COURSES BOTH BASIC AND
6 ADVANCED WHILE I WORKED THERE

7 1990 I WENT TO THE UNIVERSITY OF NORTH
8 DAKOTA, WAS THERE FOR FIVE YEARS, AND WENT THROUGH
9 THE RANKS UP TO ASSOCIATE PROFESSOR THERE AND BECAME
10 TENURED AND WAS A FULL MEMBER OF THE GRADUATE
11 FACULTY, AND THEN IN 1995 I TOOK A POSITION AT BOISE
12 STATE UNIVERSITY AND WAS PROMOTED I BELIEVE THE NEXT
13 YEAR TO FULL PROFESSOR AND HAVE BEEN THERE SINCE

14 Q WHAT PROFESSIONAL ASSOCIATIONS AND OTHER
15 ORGANIZATIONS HAVE YOU BEEN INVOLVED IN DURING THE
16 COURSE OF YOUR CAREER?

17 A I'VE BEEN INVOLVED IN A NUMBER MY PRIMARY
18 AFFILIATION IS WITH THE AMERICAN PSYCHOLOGY LAW
19 SOCIETY WHICH IS A PROFESSIONAL ORGANIZATION OF
20 PSYCHOLOGISTS AND LAWYERS WHO ARE INTERESTED IN HOW
21 PSYCHOLOGY AND LAW CAN WORK TOGETHER TO DO REALLY
22 WHAT WE'RE DOING TODAY AND IN OTHER SETTINGS

23 I'M ALSO A MEMBER OF THE AMERICAN
24 PSYCHOLOGICAL SOCIETY WHICH IS A LARGE SOCIETY OF
25 PSYCHOLOGICAL SCIENTISTS PRIMARILY THOSE PEOPLE WHO

1 DO RESEARCH AND WORK IN ACADEMIC SETTINGS AND OTHER
2 RESEARCH RELATED SETTINGS AND I'M ALSO A MEMBER OF
3 THE AMERICAN PSYCHOLOGICAL ASSOCIATION WHICH IS AN
4 EVEN LARGER ASSOCIATION WHICH ALSO INCLUDES ALL THE
5 CLINICAL PSYCHOLOGISTS

6 Q DOCTOR, HAVE YOU REVIEWED ANY JOURNALS IN THE
7 AREA OF YOUR EXPERTISE OR DONE ANY EDITING OF THOSE
8 JOURNALS?

9 A I'VE DONE BOTH I REVIEW QUITE A BIT ACTUALLY
10 THIS YEAR I'VE BEEN REVIEWING RATHER EXTENSIVELY,
11 IT'S BEEN TAKING UP A LOT OF TIME, BUT I HAVE
12 REVIEWED FOR THE PREMIER JOURNALS IN PSYCHOLOGY, THE
13 PSYCHOLOGY BULLETIN, THE JOURNAL OF APPLIED
14 PSYCHOLOGY, JOURNAL OF PERSONALITY AND SOCIAL PSYCH,
15 APPLIED COGNITION JOURNAL OF EXPERIMENTAL PSYCHOLOGY
16 GENERAL AND APPLIED, SO IT'S SOMETHING I DO A LOT I
17 ALSO REVIEWED GRANTS FOR THE NATIONAL SCIENCE
18 FOUNDATION AND FOR THE U S DEPARTMENT OF DEFENSE AND
19 FOR SCIENCE CANADA WHICH IS THE CANADIAN EQUIVALENT
20 OF OUR NATIONAL SCIENCE FOUNDATION

21 I SERVED AS AN, ON THE EDITORIAL STAFF OF
22 THE JOURNAL POLYGRAPH WHICH IS THE JOURNAL OF THE
23 AMERICAN POLYGRAPH ASSOCIATION AND I EDIT A JOURNAL,
24 AN ON-LINE JOURNAL, THAT IS PUBLISHED ON THE WORLD
25 WIDE WEB CALLED THE JOURNAL OF CREDIBILITY ASSESSMENT

1 AND WITNESS PSYCHOLOGY

2 Q HAVE YOU BEEN CONSULTANT TO ANY AGENCIES OR
3 OTHER SIMILAR INSTITUTIONS?

4 A I HAVE OVER THE YEARS I'VE CONSULTED WITH
5 NUMEROUS POLICE DEPARTMENTS, FEDERAL AGENCIES,
6 FOREIGN GOVERNMENTS I'VE CONSULTED WITH THE U S
7 AIR FORCE OFFICE OF SPECIAL INVESTIGATIONS I'VE
8 DONE WORK WITH THE FBI, THE INSPECTOR GENERALS OF
9 SEVERAL STATES, SO DONE A VARIETY OF THAT WORK

10 Q NOW DID ANY OF THIS CONSULTING WITH THESE
11 GOVERNMENT AGENCIES INVOLVE ANY TYPE OF TRAINING ON
12 YOUR, THAT YOU RENDERED?

13 A YES, IT HAS

14 Q AND WHAT WOULD THAT BE?

15 A I'VE DONE INVITED SEMINARS FOR THE U S SECRET
16 SERVICE, FOR THE FEDERAL BUREAU OF INVESTIGATIONS,
17 CENTRAL INTELLIGENCE AGENCY, NUMEROUS STATES, NORTH
18 DAKOTA, NEW MEXICO, CANADA I'VE DONE QUITE A BIT OF
19 WORK WITH THE ROYAL CANADIAN MOUNTED POLICE I'VE
20 TWICE BEEN INVITED TO FOREIGN COUNTRIES OTHER THAN
21 CANADA I'VE BEEN TO NORWAY AND SWEDEN AND PUT ON
22 SEMINARS THERE FOR LAW ENFORCEMENT AND SOCIAL WORKERS
23 AND PSYCHOLOGISTS

24 Q AND THE SUBJECT OF THIS TRAINING THAT YOU
25 RENDERED WHAT WOULD THAT BE?

1 A MOST OF THAT IS ON POLYGRAPH ALTHOUGH I HAVE
2 ALSO SPOKEN ON CHILD WITNESSES

3 Q WHEN YOU ARE TRAINING THESE POTENTIAL POLYGRAPH
4 EXAMINERS DO YOU TRAIN THEM IN THE SAME METHOD THAT
5 WAS USED TO ADMINISTER POLYGRAPH TO THE DEFENDANT
6 BILL WAYNE COPE?

7 A YES, I DO

8 Q HOW ABOUT RESEARCH PUBLICATION, ARTICLES, BOOKS,
9 AND THAT SORT OF THING HAVE YOU DONE ANY
10 PUBLISHING?

11 A YES, I HAVE

12 Q IS IT FAIRLY EXTENSIVE?

13 A IT IS

14 Q AND WOULD IT BE SET FORTH IN YOUR CURRICULUM
15 VITAE WHICH WE'LL GET TO IN A MOMENT?

16 A IT IS IF YOU COUNT ALL BOOK CHAPTERS AND
17 REPORTS AND PEER REVIEW PUBLICATIONS THERE ARE OVER A
18 HUNDRED

19 Q AND HAVE YOU DELIVERED ANY PAPERS AT SCIENTIFIC
20 MEETINGS OF EXPERTS IN YOUR FIELD OR IN THE FIELD OF
21 POLYGRAPH?

22 A YES, I HAVE, MANY

23 Q CAN YOU GIVE US A ROUGH IDEA ABOUT HOW MANY?

24 A IT'S WELL OVER A HUNDRED PROBABLY 120 NOW

25 Q HOW MANY RESEARCH GRANTS HAVE YOU BEEN AWARDED

1 TO DO RESEARCH IN THE AREA OF POLYGRAPH?

2 A IN THE AREA OF POLYGRAPH ABOUT 15

3 Q AND THEY'VE ALL DEALT WITH POLYGRAPH
4 EXAMINATION?

5 A THAT'S CORRECT, ONE ASPECT OF POLYGRAPH
6 EXAMINATION OR ANOTHER THE POST DOCTRINAL POSITION
7 I HAD WAS TO WORK ON DEVELOPING COMPUTER ALGORITHMS
8 TO SCORE POLYGRAPH CHARTS AND SINCE THEN I HAVE
9 RECEIVED FUNDING TO DO A FIELD STUDY ON THE VALIDITY
10 OF POLYGRAPH WITH THE ROYAL CANADIAN MOUNTED POLICE
11 WHICH CAME THROUGH SCIENCE CANADA, AND I'VE DONE WORK
12 FUNDED THROUGH THE CIA ON AUTOMATING THE POLYGRAPH
13 TEST ITSELF AND THROUGH THE DEPARTMENT OF DEFENSE ON
14 VARIOUS ASPECTS OF THE TEST THAT HAVE TO DO WITH
15 SOMETHING CALLED OUTSIDE ISSUES

16 Q CONCERNING TEACHING EXPERIENCE AS A PROFESSOR
17 AND SO FORTH, COULD YOU TELL US ABOUT YOUR TEACHING
18 EXPERIENCE AND THE USE OF STATISTICS AND RESEARCH
19 METHODS?

20 A WELL, I'VE DONE EXTENSIVE TEACHING I'M TRAINED
21 AS A SCIENTIST WHEN WE SAY PSYCHOLOGIST THERE ARE
22 REALLY TWO KINDS OF PSYCHOLOGISTS THERE ARE THE
23 PSYCHOLOGISTS THAT DO THERAPY AND SEE PATIENTS, THEN
24 THERE IS ALSO A LARGE GROUP OF PSYCHOLOGISTS WHO ARE
25 SCIENTISTS AND TRAINED TO DO SCIENTIFIC RESEARCH I

1 AM THE LATTER SO I'M TRAINED TO DO SCIENTIFIC
2 RESEARCH I HAD HEAVY TRAINING IN STATISTICAL
3 METHODS AND RESEARCH DESIGN ISSUES AND I'VE TAUGHT
4 THAT FOR CLOSE TO 20 YEARS NOW INCLUDING GIVING
5 COURSES IN RESEARCH METHODS AND STATISTICS AT THE
6 GRADUATE LEVEL FOR DOCTRINAL CANDIDATES

7 Q WHAT IS PSYCHOPHYSIOLOGY, DOCTOR?

8 A PSYCHOPHYSIOLOGY IS A SUB DISCIPLINE OF
9 PSYCHOLOGY THAT INVOLVES STUDYING HOW THE MIND AND
10 BODY INTERACT THERE ARE A NUMBER OF THINGS THAT ARE
11 STUDIED UNDER THE HEADING OF PSYCHOPHYSIOLOGY THERE
12 ARE ABOUT A THOUSAND MEMBERS TO THAT SOCIETY NOW AS I
13 RECALL WORLD WIDE AND EVERYBODY EXPERIENCES THAT
14 WHEN YOU EXPERIENCE SOMETHING THAT CAUSES YOU TO BE
15 NERVOUS OR AFRAID YOU KNOW YOUR BODY FEELS DIFFERENT
16 AND PSYCHOPHYSIOLOGISTS STUDY HOW THOSE THINGS RELATE
17 TO EACH OTHER, SO WE STUDY THINGS LIKE STRESS,
18 BIOFEEDBACK ABNORMAL PSYCHOLOGY, HOW THAT CHANGES
19 YOUR PSYCHOLOGY HOW STRESS AND THE EFFECTS ON YOUR
20 BODY CHANGE YOUR HEALTH AND THEN ONE OF THE AREAS
21 THAT IS STUDIED UNDER PSYCHOPHYSIOLOGY IS IN FACT
22 POLYGRAPH BECAUSE WE'RE USING PSYCHOPHYSIOLOGICAL
23 MEASURES TO MAKE INFERENCES ABOUT WHETHER A PERSON IS
24 TELLING THE TRUTH OR NOT

25 Q WHAT IS YOUR PARTICULAR SPECIALTY, DOCTOR?

1 A AS A GRADUATE STUDENT I WAS TRAINED IN
2 PSYCHOPHYSIOLOGY AND THAT WAS WHERE MY PRIMARY
3 GRADUATE TRAINING CAME SINCE GETTING MY DEGREE I'VE
4 DRIFTED A LITTLE BIT FROM THAT AND REALLY MORE
5 IDENTIFY MYSELF MORE WITH PSYCHOLOGY AND LAW SOCIETY,
6 SO I DON'T GO TO THE PSYCHOPHYSIOLOGY MEETINGS
7 ANYMORE I GO TO THE PSYCHOLOGY AND LAW MEETINGS
8 ALTHOUGH I STILL DO A LOT OF PSYCHOPHYSIOLOGY BECAUSE
9 I'M STILL INVOLVED IN DOING RESEARCH ON POLYGRAPH AND
10 THINGS RELATED TO POLYGRAPH

11 Q AND IN ADDITION TO BEING TRAINED IN
12 PSYCHOPHYSIOLOGY AND SPECIALIZING IN THAT DO YOU
13 TEACH IN THAT AS WELL?

14 A I DO, YES

15 Q DO YOU CONDUCT WORK SHOPS ON THAT SUBJECT?

16 A I CERTAINLY HAVE FOR MANY, MANY YEARS WE
17 CONDUCTED AN ANNUAL WORK SHOP AT THE UNIVERSITY OF
18 UTAH, I WENT BACK EVEN AFTER I LEFT THERE AND
19 INSTRUCTED IN THAT, THAT ENDED IN THE EARLY 1990'S
20 WHEN MY MENTOR RETIRED, SO THERE IS NO LONGER A
21 POLYGRAPH LAB AT THE UNIVERSITY OF UTAH IN THE PSYCH
22 DEPARTMENT, BUT I CONTINUE TO GET INVITED TO DO THAT
23 I DID ONE AT THE INVITATION OF THE STATE OF NEW
24 MEXICO A COUPLE YEARS AGO

25 Q DOCTOR, HAVE YOU EVER GIVEN ANY COURSES OR

1 LECTURES TO LAW ENFORCEMENT AGENCIES OR TRAINING
2 POLICE OFFICERS?

3 A I HAVE, YES

4 Q AND HAS THAT BEEN RELATIVE TO THE POLYGRAPH?

5 A OH, YES, ABSOLUTELY

6 Q HOW OFTEN HAVE YOU DONE THAT IF YOU KNOW?

7 A OH, OVER THE YEARS QUITE A FEW TIMES I USED TO
8 GO EVERY YEAR AND TEACH FOR THE ROYAL CANADIAN
9 MOUNTED POLICE I WAS THEIR PRIMARY INSTRUCTOR FOR
10 THE SCIENCE OF POLYGRAPH AND ALSO HOW TO DO SCORING
11 OF POLYGRAPH CHARTS AND THEN AT INVITATION OF OTHER
12 AGENCIES SO I'VE LECTURED AT THE FBI ACADEMY AND AT
13 THE INVITATION OF THE SECRET SERVICE AND THE CIA

14 Q HAVE YOU EVER DONE ANY POLYGRAPH WORK FOR ANY
15 COURTS OR PROSECUTORS OR LAW ENFORCEMENT AGENCIES OF
16 ANY TYPE?

17 A I HAVE ALTHOUGH NOT FREQUENTLY MOST OF THE
18 TIME I GET CALLS FROM DEFENSE ATTORNEYS ALTHOUGH
19 THERE ARE NOW SEVERAL JUDGES IN THE STATE OF IDAHO
20 THAT HAVE ASKED ME TO RUN TESTS WHERE ALL THE PARTIES
21 HAVE AGREED AND I'VE DONE THAT AND REPORTED DIRECTLY
22 TO THE COURT AND IN YEARS PAST, THIS DOES NOT
23 HAPPENED RECENTLY, BUT IN YEARS PAST I ALSO HAVE DONE
24 WORK FOR LAW ENFORCEMENT AGENCIES THAT DIDN'T HAVE
25 THEIR OWN POLYGRAPH EXAMINERS THAT NOW IS BECOMING

1 MUCH LESS COMMON BECAUSE MOST OF THEM HAVE THEIR OWN
2 POLYGRAPH EXAMINERS

3 Q HAVE YOU EVER TESTIFIED IN COURT, DOCTOR?

4 A I HAVE

5 Q ABOUT HOW MANY TIMES HAVE YOU BEEN QUALIFIED AS
6 AN EXPERT AND TESTIFIED IN COURT?

7 A I BELIEVE IT'S IN THE 60S NOW THEY ARE ALL
8 REFLECTED ON MY VITAE

9 Q AND THIS IS BOTH IN STATE AND IN FEDERAL COURTS?

10 A THAT'S CORRECT

11 Q ALL RIGHT AND HAVE YOU YOURSELF BEEN TRAINED
12 AS A POLYGRAPH EXAMINER?

13 A I HAVE, YES

14 Q ALL RIGHT AND ARE YOU LICENSED AS A POLYGRAPH
15 EXAMINER?

16 A I'M PRESENTLY LICENSED IN TWO STATES I'M
17 LICENSED IN THE STATE OF NEW MEXICO AND THE STATE OF
18 NORTH DAKOTA

19 MR BAITY AT THIS TIME, YOUR HONOR, WE
20 WOULD OFFER DR HONTIS AS AN EXPERT IN PSYCHOLOGY
21 PARTICULARLY IN THE POLYGRAPH

22 THE COURT ANY VOIR DIRE

23 MR GREELEY NO, YOUR HONOR AT THIS
24 POINT I WOULD STATE AN OBJECTION TO THIS BASED UPON
25 RELEVANCY YOUR HONOR, I WOULD ANTICIPATE THAT THE

1 DOCTOR HERE IS --

2 THE COURT YOU WANT THE JURY TO GO OUT
3 WHILE WE DISCUSS THAT

4 MR GREELEY THAT WILL BE FINE

5 THE COURT LET ME LET YOU GO TO THE JURY
6 ROOM SO I CAN

7 (THE JURY EXITS THE COURTROOM AT 10 36
8 AM)

9 THE COURT YES, SIR

10 MR GREELEY YOUR HONOR, I WOULD
11 ANTICIPATE THAT THIS WITNESS HAS BEEN CALLED ON
12 BEHALF OF MR COPE TO TESTIFY AND TO POTENTIALLY
13 ATTACK THE RESULTS OF POLYGRAPH THAT'S BEEN TESTIFIED
14 TO BY THE YORK COUNTY SHERIFF'S DEPARTMENT AS WELL AS
15 TO THE METHODOLOGY THAT MAY HAVE BEEN USED IN THIS
16 CASE HOWEVER, THERE IS NOTHING IN THE RECORD AT
17 THIS POINT IN TIME THAT MAKES THE RESULTS OF THE
18 POLYGRAPH AT ISSUE, THAT MAKES IT SO THAT IT WAS IN
19 INCORRECT THE ONLY PERSON WHO KNOWS KNOWSWHETHER OR
20 NOT THE RESULTS OF THAT POLYGRAPH SHOWING DECEPTION
21 WAS INCORRECT IS MR COPE AND UNTIL MR COPE TAKES
22 THE STAND AND TESTIFIES THAT THAT WAS AN INCORRECT
23 POLYGRAPH AND THAT IT WAS NOT TRUE, THE RESULTS THAT
24 THEY FOUND ONLY THEN DOES THE ISSUE OF THE RESULTS OF
25 THE POLYGRAPH AND THE METHODOLOGY BECOME AN ISSUE IN

1 THIS COURT, SO AT THIS POINT IN TIME THIS GENTLEMAN'S
2 TESTIMONY IS NOT RELEVANT

3 THE COURT MR BRACKETT

4 MR BRACKETT YOUR HONOR, ALSO THE
5 POLYGRAPH WASN'T ADMITTED FOR THE SUBSTANTIVE TRUTH
6 OF WHAT THE POLYGRAPH RESULTS WERE AS A MATTER OF
7 FACT WE SPECIFICALLY TOLD THE JURY THAT THEY COULD
8 NOT FIND, THAT THEY COULD NOT USE THE RESULTS OF THE
9 POLYGRAPH AS SUBSTANTIVE EVIDENCE OF HIS GUILT IF
10 THEY WANT TO ATTACK THE POLYGRAPH RESULTS AND SAY
11 THEY ARE FALSE THEN THEY ARE PUTTING THAT ISSUE INTO
12 PLAY AND THEN THIS BECOMES A SUBSTANTIVE ISSUE THAT
13 THE JURY IS GOING TO HAVE TO --

14 THE COURT MR BAITY, WHAT IS THE
15 RELEVANCY AND WHAT IS THE ISSUE THAT THIS --

16 MR BAITY WELL, YOUR HONOR, CERTAINLY
17 THE RESULTS HAVE BEEN PUT IN EVIDENCE AND HAVE BEEN
18 TESTIFIED TO THAT NOT ONLY THE POLYGRAPH WAS GIVEN TO
19 MR COPE BUT THAT THERE WAS AN INDICATION OF
20 DECEPTION WE CERTAINLY THINK THAT WE CAN GO INTO
21 THAT ON THIS AND CERTAINLY WE THINK THAT IS RELEVANT
22 TO OUR CASE AND TO THIS CASE THAT HE WAS IN FACT
23 GIVEN A POLYGRAPH AND HE WAS IN FACT INFORMED THAT HE
24 HAD FAILED THE TEST AND THE EFFECT THAT THAT HAD ON
25 HIM IN HIS SUBSEQUENT CONFESSIONS AND STATEMENTS

1 THE COURT BUT THAT'S NOT WHAT THIS MAN
2 IS TESTIFYING TO HE'S TESTIFYING TO THE TEST AND
3 THE ONLY EVIDENCE IN THE RECORD IS HE TOOK THE TEST
4 AND HE WAS TOLD HE FAILED

5 MR BAITY YES, SIR AND THIS MAN IS
6 GOING TO TESTIFY THAT, THAT IN HIS BELIEF THAT WHAT
7 HE WAS TOLD WAS INCORRECT AND WAS IN FACT NOT
8 REFLECTED IN THE STATE'S OWN EXHIBITS, IN THE CHARTS
9 THAT WERE PRODUCED, AND WE BELIEVE THAT THAT'S A VERY
10 RELEVANT ISSUE IN THIS CASE AND GOES TO THE HEART OF
11 MR COPE'S SUBSEQUENT ACTIONS WITH REGARD TO THE
12 CONFESSIONS THAT HAVE BEEN PLACED IN EVIDENCE IN THIS
13 CASE

14 MR BRACKETT WE PRODUCED NO CHARTS
15 THEY ARE NOT IN EVIDENCE WE DID NOT ATTEMPT TO
16 BUTTRESS THE VALIDITY OF IT TO SAY THAT IT'S TRUE HE
17 FAILED AND THEREFOR HE'S GUILTY WE NEVER DID THAT
18 WE SIMPLY DID THAT BECAUSE THEY WERE ATTACKING THE
19 VOLUNTARINESS AND AS YOUR HONOR WELL KNOWS, BUT THERE
20 ARE NO CHARTS IN EVIDENCE WE DIDN'T --

21 MR BAITY YOUR HONOR, I'VE BEEN TOLD
22 THAT THEY ARE GOING TO STIPULATE TO THE CHARTS AND WE
23 ALSO MET IN CHAMBERS BEFORE THIS TRIAL STARTED AND
24 YOU INDICATED YOU WERE GOING TO LET THE RESULTS IN
25 AND THAT ESSENTIALLY THAT WAS GOING TO BE PART OF THE

1 DECISION TO LET IN THE FALSE CONFESSION EXPERT UPON
2 THESE RESULTS HE HAS RELIED AND WE JUST CERTAINLY
3 THINK THAT THIS MAN OUGHT TO BE ABLE TO TESTIFY AS TO
4 HIS OPINION AS TO WHAT WAS STATED BY MR BAKER HE
5 JUST HAS AN OPPORTUNITY TO --

6 THE COURT BUT I STILL DON'T SEE THE
7 RELEVANCE AS TO THE UNDERLYING -- HE WAS TOLD
8 SOMETHING AND THE QUESTION IS DID HE RELY ON THAT OR
9 DID HE NOT RELY ON THAT OR WAS THAT PART OF THE
10 EQUATION WHETHER IT WAS TRUE OR NOT DOESN'T REALLY
11 MATTER

12 MR BAITY WELL, YES IT DOES, YOUR HONOR,
13 IT DOES MATTER, AND IT MATTERS IN THAT WE BELIEVE
14 THAT THE MOTIVE THAT THE POLICE HAD IN MAKING THOSE
15 STATEMENTS AND WE BELIEVE, WE BELIEVE THAT'S IN
16 QUESTION WE ALSO BELIEVE THAT IF MR COPE HAD BEEN
17 TOLD SOMETHING OTHERWISE, SOMETHING THAT IS MORE
18 ACCURATELY REFLECTED IN THE TEST ITSELF THAT HIS
19 ACTIONS, WE CERTAINLY ARGUE, WOULD HAVE BEEN
20 DIFFERENT, AND WE THINK THAT IS VERY RELEVANT IF THE
21 INFORMATION THAT WAS PROVIDED TO HIM WAS INCORRECT
22 WE BELIEVE THAT'S EXTREMELY RELEVANT IN HIS THOUGHT
23 PROCESS AND IN HIS DECISION TO MAKE THESE
24 CONFESSIONS WE'RE GOING TO GIVE TESTIMONY IN THIS
25 CASE ABOUT HOW HE RELIED, I BELIEVE THERE IS

1 TESTIMONY ALREADY IN THIS CASE WHERE MR COPE
2 REPEATEDLY REQUESTED THAT HE BE GIVEN A POLYGRAPH AND
3 THAT HE WOULD RELY ON THAT POLYGRAPH AND HE BELIEVED
4 IN THAT POLYGRAPH, AND WE HEARD THE THREE AND A HALF
5 HOUR TAPE, HE REQUESTED POLYGRAPH A DOZEN TIMES AND
6 MR BAKER SAID THAT HE FREELY AND VOLUNTARILY
7 SUBMITTED TO IT AND THEN HE WAS TOLD THAT HE HAD
8 FAILED THE POLYGRAPH EXAMINATION WE'RE JUST SIMPLY
9 HERE TO LET THE JURY KNOW THAT THE INFORMATION THAT
10 HE WAS PROVIDED, THAT HE WAS RELYING ON, THAT HE
11 BELIEVED IN, WAS INCORRECT INFORMATION WE BELIEVE
12 THAT'S VERY RELEVANT

13 THE COURT WAIT JUST A MINUTE LET ME
14 BACK UP MR BRACKETT, HOW ABOUT HIS QUALIFICATIONS
15 DO YOU OBJECT TO HIS QUALIFICATIONS OR JUST
16 RELEVANCY?

17 MR BRACKETT RELEVANCY AS FAR AS THIS
18 CASE HIS QUALIFICATIONS, HE SOUNDS EMINENTLY
19 QUALIFIED

20 THE COURT ALL RIGHT HOW ABOUT YOU?

21 MR GREELEY I WOULD, I BELIEVE THE COURT
22 WOULD FIND HIM QUALIFIED YOUR HONOR, IF I MAY ALSO
23 ADD IN REGARDS TO THE RELEVANCY MR BAITY HAS BEEN
24 TALKING ABOUT HIS CLIENT RELIANCE'S UPON THIS
25 POLYGRAPH AND HOW THIS IS GOING TO FIT INTO HIS

1 RELIANCE AND MISCONCEPTION, THERE HAS BEEN NO
2 EVIDENCE IN THIS RECORD THAT HIS CLIENT RELIED ON
3 ANYTHING AND UNTIL EVIDENCE IS IN THE RECORD THAT HE
4 RELIED ON THIS, THEN THIS IS NOT RELEVANT, NONE OF
5 THIS IS RELEVANT, AND THE ONLY PERSON WHO CAN TESTIFY
6 TO THAT IS THIS GENTLEMAN SEATED HERE

7 THE COURT I OVERRULE THE OBJECTION I'M
8 GOING TO ALLOW THE TESTIMONY IN I FIND HE IS
9 QUALIFIED I'LL MAKE A FINDING OF QUALIFICATION
10 BEFORE THE JURY ALL RIGHT BRING IN THE JURY

11 I FIND IT MAYBE RELEVANT I FIND AT THIS
12 POINT THERE IS SOME TYING UP TO DO, BUT THERE IS
13 ALWAYS A CART BEFORE THE HORSE SORT OF WHEN DO YOU
14 BRING IN WHAT, WHAT GOES FIRST AND WHAT GOES SECOND,
15 SO BASED ON REPRESENTATION OF COUNSEL THAT IT WILL BE
16 TIED UP TO SOME FACT THAT IS DEFINITELY AT ISSUE I
17 AM FINDING BASED ON THAT IT IS RELEVANT

18 MR BAITY IT WILL BE TIED UP, YOUR
19 HONOR, COMPLETELY AND MOST CERTAINLY TO YOUR
20 SATISFACTION

21 THE COURT WELL --

22 MR BAITY I CERTAINLY HOPE SO

23 (THE JURY RETURNS TO THE COURTROOM)

24 THE COURT ON BEHALF OF MR COPE,

25 MR BAITY HAS OFFERED MR HONT'S AS AN EXPERT WITNESS

1 IN PSYCHOLOGY WITH A SPECIALITY IN POLYGRAPH AND I
2 FIND HE IS QUALIFIED

3 MR BAITY THANK YOU, YOUR HONOR
4 DIRECT EXAMINATION CONTINUED BY MR BAITY

5 Q DR HONTs, I'M GOING TO -- MAY I APPROACH THE
6 WITNESS, YOUR HONOR

7 THE COURT CERTAINLY

8 Q I'M GOING TO ASK YOU TO IDENTIFY THIS DOCUMENT

9 A YES, THIS IS A COPY OF MY CURRICULUM VITAE THAT
10 WAS PREPARED ON THE THIRD OF DECEMBER 2004

11 MR GREELEY YOUR HONOR, THE VITAE IS 38
12 PAGES LONG, THIS IS THE FIRST TIME I'VE SEEN IT, SO

13 THE COURT GO AHEAD AND YOU GOING TO
14 OFFER THAT IN EVIDENCE

15 MR BAITY I WOULD

16 THE COURT LET'S LEAVE THAT PENDING IF WE
17 CAN I DON'T WANT MR GREELEY TO BE READING THAT AND
18 LISTENING TO THE EXAMINATION AT THE SAME TIME BUT

19 MR BAITY WE'LL TAKE IT UP

20 THE COURT MR BRACKETT HAS A COPY TO
21 REVIEW?

22 MR BAITY YES, SIR

23 THE COURT ALL RIGHT WE'LL LEAVE THAT
24 I HATE TO LEAVE THINGS PENDING BUT GO AHEAD

25 MR BAITY UNDERSTOOD THANK YOU, YOUR

1 HONOR

2 DIRECT EXAMINATION BY MR BAITY

3 Q DR HONTS, DID YOU EXPLAIN THE BASIC POLYGRAPH
4 TECHNIQS AND WHAT POLYGRAPHS ARE ALL ABOUT?

5 A YES AND THE VERY BASIC IDEA OF THE POLYGRAPH
6 IS THAT ONE PERSON TELLS A LIE, PHYSIOLOGICAL
7 RESPONSES OCCUR, AND THAT MAYBE FOR A VARIETY OF
8 REASONS FOR A VARIETY OF DIFFERENT PEOPLE I THINK
9 THAT DIFFERENT PEOPLE RESPOND FOR DIFFERENT REASONS
10 IT'S HARDER TO LIE THAN IT IS TO TELL THE TRUTH
11 BECAUSE IF YOU ARE GOING TO LIE YOU HAVE TO IN YOUR
12 MIND FORM THAT LIE AND SEPARATE IT FROM THE TRUTH AND
13 KEEP THOSE TWO THINGS GOING, SO THERE IS A CERTAIN
14 AMOUNT OF MENTAL WORK THAT GOES ON, AND THAT BY
15 ITSELF CAN CAUSE YOU TO HAVE PHYSIOLOGICAL RESPONSES
16 SOME PEOPLE FEEL GUILTY WHEN THEY LIE THAT CAN
17 CAUSE YOU TO HAVE PHYSIOLOGICAL RESPONSES AND MANY, I
18 THINK MOST ARE, ESPECIALLY IN SOMETHING LIKE A
19 POLYGRAPH TEST PARTICULARLY ONE BEING ADMINISTERED BY
20 A POLICE OFFICER, PEOPLE IF THEY ARE LYING OR AFRAID
21 THEY ARE GOING TO GET CAUGHT, AND SO THAT'S THE BASIC
22 PREMISE OF THE POLYGRAPH, THAT WHEN PEOPLE LIE, THEY
23 PRODUCE PHYSIOLOGICAL RESPONSES THE PROBLEM THAT WE
24 HAVE WITH THE POLYGRAPH OR ONE PROBLEM THAT HAS BEEN
25 WORKED ON FOR A LONG TIME, POLYGRAPH'S ACTUALLY BEEN

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1 AROUND FOR OVER A HUNDRED YEARS IN ONE FORM OR
2 ANOTHER, IS THAT IF, WE HAVE AN INNOCENT PERSON AND
3 WE ASK THEM, DID YOU DO IT, AND THEN WE ONLY ASK
4 OTHER TRUTHFUL QUESTIONS, SO IS YOUR NAME JOHN, IS
5 TODAY THURSDAY, ARE THERE LIGHTS ON IN THIS ROOM, YOU
6 DON'T HAVE TO BE A ROCKET SCIENTIST TO FIGURE OUT DID
7 YOU COMMIT THE MURDER, DID YOU STEAL THE MONEY FROM
8 THE SAFE, IS A MUCH MORE IMPORTANT QUESTION THAN IS
9 TODAY THURSDAY AND SO THE VERY EARLY POLYGRAPH
10 TESTS, FIRST HALF OF THE 20TH CENTURY PRODUCED, WE
11 BELIEVE PRODUCED, A LOT OF WHAT ARE CALLED FALSE
12 POSITIVE ERRORS, THAT IS, A LOT OF INNOCENT PEOPLE
13 WHO TOOK THOSE TESTS FAILED THEM ALMOST ALL THE
14 GUILTY PEOPLE ALSO FAILED THEM OR DECEPTIVE PEOPLE,
15 BUT A LOT OF THE TRUTHFUL PEOPLE WOULD HAVE ALSO
16 FAILED THEM AND SO ABOUT 1950 A MAN NAMED JOHN REED
17 CAME UP WITH AN IDEA FOR SOMETHING CALLED A
18 COMPARISON QUESTION AND WHAT A COMPARISON QUESTION
19 DOES IS IT'S PRESENTED TO THE PERSON TAKING THE TEST
20 AS AN IMPORTANT QUESTION BUT IT'S A QUESTION THAT WE
21 ASSUME THAT THE PERSON IS LYING TO, SO IT WOULD BE
22 SOMETHING LIKE, IF YOU TOOK THE MONEY FROM THE SAFE,
23 WE KNOW THAT DIDN'T HAPPEN BY ACCIDENT, THE PERSON
24 WHO DID THAT HAD TO PLAN TO DO THAT, THEY HAD TO GO
25 IN AND OPEN THE SAFE AND TAKE THE MONEY AND HAVE AN

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1 ALIBI FOR HOW TO GET AWAY WITH IT, AND THEY DIDN'T DO
2 THAT BY ACCIDENT IT'S NOT LIKE THEY FOUND THE MONEY
3 LAYING ON THE GROUND ON THE STREET, AND THEY'VE DONE
4 OTHER BAD THINGS BEFORE IF I WERE TO ASK YOU SAY,
5 HAVE YOU EVER TOLD A LIE TO SOMEBODY WHO TRUSTED YOU?
6 YOU HAVEN'T DONE THAT, HAVE YOU? YOU ARE NOT THAT
7 KIND OF PERSON, ARE YOU? AND IN THAT SITUATION THE
8 PERSON MANIPULATING AND PRODUCING ANOTHER ANSWER TO
9 THAT WHEN IN REALITY ALL OF US PROBABLY HAVE TOLD A
10 LIE TO SOMEBODY WE HAVE TRUSTED OR WE HAVE TAKEN
11 SOMETHING THAT DIDN'T BELONG TO US OR WE THOUGHT
12 ABOUT DOING THINGS THAT WOULD BE EMBARRASSING IF WE
13 HAD TO ADMIT IT, AND SO YOU PUT THE PERSON IN A BIND
14 AND THE THEORY OF THIS TEST WHICH IS CALLED THE
15 COMPARISON QUESTION TEST OR SOMETIMES CALLED THE
16 CONTROL QUESTION TEST IS THAT IF YOU COMMITTED THE
17 CRIME, SO IN THIS CASE WE HAVE A HEINOUS CRIME, A
18 MURDER, WE EXPECT THAT THE PERSON WHO COMMITTED THAT
19 MURDER IS GOING TO REMEMBER HAVING DONE IT, THEY MAY
20 FEEL GUILTY ABOUT IT, THEY ARE CERTAINLY GOING TO BE
21 CONCERNED ABOUT GETTING CAUGHT IN IT, BECAUSE THERE
22 ARE VERY SERIOUS PUNISHMENTS TO BE ASSOCIATED WITH
23 THAT, THEY ARE GOING TO HAVE TO REMEMBER THAT THEY
24 DID IT AND THEN KEEP THEIR LIE STRAIGHT AS THEY ARE
25 TELLING ABOUT IT, SO ALL OF THESE THINGS ARE GOING TO

1 GO ON IN THEIR MIND AND ON A POLYGRAPH THEN WHEN WE
2 ASK DID YOU DO IT, WE EXPECT TO SEE LARGE
3 PHYSIOLOGICAL RESPONSES

4 ON THE OTHER HAND FOR THE PERSON WHO
5 DIDN'T DO IT, IF THEY'VE BEEN ACCUSED AND NOW BEING
6 GIVEN A POLYGRAPH, WE ALSO TELL THEM THESE OTHER
7 QUESTIONS ARE IMPORTANT BECAUSE THEY TELL US ABOUT
8 YOUR CHARACTER YOU ARE NOT THE KIND OF PERSON WHO
9 WOULD HAVE COMMITTED A MURDER, AND WE EXPECT THE
10 INNOCENT PERSON TO RESPOND TO THE COMPARISON
11 QUESTIONS AND THAT PULLS THEIR ATTENTION AWAY FROM
12 THE RELEVANCE, AND SO WE LOOK FOR THIS DIFFERENCE
13 WE NEED TO SEE RESPONSE TO SOMETHING, WE WANT TO SEE
14 RESPONSE TO EITHER THE RELEVANCE OR THE CONTROLS, AND
15 IF THE PERSON RESPONDS PRIMARILY TO RELEVANCE,
16 FURTHER DECEPTIVE IF THEY RESPOND PRIMARILY TO THE
17 COMPARISON OR CONTROL QUESTION THEN WE INFER THAT
18 THEY ARE TRUTHFUL ABOUT THE RELEVANCE, SO WE LOOK FOR
19 THIS DIFFERENCE AND THAT'S A STRENGTH OF THE TEST
20 IN THAT IT PROTECTS THE TEST AGAINST, LIKE DRUGS, YOU
21 CAN TAKE DRUGS THAT WILL ALTER YOUR PHYSIOLOGY BUT IT
22 ALTERS YOUR PHYSIOLOGY TO ALL THE QUESTIONS SO WHAT
23 WE, IF WE DON'T GET A RESPONSE TO ANYTHING, THAT'S
24 CALLED AN INCONCLUSIVE TEST, WE CAN'T MAKE UP OUR
25 MINDS ABOUT A DECISION, AND IF YOU RESPOND TO

1 EVERYTHING, THEN IT'S ALSO INCONCLUSIVE SO WE LOOK
2 FOR THAT DIFFERENCE IN REACTION AND THAT'S HOW THE
3 COMPARISON QUESTION TEST WORKS

4 Q NOW WHEN YOU ARE MEASURING A SUBJECT'S REACTIONS
5 PHYSIOLOGICAL THINGS ARE CONSIDERED ABOUT THAT PERSON
6 ARE MEASURED?

7 A YES

8 Q TESTED?

9 A A TYPICAL POLYGRAPH THAT'S IN USE TODAY MEASURES
10 THREE PHYSIOLOGICAL MEASURES IT MEASURES BLOOD
11 PRESSURE FROM A CUFF ON THE UPPER ARM WHICH IS
12 EXACTLY THE SAME CUFF THAT YOUR PHYSICIAN USES A
13 POLYGRAPH EXAMINER TAKES YOUR BLOOD PRESSURE IN A
14 LITTLE BIT DIFFERENT WAY BECAUSE WE'RE ASKING A
15 DIFFERENT QUESTION YOUR PHYSICIAN WANTS TO KNOW
16 WHAT YOUR BLOOD PRESSURE IS RIGHT NOW SO IS IT 120
17 OVER 70 OR 140 OVER 90 OR WHATEVER POLYGRAPH
18 EXAMINER ACTUALLY WANTS TO KNOW WHEN I ASK YOU THIS
19 QUESTION DOES YOUR BLOOD PRESSURE GO UP, DOWN, OR
20 STAY THE SAME, SO YOU PUT A LITTLE BIT OF PRESSURE IN
21 IT, USUALLY ABOUT 65 OR 70 MILLIMETERS OF PRESSURE
22 WITH THE NEWER INSTRUMENTS MAY BE JUST A LITTLE BIT
23 LESS BUT YOU LEAVE IT ON FOR THAT WHOLE PERIOD OF
24 TIME THAT YOU ARE ASKING QUESTIONS AND YOU GET A
25 CONTINUOUS RECORDING THAT SHOWS EACH BEAT OF THE

1 HEART SO YOU CAN LEARN SOME THINGS ABOUT HOW FAST A
2 PERSON'S HEART'S BEATING, BUT THE IMPORTANT THING IS
3 TO SEE WHETHER THE BLOOD PRESSURE ITSELF IS GOING UP
4 OR DOWN

5 Q I'M SORRY GO AHEAD

6 A THE SECOND THING THAT WE MEASURE IS CALLED THE
7 GALVANIC SKIN RESPONSE OR IT IS SOMETIMES CALLED THE
8 ELECTRODERMAL RESPONSE, BUT SIMPLY IT IS HOW MUCH
9 YOUR HANDS ARE SWEATING, AND THERE ARE TWO SENSORS
10 THAT ARE PLACED USUALLY ON THE PALM SIDE OF TWO
11 FINGERS AND IT'S QUITE HONESTLY A GLORIFIED OHM-METER
12 AND IT WORKS JUST THE WAY AN OHM-METER DOES, IT RUNS
13 A LITTLE BIT OF CURRENT THROUGH THE HANDS AND
14 MEASURES HOW MUCH RESISTANCE YOUR HAND HAS TO THAT
15 CURRENT AND IT, IT'S VERY SENSITIVE AND WHAT
16 HAPPENS IS THAT IF YOUR HANDS ARE VERY DRY YOUR
17 RESISTANCE IS HIGH BECAUSE DRY SKIN DOES NOT CONDUCT
18 ELECTRICITY VERY WELL IF YOUR HANDS ARE SWEATING A
19 LOT YOUR RESISTANCE GOES DOWN AND IT TURNS OUT WHEN
20 YOUR MIND IS ACTIVE AND WHEN YOU ARE FRIGHTENED OR
21 AND WHEN YOU LIE YOU PRODUCE SWEATING RESPONSES IN
22 YOUR HAND AND THESE OCCUR VERY QUICKLY AND THEY ARE
23 QUITE EASY TO MEASURE

24 THE THIRD SYSTEM THAT IS MEASURED IS
25 BREATHING, IT'S RESPIRATION, AND USUALLY THERE ARE

1 TWO SENSORS THERE IS ONE THAT IS PLACED AROUND THE
2 UPPER PART OF THE CHEST AND ANOTHER THAT IS PLACED
3 OVER THE ABDOMEN AND THEN CAPTURED THERE ARE TWO
4 KINDS OF BREATHING, THERE IS BREATHING THROUGH THE
5 DIAPHRAGM WHICH IS PICKED UP MOSTLY BY THE ABDOMINAL
6 SENSOR, AND THEN THERE IS BREATHING WITH THE CHEST
7 MUSCLES AND THE RIB CAGE WHICH IS PICKED UP BY THE
8 UPPER SENSOR AND PEOPLE VARY A LOT ABOUT WETHER THEY
9 BREATH WITH ONE OR BOTH AT ANY PARTICULAR TIME AND
10 WHAT WE LOOK FOR, THERE ARE THINGS THAT DECREASE
11 BREATHING WHEN, YOU, A PERSON TELLS A LIE AND THEY
12 GET UNDER STRESS YOU TEND TO TENSE UP AND WHEN YOU
13 TENSE UP YOU HAVE A PERIOD THAT THE BREATHING IS
14 SUPPRESSED AND THE MOST EXTREME CASE WOULD BE YOU
15 STOP BREATHING ALL TOGETHER I HAVE SEEN CASES WHERE
16 PEOPLE WOULD JUST FORGET TO BREATH FOR 10-12 SECONDS
17 THAT IS A LITTLE UNUSUAL IT'S MORE FREQUENT THAT
18 YOU SEE THAT THE BREATHING CYCLE BECOMES MUCH SMALLER
19 INDICATING A SUPPRESSION AND TENSENESS

20 Q DOCTOR, HAVE YOU CONDUCTED RESEARCH AND FIELD
21 STUDIES AND CLINICAL STUDIES IN CONNECTION WITH THOSE
22 PHYSIOLOGICAL PHENOMENA YOU JUST DESCRIBED?

23 A YES, I HAVE

24 Q WHO FUNDED THOSE STUDIES?

25 A I'VE RECEIVED FUNDING FROM A NUMBER OF DIFFERENT

1 SOURCESS FROM THE U S DEPARTMENT OF JUSTICE, FROM
2 THE U S DEPARTMENT OF DEFENSE, FROM SCIENCE
3 CANADA, THE CENTRAL INTELLIGENCE AGENCY WHEN I WAS
4 AT THE UNIVERSITY OF UTAH WE GOT SOME MONEY FROM THE
5 U S SECRET SERVICE

6 Q ALL RIGHT SWITCH GEARS, DOCTOR CAN YOU TELL
7 ME WHAT IS MEANT BY A FALSE POSITIVE?

8 A THERE ARE FOUR POSSIBLE OUTCOMES IN A DIAGNOSTIC
9 TEST A TRUE POSITIVE MEANS YOU HAVE WHAT YOU ARE
10 LOOKING FOR, SO THAT, IN THIS CASE, WOULD BE A
11 DECEPTIVE PERSON WHO FAILS THE TEST A FALSE
12 POSITIVE WOULD MEAN THAT THE DIAGNOSTIC TEST SAYS YOU
13 HAVE IT BUT YOU DON'T, SO THAT WILL MEAN YOU HAVE A
14 TRUTHFUL PERSON WHO WE SAID FAILS

15 THE OTHER TWO OUTCOMES ARE NEGATIVE AND A
16 NEGATIVE OUTCOME HERE WOULD MEAN THAT WE SAY YOU PASS
17 THE TEST AND IN FACT YOU WERE TRUTHFUL AND A FALSE
18 NEGATIVE WOULD MEAN THAT THE POLYGRAPH EXAMINER SAYS
19 YOU PASS THE TEST BUT YOU WERE IN FACT LYING

20 Q DOCTOR, IS THERE A PARTICULAR TEST KNOWN AS THE
21 DIRECTED LIE CONTROL TEST?

22 A THERE IS IT'S JUST A VARIANT OF THE COMPARISON
23 QUESTION TEST

24 Q THAT YOU'VE ALREADY GONE INTO?

25 A YES, I HAVE

1 Q ARE THERE CERTAIN TYPES OF PEOPLE THAT CAN BEAT
2 A POLYGRAPH?

3 A I DON'T BELIEVE SO IN SCIENCE WE ALWAYS LOOK
4 FOR EXCEPTIONS AND SO WE WOULD HAVE TO FIND -- I
5 CAN'T SAY FOR CERTAIN THAT THERE ISN'T A PARTICULAR
6 KIND OF PERSON THAT CAN BEAT THE POLYGRAPH, BUT THE
7 EVIDENCE RIGHT NOW SUGGESTS THERE IS NOT WE'VE DONE
8 EXTENSIVE RESEARCH THERE ARE A NUMBER OF PUBLISHED
9 STUDIES NOW ON PSYCHOPATHS BECAUSE WE'VE BEEN VERY
10 CONCERNED ABOUT PSYCHOPATHS AND THE POLYGRAPH
11 PSYCHOPATHS ARE PEOPLE INVOLVED IN CRIMINAL ACTIVITY,
12 THEY ARE PEOPLE WHO LIE ALL THE TIME, AND THE CONCERN
13 WAS THAT IF YOU ARE A HABITUAL LIAR THAT IT'S NOT
14 GOING TO HAVE THE PHYSIOLOGICAL RESPONSES ASSOCIATED
15 WITH IT AND BOTH LABORATORY AND FIELD WORK HAS SHOWN
16 US IN FACT PSYCHOPATHS ARE JUST AS DETECTABLE AS
17 ANYBODY ELSE AND ACTUALLY TO ME AS A PSYCHOLOGIST
18 THAT MAKES SENSE BECAUSE THE KIND OF PROBLEM A
19 PSYCHOPATH HAS TO DO WITH EMPATHY FOR THE VICTIM BUT
20 THEY DO UNDERSTAND WHAT THEY HAVE TO LOSE WHEN THEY
21 TAKE A POLYGRAPH AND SO THERE HAVE BEEN IN FACT A
22 NUMBER OF VERY FAMOUS PSYCHOPATHS WHO HAVE BEEN GIVEN
23 POLYGRAPHS AND FAILED

24 Q LIKewise, CAN PEOPLE BE TRAINED TO BEAT A
25 POLYGRAPH?

1 A THAT IN FACT IS POSSIBLE A GREAT DEAL OF MY
2 RESEARCH HAS BEEN FOCUSED ON THAT I BEGAN WORKING
3 ON THAT PROBLEM IN 1981 IN SORT OF A DIFFERENT
4 SETTING THAN THIS WE WERE PARTICULARLY CONCERNED IN
5 THAT PERIOD OF TIME, IT'S HARD TO REMEMBER BACK THAT
6 FAR IN SOME WAYS, BUT THE COLD WAR WAS ON HARD AND
7 HEAVY AT THAT TIME AND OUR GOVERNMENT WAS RELYING
8 HEAVILY ON THE USE OF POLYGRAPH TO LOOK FOR SPIES AND
9 AN IMPORTANT QUESTION WAS CAN PEOPLE BE TRAINED TO
10 BEAT THE POLYGRAPH AND EVADE OUR SCREENING SYSTEM
11 THAT WAY, AND I BEGAN A SERIES OF STUDIES WHICH IS
12 ACTUALLY STILL ONGOING, BUT WHAT WE FOUND IS THAT IN
13 THE LABORATORY SETTING WHERE, WE DO ALL OF THIS IN A
14 LABORATORY SETTING SO WE KNOW WHO GETS WHAT TRAINING,
15 WE KNOW WHO DID THE CRIME AND WHO DIDN'T BECAUSE WE
16 ALL SET IT UP THAT WAY, BUT WE CAN TEACH A PERCENTAGE
17 OF PEOPLE TO FOOL THE TEST IN THE LABORATORY THERE
18 IS NOT, THERE IS REALLY VERY LITTLE EVIDENCE THAT
19 THAT HAPPENS OFTEN IN THE REAL WORLD IN FACT, THE
20 NUMBER OF REAL CASES WHERE WE KNOW THE POLYGRAPH HAS
21 BEEN BEATEN ARE FEWER THAN FIVE THAT I KNOW OF

22 Q WHAT ABOUT SOMEONE WHO HAS CONVINCED HIMSELF
23 THAT HE, THAT HE DID NOT DO THE ACTS THAT HE'S
24 CHARGED WITH?

25 A WELL, THAT'S SOMETHING THAT'S OFTEN RAISED ABOUT

1 POLYGRAPH AND I THINK, I THINK THAT A PERSON UNLESS
2 THAT PERSON IS MENTALLY ILL AND AS A PSYCHOLOGIST
3 THERE IS A CATEGORY OF MENTAL ILLNESSES THAT INVOLVE
4 DISTORTIONS OF THOUGHT, SO SCHIZOPHRENIA WOULD BE ONE
5 OF THOSE, CERTAIN ASPECTS OF MANIC DEPRESSIVE
6 DISORDER, WHERE PEOPLE ARE NO LONGER IN TOUCH WITH
7 REALITY AND THEY DEVELOP DELUSIONS THAT THEY
8 GENUINELY BELIEVE

9 IN THE ABSENCE OF THAT I THINK THE ANSWER
10 IS NO I DON'T THINK YOU CAN CONVINCE YOURSELF TO
11 BEAT THE POLYGRAPH WE ACTUALLY HAVE EVIDENCE ON
12 THAT IN OUR LABORATORY STUDIES, WE'VE CONDUCTED A
13 NUMBER OF LABORATORY STUDIES OVER THE YEARS, AND ONE
14 OF THE NICE THINGS ABOUT WORKING IN A LABORATORY
15 SETTING IS YOU GET TO DEBRIEF PEOPLE AFTER THE
16 POLYGRAPH AND WE TALK EXTENSIVELY WITH THEM ABOUT
17 WAYS THAT THEY'VE TRIED TO BEAT THE POLYGRAPH AND
18 PEOPLE DO TRY TO BEAT IT ABOUT 60 PERCENT OF OUR
19 LABORATORY SUBJECTS REPORT DOING SOMETHING IN AN
20 EFFORT TO BEAT THE POLYGRAPH AND ONE THING THAT
21 THEY OFTEN TRY TO DO IS CONVINCE THEMSELVES THEY
22 DIDN'T REALLY COMMIT A CRIME, THAT THIS IS A
23 LABORATORY EXPERIMENT, WE'RE PAYING THEM TO BE THERE,
24 AND THEY ARE JUST UNIVERSALLY NOT SUCCESSFUL AT
25 PULLING THAT OFF IT'S ONLY WHEN WE GIVE PEOPLE VERY

1 SPECIFIC TRAINING IN HOW TO MANIPULATE THEIR
2 PHYSIOLOGY THAT THEY ARE ABLE TO BEAT THE TEST AND
3 YOU CAN DO THAT BY CONTROLLING YOUR MUSCLE TENSIONS
4 SO THERE ARE MUSCLES YOU CAN TENSE YOU CAN TENSE
5 THE BIG MUSCLES IN YOUR LEG YOU CAN MAKE YOUR BLOOD
6 PRESSURE GO UP AND IF YOU ARE VERY CAREFUL ABOUT HOW
7 YOU DO THAT, DO IT EXACTLY THE RIGHT TIME ON THE
8 COMPARISON QUESTIONS, WE CAN TRY TO TRAIN SOME PEOPLE
9 TO BEAT POLYGRAPH

10 Q ARE POLYGRAPH EXAMINATIONS APPROPRIATE AT ALL
11 TIMES OR ARE THERE ARE SOME TIMES WHEN THEY ARE
12 INAPPROPRIATE?

13 A NO, THERE ARE CLEARLY SOMETIMES WHEN THEY ARE
14 INAPPROPRIATE

15 Q WOULD A PROPER POLYGRAPH EXAM INCLUDE SOME
16 PRETEST QUESTIONS TO DETERMINE THAT THE SUBJECT OF
17 THE TEST IS AN APPROPRIATE PERSON TO BE TESTED?

18 A YES, IT SHOULD

19 Q AND DOES A TEST REQUIRE SUCH COMPARISON OF THE
20 CONTROLLED QUESTIONS TO THE RELEVANT QUESTIONS?

21 A IT REQUIRES EXTENSIVE COMPARISON OF THE CONTROL
22 AND RELEVANT QUESTIONS

23 Q DOCTOR, IS THERE A TESTABLE SCIENTIFIC
24 HYPOTHESIS CONCERNING THE POLYGRAPH AND POLYGRAPH
25 EXAMINATION?

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1 A THERE ARE ACTUALLY SEVERAL THE BASIC PREMISE
2 THAT WE TALKED ABOUT IS TESTABLE THAT IS WE CAN ASK
3 THE SCIENTIFIC QUESTION DO PEOPLE GIVE PHYSIOLOGICAL
4 RESPONSES WHEN THEY LIE AND THAT'S TESTABLE BY THE
5 METHODS OF SCIENCE AND THEN WE CAN ASK SPECIFIC
6 MORE ENGINEERING KINDS OF QUESTIONS ABOUT THE VARIOUS
7 TECHNIQUES DOES THIS TECHNIQUE WORK BETTER THAN
8 THAT TECHNIQUE DOES THIS METHOD OF SCORING WORK
9 BETTER THAN THAT METHOD OF SCORING IF WE GIVE
10 PEOPLE DRUGS DOES THAT ENABLE THEM TO BEAT THE
11 POLYGRAPH SO THERE ARE MANY SCIENTIFIC QUESTIONS THAT
12 CAN BE ASKED

13 Q AND HAS THIS HYPOTHESIS BEEN TESTED?

14 A IT HAS, MANY OF THEM HAVE, YES BUT THE BASIC
15 PREMISE OF DO PEOPLE RESPOND WHEN THEY TELL LIES HAS
16 BEEN TESTED EXTENSIVELY AND PUBLISHED IN PEER REVIEW
17 JOURNALS AND QUESTIONS ABOUT THE ACCURACY OF THE
18 COMPARISON QUESTION TEST THAT I DESCRIBED EARLIER
19 HAVE ALSO BEEN CONDUCTED AND THERE HAVE BEEN MANY
20 PUBLICATIONS IN GOOD PEER REVIEW JOURNALS

21 Q IS THERE AN KNOWN ERROR RATE?

22 A THERE ARE ESTIMATES OF ERROR RATE AND THEY TEND
23 TO CENTER AROUND TWO OR THREE PERCENT WITH GUILTY
24 PEOPLE AND ABOUT TEN PERCENT WITH THE INNOCENT

25 Q I BELIEVE YOU'VE ALREADY STATED THIS HYPOTHESIS

1 AND TECHNIQUE HAS BEEN SUBJECTED TO PEER REVIEW AND
2 PUBLICATION

3 A IT HAS EXTENSIVE AND IN VERY GOOD JOURNALS
4 SOME OF THE JOURNALS THAT I PUBLISH IN, FOR EXAMPLE,
5 JOURNAL OF APPLIED PSYCHOLOGY AND PSYCHOPHYSIOLOGY
6 TEND TO REJECT ABOUT 85 TO 90 PERCENT OF THE ARTICLES
7 THAT ARE SUBMITTED SO THESE ARE NOT PRO FORMA
8 PUBLICATIONS THESE ARE PUBLICATIONS THAT HAVE BEEN
9 PUT UNDER A LOT OF SCIENTIFIC SCRUTINY AND HAVE BEEN
10 FOUND TO MEET RIGOROUS SCIENTIFIC STANDARDS

11 Q AND IS THE THEORY UPON WHICH THE HYPOTHESIS AND
12 THE TECHNIQUE IS IT BASED GENERALLY ON ACCEPTED
13 PRINCIPLES WITHIN THE SCIENTIFIC COMMUNITY?

14 A I BELIEVE IT IS, YEAH

15 Q DOCTOR, HAVE YOU HAD AN OPPORTUNITY TO REVIEW
16 THE CHARTS AND THE SCORING AND THE TEST RESULTS OF
17 THE POLYGRAPH EXAMINATION THAT WAS GIVEN TO THE
18 DEFENDANT MR BILLY WAYNE COPE HERE?

19 A I HAVE

20 Q I ASK YOU TO TAKE A LOOK AT THIS CAN YOU
21 IDENTIFY IT?

22 A YES THIS IS A PHOTOCOPY OF THE MATERIALS THAT
23 YOU SENT TO ME, SO THESE ARE THE MATERIALS THAT I
24 REVIEWED

25 Q AND WHAT IS YOUR UNDERSTANDING OF WHAT THOSE

1 ARE?

2 A MY UNDERSTANDING IS THAT THIS WAS A POLYGRAPH
3 THAT WAS ADMINISTERED TO BILLY WAYNE COPE ON, IT'S
4 IDENTIFIED ON THE CHART, ON NOVEMBER 30, 2001

5 Q THANK YOU

6 MR GREELEY I HAVEN'T SEEN THESE, SO
7 I'LL JUST DEFER TO THE STATE BECAUSE THEY KNOW
8 WHETHER OR NOT IT IS ACCURATE

9 MR BRACKETT THESE WERE THE CHARTS WE
10 PROVIDED

11 MR BAITY YOUR HONOR, I WOULD MOVE THIS
12 BEING ADMITTED INTO EVIDENCE

13 MR BRACKETT WITHOUT OBJECTION

14 MR GREELEY SUBJECT TO PREVIOUS
15 OBJECTION

16 MR BAITY THANK YOU, YOUR HONOR

17 (DEFENSE EXHIBIT 64 POLYGRAPH TEST IN
18 EVIDENCE)

19 Q DR HONT'S, I'M HANDING YOU A, I BELIEVE IT'S A,
20 13 PAGE DOCUMENT THAT HAS BEEN COLLECTIVELY MARKED AS
21 DEFENSE EXHIBIT NUMBER 64 AND I ASK THAT YOU REFER TO
22 THAT IN THE NEXT QUESTIONS I HAVE FOR YOU DOCTOR,
23 INCLUDED IN THAT EXHIBIT THAT I JUST HANDED TO YOU,
24 DOES THAT INCLUDE THE CHARTS MONITORING THE
25 PHYSIOLOGICAL REACTIONS OF THE SUBJECT OF THIS TEST?

1 A YES, IT DOES

2 Q AND DOES THAT EXHIBIT ALSO INCLUDE THE SCORING
3 SUMMARIES AND SHEETS THAT WERE CONDUCTED, THAT WERE
4 FILLED OUT BY THE POLYGRAPH EXAMINER?

5 A YES, IT DOES

6 Q ALL RIGHT AND DOES IT INCLUDE THE RESULTS OF
7 THE POLYGRAPH EXAMINATION?

8 A IT DOES

9 Q ALL RIGHT IS THAT A TYPICAL REPORT THAT YOU'VE
10 SEEN OF OTHER POLYGRAPH EXAMS?

11 A THE REPORTS ARE VERY BRIEF USUALLY THERE IS
12 MORE DETAIL GIVEN IN REPORTS, BUT I'VE SEEN OTHER
13 REPORTS LIKE THIS BEFORE

14 Q ALL RIGHT AND ARE YOU ABLE TO UNDERSTAND IT
15 AND UNDERSTAND WHAT WENT ON DURING THE EXAMINATION OF
16 MR COPE?

17 A TO A DEGREE SINCE THERE IS NOT A TAPE
18 RECORDING OF IT OR I WAS NOT PROVIDED A TAPE
19 RECORDING OF IT, THERE ARE CERTAINLY SOME THINGS I
20 CAN'T KNOW ABOUT IT, BUT THERE IS SUFFICIENT MATERIAL
21 TO EVALUATE THE POLYGRAPH RECORDING

22 Q DO YOU RECOGNIZE THE TYPE OF TEST?

23 A I DO

24 Q THERE ARE DIFFERENT TYPES OF TESTS?

25 A THERE ARE

1 Q AND YOU RECOGNIZE THAT AS ONE THAT'S BEEN
2 ACCEPTED?

3 A I DO

4 Q IS THERE A PROPER PROCEDURE FOR AN EXAMINER TO
5 FOLLOW IN CONDUCTING A TEST OF THIS TYPE?

6 A THERE IS

7 Q AND CAN YOU TELL FROM LOOKING AT THAT REPORT DID
8 THE EXAMINER, IN THIS CASE IT WOULD BE DETECTIVE
9 BAKER, FOLLOW THE PROPER PROCEDURE?

10 A I CAN CERTAINLY TELL SOME THINGS ABOUT WHETHER
11 THE PROPER PROCEDURE WAS FOLLOWED THERE IS A LIST,
12 A COMPLETE LIST, OF THE QUESTIONS THAT WERE RUN AND
13 THEY ARE IN THE PROPER FORM FOR A COMPARISON QUESTION
14 TEST THERE ARE THREE RELEVANTS AND THREE COMPARISON
15 QUESTIONS AND THE FORM OF THE QUESTIONS IS FINE

16 Q ALL RIGHT AGAIN NOW I JUST WANT TO MAKE SURE
17 EVERYONE UNDERSTANDS THE DIFFERENCE BETWEEN THE
18 RELEVANT QUESTIONS AND CONTROL QUESTIONS YOU ARE
19 TALKING ABOUT MAYBE YOU CAN JUST GO OVER THAT
20 BRIEFLY?

21 A CERTAINLY THERE ARE THREE RELEVANT QUESTIONS
22 ON THIS TEST WHICH WENT TO THE ISSUE THAT WAS BEING
23 INVESTIGATED AND THEY ARE DID YOU CHOKE AMANDA, DID
24 YOU CHOKE AMANDA CAUSING HER TO DIE, AND WERE YOU IN
25 THE ROOM WHEN AMANDA DIED, AND SO THOSE WOULD BE

1 CALLED THE RELEVANT QUESTIONS BECAUSE THEY GO
2 DIRECTLY TO THE ISSUE AND THEN THERE WERE THREE
3 COMPARISON QUESTIONS, WHERE THEY INDICATED IT'S
4 COMPARITIVE QUESTIONS, AND THEY FIT THAT FORM AND I
5 DON'T KNOW EXACTLY HOW THEY WERE PRESENTED SINCE
6 THERE WAS NO TAPE RECORDING, BUT THEY WOULD HAVE BEEN
7 PRESENTED AS CHARACTER QUESTIONS SO THAT THESE ARE
8 IMPORTANT QUESTIONS TO SHOW YOU ARE NOT THE KIND OF
9 PERSON WHO WOULD HAVE DONE THIS AND THEY ARE
10 BEFORE THIS SUMMER DID YOU EVER LOSE YOUR TEMPER AND
11 HURT ANYONE, BEFORE THIS SUMMER DID YOU EVER FORCE
12 ANYONE TO DO SOMETHING YOU WANTED, AND BEFORE THIS
13 SUMMER DID YOU HAVE FANTASIES ABOUT FORCING SOMEONE
14 TO DO SOMETHING AGAINST THEIR WILL, AND THOSE ARE
15 APPROPRIATE HERE BECAUSE THIS IS AN ISSUE ABOUT FORCE
16 SO THEY ARE RELATED IN TERMS OF CHARACTER AND THEY
17 COULD EASILY BE PRESENTED AS, THESE WOULD SHOW
18 SOMETHING ABOUT YOUR CHARACTER THAT WOULD INDICATE
19 YOU ARE THE KIND OF PERSON WHO MIGHT HAVE DONE THIS
20 UNDER THE ASSUMPTION THAT THIS GENTLEMAN PROBABLY HAS
21 DONE THESE THINGS HE PROBABLY HAS HAD FANTASIES
22 ABOUT FORCING SOMEBODY TO DO SOMETHING AGAINST THEIR
23 WILL AND THAT HE MAY HAVE FORCED SOMEBODY TO DO
24 SOMETHING THAT THEY DIDN'T WANT TO AND THAT HE MAY
25 HAVE LOST HIS TEMPER AND HURT SOMEONE WHICH I THINK

1 FAIRLY SAFE WITH MOST ADULT MALES THAT, YOU KNOW, IF
2 YOU READ THOSE QUESTIONS LITERALLY WE MOST POSSIBLY,
3 LIKELY HAVE DONE ALL OF THOSE THINGS, SO IT WOULD BE
4 CALLED A PROBABLE LIE IN THAT SENSE

5 Q DOCTOR, DO YOU HAVE DISPUTE WITH THE CONTROLLED
6 QUESTIONS THAT WERE MADE A PART OF THIS TEST?

7 A I DO NOT

8 Q ALL RIGHT, SIR NOW CAN YOU COMMENT ON THE
9 SETTING AS YOU UNDERSTAND IT WELL, BEFORE I ASK YOU
10 THAT QUESTION WHAT ELSE HAVE YOU REVIEWED IN
11 ADDITION TO THE DOCUMENTS THAT YOU HAVE IN YOUR HAND
12 IN THAT EXHIBIT?

13 A THE ONLY OTHER THINGS THAT I REVIEWED WAS AN
14 E-MAIL FROM YOU, THAT YOU CONTACTED ME INITIALLY BY
15 E-MAIL, AND I ALSO REVIEWED A TRANSCRIPT OF A FAMILY
16 COURT HEARING WHERE THE POLYGRAPH EXAMINER TESTIFIED

17 Q THAT WOULD BE DETECTIVE BAKER?

18 A YES, THAT'S CORRECT

19 Q WERE YOU ABLE TO GAIN ANY TYPE OF INFORMATION
20 ABOUT THE SETTING THAT THIS POLYGRAPH WAS
21 ADMINISTERED IN?

22 A I GAINED SOME FROM BOTH OF THOSE SOURCES, YES

23 Q AND DO YOU HAVE ANY COMMENTS ON THE SETTING AS
24 IT BEING APPROPRIATE?

25 A WELL, THERE ARE SOME THINGS THAT CAUSED ME SOME

1 CONCERN ONE, THIS IS VERY, VERY RECENT AFTER THE
2 CRIME, IT'S THE NEXT DAY, AND IT'S A LITTLE UNUSUAL
3 TO RUN POLYGRAPHS THAT QUICKLY I HAVE, IN FACT,
4 BEEN CRITICIZED FOR RUNNING POLYGRAPH IN A MURDER
5 CASE A WEEK AFTER THE MURDER BECAUSE IT'S VERY
6 EMOTIONALLY PARTICULARLY WHEN IT'S A FAMILY MEMBER
7 AND FROM A POLYGRAPH EXAMINER'S POINT OF VIEW WHAT
8 YOU HAVE TO THINK ABOUT IS THE TRUTH OF THE PERSON
9 YOU DON'T KNOW WHEN YOU BEGAN A POLYGRAPH TEST YOU
10 DON'T KNOW, THAT'S WHY YOU'RE RUNNING A POLYGRAPH,
11 AND A POLYGRAPH EXAMINER, IF THEY DO THEIR JOB
12 PROPERLY, HAS TO HAVE AN OPEN MIND THAT THIS PERSON
13 COULD BE TELLING THE TRUTH OR THEY MIGHT NOT BE
14 TELLING THE TRUTH IN A SETTING LIKE THIS IF THE
15 PERSON IS TELLING THE TRUTH, IN THIS CASE A FATHER
16 WHO HAS DISCOVERED HIS DAUGHTER BRUTALLY MURDERED, IN
17 SOME WAYS HE'S ALMOST THE VICTIM, AND IF HE IS
18 TELLING THE TRUTH THAT'S VERY TRAUMATIC, AND IT MAKES
19 RUNNING A POLYGRAPH VERY DIFFICULT PARTICULARLY THAT
20 SOON AFTER THE CRIME

21 I ALSO UNDERSTAND THAT HE WAS INTERVIEWED,
22 INTERROGATED, LATE INTO THE EVENING AND THERE IS A
23 LITTLE BIT OF DISPUTE ABOUT THE TIMING WHEN THAT
24 ENDED BUT IT ENDED IN THE EARLY MORNING HOURS, MAYBE
25 BETWEEN TWO AND THREE O'CLOCK, AND HE WAS THEN

1 ARRESTED FOR MURDER, AND THEN I ALSO UNDERSTAND THAT
2 AT AGAIN A VERY EARLY HOUR 4 30 - 4 20 IN THAT
3 NEIGHBORHOOD HE WAS ACTUALLY BROUGHT BEFORE A
4 MAGISTRATE AND ARRAIGNED, AND THEN SIX HOURS AFTER
5 THAT HE'S BEING GIVEN A POLYGRAPH AND HE MAY OR MAY
6 NOT HAVE SLEPT IN THAT PERIOD OF TIME, BUT IT'S
7 CERTAINLY DIFFICULT FOR ME TO IMAGINE ANYONE COULD
8 HAVE SLEPT WELL AND HAVE BEEN RESTED AFTER THAT
9 PERIOD OF TIME, SO ALL OF THOSE THINGS CAUSED ME
10 CONCERN I WOULD NOT HAVE RUN A POLYGRAPH UNDER
11 THOSE SETTINGS BUT THEN THAT'S A DECISION THAT A
12 POLYGRAPH EXAMINER HAS TO MAKE

13 Q IS IT IMPORTANT THAT SOMEONE HAVE A, APPROPRIATE
14 REST BEFORE THEY ARE GIVEN THE TEST?

15 A WELL, I BELIEVE IT IS I WOULD LIKE PEOPLE TO
16 BE FULLY RESTED BECAUSE THE PHYSIOLOGY IS LIKELY TO
17 BE MORE ACTIVE AND RESPONSIVE AND THEY ARE ALSO
18 MENTALLY LIKELY TO BE MORE ALERT AND PAY BETTER
19 ATTENTION TO WHAT'S GOING ON SO I THINK HAVING A
20 RESTED AND RELATIVELY NOT STRESSED PERSON IS VERY
21 ADVANTAGEOUS FOR RUNNING POLYGRAPH

22 Q DOCTOR, IN YOUR OPINION WAS BILLY WAYNE COPE A
23 PROPER SUBJECT FOR POLYGRAPH EXAMINATION?

24 A WELL, I CAN'T KNOW I WASN'T THERE AND WE DON'T
25 HAVE A RECORDING THAT IS A CALL THAT POLYGRAPH

1 EXAMINERS ARE TRAINED TO MAKE AND DETECTIVE BAKER
2 DECIDED THAT HE WAS AN APPROPRIATE SUBJECT AND I
3 DON'T HAVE THE INFORMATION THAT HE BASED THAT ON
4 THERE ARE THINGS THAT CAUSE ME CONCERN

5 Q HAVE YOU HAD AN OPPORTUNITY, AN AMPLE
6 OPPORTUNITY, TO REVIEW THE CHARTS THAT ARE NOW IN
7 EVIDENCE IN EXHIBIT NUMBER --

8 A 64

9 Q 64, HAVE YOU HAD AN OPPORTUNITY TO REVIEW THOSE
10 CHARTS AND FORM AN OPINION AS TO THEM?

11 A I HAVE

12 Q HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE
13 SCORING OF THOSE CHARTS THAT WAS PERFORMED BY
14 DETECTIVE BAKER?

15 A YES

16 Q AND DID HE FILL OUT A FORM OR A CHART HIMSELF
17 INDICATING WHAT HIS SCORES WERE?

18 A HE DID HE HAD A SCORE SHEET

19 Q NOW, DOCTOR, JUST BRIEFLY IF YOU WOULD, EXPLAIN
20 TO THE LADIES AND GENTLEMEN OF THE JURY WHAT GOES ON
21 IN THE SCORING PROCESS?

22 A OKAY THAT WILL BE FINE LET ME TALK ABOUT HOW
23 MY PROCEDURES WENT

24 Q ALL RIGHT

25 A BECAUSE I WAS CONTACTED BY YOU AND THEN YOU SENT

1 ME SCANNED VERSIONS OF THESE VIA E-MAIL AND MY NORMAL
2 PRACTICE AND I'M CALLED TO DO THIS FREQUENCY TO
3 REVIEW POLYGRAPHS THAT ARE RUN BY OTHER PEOPLE IS I
4 LIKE TO LOOK AT THE CHARTS FIRST AND SO THE FIRST
5 THING I DID WAS TO PRINT THE IMAGES OF THE CHARTS
6 THAT YOU SENT TO ME AND THEY HAVE STANDARD CHART
7 MARKINGS WHICH I'M ALWAYS HAPPY TO SEE, SO RELEVANT
8 QUESTIONS ARE MARKED 'R' AND COMPARISON QUESTIONS ARE
9 MARKED 'C' SO THAT MAKES IT VERY EASY SO THE VERY
10 FIRST THING I DID WAS SCORE THE CHARTS THE SECOND
11 THING I DID WAS TO LOOK AT THE QUESTIONS AND THE
12 THIRD THING I DID WAS TO EXAMINE DETECTIVE BAKER'S
13 SCORING I HONESTLY HAD ASSUMED THAT HE HAD FOUND
14 HIM DECEPTIVE SINCE I WAS CONTACTED BY DEFENSE
15 ATTORNEY AND BROUGHT IN TO TAKE A LOOK AT THIS BUT
16 THEN I SCORED AFTER I SCORED THEN I LOOK AT HIS
17 SCORES

18 Q SO YOU HAVE SCORED THIS TEST BASED ON THE CHARTS
19 THAT WERE SENT TO YOU?

20 A I HAVE

21 Q AND OF COURSE YOU HAVE DETECTIVE BAKER'S
22 SCORING?

23 A I DO

24 Q HOW DO THE TWO COMPARE?

25 A WELL, THEY DON'T COMPARE VERY WELL AND I DIDN'T

1 ACTUALLY GET TO FINISH THE PREVIOUS QUESTION --

2 Q I'M SORRY

3 A ---YOU ASKED

4 Q PLEASE FINISH

5 A BECAUSE YOU ASKED ME TO TALK TO YOU ABOUT HOW
6 SCORING IS DONE

7 Q YES, SIR

8 A AND THE WAY SCORING IS DONE IS THAT YOU GO TO
9 THE ACTUAL PHYSIOLOGICAL RECORDINGS AND THERE ARE
10 RULES AND THE SYSTEM THAT I USE, THERE ARE THREE
11 SYSTEMS FOR SCORING POLYGRAPH CHARTS, THE SYSTEM I
12 USED WAS DEVELOPED AT THE UNIVERSITY OF UTAH IT'S
13 THE ONE THAT I BELIEVE HAS THE MOST SCIENTIFIC
14 VALIDATION SCIENTIFICOR NUMBER OF PUBLISHED STUDIES
15 ON IT IT'S A VERY SIMPLE SYSTEM THERE ARE
16 ACTUALLY 11 DIFFERENT THINGS WE LOOK FOR IN THE
17 CHARTS CALLED CRITERIA SO, FOR EXAMPLE, WE'LL GO TO
18 THE CHART, I LOOK AT THE FIRST RELEVANT QUESTION,
19 IT'S BRACKETED BY TWO COMPARISONS SO THERE IS ONE
20 RIGHT BEFORE IT AND THEN THERE IS ONE RIGHT AFTER IT
21 AND THE STANDARD RULE IN THE SCORING SYSTEMS,
22 ACTUALLY I BELIEVE IN ALL THREE SCORING SYSTEMS, NOW
23 IS THAT YOU GO WITH THE STRONGER COMPARISON QUESTION
24 BECAUSE IF THE TEST IS GOING TO MAKE A MISTAKE IT IS
25 THAT THE COMPARISON QUESTIONS DON'T WORK WELL ENOUGH

1 SO YOU GO TO RELEVANT QUESTION IN THE BLOOD PRESSURE,
2 FOR EXAMPLE, I ACTUALLY HAVE A PLASTIC RULER MARK
3 WITH MILLIMETERS THAT I LAY OVER THE CHARTS SO I CAN
4 LOOK THROUGH IT AND ACTUALLY MEASURE HOW LARGE AN
5 INCREASE THERE WAS IN BLOOD PRESSURE IN TERMS OF
6 DEFLECTION ON THE CHARTS SO I MEASURE THAT AND THEN
7 THERE ARE RULES I MEASURE THE TWO COMPARISON
8 QUESTIONS, I MEASURE THE RELEVANT QUESTION, AND THE
9 RULE IS THAT YOU HAVE TO HAVE A DIFFERENCE OF AT
10 LEAST ONE AND A HALF TO ONE TO SCORE IT SO YOU NEED
11 SEVEN AND A HALF MILLIMETERS VERSUS FIVE TO MAKE A
12 SCORING, FOR EXAMPLE

13 THEN YOU MOVE UP TO THE NEXT CHANNEL WHICH
14 WOULD BE THE ELECTRODERMAL CHANNEL YOU DO THE SAME
15 THING YOU PUT THE RULER ON IT, YOU MEASURE AND
16 AGAIN THERE ARE RATIO RULES HERE IT TAKES A TWO TO
17 ONE TO GIVE IT A SCORE AND YOU MOVE ON UP TO THE
18 BREATHING AND THE BREATHING IS A LITTLE MORE
19 DIFFICULT IN THAT WE'RE LOOKING FOR PATTERNS IN THE
20 BREATHING AND I TALKED ABOUT THE FACT THAT WE SCORE
21 SUPPRESSIONS THEY CAN OCCUR IN SEVERAL WAYS YOU
22 CAN FORGET TO BREATHE, YOU CAN BREATHE MORE SHALLOW,
23 YOU CAN BREATHE MORE SLOWLY, THE SHAPE CAN CHANGE
24 THE BASE LINE CAN CHANGE ONE THAT THING THAT
25 ACTUALLY MR COPE SHOWS FAIRLY FREQUENTLY IS HIS

1 DIAPHRAGM GETS VERY TENSE AND HIS BREATHING PATTERN
2 ACTUALLY SHIFTS UPWARD EVEN THOUGH THE BREATHING
3 CYCLES ARE GETTING SMALLER SO YOU GO THROUGH THAT
4 VERY SYSTEMATICALLY FOR EACH RELEVANT QUESTION AND
5 ASSIGN SCORES SCORES ARE ASSIGNED ON A SEVEN POINT
6 SCALE ZERO MEANS THERE IS NO DIFFERENCE AND THAT
7 COULD BE THE PERSON DIDN'T RESPOND TO ANYTHING OR IT
8 COULD MEAN THEY GAVE AN EQUAL RESPONSES TO BOTH

9 A PLUS ONE WOULD MEAN THAT THE CONTROL
10 QUESTION WAS SLIGHTLY LARGER BUT SCORIBLY LARGER THAN
11 THE RELEVANT PLUS TWO WOULD MEAN THERE IS A BIGGER
12 DIFFERENCE AND PLUS THREE THERE IS A REALLY, REALLY A
13 DRAMATIC HUGE DIFFERENCE

14 AND THEN IN THE MINUS DIRECTION THAT MEANS
15 THAT THE RELEVANCE IS BIGGER SO MINUS ONE MEANS THE
16 RELEVANT IS JUST BARELY BIGGER MINUS TWO MEANS IT'S
17 SIGNIFICANTLY BIGGER MINUS THREE MEANS IT'S
18 DRAMATICALLY BIGGER SO YOU GO THROUGH AND YOU
19 ASSIGN SCORES IN EACH SPOT ON EACH RELEVANT QUESTION
20 IN THIS CASE THE QUESTIONS ARE REPEATED THREE TIMES
21 SO THERE ARE NINE PLACES THAT YOU COLLECT SCORES

22 Q SO DOCTOR, USING THE TECHNIQUES YOU JUST
23 DESCRIBED YOU DID IN FACT SCORE THE CHARTS THAT WERE
24 PROVIDED TO YOU IN THIS CASE THAT WERE SHOWN IN THAT
25 EXHIBIT?

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1 A I DID

2 Q AND THEN YOU COMPARED THAT SCORING WITH THE
3 SCORING THAT WAS RENDERED BY DETECTIVE BAKER?

4 A THAT'S CORRECT

5 Q I BELIEVE I ASKED YOU EARLIER HOW DID THOSE TWO
6 SCORINGS COMPARE?

7 A WELL, THEY DIDN'T COMPARE WELL AT ALL
8 DETECTIVE BAKER ENDED UP WITH A TOTAL SCORE OF MINUS
9 15 WHICH WOULD BE A STRONG DECEPTIVE OUTCOME AND I
10 ACTUALLY ENDED UP WITH A SCORE OF PLUS 12 WHICH IS A
11 STRONG TRUTHFUL OUTCOME SO I WAS PRETTY SURPRISED TO
12 SEE THAT LEVEL OF DIFFERENCE IN SCORING

13 Q IN USING THE CHARTS, DOCTOR, CAN YOU ILLUSTRATE
14 EITHER ON THE OVERHEAD OR SIMPLY REFERRING TO THE
15 CHARTS THE POINTS THAT YOU DISAGREE ON?

16 A I COULD CERTAINLY SHOW SOME OF THEM, YES

17 Q ALL RIGHT

18 A I THINK USING THE ELMO WOULD PROBABLY BE THE
19 BEST WAY TO GO

20 MR BRACKETT WE HAD SOME TECHNICAL
21 DIFFICULTIES YESTERDAY WE JUST BARELY GOT THE
22 LAPTOP GOING I DON'T THINK THIS IS HOOKED UP WE
23 HAD TO UNHOOK THIS OVER THE NIGHT

24 THE COURT YOU WANT TO TAKE A SHORT BREAK
25 AND HOOK IT UP FOR US

1 MR BRACKETT YES, SIR

2 THE COURT WE'LL TAKE A SHORT BREAK SO WE
3 CAN UTILIZE THIS

4 MR BAITY THANK YOU, YOUR HONOR

5 (COURT'S IN RECESS AT 11 19 AM)

6 (COURT RESUMES AT 11 25 AM)

7 MR GREELEY I WOULD JUST LIKE TO PUT
8 SOMETHING ON THE RECORD

9 THE COURT AS SOON AS MR SANDERS GETS IN
10 HERE

11 MR GREELEY OKAY

12 (DEFENDANTS ARE PRESENT)

13 THE COURT MR GREELEY

14 MR GREELEY YOUR HONOR, I WOULD SUBMIT
15 TO THE COURT THAT IN JUST THE LAST TESTIMONY THAT WAS
16 EXHIBITED, THAT WAS PRESENTED BY THE EXPERT IN THIS
17 CASE WAS A RESULT OF THE POLYGRAPH, HIS RESULT, HIS
18 SCORE BASED UPON THE GRAPHS I WOULD MOVE TO STRIKE
19 AT THIS TIME HIS OPINION AS TO THAT SCORE AND THE
20 BASIS FOR THAT IS THE SOUTH CAROLINA COURTS HAVE NOT
21 YET ACCEPTED THE POLYGRAPH AS A SCIENTIFIC ANALYSIS
22 THAT IS ADMISSIBLE IN COURT, THE RESULTS ARE NOT
23 ADMISSIBLE IN COURT, AND I WOULD SUBMIT TO THE COURT
24 THAT WHAT THIS EXPERT JUST DID WAS ESSENTIALLY A
25 RESULT OF HIS INTERPRETATION OF THE POLYGRAPH, AND I

1 WOULD MOVE TO STRIKE ON THAT BASIS

2 THE COURT I DENY THE MOTION BRING IN
3 THE JURY JUST FOR THE RECORD I GUESS I HAVE SOME
4 QUESTION AS TO MR SANDERS' STANDING TO MAKE
5 OBJECTIONS TO THIS LINE OF QUESTIONING BUT EVEN, I'M
6 ASSUMING THAT HE DOES HAVE STANDING AND MY RULINGS
7 ARE BASED ON MY ASSUMPTION THAT HE DOES HAVE
8 STANDING, BUT IF THE MATTER GOES FURTHER I WANT THE
9 RECORD TO REFLECT THAT I DID FACTOR THAT INTO MY
10 THINKING

11 MR GREELEY MY POSITION ON STANDING IS
12 THAT WE HAVE POTENTIALLY FOUR CONFESSIONS FROM MR
13 COPE IN REGARDS TO THIS CRIME, NONE OF THEM INCLUDE
14 MY CLIENT WHICH IS EXCULPATORY TO MY CLIENT

15 THE COURT OKAY

16 (THE JURY RETURNS TO THE COURTROOM AT
17 11 27 AM)

18 DIRECT EXAMINATION BY MR BAITY

19 Q DOCTOR, I BELIEVE THAT YOU SAID YOU WISHED TO
20 USE THIS APPARATUS?

21 A YES

22 Q TO EXPLAIN YOUR FINDINGS HERE AND PLEASE STEP
23 DOWN

24 THE COURT YOU MAY

25 A THANK YOU

1 MR BAITY WITH PERMISSION OF THE COURT
2 A THE CLEAREST ILLUSTRATION OF WHERE WE DIFFER,
3 THESE ARE FROM COPIES, THE ORIGINALS WOULD HAVE BEEN
4 CONTINUAL, OCCURS AT THE FIRST RELEVANT QUESTION ON
5 THE SECOND CHART AT THAT POINT DETECTIVE BAKER
6 ASSIGNED A SCORE OF MINUS FIVE FOR THAT QUESTION AND
7 I GAVE IT A SCORE PLUS TWO, SO THERE IS A SEVEN POINT
8 DIFFERENCE, THAT'S THE ONE QUESTION WHERE WE HAVE
9 GREATEST DIFFERENCE ALTHOUGH WE DIFFER IN MANY
10 PLACES

11 Q DOCTOR, LET ME GIVE YOU A LASER
12 A THAT WOULD BE GREAT THANK YOU VERY MUCH IF
13 WE LOOK AT THIS, THE TRACING AT THE BOTTOM IS THE
14 BLOOD PRESSURE TRACING, AND EACH ONE OF THOSE LITTLE
15 MOVEMENTS IS A BEAT OF THE HEART JUST TO ORIENT YOU
16 THE GRAPH, THE GRID THERE, EACH OF THOSE BARS IS FIVE
17 SECONDS, SO THAT SORT OF ORIENTS YOU IN TIME, AND
18 TIME IS MOVING IN THIS DIRECTION LET ME MOVE THAT
19 UP A LITTLE BIT SO WE CAN SEE THE QUESTION SO THERE
20 WAS A COMPARISON QUESTION ASKED HERE C-4, IT'S
21 ACTUALLY TYPED OVER ON THE COMPUTER, BUT AT C-4, SAYS
22 R-5 THEN THAT'S C-6, SO THIS IS THE FIRST RELEVANT
23 QUESTION, FIRST CONTROL, SECOND CONTROL, AND THIS IS
24 BLOOD PRESSURE, THIS IS SWEATING IN THE PALM, AND
25 IT'S TURNED OVER SO THAT IT ACTUALLY REPRESENTS

1 INCREASE SWEATING WHEN IT MOVES UP SO THAT'S A
2 DECREASE IN RESISTANCE THEN THESE TWO ARE THE
3 BREATHING THIS IS ABDOMINAL BREATHING AND THIS IS
4 THE THORACIC BREATHING AND UNFORTUNATELY THAT DOESN'T
5 PROJECT REALLY WELL BUT I THINK WE CAN SEE WHAT WE
6 NEED TO SEE HERE DETECTIVE BAKER SCORED THE BLOOD
7 PRESSURE HERE AS A MINUS ONE AND IF YOU MEASURE THIS
8 RESPONSE, THIS IS WHAT YOU ARE MEASURING IS RIGHT
9 HERE, AND IF YOU LOOK AT THE COMPARISON QUESTION WHAT
10 YOU ARE MEASURING IS RIGHT THERE I MEAN, TO ME THAT
11 ONE IS PRETTY EASY TO SEE THAT THERE IS A MUCH LARGER
12 CHANGE IN BLOOD PRESSURE HERE THAN THERE IS THERE AND
13 TO ME, AND THAT SCORES OUT, ACTUALLY IF YOU MEASURE
14 IT IT'S MORE THAN TWO TO ONE SO THAT WOULD SCORE A
15 PLUS TWO

16 IN THE SKIN RESPONSE IN THIS CASE THE
17 ACTUAL RESPONSES TO THE RELEVANT IS MUCH LARGER AND
18 DETECTIVE BAKER GIVE IT A MINUS THREE, I GAVE IT A
19 MINUS TWO, SO WE'RE NOT THAT FAR OFF ON OUR SCORING
20 IT SHOULD MEASURE FOUR TO ONE, IF YOU ACTUALLY
21 MEASURE IT DOESN'T QUITE MAKE IT, SO I WAS SORT OF A
22 STICKLER FOR THE RULES AND DIDN'T GIVE IT THE THREE
23 BUT IT'S CLOSE I'LL GIVE HIM THAT

24 THE MAIN PLACE THAT I ENDED UP WITH
25 DISAGREEMENTS WITH HIM HAD TO DO WITH THE SCORING IN

1 THE BREATHING AND IF YOU'LL LOOK AT THE PERIOD
2 FOLLOWING THE RELEVANT QUESTION YOU'LL NOTICE THE
3 CYCLES ARE PRETTY LARGE AND FAIRLY, YOU KNOW, HE'S
4 TAKING DEEP RELAXED BREATHS, BUT IF YOU LOOK THROUGH
5 THE COMPARISON SECTIONS THERE ARE VERY SMALL
6 SUPPRESSED BREATHS, PARTICULARLY THROUGH HERE IF
7 YOU LOOK JUST IN THIS SECTION, THIS DOESN'T PROJECT
8 VERY WELL, YOU CAN SEE IT BETTER ON THE PAPER, BUT
9 THESE ARE DOWN AND THERE REALLY IS NOTHING HERE TO
10 SCORE, SO I GAVE THAT ALSO A PLUS TWO AND HE GAVE IT
11 A ZERO AND IF WE GO THROUGH THE CHART SECTION BY
12 SECTION BY SECTION WE SEE THINGS LIKE THAT

13 AGAIN ON, IF WE WERE TO LOOK AT THE SECOND
14 RELEVANT IN THAT ONE, I HAVE A SCORE OF PLUS ONE AT
15 THAT SPOT AND DETECTIVE BAKER HAS A SCORE OF MINUS
16 TWO, SO WE HAVE A THREE POINT DIFFERENCE ACTUALLY
17 WE AGREED ON THE SKIN RESPONSE THIS SKIN RESPONSE
18 IS MUCH LARGER THAN THIS COMPARISON QUESTION AND WE
19 BOTH SCORED THAT A MINUS ONE AND ACTUALLY YOU CAN'T
20 SEE THE NEXT COMPARISON THE NEXT COMPARISON IS OVER
21 HERE WE BOTH SCORED THIS AS ZERO BUT AGAIN LOOK AT
22 THAT BREATHING THAT'S DEEP RELAXED BREATHING
23 THERE IS NOT ANY INDICATION OF STRESS THERE BUT THERE
24 IS A BIG RESPONSE TO QUESTION C-6 SO I GAVE THAT A
25 PLUS TWO IN THE BREATHING AND THAT'S VERY TYPICAL OF

1 HOW WE DISAGREED IN THE WAY OF SCORING

2 Q ALL RIGHT DOCTOR, DID YOU PUT YOUR SCORING
3 THAT YOU JUST DESCRIBED IN PREVIOUS QUESTIONS IN
4 WRITTEN FORM?

5 A I DID

6 MR BRACKETT YOUR HONOR, WE PROVIDED A
7 TREMENDOUS AMOUNT OF DISCOVERY IN THIS CASE AND
8 REPEATEDLY ASKED FOR RECIPROCAL DISCOVERY AND WERE
9 NEVER PROVIDED THIS

10 THE COURT DO YOU OBJECT?

11 MR BRACKETT YES, SIR

12 THE COURT I SUSTAIN THE OBJECTION

13 MR BAITY HE'S ALREADY TESTIFIED TO IT
14 ALL RIGHT THANK YOU, YOUR HONOR

15 THE COURT MR GREELEY, YOU WANT TO CHIME
16 IN WITH ANYTHING?

17 MR GREELEY I WOULD OBJECT TOO

18 THE COURT BOTH OBJECTIONS ARE SUSTAINED

19 Q DR HONT'S, BASED ON YOUR EXAMINATION OF THE
20 EXHIBIT, THE CHARTS THAT WE'VE BEEN DISCUSSING TODAY,
21 HAVE YOU FORMED AN OPINION AS TO MR COPE'S
22 PERFORMANCE ON THIS TEST?

23 A YES

24 Q DO YOU BELIEVE THAT BASED ON THOSE CHARTS THAT
25 YOU REVIEWED DID MR COPE'S PERFORMANCE ON THIS TEST

1 INDICATE DECEPTION OR TRUTHFULNESS?

2 A THEY INDICATE TRUTHFULLNESS TO ME

3 Q IF MR COPE WAS INFORMED FOLLOWING THIS TEST
4 THAT HIS PERFORMANCE INDICATED DECEPTION WOULD THAT
5 BE TRUE OR CORRECT OR WOULD IT BE FALSE?

6 A I BELIEVE IT WOULD BE INCORRECT, THAT HE SHOULD
7 HAVE BEEN TOLD THAT HE PASSED IT

8 Q THANK YOU ANSWER ANY QUESTIONS THE STATE
9 WOULD HAVE

10 THE COURT THE STATE GOES FIRST
11 CROSS EXAMINATION BY MR BRACKETT

12 Q GOOD AFTERNOON, SIR WELCOME TO SOUTH CAROLINA

13 A THANK YOU

14 Q HOW ARE YOU?

15 A IT'S GOOD IT'S NICE TO BE BACK IN THE SOUTH

16 Q YES, SIR EVEN WITH THE HURRICANE WE ARE
17 HAVING

18 A EVEN WITH THE HURRICANE

19 Q YOU SAID YOU RELIED ON AN E-MAIL, A TRANSCRIPT,
20 AND THOSE CHARTS THAT ARE NOW IN EVIDENCE?

21 A THAT'S CORRECT

22 Q DO YOU HAVE THAT E-MAIL WITH YOU?

23 A NOT WITH ME HERE, NO

24 Q NOT WITH YOU NEAR OR HERE?

25 A HERE

1 Q WHERE WOULD THAT BE?

2 A I MIGHT HAVE IT IN MY BRIEFCASE IN THE CAR

3 Q ALL RIGHT I'D LIKE TO SEE THAT E-MAIL IF I
4 COULD IF YOU RELIED ON IT IN FORMING HIS OPINION
5 I'D LIKE TO KNOW ALL THE INFORMATION THAT DR HONT'S
6 REVIEWED PRIOR TO CROSS EXAMINATION I DON'T KNOW
7 WHAT THAT SAYS

8 THE COURT HOW LONG WILL IT TAKE TO GET
9 IT

10 A CAR'S RIGHT OUTSIDE

11 MR BAITY TAKE HIM TO THE CAR, YOUR
12 HONOR

13 THE COURT DO THAT RATHER THAN TAKE A
14 BREAK WE'LL JUST SIT IN HERE

15 MR BAITY I MIGHT BE ABLE TO PROVIDE IT
16 MYSELF

17 THE COURT WELL, IF YOU CAN THAT IS THE
18 QUICKEST WAY

19 MR BAITY YES SIR I'LL HAVE TO GO TO
20 THE LIBRARY BECAUSE THAT'S WHERE IT IS

21 THE COURT ALL RIGHT THANK YOU

22 MR BAITY YES, SIR

23 (COMPLIES)

24 Q IS THIS THE E-MAIL YOU RECEIVED FROM MR BAITY?

25 A YES, IT IS

1 Q OKAY

2 A (READING THE E-MAIL)

3 Q ALL RIGHT SIR, ARE YOU FAMILIAR WITH THE
4 CONTENTS OF THIS E-MAIL?

5 A I AM

6 Q AND THIS E-MAIL WAS SENT TO YOU TWO OR THREE
7 WEEKS AGO?

8 A YES

9 Q THAT WAS YOUR FIRST INVOLVEMENT IN THIS CASE?

10 A IT WAS

11 Q AND WOULD IT BE SAFE TO CHARACTERIZE THIS E-MAIL
12 AS BASICALLY SAYING THE DEFENSE VERSION OF THE CASE?

13 A ABSOLUTELY

14 Q THIS IS NOT THE STATE'S VERSION?

15 A OH, I WOULDN'T THINK SO

16 Q OKAY SO THIS IS PARTIALLY WHAT YOU RELIED ON
17 IN FORMING YOUR OPINION?

18 A PARTIALLY

19 Q ALONG WITH THIS TRANSCRIPT?

20 A THAT'S CORRECT

21 Q FROM THE FAMILY COURT HEARING AT SOME OTHER
22 POINT IN TIME?

23 A THAT'S CORRECT

24 Q AND THOSE DOCUMENTS THERE THAT ARE NOW MARKED IN
25 EVIDENCE, THE POLYGRAPH --

1 A YES, EXHIBIT 64 IT WAS MOSTLY 64 THE CHARTS
2 THEMSELVES, THEY SPEAK FOR THEMSELF

3 Q AND WOULD YOU AGREE THAT AS AN EXPERT THAT IN
4 ORDER TO FORM AN OPINION AND HAVE THAT OPINION BE
5 VALID THE MORE INFORMATION YOU HAVE THE BETTER YOUR
6 OPINION IS GOING TO BE?

7 A THAT'S CORRECT

8 Q THE LESS INFORMATION, THE LESS VALUABLE YOUR
9 OPINION IS?

10 A THAT'S CERTAINLY TRUE

11 Q OKAY NOW YOU HAD INDICATED THAT THERE SEEMED
12 TO BE A SCARCITY OF INFORMATION ON THE, IN THE FORM
13 OF NOTES FROM DETECTIVE BAKER, THAT IT WAS KIND OF A
14 THIN SORT OF REPORT THAT YOU HAD, DIDN'T REALLY HAVE
15 A WHOLE LOT OF DETAIL?

16 A THE REPORT ITSELF IT WOULDN'T NECESSARILY BE
17 NOTES THE REPORT IS ONE PAGE IT'S THAT FIRST ONE

18 Q THIS ONE THAT SAYS POLYGRAPH REPORT WHERE IT
19 INDICATES THAT HE FAILED?

20 A THAT'S CORRECT

21 Q THEN THE BULK OF THE REST OF THIS IS ALL REALLY
22 SCORING INFORMATION, ISN'T THAT RIGHT?

23 A IT'S MATERIAL, YES, THAT WAS GENERATED AS PART
24 OF THE TEST

25 Q OKAY BUT IT DOESN'T REALLY DETAIL ANY OF THE

1 FACTORS SURROUNDING THE INTERVIEW AND ALL THAT SORT
2 OF THING?

3 A THAT'S CORRECT

4 Q AND THAT'S IMPORTANT AND YOU SAY IT'S HARD FOR
5 YOU TO FORM AN OPINION BECAUSE YOU DON'T HAVE THAT
6 INFORMATION?

7 A THAT IS ALSO CORRECT

8 Q ALL RIGHT SO I TAKE IT THEN, SIR, THAT YOU
9 NEVER WERE SHOWN BY THE DEFENSE THIS FOUR PAGE, ONE
10 TWO, THREE, FOUR, FOUR PAGE SUMMARY OF THE INTERVIEW,
11 OF THE REPORT DETAILING ALL THE CIRCUMSTANCES THAT
12 WAS PREPARED BY MIKE BAKER THAT SAME DAY JUST AFTER
13 HE ADMINISTERED THE POLYGRAPH?

14 A I HAVE NOT SEEN THIS, NO

15 Q OKAY AND THAT WOULD BE IMPORTANT FOR YOU IN
16 FORMING YOUR OPINION, RIGHT?

17 A I HAVEN'T READ IT YET SO I DON'T KNOW

18 Q WELL, IF IT CONTAINS ALL THE DETAILS AND THE
19 CIRCUMSTANCES SURROUNDING THE ADMINISTRATION OF THE
20 POLYGRAPH THEN IT WOULD BE IMPORTANT, WOULD IT NOT?

21 A IF IT CONTAINS INFORMATION ABOUT THINGS THAT
22 HAPPENED BEFORE

23 Q BEFORE THE POLYGRAPH?

24 A BEFORE THE CHARTS WERE COLLECTED

25 Q AND DURING THE ADMINISTRATION AND THE DETAILS OF

1 THE INTERVIEW AND ALL THAT SORT OF THING AND THE
2 CIRCUMSTANCES OF THE PREPOLYGRAPH INTERVIEW

3 A THE PREPOLYGRAPH WOULD HAVE BEEN OF INTEREST TO
4 ME AND I HAD, THAT WAS DISCUSSED SOMEWHAT IN THE
5 TRANSCRIPT THAT I READ

6 Q OKAY

7 A AND THIS WAS REFERED TO IN THAT TRANSCRIPT

8 Q YES, SIR BUT YOU DIDN'T REVIEW THIS?

9 A I HAVE NOT SEEN THAT

10 Q THE DEFENSE DIDN'T PROVIDE THIS TO YOU?

11 A THEY DID NOT

12 Q ALL RIGHT NOW LIKEWISE WHAT MR BAKER ACTUALLY
13 SAID IN THIS TRIAL COULD BE VERY SIGNIFICANT?

14 A IT COULD HAVE SOME IMPACT, YES, SIR

15 Q YES, SIR

16 A IT WOULDN'T AFFECT MY SCORING OF THE CHARTS

17 Q NO WE WILL GET TO THAT IN JUST A SECOND, BUT
18 IT COULD BE SIGNIFICANT AND YOU AS AN EXPERT AGAIN
19 COMING BACK TO YOU WANT TO HAVE AS MUCH INFORMATION
20 AS POSSIBLE TO FORM YOUR OPINION, WHAT HE ACTUALLY
21 TESTIFIED TO ABOUT THE ADMINISTRATION AND HIS SCORING
22 AND ALL THOSE DETAILS THAT WOULD BE IMPORTANT TO YOU?

23 A I WOULD LIKE TO HAVE HEARD IT, YES

24 Q YES, SIR BUT YOU WEREN'T INVITED TO COME DOWN
25 HERE TO VIEW THAT TESTIMONY?

1 A I DID NOT HEAR IT, NO

2 Q THEY DID NOT PROVIDE YOU WITH A SUMMARY OF WHAT
3 HE SAID?

4 A NO

5 Q OF COURSE, WE HAVE ALREADY SEEN THEIR SUMMARY OF
6 THE CASE AND THAT'S ALL DEFENSE ORIENTED, ISN'T IT?

7 A YES

8 Q SO LIKEWISE JUST DISCUSSING THE CASE WITH
9 DETECTIVE BAKER WOULD HAVE BEEN OF HELP, RIGHT?

10 A THE MAIN THING THAT WOULD HAVE BEEN OF HELP TO
11 ME IN EVALUATING THE TEST WOULD HAVE BEEN A TAPE
12 RECORDING

13 Q OKAY WELL, IN THE ABSENCE OF A TAPE RECORDING,
14 YOU DON'T HAVE ONE, IN THE ABSENCE OF THAT, CALLING
15 MR BAKER ON THE TELEPHONE AND ACTUALLY HAVING A
16 CONVERSATION WITH HIM, EXPERT TO EXPERT SO TO SPEAK
17 ABOUT HOW THIS POLYGRAPH WAS PERFORMED, THAT WOULD
18 HAVE BEEN OF USE IN FORMING YOUR OPINION, WOULDN'T
19 IT?

20 A I DON'T THINK IT WOULD HAVE HELPED MUCH

21 Q WELL NOW WAIT A MINUTE YOU JUST SAID THAT IT
22 WOULD HAVE BEEN OF HELP TO YOU TO HEAR HIS TESTIMONY
23 BUT IT WOULDN'T HAVE BEEN OF HELP TO YOU TO HAVE A
24 CONVERSATION WITH HIM WHERE YOU COULD ASK HIM
25 QUESTIONS?

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1 A HIS TESTIMONY IS SWORN

2 Q YES, I UNDERSTAND THAT BUT ACTUALLY DISCUSSING
3 IT WITH HIM AND ASKING HIM QUESTIONS HE WOULD HAVE
4 HAD TO TELL YOU ONE THING OR ANOTHER AND THEN IF HE
5 SAID SOMETHING DIFFERENT TO YOU THEN HE CAME IN COURT
6 AND SAID, YOU COULD HAVE TESTIFIED ABOUT THAT TOO,
7 RIGHT?

8 A THAT'S POSSIBLE

9 Q BUT YOU DIDN'T CALL HIM?

10 A I DID NOT

11 Q ALL RIGHT LIKEWISE YOU SAID YOU DIDN'T HEAR
12 ANY OF THE OTHER EVIDENCE, ANY OF THE STATE'S CASE,
13 YOU HADN'T HEARD THE AUDIO TAPES OF THE INTERVIEW
14 FROM THE NIGHT BEFORE?

15 A NO

16 Q YOU HAVEN'T HEARD HIS DEMEANOR, HOW HE WAS
17 BEHAVING WITH THE POLICE?

18 A NO

19 Q THE FACT THAT WHEN THEY WERE ASKING HIM HOW HE
20 REACTED TO THE FACT THAT HIS DAUGHTER HAD BEEN
21 SEVERELY BEATEN AND RAPED AND SO FORTH HIS REACTION
22 WAS TO DESCRIBE A CHICKEN SANDWICH DELIVERY TO
23 LANCASTER?

24 A NO

25 Q YOU DIDN'T HEAR ABOUT ALL THAT?

1 A I DID NOT

2 Q OKAY SO WHEN YOU SAID YOUR OPINION AS REGARDS,
3 AS REGARDS TO HIM BEING A VICTIM AND BEING DISTRAUGHT
4 AND NOT BEING A GOOD CANDIDATE REALLY THE BEST WAY TO
5 KNOW WHAT HIS DEemeanOR WAS AND WHAT HIS PHYSICAL
6 CONDITION AND EMOTIONAL STATE WAS WOULD HAVE BEEN TO
7 ACTUALLY LISTEN TO THOSE TAPES THAT WERE DONE THE
8 NIGHT BEFORE THEN YOU COULD HAVE HEARD WHAT HIS
9 DEemeanOR AND HOW DISTRAUGHT OR NOT DISTRAUGHT HE WAS?

10 A NO, BECAUSE THAT WAS THE NIGHT BEFORE I'D LIKE
11 TO KNOW WHAT HAPPENED, THE ONLY THING I WAS ASKED TO
12 EVALUATE WAS THE POLYGRAPH TEST

13 Q OKAY

14 A AND SO THE ONLY THING THAT WOULD HAVE HELPED
15 THERE WOULD HAVE BEEN TO KNOW WHAT HE WAS LIKE DURING
16 THE POLYGRAPH TEST

17 Q OKAY BUT THE BEST JUDGE OF THAT I THINK YOU
18 TESTIFIED ON DIRECT, THE BEST JUDGE OF THAT WOULD BE
19 THE ACTUAL POLYGRAPH OPERATOR?

20 A YES

21 Q AND THE POLYGRAPH OPERATOR IS TYPICALLY TRAINED
22 TO OBSERVE FOR THOSE PHENOMENA AND TAKE THEM INTO
23 ACCOUNT AND MAKE A DECISION?

24 A THAT'S CORRECT

25 Q AND IN FACT IN THIS CASE WERE YOU AWARE THAT

1 THEY ATTEMPTED TO RUN A POLYGRAPH IN THE MIDDLE OF
2 THE NIGHT AFTER THE INTERVIEW CONCLUDED?

3 A YES, ACTUALLY THAT'S IN THE TRANSCRIPT THAT I
4 READ AND DETECTIVE BAKER, TO HIS CREDIT, REFUSED TO
5 DO THAT AT 3 30 IN THE MORNING OR WHENEVER THAT WAS

6 Q SO YOU HAVE GOOD REASON TO BELIEVE THAT HE WAS
7 COGNIZANT OF THESE PROBLEMS AND AWARE OF THEM AND WAS
8 TAKING THEM INTO ACCOUNT AS HE WAS MAKING HIS
9 DECISIONS AS TO WHETHER TO ADMINISTER THE POLYGRAPH
10 OR NOT?

11 A IT SEEMS THAT I HE DID, YES

12 Q YES, SIR YOU SAID THAT THERE WERE TWO, THREE
13 SYSTEMS FOR SCORING, AND THE ONE THAT YOU USE IS FROM
14 THE UNIVERSITY OF UTAH?

15 A THAT'S CORRECT

16 Q OKAY NOW THE OTHER TWO SYSTEMS, YOU KNOW WHICH
17 SYSTEM THAT HE USED TO SCORE?

18 A I DON'T KNOW FOR SURE IT LOOKS LIKE THE U S
19 MILITARY SYSTEM, BUT I DON'T KNOW THAT FOR SURE THE
20 THREE SYSTEMS ARE QUITE SIMILAR

21 Q OKAY NOW THE SYSTEM THAT HE USED, OBVIOUSLY,
22 HE HAS AS MUCH FAITH IN THAT AS YOU HAVE IN YOUR
23 SYSTEM?

24 A HE MAY, YES

25 Q HE MAY, BUT YOU DON'T?

1 A I DON'T

2 Q AND LIKEWISE HE -- SO THAT'S A SUBJECTIVE ISSUE
3 THAT COULD VARY FROM EXPERT TO EXPERT?

4 A NO, I BELIEVE THAT'S A SCIENTIFIC ISSUE THAT
5 ACTUALLY WE HAVE DATA ON AND THE DATA SHOW THAT THE
6 UTAH SYSTEM IS THE MOST ACCURATE SYSTEM

7 Q OBVIOUSLY IT'S NOT CONCLUSIVE BECAUSE WE HAVE
8 THOSE OTHER TWO SYSTEMS AND THEY ARE STILL IN USE?

9 A WELL, THAT HAPPENS IN LOTS OF AREAS BUT THERE IS
10 CLEAR SCIENTIFIC DATA ON IT

11 Q THE MILITARY SYSTEM THAT YOU WERE TALKING ABOUT
12 THAT'S A DIFFERENT ONE, WHERE IS THAT USED, WHO USES
13 THAT?

14 A THAT'S USED, THAT'S A SYSTEM TAUGHT BY THE
15 FEDERAL GOVERNMENT AT THE POLYGRAPH INSTITUTE I'M
16 TRAINED IN THAT SYSTEM AS WELL

17 Q OKAY

18 A IT'S VERY SIMILAR AND ACTUALLY IF YOU SCORE
19 CHARTS WITH THE MILITARY SYSTEM AND WITH THE UTAH
20 SYSTEM THE CORRELATION IS USUALLY VERY HIGH

21 Q NOW I BELIEVE YOU, IN YOUR PUBLICATIONS THAT YOU
22 WENT THROUGH YOU DIDN'T MENTION THIS ONE
23 SPECIFICALLY, BUT IT IS LISTED, YOU SUBMITTED SOME
24 INFORMATION IN REGARDS TO A CASE THAT WAS PENDING
25 BEFORE THE SUPREME COURT, UNITED STATES OF AMERICA

1 VERSUS EDWARD G SCHEFFER?

2 A YES

3 Q IN 1977?

4 A YES

5 Q AND YOU WROTE A, BASICALLY A BRIEF IN SUPPORT OF
6 A POSITION --

7 A THAT'S CORRECT

8 Q ---THAT WAS IN DISPUTE IN THAT CASE

9 A I CO-AUTHORED AN AMICUS BRIEF, YES, SIR

10 Q AND I'LL SHOW YOU A DOCUMENT AND ASK DO YOU
11 RECOGNIZE THAT AS BEING THE, YOU WILL HAVE TO TURN
12 THE PAGE, THE SECOND PAGE ON THAT WHERE THE BRIEF
13 ACTUALLY STARTS, DO YOU RECOGNIZE THAT AS BEING THE
14 BRIEF THAT YOU SUBMITTED?

15 A I'VE NOT SEEN THIS FORM OF IT, BUT IT LOOKS THE
16 CORRECT CONTENT

17 Q IF YOU WILL JUST TAKE A MOMENT TO REVIEW THAT
18 AND CONFIRM, SATISFY YOURSELF THAT THAT IS IN FACT
19 THE CONTENT OF THE BRIEF THAT YOU SUBMITTED

20 A (READS) IT DOES

21 Q ALL RIGHT, SIR NOW YOU HAD MENTIONED BEFORE
22 THE DEPARTMENT OF DEFENSE SCORING METHOD AND
23 METHODOLOGY, YOU DISCUSS SOME OF THE DEPARTMENT OF
24 DEFENSE TRAINING METHODS IN THIS, DON'T YOU?

25 A YES

1 Q OKAY AND IS IT FAIR TO CHARACTERIZE YOUR --
2 THE COURT KEEP YOUR VOICE LEVEL UP A
3 LITTLE BIT

4 Q YES, SIR ON PAGE THREE OF THIS DOCUMENT

5 A OKAY

6 Q THE SECOND FULL PARAGRAPH, SECOND SENTENCE, ARE
7 YOU WITH ME?

8 A WHAT'S THE PARAGRAPH START WITH?

9 Q THE PRIMARY PROBLEM THE SECOND SENTENCE,
10 HOWEVER POLYGRAPH EXAMINERS IN THE UNITED STATES
11 MILITARY GENERALLY RECOGNIZED RECOGNIZEDAS SOME OF
12 THE BEST TRAINED EXAMINERS IN THE WORLD

13 A YES

14 Q MOREOVER THE UNITED STATES MILITARY POLYGRAPH
15 PROGRAMS MAINTAIN A HIGH LEVEL OF QUALITY CONTROL
16 OVER THE ADMINISTRATION OF POLYGRAPH EXAMINATIONS

17 A IT'S TRUE

18 Q THESE FACTORS WORK TO ENSURE THAT THE QUALITY OF
19 POLYGRAPH PRACTICE IN THE UNITED STATES MILITARY IS
20 QUITE HIGH

21 A YES

22 Q YOU ARE REFERRING TO THE DEPARTMENT OF DEFENSE
23 POLYGRAPH INSTITUTE WHICH IS LOCATED IN FORT JACKSON
24 HERE IN SOUTH CAROLINA, ISN'T THAT RIGHT?

25 A IT IS NOW, YES

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1 Q YES, SIR ON PAGE SEVEN OF 18, FIRST FULL
2 PARAGRAPH AT THE TOP OF THE PAGE, THE SENTENCE
3 BEGINS, THE RESULTING PHYSIOLOGICAL I'M RIGHT HERE
4 YOU WITH ME?

5 A I AM

6 Q THE SECOND SENTENCE INDEPENDENT EVALUATIONS BY
7 PERSONS WHO HAVE ACCESS TO ONLY THE PHYSIOLOGICAL
8 DATA ARE USEFUL FOR EVALUATING THE INFORMATIONAL
9 CONTENT OF THOSE DATA, HOWEVER, THE DECISIONS
10 RENDERED BY THE ORIGINAL EXAMINERS PROBABLY PROVIDE A
11 BETTER ESTIMATE OF THE ACCURACY OF POLYGRAPH
12 TECHNIQUES AS THEY ARE ACTUALLY EMPLOYED IN THE
13 FIELD STAND BY THAT STATEMENT?

14 A YES

15 Q OKAY NEXT PAGE, BOTTOM PARAGRAPH, YOU WITH ME
16 THERE?

17 A I AM

18 Q HIGH QUALITY SCIENTIFIC RESEARCH FROM THE
19 LABORATORY IN THE FIELD CONVERGE ON THE CONCLUSION
20 THAT THE QUALITY QUESTION, THAT'S THE CQT WHICH
21 STANDS FOR?

22 A COMPARISON QUESTIONS

23 Q COMPARISON QUESTION IS A HIGHLY ACCURATE
24 DISCRIMINATOR OF TRUTH TELLERS AND DECEIVERS, AND YOU
25 SAW NO PROBLEM WITH THE COMPARISON QUESTIONS IN THIS

1 TEST?

2 A NO

3 Q OKAY THE RESEARCH RESULTS CONVERGE ON AN
4 ACCURACY ESTIMATE THAT EXCEEDS 90 PERCENT

5 A YES

6 Q MOREOVER ORIGINAL EXAMINERS WHO ARE MOST LIKELY
7 TO OFFER TESTIMONY PRODUCE EVEN HIGHER ESTIMATES OF
8 ACCURACY THERE MAY BE A TENDENCY FOR THE COMPARISON
9 QUESTION TO PRODUCE MORE FALSE POSITIVE THAN NO FALSE
10 NEGATIVE ERRORS BUT THIS TREND IN THE CURRENT
11 LITERATURE IS NOT PARTICULARLY STRONG

12 A THAT'S TRUE

13 Q THAT'S A LITTLE BIT AT VARIANCE WITH WHAT YOU
14 TESTIFIED TO EARLIER, IS IT NOT, REGARDING THE FALSE
15 POSITIVE BEING HIGHER THAN FALSE NEGATIVE?

16 A NO, THAT'S WHAT I SAID THERE IS A TENDENCY FOR
17 IT TO BE MORE FALSE POSITIVE THAN FALSE NEGATIVE AND
18 THE TREND IN THE CURRENT LITERATURE SO IT IS
19 REFERENCING THE MOST RECENT STUDIES IS THAT IT'S NOT
20 PARTICULARLY STRONG ALTHOUGH IF YOU LOOK AT THE
21 WHOLE BODY OF LITERATURE THE NUMBERS I GAVE ARE
22 CORRECT

23 Q OKAY NO TENDENCY, NEXT PAGE NO TENDENCY
24 TOWARD FALSE POSITIVE ERRORS IS SEEN IN THE DECISIONS
25 OF THE OTHER EXAMINERS

1 A THAT WAS TRUE FOR THE DATA AND WE REFERENCED IT

2 Q YES, SIR AND THAT WOULD BE MIKE BAKER THE
3 ORIGINAL EXAMINER IN THIS CASE?

4 A YES

5 Q YES THE SCIENTIFIC VALIDITY OF A PROPERLY
6 ADMINISTERED POLYGRAPH EXAM IN THE REAL LIFE CASE
7 COMPARES FAVORABLY WITH SUCH OTHER FORMS OF
8 SCIENTIFIC EVIDENCE, X-RAYS, ELECTROCARDIOGRAMS,
9 FIBER ANALYSIS, AND IS FAR MORE RELIABLE THAN OTHER
10 FORMS OF EXPERT TESTIMONY INCLUDING PSYCHOLOGICAL, IS
11 THAT RIGHT?

12 A YES

13 Q FINALLY PAGE 15 OF 18

14 A MY PAGES AREN'T NUMBERED SO YOU WILL HAVE TO

15 Q AT THE TOP RIGHT HAND CORNER OFF THE INTERNET
16 PRINTING

17 A NO, MINE DOESN'T HAVE THAT

18 Q WELL, IT IS THE SECOND TO THE LAST PAGE

19 A OKAY THAT HELPS

20 Q YES, SIR IS THAT WRITTEN ACROSS THE TOP,
21 PROBLEMS ASSOCIATED THE BOTTOM SECOND TO THE LAST
22 FULL PARAGRAPH, HONTIS, AND THAT WOULD BE YOU, HONTIS
23 AND PERRY

24 A YES

25 Q YOU WOULD BE THE HONTIS OF THAT?

1 A I AM

2 Q ALTHOUGH CRITICAL OF THE GENERAL LEVEL OF
3 TRAINING FOR POLYGRAPH EXAMINERS NOTE THAT THE
4 DEPARTMENT OF DEFENSE POLYGRAPH INSTITUTE IS
5 GENERALLY TO BE CONSIDERED THE BEST TRAINING FACILITY
6 FOR POLYGRAPH EXAMINERS

7 A YES

8 Q THE UNITED STATES, IN THE NEXT SENTENCE DOWN,
9 ALL POLYGRAPH EXAMINERS FOR THE LSI ARE TRAINED AT
10 DODPI, IS THAT WHAT IT IS CALLED, D-O-D-P-I?

11 A YES

12 Q DODPI THAT'S THE POLYGRAPH SCHOOL?

13 A YES, THAT'S THE ACRONYM FOR IT

14 Q YES, SIR THE UNITED STATES MILITARY POLYGRAPH
15 PROGRAMS MAINTAIN STRICT GUIDELINES FOR THE
16 ADMINISTRATION OF POLYGRAPH TESTS AND EVERY POLYGRAPH
17 IN A CRIMINAL CASE IS REVIEWED BY QUALITY CONTROL OF
18 THE PROGRAM HEADQUARTERS EXAMINERS WHO PRODUCE
19 SUBSTANDARD WORK RECEIVE ADDITIONAL TRAINING OR ARE
20 REASSIGNED TO OTHER DUTIES

21 A YES

22 Q YOU HAVE A LOT OF FAITH IN DODPI?

23 A YES

24 Q THEY DO GOOD WORK THERE?

25 A GENERALLY, YES

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1 MR BRACKETT COURT'S INDULGENCE ONE
2 MOMENT

3 Q ONE FINAL QUESTION OBVIOUSLY YOU DON'T COME
4 ALL THE WAY FROM BOISE FOR NOTHING

5 A YES

6 Q HOW MUCH ARE YOU GETTING PAID AN HOUR?

7 A I CHARGE 200 AN HOUR FOR WORK IN BOISE AND 2400
8 A DAY WHEN I TRAVEL

9 Q OKAY HOW MANY DAYS HAVE YOU GOT IN THIS CASE?

10 A TWO

11 Q DO YOU MAKE \$5,000?

12 A ROUGHLY

13 MR BRACKETT NO FURTHER QUESTIONS

14 THE COURT MR GREELEY

15 MR GREELEY I DON'T HAVE ANY QUESTIONS

16 THE COURT REDIRECT

17 MR BAITY JUST A COUPLE, YOUR HONOR

18 REDIRECT EXAMINATION BY MR BAITY

19 Q DR HONT'S, IF YOU HAD BEEN GIVEN THE INFORMATION
20 THAT MR BRACKETT ASKED YOU ABOUT CONCERNING THE
21 PRETEST SETTING AND THE QUESTIONS THAT WERE ASKED
22 DURING THAT BY MR BAKER TO MR COPE, WOULD THAT HAVE
23 AFFECTED THE WAY THAT YOU SCORED THIS TEST AT ALL?

24 A NO, NOT AT ALL IN FACT, THE SCORING WOULD HAVE
25 BEEN DONE BEFORE I WOULD WANT TO HAVE ACCESS TO ANY

1 OF THAT MATERIAL

2 Q AND YOU DID OBTAIN A FLAVOR, DID YOU NOT, OF
3 WHAT DID GO ON BY REVIEWING THE TRANSCRIPT AND BY
4 REVIEWING THE QUESTIONS, THE PRETEST QUESTIONS, THAT
5 WERE ASKED?

6 A THAT'S CORRECT

7 Q AND BY REVIEWING THE CONTROL QUESTIONS?

8 A YES

9 Q AND I BELIEVE YOU TESTIFIED YOU DIDN'T HAVE ANY
10 QUARREL WITH THE CONTROL QUESTIONS THAT WERE SELECTED
11 BY MR BAKER, IS THAT CORRECT?

12 A I DO NOT

13 Q WOULD A TAPE RECORDING OR A VIDEO TAPE OR AUDIO
14 TAPE BEEN A BETTER WAY TO UNDERSTAND THIS INFORMATION
15 THAN JUST SIMPLY THE SUMMARY FROM THE POLYGRAPH
16 EXAMINER?

17 A YES, IT WOULD HAVE

18 Q ARE VIDEO TAPED POLYGRAPHS OR AUDIO TAPE
19 POLYGRAPHS UNHEARD OF THIS IN INDUSTRY?

20 A ABSOLUTELY NOT IN MANY PLACES THEY ARE IN FACT
21 REQUIRED STATE OF NEW MEXICO WHERE POLYGRAPHS ARE
22 ADMISSIBLE THAT'S A BASIC REQUIREMENT FOR
23 ADMISSIBILITY

24 Q THANK YOU

25 MR BAITY : NOTHING FURTHER, YOUR HONOR

1 THE COURT MR BRACKETT

2 MR BRACKETT NO, SIR

3 THE COURT ALL RIGHT WE APPRECIATE YOUR
4 TIME THANK YOU ANY REASON THIS WITNESS CAN'T BE
5 EXCUSED

6 MR BRACKETT NO, SIR

7 MR GREELEY NO OBJECTION

8 THE COURT HAVE A SAFE TRIP BACK CALL
9 YOUR NEXT WITNESS

10 MR BAITY YOUR HONOR, MAY WE BRIEFLY
11 APPROACH

12 (BENCH CONFERENCE AT 12 00 PM)

13 THE COURT MEMBERS OF THE JURY PANEL,
14 WE'RE GOING TO GO AHEAD AND BREAK FOR LUNCH IT'S 12
15 O'CLOCK I'M GOING TO ASK YOU TO BE BACK AT 1 15

16 (THE JURY EXITS THE COURTROOM AT 12 02
17 PM)

18 THE COURT DUE TO THE NATURE OF THE
19 CONFERENCE I THINK WE OUGHT TO PUT SOMETHING ON THE
20 RECORD MR BAITY

21 MR BAITY YOUR HONOR, IT'S BEEN MY
22 UNDERSTANDING, PERHAPS IT'S NOT BEEN CLEARLY STATED,
23 BUT THAT THE CONFERENCE ROOM WAS TO BE USED BY THE
24 DEFENSE

25 THE COURT THE LIBRARY

1 MR BAITY THE LIBRARY, I'M SORRY USED
2 BY THE DEFENSE TO PREPARE ITS CASE AND TO STORE ITS
3 RECORDS AND FILES AND SO FORTH YESTERDAY AFTERNOON
4 I USED THAT ROOM FOR THAT PURPOSE QUITE EXTENSIVELY
5 WHILE COURT WAS GOING ON I WAS WORK USING THE PHONE
6 AND USING THE CONFERENCE TABLE THAT WAS FURTHEST BACK
7 IN THE LIBRARY, LIBRARYYOUR HONOR I GOT UP AT ONE
8 POINT TO GO TO THE RESTROOM AND RETURNED DIRECTLY TO
9 THAT TABLE AND AN IMPORTANT WORK PRODUCT WAS MISSING
10 AND I MEAN IT WASN'T A MATTER OF, I DIDN'T GO
11 ANYWHERE EXCEPT TO THE RESTROOM, IT WASN'T A MATTER
12 OF ME MISPLACING IT BUT IT IS GONE IT IS NOT
13 CRITICAL TO THE CASE AND QUITE FRANKLY I RECREATED IT
14 AGAIN LAST NIGHT

15 THIS MORNING, YOUR HONOR, I HAVE NOTES
16 THAT WERE PREPARED IN ANTICIPATION OF MY NEXT
17 WITNESS, HIS DIRECT EXAMINATION, AND I HAVE FOUND A
18 PORTION OF THOSE NOTES WHICH WERE STORED IN THE
19 LIBRARY, HOWEVER A PORTION OF THEM ARE MISSING AGAIN,
20 AND I CAN STATE TO THIS COURT WITHOUT ANY HESITATION
21 THAT I KNOW THEY WERE THERE, THAT I REVIEWED THEM
22 THIS MORNING I REVIEWED THEM RIGHT BEFORE I CALLED
23 DR HONTS AND JUST LEFT THEM IN THE LIBRARY, NOT
24 LAYING OUT, BUT ACTUALLY STORED WITH MY BRIEF CASE
25 AND I CAN RECREATE THOSE IT'S NOT A PROBLEM I

1 HAVE EXTRA COPIES IN MY OTHER FILES IT WAS JUST
2 SORT OF A SUMMARY I HAVE NO IDEA WHAT MAY BE GOING
3 ON AND I DIDN'T FEEL IT NECESSARY TO REPORT YESTERDAY
4 WHAT I MENTIONED BUT I DO FEEL THE NEED TO DO IT
5 NOW AND I BELIEVE IT'S MADE IT DIFFICULT BUT
6 CERTAINLY NOT IMPOSSIBLE FOR US TO GO FORWARD AND I
7 WILL BE PREPARED SHORTLY IF I CAN HAVE 30 MINUTES TO
8 SIMPLY JOT SOME THINGS DOWN

9 THE COURT WELL, YOU INDICATED YOUR BRIEF
10 CASE WAS MISSING

11 MR BAITY MY BRIEF CASE, WHAT I MEANT TO
12 SAY WAS MY BRIEF CASE WAS NOT IN THE SAME POSITION
13 WHERE IT WAS AND THERE IS AND I HAD THE FILE SITTING
14 ON TOP OF THAT AND THERE ARE SOME THINGS THAT ARE
15 MISSING FROM THAT FILE, NOT FROM MY BRIEF CASE THEY
16 WERE STORED, AS I SAID STORED WITH MY BRIEF CASE

17 THE COURT BUT YOUR BRIEF CASE IS NOT
18 MISSING

19 MR BAITY NO, MY BRIEF CASE IS HERE,
20 YOUR HONOR

21 THE COURT WELL, WE'LL BREAK FOR LUNCH
22 AND COME BACK AT 1 15 AND HOPEFULLY YOU'LL BE ABLE TO
23 RECONSTRUCT IT BUT I'M GOING TO MAKE, SEE IF WE CAN
24 FIND OUT WHAT HAPPENED OUR CLEANING CREW USUALLY
25 COMES IN AT NIGHT

1 MR BAITY THIS WAS BEFORE FIVE O'CLOCK
2 THE COURT MR MORTON

3 MR MORTON YOUR HONOR, I DON'T HAVE
4 ANYTHING ON THAT ISSUE I JUST WANTED TO MENTION ONE
5 THING MR BRACKETT INDICATED THAT WE HAVE PROVIDED,
6 IN THE SPEAKING OF THE OBJECTIONS, ALL THE DISCOVERY
7 THAT HAD BEEN PROVIDED TO THE DEFENSE I DIDN'T WANT
8 TO GET UP AND OBJECT TO ALL THE DISCOVERY THAT THEY
9 DIDN'T PROVIDE THE DEFENSE UNTIL THIS CASE STARTED
10 I WOULD JUST ASK MR BRACKETT TO REFRAIN FROM THOSE
11 KIND OF SPEAKING OBJECTIONS TO THE JURY WHICH IMPLIES
12 TO THE JURY THEY WERE DOING THINGS FOR US THAT WE ARE
13 NOT DOING FOR THEM

14 THE COURT AND I THINK THAT IS
15 REASONABLE IF YOU HAVE AN OBJECTION, MAKE THE
16 OBJECTION, AND IF YOU NEED TO EXPAND ON IT JUST SAY
17 WELL I NEED TO IT TAKE UP OUTSIDE THE PRESENCE OF THE
18 JURY BECAUSE SPEAKING OBJECTIONS ARE NOT PROPER I'M
19 NOT FINDING -- ANYWAY GO AHEAD

20 MR GREELEY YOUR HONOR, DURING
21 MR HONTS DIRECT EXAMINATION MR BAITY DID HAND ME
22 HIS VITAE AND I SAT IT OVER HERE AND I HAVE NO
23 OBJECTION TO HIM PUTTING IT INTO EVIDENCE AT THIS
24 TIME SINCE I KIND --

25 MR BRACKETT NO OBJECTION

1 THE COURT BE RECEIVED WITHOUT OBJECTION

2 MR BAITY THANK YOU, YOUR HONOR

3 (COURT IN RECESS AT 12 07 PM)

4 (COURT RESUMES AT 1 20 PM AND THE

5 DEFENDANTS ARE PRESENT AND THE JURY RETURNS TO THE

6 COURTROOM AT 1 27 PM)

7 THE COURT CALL YOUR NEXT WITNESS

8 MR BAITY PLEASE THE COURT, YOUR HONOR

9 WE CALL SAUL M KASSIN TO THE STAND

10 SAUL KASSIN, BEING FIRST DULY SWORN,

11 TESTIFIED AS FOLLOWS

12 DIRECT EXAMINATION BY MR BAITY

13 Q DR KASSIN, WOULD YOU PLEASE GIVE US YOUR FULL
14 NAME AND ADDRESS?

15 A SAUL KASSIN S-A-U-L K-A-S-S-I-N
16 WILLIAMSTOWN, MASSACHUSETTS

17 Q PLEASE SPEAK UP IF YOU CAN AND UNFORTUNATELY
18 THAT MICROPHONE WILL GET NO CLOSER

19 A OKAY

20 Q YOU ARE GOING TO NEED TO PROJECT JUST A BIT
21 DOCTOR, WHAT IS YOUR PROFESSION AND CURRENT
22 EMPLOYMENT

23 A I'M A SOCIAL PSYCHOLOGIST AND A PSYCHOLOGY
24 PROFESSOR AT WILLIAMS COLLEGE IN MASSACHUSETTS

25 Q AND WHERE IS WILLIAMS COLLEGE LOCATED?

1 A IT'S THE NORTHWEST CORNER OF MASSACHUSETTS,
2 COUPLE OF MILES SOUTH OF VERMONT, JUST EAST OF NEW
3 YORK

4 Q COULD YOU GIVE US A SUMMARY OF YOUR EDUCATIONAL
5 BACKGROUND PLEASE?

6 A I HAVE A PH D IN SOCIAL PSYCHOLOGY 1978 FROM
7 THE UNIVERSITY OF CONNECTICUT I HAVE HAD A POST
8 DOCTRINAL FELLOWSHIP AT THE UNIVERSITY OF KANSAS IN
9 1979 I WAS A VISITING PROFESSOR AT STANFORD
10 UNIVERSITY 1985 A JUDICIAL FELLOW AT THE U S
11 SUPREME COURT IN 1984 AND I'VE BEEN AT WILLIAMS
12 COLLEGE EVER SINCE I'M A PROFESSOR OF PSYCHOLOGY
13 THERE AND CHAIR OF LEGAL STUDIES

14 Q AND CHAIR OF?

15 A OF LEGAL STUDIES

16 Q LEGAL STUDIES THANK YOU PRIOR TO BECOMING A
17 PROFESSOR OF PSYCHOLOGY AT WILLIAMS COLLEGE WHAT
18 OTHER POSITIONS DID YOU HOLD?

19 A I WAS A, AN ASSISTANT PROFESSOR OF PSYCHOLOGY AT
20 PURDUE UNIVERSITY AND AGAIN I HAD, FOR ONE YEAR, A
21 VISITING POSITION AT STANFORD UNIVERSITY

22 Q COULD YOU DESCRIBE ANY HONORS THAT YOU RECEIVED
23 DURING THE COURSE OF YOUR CAREER?

24 A I RECEIVED JUDICIAL FELLOWSHIP, A U S SUPREME
25 COURT JUDICIAL FELLOWSHIP THE TWO POST DOCTRINAL

1 FELLOWSHIPS THAT I DESCRIBED I'M A FELLOW OF THE
2 AMERICAN PSYCHOLOGICAL SOCIETY OF, FELLOW OF THE
3 AMERICAN PSYCHOLOGICAL ASSOCIATION, AND A FELLOW OF
4 THE AMERICAN PSYCHOLOGY LAW SOCIETY

5 Q ARE THOSE THE LEADING ASSOCIATIONS IN YOUR
6 PROFESSION?

7 A YES

8 Q ARE YOU INVOLVED IN THE REVIEW AND EDITING OF
9 ANY SCHOLARLY JOURNALS?

10 A I'M AN EDITOR, A CONSULTING EDITOR, ON LAW AND
11 HUMAN BEHAVIOR WHICH IS A JOURNAL THAT PUBLISHES
12 RESEARCH IN THE AREA OF PSYCHOLOGY AND THE LAW

13 Q AND ARE THERE ANY PARTICULAR RESEARCH AREAS IN
14 WHICH YOU ARE CONCENTRATED IN YOUR PROFESSIONAL LIFE?

15 A YES I'M A SOCIAL PSYCHOLOGIST I STUDY SOCIAL
16 INFLUENCE AND THE AREA IN WHICH I STUDY SOCIAL
17 INFLUENCE IS LEGAL DECISION MAKING FOCUSING FOR
18 EXAMPLE ON INTERVIEWS AND INTERROGATIONS

19 Q ALL RIGHT WHAT ARE YOUR PRIMARY AREAS OF
20 PROFESSIONAL FOCUS IN YOUR CAREER?

21 A AGAIN AS A SOCIAL PSYCHOLOGIST MY INTEREST IS IN
22 SOCIAL INFLUENCE AND SO IN THE AREA OF FORENSIC
23 PSYCHOLOGY I STUDY POLICE INTERVIEWING TECHNIQUES,
24 DECEPTION DETECTION, INTERROGATION TECHNIQUES, AND
25 CONFESSIONS

1 Q HAVE YOU WRITTEN OR EDITED ANY BOOKS IN YOUR
2 FIELD?

3 A YES, I'VE WRITTEN AND EDITED SEVERAL BOOKS

4 Q CAN YOU DESCRIBE SOME OF THOSE PLEASE?

5 A I'M AUTHOR OF AN INTRODUCTORY PSYCHOLOGY
6 TEXTBOOK, COLLEGE LEVEL TEXTBOOK I'M ONE OF THREE
7 AUTHORS ON A SOCIAL PSYCHOLOGY UNDERGRADUATE
8 TEXTBOOK I'VE WRITTEN AND EDITED PROFESSIONALLY
9 SCHOLARLY BOOKS BOTH IN THE AREA OF SOCIAL PSYCHOLOGY
10 AND MORE SPECIFICALLY IN THE AREA OF PSYCHOLOGY AND
11 LAW

12 Q AND HAVE YOU WRITTEN ANY ARTICLES THAT HAVE
13 APPEARED IN PROFESSIONAL JOURNALS?

14 A YES, A NUMBER OF THEM

15 Q HAVE YOU TAUGHT ANY COLLEGE LEVEL COURSES
16 ADDRESSING THE STUDY OF EITHER SOCIAL PSYCHOLOGY OR
17 INTERROGATION IN STATEMENTS WHICH ARISE FROM AN
18 INTERROGATION?

19 A YES WELL, I REGULARLY TEACH SOCIAL PSYCHOLOGY
20 AND I TEACH A COURSE IN PSYCHOLOGY AND THE LAW ON A
21 COUPLE OF OCCASIONS I'VE TAUGHT AN UPPER LEVEL COURSE
22 ON THE PSYCHOLOGY OF EVIDENCE, SO YES, THAT'S PART OF
23 MY REGULAR, MY TEACHING AND RESEARCH ARE IN THE SAME
24 AREAS

25 Q IN THE COURSE OF YOUR PROFESSION AS A

1 PSYCHOLOGIST SPECIALIZING IN THE AREA OF
2 INTERROGATION METHODOLOGY, HAVE YOU BEEN CALLED UPON
3 TO TESTIFY AS AN EXPERT WITNESS IN ANY CRIMINAL
4 PROCEEDINGS?

5 A YES

6 Q SUCH AS THIS?

7 A YES, I HAVE

8 Q WHAT TYPES OF SUBJECTS HAVE YOU TESTIFIED ABOUT
9 AS AN EXPERT WITNESS?

10 A I'VE TESTIFIED ABOUT INTERVIEWING INTERROGATION
11 AND CONFESSION AND I'VE TESTIFIED ABOUT EYE WITNESS
12 IDENTIFICATIONS

13 Q DOCTOR, HAVE YOU TESTIFIED IN THE COURTS OF THIS
14 STATE AS AN EXPERT WITNESS?

15 A YES, I HAVE

16 Q HAVE YOU TESTIFIED IN OTHER STATES OR FEDERAL
17 JURISDICTIONS AS AN EXPERT WITNESS?

18 A YES, I HAVE

19 Q HAVE YOU BEEN HIRED AS A CONSULTANT OR EXPERT
20 WITNESS FOR BOTH PROSECUTION AND DEFENSE?

21 A ACTUALLY I HAVE I WAS ASKED ONLY ONCE BY THE
22 PROSECUTION AND WHILE I WAS AGREEABLE TO TESTIFY
23 ULTIMATELY THEY DIDN'T NEED MY TESTIMONY, BUT, AND I
24 DON'T TESTIFY A LOT

25 Q COULD YOU TELL US WHAT STATES YOU'VE BEEN

1 QUALIFIED AS AN EXPERT IN?

2 A CALIFORNIA, WISCONSIN, MILITARY COURT, NEW YORK,
3 MASSACHUSETTS, CONNECTICUT, SOUTH CAROLINA

4 Q IS THE SCIENCE OF SOCIAL PSYCHOLOGY A RECOGNIZED
5 SCIENCE, DR KASSIN?

6 A YES, IT IS

7 Q DOES IT HAVE BODY OF WRITTEN REFERENCES AND
8 STUDIES?

9 A YES IT'S A SUBSTANTIAL ONE AT THAT

10 Q AND HAVE YOU PARTICIPATED IN THE CREATION OF A
11 PORTION OF THAT BODY OF WORK?

12 A YES, I HAVE

13 Q HAVE YOU CONDUCTED CASE STUDIES AND OTHER FIELD
14 RESEARCH IN THAT AREA?

15 A IN SOCIAL PSYCHOLOGY?

16 Q YES, SIR

17 A YES

18 Q AND HAS THE ISSUE OF POLICE INTERROGATION BEEN
19 GIVEN ATTENTION TO BY SOCIAL PSYCHOLOGISTS OVER THE
20 YEARS?

21 A YES, SIR IN FACT, MORE GENERALLY BY
22 PSYCHOLOGISTS NOT SOCIAL PSYCHOLOGISTS BECAUSE IT
23 INTERSECTS WITH A NUMBER OF DIFFERENT AREAS OF
24 PSYCHOLOGY IT INTERSECTS WITH CLINICAL PSYCHOLOGY,
25 WITH DEVELOPMENTAL PSYCHOLOGY WHEN THERE ARE JUVENILE

1 CHILD ISSUES AND IT INTERSECTS IMPORTANTLY WITH
2 COGNITIVE PSYCHOLOGY AND COGNITIVE PSYCHOLOGISTS
3 STUDY HOW PEOPLE THINK AND PARTICULARLY COGNITIVE
4 PSYCHOLOGISTS STUDY MEMORY AND MANY MEMORY
5 RESEARCHERS HAVE BECOME INVOLVED IN THE STUDY OF
6 INTERROGATIONS AND CONFESSIONS

7 Q AND YOU HAVE PERSONALLY CONDUCTED RESEARCH, CASE
8 STUDIES, AND OTHER TESTING ON --

9 A YES

10 Q --SUBJECTS AND SOCIAL PSYCHOLOGY?

11 A YES

12 Q SPECIFICALLY IN POLICE INTERROGATION?

13 A YES

14 Q AND HAVE YOU PUBLISHED ANY OF YOUR WORK
15 SPECIFICALLY ON THE SUBJECT OF POLICE INTERROGATION?

16 A YES

17 Q AND WHAT TYPE OF PUBLICATIONS?

18 A I'VE PUBLISHED, I'VE BEEN PUBLISHING ON THE
19 TOPIC OF CONFESSIONS NOW SINCE 1980 THESE ARE IN
20 SCIENTIFIC JOURNALS, JOURNALS SUCH AS THE JOURNAL OF
21 PERSONALITY AND SOCIAL PSYCHOLOGY, LAW AND HUMAN
22 BEHAVIOR, THE AMERICAN PSYCHOLOGIST, PSYCHOLOGICAL
23 SCIENCE AND I'VE TESTIFIED, I'M SORRY, I PUBLISHED
24 IN THESE JOURNALS SINCE 1980 ON THIS SUBJECT

25 Q HAS YOUR PUBLISHED WORK BEEN SUBJECT TO

1 CRITICISM AND PEER REVIEW?

2 A WELL, I DON'T KNOW ABOUT THE CRITICISM PART BUT
3 PEER REVIEW, I LIKE THAT TERM BETTER, YES BASICALLY
4 WHEN YOU SUBMIT A PUBLICATION, WHEN YOU SUBMIT AN
5 ARTICLE FOR PUBLICATION TO A SCIENTIFIC JOURNAL
6 TYPICALLY WHAT WILL HAPPEN YOU WILL SEND IN MULTIPLE
7 COPIES OR SEND IN AN ELECTRONIC COPY, THE EDITOR THEN
8 SENDS IT OUT TO THREE OR FOUR PEOPLE IN THE FIELD WHO
9 TYPICALLY REVIEW IT BLIND WHICH IS TO SAY THE AUTHOR
10 DOESN'T KNOW WHO THE REVIEWERS ARE AND THE REVIEWER
11 DON'T KNOW WHO THE AUTHOR IS AND THEY GO THROUGH
12 THIS VERY INTENSE LEVEL OF SCRUTINY THE EDITOR THEN
13 MAKES A DECISION TO PUBLISH OR NOT PUBLISH OR TO
14 REVISE BASED ON THE REVIEWS THAT COME BACK
15 TYPICALLY THE JOURNALS THAT I'VE PUBLISHED IN REJECT
16 BETWEEN 60 AND 90 PERCENT OF THE ARTICLES THAT ARE
17 SUBMITTED SO THESE ARE JOURNALS THAT PEER REVIEW IS,
18 IT SETS A RELATIVELY HIGH STANDARD FOR PUBLICATION

19 Q WOULD YOU SAY THAT THE SCIENCE AND CASE STUDIES
20 I'VE JUST TALKED ABOUT ARE GENERALLY ACCEPTED BY THE
21 SCIENTIFIC COMMUNITY?

22 A YES AGAIN THESE, I'VE PUBLISHED THESE PAPERS
23 IN PEER REVIEW SCIENTIFIC JOURNALS FOR YEARS NOW

24 MR BAITY YOUR HONOR, WE WOULD OFFER DR
25 KASSIN AT THIS TIME AS AN EXPERT IN THE AREA OF

1 SOCIAL PSYCHOLOGY OF POLICE INTERROGATION

2 THE COURT ALL RIGHT VOIR DIRE

3 MR BRACKETT YES, SIR

4 CROSS EXAMINATION BY MR BRACKETT

5 Q GOOD AFTERNOON, SIR

6 A GOOD AFTERNOON

7 Q WELCOME TO SOUTH CAROLINA HOW ARE YOU?

8 A THANK YOU GOOD

9 Q YOU'VE TESTIFIED A COUPLE TIMES BEFORE IN SOUTH
10 CAROLINA?

11 A YES, I HAVE

12 Q I BELIEVE IT WAS IN '99 IN THE STATE VERSUS
13 ERNEST RIDDLE?

14 A THAT WAS A POST CONVICTION RELIEF HEARING I
15 BELIEVE

16 Q YES, SIR BUT THAT WAS THE TIME YOU TESTIFIED
17 AS AN EXPERT?

18 A YES

19 Q AND THEN THE OTHER TIME WAS STATE VERSUS WESLEY
20 MAX MYERS DOWN IN CHARLESTON?

21 A YES, IT WAS ACTUALLY A THIRD OCCASION

22 Q OKAY AND IN ONE OF THOSE OCCASIONS YOU WERE
23 ADMITTED AS AN EXPERT ON BOTH OF THOSE OCCASIONS, IS
24 THAT RIGHT?

25 A YES

1 THE COURT THEY ARE HAVING TROUBLE
2 HEARING YOU YOU GOT A SOFT VOICE AND I'M GOING TO
3 ASK THE WITNESS TO SPEAK UP TOO

4 Q NOW DR KASSIN, YOU HAVE PUBLISHED A NUMBER OF
5 ARTICLES, IS THAT RIGHT?

6 A CORRECT

7 Q AND INCLUDED IN THAT IS A JOURNAL ARTICLE IN THE
8 AMERICAN PSYCHOLOGIST IN 1977?

9 A CORRECT

10 Q AND YOU WERE NOT QUESTIONED ABOUT THIS JOURNAL
11 ARTICLE IN ANY OF THE OTHER TIMES YOU HAVE BEEN
12 QUALIFIED AS AN EXPERT IN SOUTH CAROLINA, HAVE YOU?

13 A I DON'T RECALL I MAY HAVE

14 Q WELL, YOU DON'T DISPUTE THAT IN THIS ARTICLE YOU
15 EVEN INDICATED THAT THE AREA OF EXPERTISE THAT YOU
16 CLAIM TO WANT TO TESTIFY ABOUT TODAY THAT YOU DON'T
17 BELIEVE THAT, THIS IS WHAT YOU SAID IN HERE, YOU
18 DON'T BELIEVE THAT IT QUALIFIES AS A SCIENTIFIC FIELD
19 SUBJECT TO THE REQUIREMENTS OF LAW UNDER DAUBERT, THE
20 STANDARD THAT WE HAVE TO FIND YOU?

21 A THAT'S NOT EXACTLY WHAT I SAID, BUT I KNOW THE
22 PASSAGE YOU ARE REFERRING TO

23 Q LET ME READ THE EXACT WORDS AS A RESULT OF
24 THIS NEGLECT THE CURRENT EMPIRICAL FOUNDATION MAY BE
25 TOO MEAGER TO SUPPORT RECOMMENDATIONS FOR REFORM OR

1 QUALIFY AS A SUBJECT OF SCIENTIFIC KNOWLEDGE
2 ACCORDING TO THE CRITERIA RECENTLY ARTICULATED BY THE
3 U S SUPREME COURT DAUBERT VERSUS MERRELL DOW
4 PHARMACEUTICALS INCORPORATED IN 1993?

5 A CORRECT

6 Q OKAY YOU GAVE US A LIST OF, AND PART OF THE
7 REASON FOR THAT IS YOU REALLY CAN'T SAY IF A
8 CONFESSION IS FALSE OR NOT?

9 A THAT WOULDN'T BE MY PURPOSE TO DO THAT IT
10 WOULD NOT BE MY PURPOSE TO HERE TO DO THAT, TO SAY
11 THAT A PARTICULAR CONFESSION IS TRUE OR FALSE, BUT
12 MERELY TO TALK ABOUT THE GENERAL PRINCIPLES THAT LEAD
13 PEOPLE TO CONFESS TO CRIMES THAT THEY DID OR DID NOT
14 COMMIT

15 Q I UNDERSTAND BUT THERE IS NO SCIENTIFIC WAY TO
16 VALIDATE WHETHER A CONFESSION IS TRUE OR FALSE?

17 A IN A PARTICULAR INSTANCE?

18 Q YES

19 A NO NO, NOT WITHOUT CONSIDERATION OF OTHER
20 FACTORS AND OTHER TYPES OF EVIDENCE

21 Q YES, SIR YOU COULD BASED ON YOUR TRAINING AND
22 EXPERIENCE YOU BY YOURSELF JUST LOOKING AT THE
23 CIRCUMSTANCES CAN'T SAY WHETHER ANY GIVEN ---

24 A NOT ONLY CAN I NOT BUT I ACTUALLY HAVE AN
25 ARTICLE THAT'S COMING OUT SHOWING THAT PEOPLE CANNOT

1 DISTINGUISH TRUE OR FALSE CONFESSIONS THAT THEY VIEW,
2 THE AVERAGE PERSON CAN'T DO IT, POLICE OFFICERS CAN'T
3 DO IT, AND SOCIAL SCIENTISTS CAN'T DO IT, SO YES

4 Q BUT SOMEBODY HAS TO DECIDE, A JURY ULTIMATELY,
5 RIGHT?

6 A YES

7 Q OKAY NOW IN FACT YOU GAVE US A LIST OF STATES
8 WHERE YOU ARE, YOU HAVE BEEN QUALIFIED AS AN EXPERT,
9 CALIFORNIA, WISCONSIN, BUT IF WE WERE IN THE STATE OF
10 NEW JERSEY YOU WOULD NOT BE ALLOWED TO TESTIFY, WOULD
11 YOU?

12 A NO, ACTUALLY I HAD A, I WAS OFFERED TO TESTIFY
13 IN THE STATE OF NEW JERSEY, THE TRIAL JUDGE RULED
14 THAT I SHOULD BE ALLOWED TO TESTIFY, AND THE APPEALS
15 COURT RULED THAT I SHOULD NOT

16 Q THE SUPREME COURT IN NEW JERSEY RULED THAT YOUR
17 AREA OF EXPERTISE IS NOT AN AREA OF EXPERTISE THAT
18 THEIR COURTS WOULD RECOGNIZE, STATE VERSUS PATRICK
19 FREE?

20 A I'M NOT SURE -- I KNOW THE CASE I'M NOT SURE
21 THAT WAS THE BASIS OF THEIR RULING

22 Q OKAY YOU WERE NOT ALLOWED TO TESTIFY AS AN
23 EXPERT IN THAT STATE?

24 A THAT IS CORRECT

25 Q IF WE WERE IN NEW JERSEY YOU WOULD NOT BE

1 TESTIFYING HERE TODAY?

2 A THAT'S RIGHT

3 Q IN FACT, YOU CAN'T EVEN TESTIFY AS TO THE
4 PREVALENCE OF FALSE CONFESSIONS AND NOBODY CAN SAY
5 PREVALENCE OF FALSE CONFESSIONS?

6 A THERE ARE THOSE WHO TRY AND BELIEVE ME THERE IS
7 NOT A METHODOLOGY FOR DERIVING AN ESTIMATE THAT IS
8 PRECISE, SO NOBODY KNOWS THE FREQUENCY OF FALSE
9 CONFESSION WE HAVE SOME IDEAS WE KNOW FOR EXAMPLE
10 THAT IN THE NEW DNA EXONERATION CASES LITERATURE, AS
11 DNA EXONERATION CASES HAVE COME IN, PEOPLE HAVE BEEN
12 ASTONISHED TO FIND THAT ROUGHLY 20 TO 25 PERCENT OF
13 THOSE EXONERATIONS HAD CONTAINED CONFESSIONS WHICH
14 WERE NOW KNOWN TO BE FALSE IN EVIDENCE, SO THERE ARE
15 SOME NUMBERS OUT THERE BUT THEY DON'T GIVE US THAT
16 ONE NUMBER WE'D LIKED TO HAVE, HOW OFTEN IN A YEAR,
17 FOR EXAMPLE, DOES THIS HAPPEN

18 Q BECAUSE WE DON'T KNOW HOW MANY CONFESSIONS ARE
19 ACTUALLY TAKEN IN A YEAR?

20 A WELL, WE KNOW FOR EXAMPLE THAT, WE KNOW FOR
21 EXAMPLE THAT, FOR EXAMPLE, A RECENT STUDY BY DRIZZON
22 AND LEO IN WHICH THEY ANALYZED 125 FALSE CONFESSIONS,
23 KNOWN, DOCUMENTED FALSE CONFESSIONS THEY ARGUE IN
24 THAT PAPER REASONABLY THAT THAT 125 IS THE TIP OF A
25 VERY LARGE ICEBERG AND THE WAY THEY HAVE ARRIVED AT

1 THAT IS WE KNOW THAT AND RESEARCH HAS SHOWN THIS THAT
2 MORE OFTEN THAN NOT FALSE CONFESSIONS OCCUR IN VERY
3 LOW PROFILE CASES, NOT IN BIG CASES THAT END UP IN
4 ARTICLES SUCH AS THEIRS, AND MORE OFTEN THAN NOT
5 FALSE CONFESSIONS ARE DISCOVERED TO BE FALSE BEFORE
6 THERE IS EVER A TRIAL AND A RECORD, SO LITTLE
7 ATTENTION IS PAID, SO THE DNA EXONERATION CASES ARE
8 STRICTLY POST CONVICTION DNA EXONERATION CASES AND IN
9 THAT REGARD THEY REPRESENT A SUB-SAMPLE OF WHATEVER
10 THAT NUMBER IS IN TERMS WHAT THAT NUMBER IS NOBODY
11 KNOWS

12 Q THAT'S THE ANSWER TO MY QUESTION THEN IS NO?

13 A YES

14 Q OKAY AND THERE IS A GREAT DEAL OF CONTROVERSY
15 SURROUNDING THIS FIELD OF EXPERTISE THAT YOU CLAIM A
16 NUMBER OF ARTICLES HAVE BEEN PUBLISHED IN SCHOLARLY
17 PUBLICATIONS THAT ARE PEER REVIEWED JUST LIKE YOU
18 WERE DESCRIBING THAT CONTEST THE VALIDITY OF THIS?

19 A NOT THAT I KNOW OF

20 Q PAUL CASSELL?

21 A PAUL CASSELL IS PUBLISHING IN LAW REVIEWS THAT
22 DO NOT, ARE NOT SUBJECT TO PEER REVIEW SCIENTIFIC
23 STANDARDS, AND I'M MORE THAN HAPPY TO TALK ABOUT SOME
24 OF THOSE WRITINGS

25 Q I UNDERSTAND THERE ARE, THERE IS SUBJECT TO

1 CONTROVERSY?

2 A IT'S SUBJECT TO CONTROVERSY AMONG LEGAL SCHOLARS
3 WHICH IS WHY I DON'T WANT TO GET INTO A NUMBERS
4 SITUATION BECAUSE AMONG RESEARCHERS THERE ISN'T A
5 CONTROVERSY THAT IT OCCURS, THAT IT OCCURS UNDER
6 CERTAIN CIRCUMSCRIBED CIRCUMSTANCES, AND THAT IT'S
7 PREDICTABLE BY KNOWING CERTAIN FACTORS THAT ARE IN
8 PLACE AS FAR AS CASSELL IS CONCERNED, HIS WRITINGS
9 ARE DIRECTED AT TRYING TO ESTIMATE NUMBERS WHICH IS
10 AGAIN I THINK AN ENTERPRISE THAT IS NOT ONLY -- I
11 THINK IT'S JUST NOT POSSIBLE THERE ARE TOO MANY
12 INVISIBLE CASES OUT THERE THAT WE DON'T KNOW ABOUT

13 MR BRACKETT YOUR HONOR, I WOULD OBJECT
14 TO HIM BEING QUALIFIED IN THIS AREA ON TWO GROUNDS
15 I DON'T BELIEVE THAT THIS IS --

16 THE COURT WELL, DON'T GO -- LET'S TAKE
17 IT UP OUTSIDE THE PRESENCE OF THE JURY ALL RIGHT
18 MR GREELEY, DO YOU HAVE ANY VOIR DIRE

19 MR GREELEY NO, YOUR HONOR, I DO NOT

20 THE COURT I'M GOING TO LET YOU GO TO THE
21 JURY ROOM JUST FOR A FEW MINUTES WHILE WE TAKE UP A
22 LEGAL MATTER

23 (THE JURY EXITS THE COURTROOM AT 1 44
24 PM)

25 THE COURT YES, SIR

1 MR BRACKETT PLEASE THE COURT, YOUR
2 HONOR TWO REASONS FIRST OF ALL, I DON'T BELIEVE
3 THIS IS AN AREA OF SCIENTIFIC ENDEAVOR WHICH, BY THE
4 WITNESS' OWN ADMISSION, QUALIFIES UNDER DAUBERT I
5 DON'T BELIEVE THAT, THAT THIS QUALIFIES AS A
6 SCIENTIFIC AREA THAT IS CAPABLE OF BEING, THAT IS
7 CAPABLE OF BEING ASCERTAINED WITH ENOUGH CERTAINTY
8 THAT A JURY SHOULD RELY UPON IT IN FORMING THE
9 DECISION OF WHETHER TO CONVICT OR ACQUIT IN THIS
10 CASE IT IS SIMPLY A HYPOTHESIS THAT IS UNPROVEN AND
11 THERE IS NO REAL WAY TO PROVE IT THAT'S THE FIRST
12 PROBLEM

13 AND I SUBMIT THAT, YOU KNOW, THE OTHER
14 STATES, I DON'T BELIEVE THAT THIS PARTICULAR ARTICLE
15 WAS POINTED OUT WHERE EVEN THIS WITNESS AGREES THAT
16 IT DOESN'T MEET THE STANDARDS OF DAUBERT

17 THE COURT HAVE WE ACCEPTED DAUBERT?

18 MR BRACKETT IT'S THE JONES STANDARD BUT
19 IT IS VERY SIMILAR I SUBMIT THAT IT'S CLOSE ENOUGH
20 IF IT DOESN'T QUALIFY FOR DAUBERT I DON'T BELIEVE IT
21 WOULD QUALIFY UNDER JONES BUT BE THAT AS IT MAY,
22 THE SECOND GROUNDS IS REALLY THE HEART OF IT WE
23 ISSUED, WE VISITED THIS ISSUE BEFORE WITH THE
24 PREVIOUS WITNESS IT'S NOT RELEVANT AT THIS POINT
25 HE HASN'T DENIED THE, HE HASN'T DENIED THE

1 CONFESSION, HE HAS NOT STATED THAT THE CONFESSION IS
2 FALSE I THINK IT IS GETTING THE CART BEFORE THE
3 HORSE AND I'M AFRAID THAT ONCE THIS TESTIMONY GETS IN
4 IF THEY DON'T CALL THE DEFENDANT AS A WITNESS, HE'S
5 THE ONLY PERSON THAT CAN DECRY THE CONFESSION AS
6 FALSE SETTING THE STAGE FOR DR KASSIN TO COME IN IF
7 HE'S QUALIFIED AS AN EXPERT, AND OUR CONCERN IS THAT
8 IF THEY WANT TO DO THIS THEN THEY ARE GOING TO HAVE
9 TO CALL MR COPE, THE SAME AS THE OTHER WITNESS

10 AND THE LAST THING I WOULD POINT OUT, EVEN
11 THE DEFENSE'S OWN EXPERT, THE OTHER EXPERT THAT HAS
12 TESTIFIED TODAY, IN THE BRIEF THAT I WAS READING TO
13 HIM, HE INDICATED THAT HE THOUGHT POLYGRAPHS WERE
14 MORE RELIABLE THAN PSYCHOLOGICAL TESTIMONY AND
15 POLYGRAPHS ARE NOT ADMISSIBLE

16 THE COURT SO YOU WANT US TO TAKE THE
17 FULL CREDENCE TO WHAT THAT WITNESS TESTIFIED TO

18 MR BRACKETT A PORTION OF THAT

19 THE COURT OH, YOU WANT TO PICK OUT THE
20 PORTION YOU LIKE

21 MR BRACKETT WELL, THAT PARTICULAR
22 PORTION I AGREE WITH I THINK THAT IS CORRECT
23 THAT'S WHY I POINTED IT OUT TO THE JURY

24 THE COURT ALL RIGHT

25 MR BAITY YOUR HONOR, WE'RE NOT A

1 DAUBERT STATE, WE ARE OF COURSE JONES, AND COUNSEL,
2 HAS BEEN CODIFIED IN RULE 702 AND THERE IS A FOUR
3 PRONG TEST FIRST OF ALL THAT THE EVIDENCE WILL
4 ASSIST THE TRIER OF FACT, THAT THE EXPERT WITNESS IS
5 QUALIFIED, THAT THE UNDERLYING SCIENCE AND STUDY IS
6 RELIABLE, AND THAT THE PROBATIVE VALUE OF THE
7 EVIDENCE OUTWEIGHS THE PREJUDICIAL EFFECT THIS
8 WITNESS HAS ALREADY SAID HE'S NOT GOING TO SIT UP
9 HERE AND SAY THIS IS A FALSE CONFESSION HE'S NOT
10 GOING TO TESTIFY IN HIS STEAD HE IS SIMPLY GOING TO
11 SAY THAT JUST BECAUSE THIS IS NOT AN EXACT
12 QUANTIFIABLE SCIENCE WHERE WE CAN GIVE YOU 72 PERCENT
13 OR 15 PERCENT OR WHATEVER THAT THERE IS NONETHELESS A
14 RECOGNIZED SCIENCE THAT HAS BEEN GATHERED AND WRITTEN
15 ABOUT AND PUBLISHED IN RESPECTED JOURNALS SHOWING
16 INFORMATION THAT IS COMMON TO KNOWN CASES OF FALSE
17 CONFESSIONS AND AS HE SAID, THERE HAS BEEN MANY,
18 MANY CONFESSIONS THAT ARE FALSE CONFESSIONS THAT ARE
19 INVISIBLE, THAT HAVE NOT BEEN STUDIED, AND IT'S
20 IMPOSSIBLE TO SAY THAT A CERTAIN PERCENTAGE OR
21 SOMETHING OF THAT NATURE, IT CANNOT BE QUANTIFIED,
22 BUT THERE ARE KNOWN CASES OF FALSE CONFESSIONS THIS
23 MAN, THIS DOCTOR HERE, HAS COMMITTED MOST OF THE LAST
24 TWO DECADES TO STUDYING THOSE CASES AND RECOGNIZING
25 THE HALLMARKS OF KNOWN FALSE CONFESSIONS AND SHOWING

1 THE SIMILARITIES BETWEEN THEM AND THIS IS WHAT HE'S
2 GOING TO TESTIFY TO THIS IS WHAT HIS ARGUMENTS HAVE
3 BEEN ABOUT HE'S NOT GOING TO SAY THAT THAT IS
4 FALSE, AND HE'S NOT GOING TO TRY TO USURP THE POWER
5 OF THE JURY HE IS SIMPLY GOING TO SAY IN CASE
6 STUDIES THAT HAVE BEEN STUDIED IN THE AREA OF SOCIAL
7 PSYCHOLOGY BY HIMSELF AND OTHER DISTINGUISHED
8 PROFESSORS WE HAVE NOTICED THAT IN CASES WHICH
9 SUBSEQUENTLY TURNED OUT TO BE FALSE, THESE ARE
10 HALLMARKS, THESE ARE FACTORS, THESE ARE FEATURES THAT
11 ARE COMMON IN MOST OF THOSE CASES

12 THE COURT LET ME MAKE --

13 MR BAITY ---AND THAT COULD ASSIST THE
14 TRIER OF FACT IN MAKING A DETERMINATION

15 THE COURT LET ME LET YOU DO AN
16 ABBREVIATED PROFFER THEN I DON'T WANT TO HEAR HIS
17 WHOLE TESTIMONY, BUT LET ME, ENOUGH TO COVER AND OF
18 COURSE, NOT IN ARGUMENTATIVE FASHION OBVIOUSLY, BUT
19 ENOUGH TO COVER THE JONES REQUIREMENTS BECAUSE FIRST
20 I GOT TO DECIDE THAT THE EVIDENCE WILL ASSIST THE
21 JURY AND HE'S QUALIFIED AND THAT THE SCIENCE IS
22 RELIABLE AND THEN OF COURSE PROBATIVE AND
23 PREJUDICIAL, SO SEE IF YOU CAN, WITHOUT GOING THROUGH
24 HIS OWN TESTIMONY, ADDRESS THOSE

25 MR BAITY GIVE ME JUST A MOMENT

1 THE COURT OKAY COULD I SEE THAT
2 ARTICLE THAT YOU ALLUDED TO ALL RIGHT GO AHEAD
3 DIRECT EXAMINATION BY MR BAITY

4 Q DOCTOR, IS IT TRUE THAT PEOPLE SOMETIMES CONFESS
5 TO CRIMES THEY DID NOT COMMIT?

6 A YES

7 Q AND HAS THIS FACT BEEN DOCUMENTED AND STUDIED IN
8 THE COURSE OF YOUR CAREER?

9 A YES, IT HAS

10 Q HOW OFTEN WOULD YOU ESTIMATE THAT THIS OCCURS?

11 A THERE IS NO WAY TO ESTIMATE, AND AGAIN I DON'T
12 WANT TO USE THE WORD DISHONEST, BUT ANYONE WHO TRIES
13 TO DERIVE A FREQUENCY ESTIMATE OF THE PREVALENCE OF
14 FALSE CONFESSIONS IS SIMPLY TAKING A GUESS, AN
15 EDUCATED GUESS, AND SO THERE IS NO WAY TO DO THAT
16 ON THE QUESTION OF WHERE THIS SCIENCE FITS INTO THE
17 SCHEME OF PSYCHOLOGY, I THINK I NEGLECTED TO MENTION
18 EARLIER BUT, AND I SHOULD MENTION IT NOW BECAUSE IT'S
19 RELEVANT, IS THAT THE AMERICAN PSYCHOLOGICAL SOCIETY
20 WHICH IS THE SINGLE MOST IMPORTANT GROUP,
21 ORGANIZATION, FOR THE SCIENCE OF PSYCHOLOGY AS
22 OPPOSED TO PRACTICING MENTAL HEALTH PRACTITIONERS,
23 THE AMERICAN PSYCHOLOGY SOCIETY HAS A JOURNAL CALLED
24 PSYCHOLOGY STUDY IN THE PUBLIC INTEREST IT'S A VERY
25 PRESTIGIOUS JOURNAL THEY PUBLISH IT TWO OR THREE

1 TIMES A YEAR AND EVERY TIME THEY PUBLISH IT IT'S
2 REPRESENTED BY A SINGLE ARTICLE AS A MEASURE I
3 THINK OF THE STATUS OF WHERE THIS LITERATURE NOW
4 FALLS, I WAS INVITED TO SUBMIT AN ARTICLE FOR THIS
5 JOURNAL THAT WILL BE PUBLISHED IN 2005, SO MUCH HAS
6 HAPPENED SINCE 1997 AND 2005 THAT MY, MY CITATION
7 LIST HAD TO BE CUT THERE ARE THREE NEW BOOKS
8 TOTALING THOUSANDS OF REFERENCES OF EMPIRICAL STUDIES
9 OF INTERVIEWS, INTERROGATIONS, AND CONFESSIONS IT
10 HAS CLEARLY ATTAINED A STATUS WITHIN PSYCHOLOGY THAT
11 HAS EARNED THIS INVITATION TO WRITE FOR THIS VERY
12 PRESTIGIOUS PAPER THERE ARE BOOKS BEING PUBLISHED,
13 THREE BOOKS ALONE IN THE LAST THREE YEARS, THOUSANDS
14 OF PAGES, THOUSANDS OF REFERENCES, WHAT SOCIAL
15 SCIENTISTS HAVE DONE IN THIS AREA THEY'VE ASKED THE
16 QUESTION HOW CAN IT HAPPEN AND UNDER WHAT
17 CIRCUMSTANCES AND RESEARCHERS HAVE NOW TRACED THE
18 PROCESS FROM THE INITIAL INTERVIEW TO THE
19 INTERROGATION, AND MIND YOU, LOOKING AT PROFESSIONAL
20 TRAINED INTERROGATION MANUALS THEY ARE
21 PSYCHOLOGICALLY BASED IN FACT, THE PRIMARY MANUAL
22 THAT HAS TRAINED MORE INTERROGATORS IN THIS COUNTRY
23 AND AROUND THE WORLD THAN ANYONE ELSE WHICH IS THE
24 INBAU REID MANUAL, NOW IN ITS FOURTH EDITION, HAS A
25 WHOLE CHAPTER ON THE PSYCHOLOGY OF CONFESSIONS THEY

1 HAVE A WHOLE CHAPTER ON WHICH THEY RECITED MY
2 RESEARCH ON FALSE CONFESSIONS IT'S ATTAINED A
3 STATUS OF NOT JUST WITHIN THE SCIENCE BUT WITHIN THE
4 PRACTICING COMMUNITY WHICH IS WHY I GIVE NUMBERS OF
5 TALKS TO GROUP OF JUDGES, LAW ENFORCEMENT GROUPS,
6 CRIMINAL JUSTICE GROUPS I THINK THERE IS NO
7 QUESTION THAT THERE IS SCIENCE HERE AND THAT THAT
8 SCIENCE IS RELEVANT TO THE STUDY OF CONFESSIONS BY
9 JUST ABOUT EVERY METRIC A SCIENTIST/RESEARCHER HAS
10 I'VE EXPERIENCED THAT, AS HAVE OTHERS, AND THERE ARE
11 A NUMBER OF PEOPLE IN THIS AREA THIS IS NOW A
12 SUBSTANTIALLY SIZED AREA OF RESEARCH

13 Q LET ME ASK YOU THIS, HAS THE HISTORY OF THIS
14 SCIENCE TAKEN ON ANY NEW DIMENSIONS IN THE LAST SAY
15 DECADE OR THE LAST FIVE OR SIX YEARS?

16 A ABSOLUTELY IN FACT, THE STUDY OF THE
17 PSYCHOLOGY OF CONFESSIONS REALLY CAN BE TRACED TO
18 1908 AND SOME HAS BEEN WRITTEN RIGHT ON THROUGH THE
19 YEARS, BUT WHAT HAS HAPPENED OVER THE LAST DECADE OR
20 SO IS THE DNA EXONERATIONS HAVE COME ALONG AND THESE
21 OF COURSE ARE THE CASES, POST CONVICTION, WHERE
22 PEOPLE ARE NOW EXONERATED OF CRIMES FOR WHICH THEY
23 WERE CONVICTED, AND A COUPLE OF SIGNALS THAT CAME OUT
24 OF THOSE DNA EXONERATIONS BECAUSE WHEN RESEARCHERS GO
25 BACK AND AUTOPSY THOSE CASES AND ASK THE QUESTION,

1 WHY WAS THIS INNOCENT PERSON CONVICTED IN THE FIRST
2 PLACE, CLEARLY THE MOST COMMON SOURCE OF ERROR IS EYE
3 WITNESS MISIDENTIFICATION, THAT WAS NOT A SURPRISE TO
4 ANYBODY WHAT ASTONISHED ONE SOCIAL SCIENCE
5 RESEARCHER AND LEGAL SCHOLAR AFTER ANOTHER WERE THE
6 NUMBER OF THOSE THAT CONTAINED CONFESSIONS IN
7 EVIDENCE THE ASSUMPTION HAS ALWAYS BEEN WE AT LEAST
8 KNEW THAT THOSE IN PRISON AND ON DEATH ROW WHO HAD
9 CONFESSED WE AT LEAST KNEW THAT WAS THE GUILTY
10 SUBGROUP BUT IT TURNS OUT AS THESE NUMBERS
11 ACCUMULATE CONSISTENTLY 20 TO 25 PERCENT OF THEM HAD
12 CONTAINED CONFESSIONS IN EVIDENCE BEGGING THE
13 QUESTION HOW CAN THAT HAPPEN, WHY WOULD SOMEBODY
14 CONFESS TO A CRIME THEY DID NOT COMMIT, AND THAT'S
15 WHERE THAT PSYCHOLOGY RESEARCH WHICH HAS EXISTED FOR
16 SO MANY YEARS BECAME NEWLY RELEVANT AND ADDITIONAL
17 RESEARCHERS HAVE BEEN DRAWN INTO THE AREA IN FACT,
18 I COMMENT ON MY OWN DAUBERT STATEMENT FROM THE 1997
19 AMERICAN PSYCHOLOGIST ARTICLE IN THIS PAPER TO BE
20 PUBLISHED I PUBLISH IT, I'VE CO-AUTHORED IT, WITH A
21 BRITISH RESEARCHER BY THE NAME OF GISLI GUDJONSSON
22 WHO HAS WRITTEN THE HANDBOOKS ON INTERROGATIONS AND
23 CONFESSIONS IN ENGLAND, AND WHAT WE SAY AT THE VERY
24 END IS WE COMMENT ABOUT MY DAUBERT QUOTE AND SAY THAT
25 IN FACT EVERYTHING NOW IS VERY, VERY DIFFERENT ON THE

1 BASIS OF ALL THE NEW DNA EXONERATION CASE STUDIES,
2 THE WAREHOUSE OF PSYCHOLOGY RESEARCH THAT IS RELEVANT
3 FROM THE PAST HUNDRED YEARS, AND A WHOLE NEW VARIETY
4 OF FORENSICALLY SPECIFIC RESEARCH ON INTERVIEWS,
5 INTERROGATIONS, AND CONFESSIONS AND ALL OF THE BOOKS
6 THAT HAVE BEEN PUBLISHED SINCE THAT STATEMENT IS JUST
7 NO LONGER TRUE

8 MR BAITY YOUR HONOR, I WOULD REQUEST
9 PERMISSION DURING VOIR DIRE HERE TO ALLOW HIM TO READ
10 A PARAGRAPH FROM THE ARTICLE THAT HE WAS JUST
11 REFERRING

12 THE COURT SURE

13 Q YOU DO HAVE THAT ARTICLE WITH YOU?

14 A I DO

15 Q WOULD YOU READ IT INTO THE RECORD?

16 A NOW I SHOULD PREFACE IT BY SAYING THAT THIS
17 ARTICLE IS IN PRESS, THERE MAY BE SOME CHANGES YET TO
18 COME, BUT THIS IS THE IN PRESS VERSION

19 THE COURT WE ARE MORE INTERESTED IN WHAT
20 YOU ARE SAYING AT THIS POINT GO AHEAD

21 A SHALL I READ IT?

22 Q YES

23 A OKAY SEVERAL YEARS AGO KASSIN 1997 SUGGESTED
24 THAT THE QUOTE THE CURRENT EMPIRICAL FOUNDATION MAY
25 BE TOO MEAGER TO SUPPORT RECOMMENDATIONS FOR REFORM

1 OR QUALIFY AS A SUBJECT OF SCIENTIFIC KNOWLEDGE IN
2 THIS NEW ERA OF DNA EXONERATIONS HOWEVER IT IS NOW
3 CLEAR THAT SUCH TESTIMONY IS AMPLY SUPPORTED NOT ONLY
4 BY ANECDOTES AND CASE STUDIES OF WRONGFUL CONVICTIONS
5 BUT BY A LONG HISTORY OF BASIC PSYCHOLOGY AND AN
6 EXTENSIVE FORENSIC SCIENCE LITERATURE AS SUMMARIZED
7 IN SEVERAL RECENTLY PUBLISHED BOOKS SUCH AS
8 GUDJONSSON 2003, LASSITTER 2004, AND MEMMON (SIC) ET
9 AL 2003

10 Q DR KASSIN, LET ME JUST MAKE SURE THAT WE CAN
11 UNDERSTAND THE METHODOLOGY, THE CASE STUDIES, THAT
12 YOU ARE REFERRING TO?

13 A YES

14 Q HOW DO YOU DETERMINE THAT A FALSE CONFESSION HAS
15 TAKEN PLACE AND FROM THAT DRAW THESE CONCLUSIONS THAT
16 YOU'VE TALKED?

17 A NOW, THIS FIELD HAS GROWN SUBSTANTIALLY SO THERE
18 ARE VARIED METHODOLOGIES THAT RANGE FROM SINGLE,
19 INTENSE SINGLE CASE STUDIES TO AGGREGATED CASE
20 STUDIES WHERE YOU LOOK AT COLLECTIONS OF KNOWN
21 DOCUMENTED CASES TO NATURALISTIC OBSERVATIONS OF LIVE
22 AND VIDEO TAPED INTERROGATIONS TO STUDIES OF THE
23 INTERVIEW PROCESS AND THE ABILITY OF PEOPLE INCLUDING
24 POLICE OFFICERS TO MAKE JUDGMENTS OF TRUTH AND
25 DECEPTION SO A NUMBER OF STUDIES BOTH EXPERIMENTAL

1 LABRORTORY BASED AND FIELD STUDIES AS WELL CASE
2 STUDIES HAVE BEEN PUBLISHED IN TERMS OF HOW DO YOU
3 KNOW A FALSE CONFESSION WHEN YOU SEE ONE WHICH IS THE
4 STARTING POINT THERE HAVE BEEN A NUMBER OF MECHANISMS
5 OF THIS IN SOME CASES, FOR EXAMPLE, THERE HAVE BEEN
6 INSTANCES WHERE SOMEBODY HAS CONFESSED TO A CRIME
7 ONLY LATER FOR IT TO BE DISCOVERED THAT THE CRIME
8 NEVER OCCURRED SO FOR EXAMPLE THERE WAS A WOMAN
9 WHOSE INFANT BABY HAD DIED SHE CONFESSED AFTER
10 EXTENSIVE INTERROGATION TO A SHAKEN BABY SITUATION,
11 AND WHEN THE AUTOPSY, IN FACT IT WAS WORSE THAN THAT,
12 SHE ALSO TESTIFIED THAT SHE HAD A FRIEND ADMINISTER
13 HEROIN TO THIS CHILD FOR CRYING WHEN THE AUTOPSY
14 RESULTS CAME IN IT WAS AN EVENT THAT THE CHILD HAD
15 DIED OF NATURAL CAUSES THERE WAS NO HEROIN THAT
16 THE CONFESSION ITSELF WAS FALSE WELL, WE KNOW THAT
17 THE CRIME CONFESSED TO WAS NOT COMMITTED THAT WAS
18 ONE MEASURE ANOTHER VARIETY OF THESE CASES OR CASES
19 WHERE SOMEONE CONFESSES TO A CRIME THEN IS DNA
20 EXONERATED OR IN SOME OTHER WAY EXONERATED FOR
21 EXAMPLE, SOMEBODY ELSE STEPS FORWARD AND CONFESSES,
22 FOR EXAMPLE, THERE IS A CASE IN FLORIDA WHERE A MAN
23 BY THE NAME OF PETER DALLAS NOT ONLY CONFESSES TO
24 IMPLICATE HIMSELF BUT CONFESSES AND IMPLICATES TWO
25 OTHERS IN A MURDER THE THREE OF THEM ARE NOW

1 AWAITING TRIAL AND HAVE BEEN IN JAIL FOR SOMETIME
2 WHEN ANOTHER CRIME IS COMMITTED AND A SPECIAL
3 PROSECUTOR GOES AND DISCOVERS THAT THAT PERSON NOW
4 HAS TAKEN CREDIT OR BLAME OR CONFESSED TO THE
5 ORIGINAL CRIME AND NOT, AND CAN DO SOMETHING THAT THE
6 ORIGINAL CONFESSOR COULD NOT, WHICH IS TELL THE
7 POLICE WHERE THE MURDER WEAPON IS, AND SO HE TOLD THE
8 POLICE THE WEAPON COULD BE FOUND IN A PARTICULAR
9 LAKE, THEY FISHED IT OUT OF THE LAKE, BALLISTIC
10 EVIDENCE SHOWED THAT WAS THE WEAPON OF THE ORIGINAL
11 MURDER, SO THERE WAS A CASE WHERE WE NOW KNOW THE
12 ORIGINAL CONFESSION IMPLICATING THE THREE WAS FALSE

13 THE COURT DO THOSE CASES YOU JUST CITED
14 POSTDATE OR PREDATE YOUR 1997 ARGUMENT

15 A THEY WERE ALL POST

16 THE COURT THEY ARE ALL POST

17 A THESE ARE POST 1997

18 THE COURT ALL RIGHT

19 A AND IT REALLY IS THE DNA EXONERATION LITERATURE,
20 YOUR HONOR, THAT I THINK HAS STIMULATED THIS
21 DISCOVERY

22 THE COURT ALL RIGHT WHAT I REALLY
23 WANTED TO HEAR, ALTHOUGH THAT WAS INTERESTING AND
24 INFORMATIVE, WAS WHAT'S HE GOING TO TESTIFY TO IN
25 THIS CASE? AS FAR AS, I MEAN, MORE THINGS THAN JUST

1 THE UNDERLYING SCIENCE I GOT TO LOOK AT

2 MR BAITY I THOUGHT YOU WANTED TO KNOW
3 ABOUT THAT I THOUGHT I'D START WITH THAT I WILL
4 CERTAINLY GO ON, YOUR HONOR

5 Q DR KASSIN, JUST GIVE ME JUST A MOMENT IF I MAY,
6 YOUR HONOR FIRST OF ALL DO YOU INTEND TO TESTIFY TO
7 THIS JURY THAT THIS, THAT YOU CAN STATE TO A
8 REASONABLE DEGREE OF SCIENTIFIC KNOWLEDGE THAT THIS
9 CONFESSION IS FALSE?

10 A NO, AND LET ME TAKE ONE STEP FURTHER, THERE WAS
11 A FEDERAL CASE U S VERSUS HALL 1997 IN WHICH FEDERAL
12 LAW WAS MADE ABOUT THE BOUNDARIES OF EXPERT
13 TESTIMONY

14 THE COURT LET ME STOP YOU, WE'VE GOT A
15 JURY OUT, I WANT TO PROFFER, I WANT TO FIND OUT WHAT
16 HE'S GOING TO TESTIFY HE'S STILL DEFENDING HIS
17 SCIENCE I DON'T WANT TO HEAR ANY MORE ABOUT THAT AT
18 THIS TIME I'VE ASKED FOR SOME DIFFERENT KIND OF
19 INFORMATION IF YOU'LL JUST ANSWER THE QUESTION AS
20 ASKED I THINK WE'LL MOVE ALONG

21 Q DR KASSIN, WHAT WOULD YOU TESTIFY, FOR EXAMPLE,
22 ABOUT INTERROGATION TECHNIQUES AND THE HALLMARKS THAT
23 YOU MIGHT HAVE SEEN IN OTHER FALSE CONFESSION CASES?

24 A WHAT I WOULD TESTIFY TO IS THAT FALSE
25 CONFESSIONS OCCUR WHILE WE DO NOT KNOW THE

1 FREQUENCY OF FALSE CONFESSIONS WE KNOW THE REASONS
2 THEY OCCUR, WE KNOW THEY OCCUR IN THREE TYPES THERE
3 ARE THREE TYPES OF FALSE CONFESSIONS THAT BRING
4 DIFFERENT PSYCHOLOGICAL DYNAMICS INTO PLAY WE KNOW
5 THAT TRAINED INTERROGATORS TYPICALLY ENGAGE A TWO
6 STEP PROCESS IN WHICH THEY FIRST INTERVIEW A SUSPECT
7 IN ORDER TO MAKE AN INITIAL DETERMINATION OF GUILT OR
8 INNOCENCE AND I'D LIKE TO TALK ABOUT THE EXTENSIVE
9 BODY OF RESEARCH ON THAT INTERVIEW AND DECEPTION
10 DETENTION PHASE OF THE PROCESS AND THEN ONCE THAT
11 INITIAL DETERMINATION IS MADE, THEY ENGAGE A PROCESS
12 OF INTERROGATION THERE ARE A NUMBER OF DIFFERENT
13 MANUALS THEY ARE ALL HIGHLY PSYCHOLOGICALLY BASED
14 AGAIN THE LEADING MANUAL, THE INBAU MANUAL IN SOME
15 WAYS SERVES AS A SUMMARY OF ALL THE OTHERS BECAUSE
16 THE TECHNIQUES ARE VERY, VERY SIMILAR, BUT I WOULD --

17 Q YOU'LL TESTIFY ABOUT THOSE TECHNIQUES --

18 A I WOULD TALK ABOUT THOSE TECHNIQUES THOSE
19 TECHNIQUES OF SOCIAL INFLUENCE THAT ARE PSYCHOLOGICAL
20 TECHNIQUES THAT ARE BROUGHT INTO THE INTERROGATION
21 ROOM AND THE ASPECTS OF TECHNIQUES THAT LEAD PEOPLE
22 TO CONFESS SOMETIMES GENERALLY TO CRIMES THEY
23 COMMITTED AND SOMETIMES TO CRIMES THEY DID NOT COMMIT
24 Q WOULD YOU TESTIFY TO THE EFFECT, FOR EXAMPLE, OF
25 INFORMATION CONCERNING THE TAKING OF A POLYGRAPH, THE

1 WILLINGNESS TO TAKE A POLYGRAPH, AND THE EFFECTS OF
2 BEING INFORMED OF THE RESULTS OF THAT POLYGRAPH MIGHT
3 HAVE HAD?

4 A YES MORE GENERALLY THE POLYGRAPH IS ONE
5 MECHANISM THAT IS SOMETIMES USED AS A PRESENTATION OF
6 FALSE EVIDENCE AND THE PRESENTATION OF FALSE EVIDENCE
7 IS IMPLICATED IN NEARLY EVERY FALSE CONFESSION CASE
8 KNOWN IT IS A RISK FACTOR IT'S A RISK FACTOR THAT
9 THE POLYGRAPH IS OFTEN IMPLICATED IN

10 Q NOW A MOMENT AGO YOU INDICATED THAT THERE WERE
11 SEVERAL DIFFERENT TYPES OF FALSE CONFESSIONS?

12 A YES

13 Q THERE WERE FACTORS IN EACH ONE?

14 A YES

15 Q NOW WITHOUT GOING INTO A LENGTHY DISCUSSION OF
16 THAT, WOULD YOU ATTEMPT TO IDENTIFY THE TYPE OF FALSE
17 CONFESSION THAT MIGHT BE EXISTING IN THIS CASE?

18 A WELL, I, I, I DON'T, I'M NOT RENDERING AN
19 OPINION ABOUT THIS CASE PRESENTING A FALSE
20 CONFESSION, BUT THESE ARE THE THREE POSSIBILITIES
21 THERE ARE VOLUNTARY FALSE CONFESSIONS, WHAT I CALL
22 COERCED COMPLIANT FALSE CONFESSIONS, AND COERCED
23 INTERNALIZED FALSE CONFESSIONS, AND THESE ARE
24 DIFFERENT TYPES I WOULD TALK ABOUT THEM IN GENERAL
25 TERMS AND AGAIN JUST AS A MEASURE OF HOW IMPORTANT

1 THEY ARE OUT IN THE SCIENCE IS THAT EVEN THE
2 PROFESSIONAL INTERROGATION MANUAL, THE INBAU AND REID
3 MANUAL, NOW HAS A CHAPTER USING THAT DISTINCTION SO I
4 THINK IT'S IMPORTANT TO KNOW HOW DID IT OCCUR AND WHY
5 THEY OCCUR, FOR WHAT REASONS, AND UNDER WHAT SET OF
6 CONDITIONS

7 Q ALL RIGHT AND YOU WOULD EDUCATE THIS JURY WITH
8 YOUR TESTIMONY AS TO THE TYPES OF DOCUMENTED FALSE
9 CONFESSIONS THAT YOU'VE STUDIED AND YOU WOULD GIVE
10 THE JURY THOSE FACTORS THAT YOU HAD SPOTTED AS BEING
11 COMMON TO THOSE TYPES OF FALSE CONFESSIONS?

12 A YES INTERROGATION IS A SUBJECT OF PROFESSIONAL
13 TRAINING BASED ON PRINCIPLES OF PSYCHOLOGY AND THE
14 AVERAGE PERSON JUST DOESN'T KNOW THOSE PRINCIPLES
15 IN FACT MOST AVERAGE POLICE OFFICERS UNTRAINED DON'T
16 KNOW THOSE PRINCIPLES

17 Q AND YOU TALK ABOUT CERTAIN TYPES OF
18 INTERROGATION TECHNIQUES?

19 A CORRECT

20 Q AND CERTAIN TYPES OF QUESTIONS OR TACTICS THAT
21 COULD BE USED IN SUCH A THING THAT WOULD BRING ABOUT
22 THESE FACTORS THAT COULD LEAD TO A FALSE CONFESSION?

23 A CORRECT

24 Q BUT YOU'RE NOT GOING TO TESTIFY TO THE ULTIMATE
25 ISSUE YOU'RE GOING TO LEAVE THAT TO THE TRIER OF

1 FACT?

2 A THAT'S A JURY ISSUE, YES

3 Q DO YOU BELIEVE THE INFORMATION YOU HAVE WOULD
4 ASSIST THEM IN MAKING A DECISION AS TO THE
5 VOLUNTARINESS AND THE TRUTHFULNESS OF THE FALSE
6 CONFESSION?

7 A FROM ALL THE LECTURES I GIVE TO VARIOUS GROUPS I
8 FIND IT HARD TO BELIEVE THAT I WOULDN'T I MEAN,
9 YES

10 Q WOULD YOU BE ABLE TO TESTIFY AS TO THE USE OF
11 CERTAIN TECHNIQUES OR THE SETTING IN WHICH THESE
12 CONFESSIONS OCCURRED THAT WOULD HAVE CAUSED YOU SOME
13 CONCERNS VISAVIS YOUR RESEARCH IN THIS SUBJECT?

14 A YES

15 Q FOR EXAMPLE?

16 A FOR EXAMPLE THE PRESENTATION OF FALSE EVIDENCE
17 IT IS CLEAR THAT UNDER CERTAIN CIRCUMSTANCES IF YOU
18 HAVE, FOR EXAMPLE, A SUSPECT WHO IS VULNERABLE TO
19 MANIPULATION AS A FUNCTION OF STRESS OR FATIGUE OR
20 SLEEP DEPRIVATION OR DRUG USE AND THAT DEFENDANT,
21 THAT SUSPECT, IS PRESENTED WITH OBJECTIVE, APPARENTLY
22 OBJECTIVE AND APPARENTLY UNIMPEACHABLE FALSE EVIDENCE
23 THE VAST MAJORITY OF FALSE CONFESSION CASES CONTAIN
24 THAT TACTIC IN USE, AND THERE IS NOW A WEALTH OF
25 EXPERIMENTATION AND LABORATORY RESEARCH SHOWING THAT

1 THE PRESENTATION OF FALSE EVIDENCE CAN LEAD PEOPLE TO
2 CONFESS TO THINGS THEY DON'T DO, IT CAN LEAD PEOPLE
3 TO HAVE MEMORIES OF EVENTS THAT THEY NEVER
4 EXPERIENCED THAT NEVER OCCURRED, SO, YES, THERE IS A
5 WEALTH OF RESEARCH BOTH IN THE SOCIAL PSYCHOLOGY OF
6 INFLUENCE AND ON INFLUENCES NOT JUST ON
7 DECISION-MAKING, SHOULD I CONFESS OR NOT, BUT ON
8 ACTUAL MEMORY

9 Q AND YOU HAVE CASE STUDIES AND EXAMPLES OF
10 PRECISELY THAT AT WORK IN CERTAIN DOCUMENTED CASES OF
11 FALSE CONFESSIONS?

12 A YES

13 MR BAITY YOUR HONOR, I CAN GO FURTHER
14 THE COURT MR BRACKETT

15 MR BRACKETT PLEASE THE COURT, YOUR
16 HONOR I DON'T HAVE ANY MORE QUESTIONS FOR HIM

17 THE COURT ALL RIGHT MR GREELEY

18 MR GREELEY I DON'T HAVE ANYTHING

19 MR BRACKETT YOUR HONOR, I SIMPLY DON'T
20 THINK THAT THIS IS GOING TO BE SOMETHING THAT IS
21 GOING TO BE USEFUL TO THIS JURY THE THINGS THAT
22 HE'S SAYING CAN BE ARGUED AND ARE WITHIN THE REALM OF
23 COMMON SENSE IF HE THINKS THAT THE FACTS ARE IN
24 THERE SUFFICIENT TO MAKE THAT ARGUMENT TO THE JURY,
25 IF THEY WANT TO SAY, LOOK, HE'S TIRED -- LOOK, THEY

1 TIED TO HIM -- THEY TOLD HIM THEY HAD ALL THIS
2 STUFF -- THAT'S SOMETHING THAT THE JURY CAN
3 UNDERSTAND INHERENTLY I JUST DON'T BELIEVE THAT
4 THERE IS ENOUGH, THAT HE'S GIVEN ENOUGH OF A
5 SCIENTIFIC BASIS TO ESTABLISH FOR THIS JURY USING
6 SOME OBJECTIVE SCIENTIFIC METHOD BY WHICH THEY CAN
7 ANALYZE THE CONFESSION IN THIS CASE ANY BETTER THAN
8 THEY COULD WITH THEIR OWN COMMON SENSE THAT'S THE
9 FIRST THING

10 THE SECOND THING IS I HAVE A PARTICULAR
11 CONCERN AND I FILED A MOTION IN LIMINE REGARDING
12 MENTIONING OTHER CASES, THE OTHER FACT SCENARIOS
13 WHERE SOMEBODY DID CONFESS, THERE ARE THOUSANDS,
14 HUNDREDS OF THOUSANDS OF CONFESSIONS THAT ARE GIVEN
15 THROUGHOUT THE COUNTRY AND INVARIABLY THERE IS GOING
16 TO BE PROBLEMS AND THERE ARE REASONS FOR THEM WE
17 CAN'T TRY ALL THESE OTHER CASES HE CAN GO INTO A
18 FACT SCENARIO ON ONE CASE AND AM I ALLOWED TO THEN
19 CALL OVER TO THAT JURISDICTION AND HAVE THEM SEND ME
20 THE FILE AND MAYBE SUBPOENA A COUPLE PEOPLE FROM
21 THERE TO COME HERE AND TESTIFY THAT THE FACTS HE GAVE
22 WEREN'T RIGHT AND THERE MAY BE A MISUNDERSTANDING I
23 MEAN, SOME OF THE CASES THAT HE'S GOING TO CITE TO I
24 SUSPECT ARE CONTROVERSIAL THERE ARE PEOPLE WHO
25 STILL BELIEVE THOSE PEOPLE ARE GUILTY AND WE CAN'T

1 TRY ALL THESE OTHER CASES AND THAT'S CONFUSING,
2 MISLEADING, AND PREJUDICIAL AND UNDER 403 THAT
3 PARTICULAR ASPECT SHOULD CERTAINLY BE EXCLUDED I
4 THINK THAT A JURY CAN CONCLUDE BASED ON THE EVIDENCE
5 THAT'S IN HERE USING THEIR OWN COMMON SENSE
6 EVERYTHING THAT THIS MAN CLAIMS THAT HE'S GOING TO
7 TELL THEM UNDER THE GUISE OF SCIENTIFIC EXPERTISE AND
8 I DON'T BELIEVE THAT IT'S GOING TO ASSIST THE TRIER
9 OF FACT BECAUSE IT'S NOT SCIENTIFICALLY RELIABLE
10 SECONDLY, IT CERTAINLY ISN'T RELEVANT AT THIS POINT
11 IN TIME BECAUSE THE CONFESSION HAS NOT BEEN RECANTED,
12 THE CONFESSION HAS NOT BEEN HELD TO BE FALSE BY THE
13 DEFENDANT THROUGH HIS OWN WORDS, YOU KNOW, AND IT IS
14 A GRAVE CONCERN TO THE STATE THAT ALL THIS COMES IN
15 AND THEN THE DEFENDANT DECIDES HE DOESN'T, ARE WE
16 GOING TO MOVE TO STRIKE ALL THIS AND --

17 THE COURT I DO HAVE SOME CONCERN ABOUT
18 THAT THERE IS NOTHING IN THE RECORD THAT INDICATES
19 ANYTHING BUT HE MADE A CONFESSION AND THERE IS
20 NOTHING TO INDICATE OTHERWISE OF COURSE, HE HAS A
21 RIGHT TO REMAIN SILENT AND I'M NOT GOING TO INFRINGE
22 ON THAT, SO THAT IS KIND OF ALL I CAN SAY ABOUT THAT
23 OTHER THAN THIS IS SORT OF PUTTING THE CART BEFORE
24 THE HORSE

25 MR BAITY WELL, I DON'T THINK SO

1 CERTAINLY BY HIS NOT GUILTY PLEA HE IS DENYING
2 IMPLICITLY AND EXPLICITLY THE ALLEGATIONS THAT OR THE
3 STATEMENTS THAT HE MADE I MEAN, CLEARLY IF HE WERE
4 EMBRACING THOSE STATEMENTS AND NOT DISPUTING THEM WE
5 WOULD NOT BE HERE TODAY

6 YOUR HONOR, WITH RESPECT TO AN EARLIER
7 STATEMENT OF MR BRACKETT SAID THAT, ABOUT SPECIFIC
8 EXAMPLES AND SO FORTH, OUR SUPREME COURT IN THE CASE
9 OF THE STATE VERSUS WESLEY MAX MYERS AND I CAN HAND A
10 COPY OF THAT UP IF IT PLEASES THE COURT YOUR HONOR,
11 THIS IS A CASE, IT'S A 2004 CASE, IN WHICH THIS
12 PARTICULAR WITNESS WAS QUALIFIED BY JUDGE BROWN AND
13 TESTIFIED AT THE HEARING NOW THE ISSUE THAT WAS
14 BROUGHT UP ON APPEAL WAS THE DEFENDANT WAS CONVICTED
15 DESPITE DR KASSIN'S TESTIMONY AND THE DEFENSE
16 APPEALED THE CONVICTION AND BASICALLY COMPLAINED THAT
17 DR KASSIN WAS NOT ALLOWED BY JUDGE BROWN TO GO INTO
18 ANECDOTES OR INTO SPECIFIC CASE STUDIES AND TO GO
19 INTO OTHER EXAMPLES THAT HE HAS STUDIED IN THE COURSE
20 OF HIS WORK AND THE SUPREME COURT IN THAT DECISION
21 SAID NOTHING ABOUT THAT THIS IS, YOU KNOW,
22 UNRECOGNIZED SCIENCE AND HE SHOULDN'T HAVE BEEN ABLE
23 TO TESTIFY IN THE FIRST PLACE, AND SPECIFICALLY SAID,
24 WELL, ONE OF THE CASES HE TESTIFIED ABOUT WAS VERY
25 RELEVANT AND CERTAINLY SHOULD HAVE COME IN AND THEN

1 QUITE FRANKLY ANOTHER CASE THAT HE TESTIFIED HAD NO
2 CONNECTION OR, OR NO FACTUAL NEXUS AT ALL TO IT AND
3 SHOULDN'T HAVE BEEN LET IN BUT HE WAS ALLOWED TO
4 TESTIFY ON THAT AS WELL, SO IT'S IN A BACKWARDS WAY
5 BUT THE COURT MORE OR LESS SANCTIONED THE IDEA OF THE
6 USE OF SOME EXAMPLES BY FALSE CONFESSION EXPERT OR
7 SOCIAL PSYCHOLOGIST COMMENTING ON POLICE
8 INTERROGATION, THAT IT MORE OR LESS SANCTIONED THE
9 USE OF THAT AND MORE OR LESS GAVE THE TRIAL COURT
10 SOME GUIDELINES AND SAYING IF YOU WANT TO GO INTO
11 EXAMPLES THAT WOULD BE APPROPRIATE FOR A SOCIAL
12 PSYCHOLOGIST TO COMMENT ON OTHER CASE STUDIES THAT
13 HAVE A FACTUAL CONNECTION WITH THE CASE AT BAR, BUT
14 SHOULDN'T BE GOING INTO SOMETHING THAT'S COMPLETELY
15 IRRELEVANT NOW TO ME THAT IS AN IMPLICIT ACCEPTENCE
16 OF THE SCIENCE OF THIS TYPE TESTIMONY IT'S AN
17 IMPLICIT ACCEPTENCE BY THE COURT THAT THIS IS, COULD
18 BE, COULD ASSIST THE TRIER OF FACT IT MORE OR LESS
19 CREATES RULES AND GUIDELINES FOR THIS TYPE OF
20 TESTIMONY AND I THINK THE COURT CERTAINLY COULD HAVE
21 SAID, YOU SHOULDN'T HAVE HAD THIS GUY HERE IN THE
22 FIRST PLACE AND THEY DIDN'T SAY THAT THEY JUST
23 SAID, WELL, IT'S OKAY IF HE TESTIFIES TO THIS, HE
24 SHOULDN'T BE DOING THIS, AND OF COURSE THEY DID NOT
25 GRANT THE APPEAL BUT THEY DID COMMENT ON THE WAY THAT

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1 THE TESTIMONY WAS RECEIVED AND THE APPROPRIATENESS OF
2 THAT, SO I WOULD CERTAINLY POINT OUT THAT CASE AS
3 BEING VERY RECENT, A VERY RECENT PRONOUNCEMENT OF THE
4 SUPREME COURT, NOT ONLY ON THIS SAME SUBJECT BUT ON
5 THIS SAME WITNESS, YOUR HONOR

6 MR GREELEY YOUR HONOR, IF I MAY
7 THE COURT GIVE ME JUST ONE SECOND IT
8 LOOKS LIKE THE TRIAL COURT REALLY DOESN'T ADDRESS THE
9 USE OF CASES ONE WAY OR THE OTHER

10 MR BAITY THE TRIAL COURT?

11 THE COURT NO, I'M TALKING ABOUT THE
12 APPELLATE COURT SAID THAT THE TRIAL COURT, SAID HE
13 COULDN'T TESTIFY AS TO SPECIFIC CASES AND THEN SAID
14 HE WENT AHEAD AND TESTIFIED ABOUT THEM ANYWAY AND
15 SAYS, DR KASSIN WAS ABLE TO TESTIFY AT LENGTH ABOUT
16 FALSE AND COERCED CONFESSIONS AND HE WAS ABLE TO
17 TOUCH BRIEFLY ON THE CONNECTICUT CASE AND KASSIN DID
18 TESTIFY ABOUT THE SPECIFIC CASES, HE JUST DID NOT USE
19 NAMES

20 MR BAITY YES, SIR IN THE FOOTNOTES OF
21 THAT OPINION, YOUR HONOR, THE COURT DID SAY THAT HIS
22 REFERENCE TO THE INDIANA CASE SHOULD NOT HAVE BEEN
23 ALLOWED BECAUSE IT HAD NO CONNECTION TO THE CASE AT
24 BAR IN THAT CASE THAT IS IN THERE

25 THE COURT WELL, WHAT CASES IS HE---LET

1 ME ASK YOU THIS, ARE YOU PRESENTING TO THE COURT OR
2 ARE YOU OR ARE YOU NOT PRESENTING TO THE COURT THAT
3 DR KASSIN IS GOING TO TESTIFY ABOUT ANY PARTICULAR
4 CASE?

5 MR BAITY I'M SORRY, YOUR HONOR?

6 THE COURT IS HE GOING TO TESTIFY ABOUT A
7 PARTICULAR CASE?

8 MR BAITY FRANKLY, IN MY DIRECT I DON'T
9 KNOW THAT HE IS I HAVEN'T, WE HAVEN'T DISCUSSED
10 THAT WE HAVE DISCUSSED THAT HE IS GOING TO TALK
11 GENERALLY ABOUT THE SCIENCE AND THE METHODOLOGY AND
12 THE HALLMARKS THAT HE HAS OBSERVED, AND YOUR HONOR,
13 HE AND I HAVE DISCUSSED THE NECESSITY OF NOT JUST
14 SPEWING OUT A BUNCH OF ANECDOTES BUT TO SPECIFICALLY
15 RESPOND TO RELEVANT FACTS AND RELEVANT QUESTIONS I
16 DON'T THINK THAT HE'S GOING TO TESTIFY, CERTAINLY NOT
17 MY PLAN AND I DON'T HAVE IT IN MY NOTES, TO CALL ANY
18 REFERENCE TO ANY SPECIFIC OTHER CASE HE'S GOING TO
19 TALK ABOUT GENERALLY THE SCIENCE THAT IS RECOGNIZED,
20 CERTAIN HALL, MARKS AND CERTAIN FACTORS THAT ARE
21 COMMON TO KNOWN CASES OF FALSE CONFESSION

22 THE COURT ALL RIGHT WELL, I'LL FIND
23 THAT THE EVIDENCE WILL ASSIST THE JURY, THAT HE IS
24 QUALIFIED THE UNDERLYING SCIENCE DOES APPEAR IN
25 THIS POINT IN HISTORY TO BE RELIABLE EVEN THOUGH IN

1 1997 THIS SAME WITNESS SAYS IT WAS NOT I FIND THAT
2 THE PROBATIVE VALUE IS NOT OUTWEIGHED BY THE
3 PREJUDICIAL VALUE BUT THE WITNESS CANNOT TESTIFY
4 ABOUT PARTICULAR CASES UNLESS THEY ARE ON ALL FOURS
5 WITH THIS PARTICULAR CASE, AND YOU'VE TOLD ME THAT,
6 PRETTY MUCH INDICATED THAT YOU DON'T KNOW OF ANY

7 MR BAITY I HAVE NOT, I AM NOT GOING TO
8 ASK HIM ABOUT THOSE, YOUR HONOR I DON'T KNOW
9 EVERYTHING THAT THIS MAN IS GOING TO TESTIFY

10 THE COURT I KNOW BUT HE'S HERE
11 LISTENING, IF HE STARTS GOING INTO THAT, I'M NOT
12 FINDING FAULT WITH YOU, YOU WANT TO DEFEND YOUR
13 POSITION, BUT EARLIER WHEN I ASKED WHAT HE WAS GOING
14 TO TESTIFY IN THIS CASE, HE WENT OFF INTO JUSTIFYING
15 FROM OTHER CASES AND AGAIN I'M JUST TELLING YOU, IF
16 HE STARTS DOING THAT I'M GOING TO STOP HIM I'M NOT
17 EVEN GOING TO LET THEM OBJECT, I AM GOING TO STOP HIM
18 AND IF HE GOES, IF HE CAN'T TESTIFY WITHOUT VIOLATING
19 MY RULES, THEN I'M STOP HIM ENTIRELY

20 MR BAITY YES, SIR, YOUR HONOR IF I
21 COULD JUST MAKE ONE POINT, SIR THERE MAY BE A
22 FACTOR IN THIS CASE THAT IS PRECISELY THE SAME IT
23 MAY NOT BE A CASE WHERE THERE IS TWO DEFENDANTS AND
24 THE DNA IS ON ONE AND THERE IS A CONFESSION ON THE
25 OTHER, I MEAN, I DON'T KNOW OF ANY CASES THAT ARE

1 PRECISELY ON ALL FOURS IN THAT REGARD, HOWEVER, THERE
2 MAY BE CASES WHERE SOMEONE DID MAKE A CONFESSION THAT
3 CERTAIN TYPE FACTORS ARE IN THAT WOULD MATCH THE
4 CIRCUMSTANCES THAT ARE IN THIS CASE

5 THE COURT WELL, LET ME TELL YOU ONE OF
6 THE CONCERNS THAT I HAVE, HASN'T BEEN ARTICULATED BY
7 THE SOLICITOR BUT I'M SURE IT'S IN HIS MIND, IF
8 MR COPE'S COUNSEL PARADES OUT BEFORE THE JURY A
9 HORRIBLE STRING OF INJUSTICE, THAT IS ALL OF THESE
10 INDIVIDUALS WHO HAVE, IN SPITE OF OVERWHELMING DNA
11 AND BEING IN JAIL WHEN IT HAPPENED, CONFESSED, THEN
12 THAT PREJUDICIAL VALUE DOES OUTWEIGH THE PROBATIVE
13 VALUE THAT'S NOT GOING TO HELP THAT JURY TO HAVE
14 ANY, YOU KNOW, INQUIRE MAGAZINE KIND OF, AND AGAIN I
15 SAY THAT, I DON'T USE THAT, I GUESS I'M TOO
16 EXPRESSIVE SOMETIMES, BUT TO GO THROUGH A LITANY OF
17 HORROR CASES, CASES OF HORROR AS TO PEOPLE ON DEATH
18 ROW WHO ARE SITTING IN THE CHAIR WHEN THE GOVERNOR
19 FOUND OUT THAT THE DNA AND THIS PERSON HAD CONFESSED,
20 I'M NOT GOING TO TOLERATE THAT SO WITH THOSE
21 GUIDELINES I'M GOING TO LET HIM TESTIFY WE'RE GOING
22 TO TAKE A SHORT BREAK BEFORE WE DO MR GREELEY

23 MR GREELEY I'VE BEEN QUIET IF I MAY
24 JUST --

25 THE COURT YOU CERTAINLY HAVE

1 MR GREELEY YOUR HONOR, JUST IN REPLY TO
2 ONE OF THE THINGS MR BAITY BROUGHT UP, HE MENTIONED
3 HIS CLIENT HAS PLEAD NOT GUILTY AND ABOUT HOW THAT IS
4 IN ITSELF AN ASSERTION THAT THE CONFESSION IS FALSE
5 I WOULD LIKE TO SUBMIT TO THE COURT THAT'S NOT TRUE
6 WHEN A DEFENDANT, I'VE BEEN DOING THIS FOR AWHILE,
7 WHEN A DEFENDANT ENTERS A PLEA OF NOT GUILTY HE IS
8 TELLING THE STATE YOU'VE MADE YOUR ALLEGATION, YOU
9 NEED TO PROVE YOUR ALLEGATION IT IS NOT AN
10 AFFIRMATIVE ADDRESS TO ANY PARTICULAR PIECE OF
11 EVIDENCE THAT THE STATE MAY HAVE AND IT'S NOT EVEN A
12 CLAIM OF INNOCENCE, IT'S A PLEA OF NOT GUILTY, AND SO
13 THE FACT THAT MR COPE HAS ENTERED A PLEA OF NOT
14 GUILTY DOES NOT AFFIRMATIVELY ADDRESS THE CONFESSIONS
15 AND THUS DOES NOT BY IMPLICATION MAKE THEM FALSE AND
16 SO WE STILL HAVE THE RELEVANCY ISSUE

17 THE COURT WELL, I UNDERSTAND THAT, BUT I
18 BELIEVE THE PLEA OF NOT GUILTY AT LEAST PUTS ALL
19 THOSE ISSUES INTO PLAY AND I AGREE EXACTLY WHAT YOU
20 SAY, IT SIMPLY PLACES THE BURDEN ON THE STATE TO
21 PROVE HIM GUILTY OF THESE BEYOND A REASONABLE DOUBT,
22 BUT I FIND IT IS RELEVANT WE'LL TAKE A SHORT BREAK

23 MR BAITY THANK YOU, YOUR HONOR

24 (COURT'S IN RECESS AT 2 19 PM)

25 (COURT RESUMES AT 2 26 PM)

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1 THE COURT MR BAITY, YOU ARE TENDERING
2 HIM AS A, IN SOCIAL PSYCHOLOGY WITH FOCUS ON
3 INTERVIEWING AND INTERROGATION

4 MR BAITY YES, SIR, INTERROGATION,
5 THAT'S CORRECT

6 THE COURT BRING IN THE JURY

7 (THE JURY RETURNS TO THE COURTROOM AT
8 2 30 PM)

9 THE COURT MEMBERS OF THE JURY PANEL, I
10 HAVE FOUND DR KASSIN TO BE QUALIFIED IN THE AREA OF
11 SOCIAL PSYCHOLOGY WITH THE FOCUS ON INTERROGATION AND
12 INTERVIEWS

13 MR BAITY THANK YOU, YOUR HONOR MAY IT
14 PLEASE THE COURT

15 DIRECT EXAMINATION BY MR BAITY

16 Q DR KASSIN, HAVE YOU PREPARED A CURRICULUM VITAE
17 RECENTLY?

18 A YES, I HAVE

19 Q I ASK YOU IF YOU RECOGNIZE THAT DOCUMENT AND I
20 HAVE ALREADY PROVIDED THIS TO COUNSEL?

21 A YES

22 Q IS THIS YOUR CV?

23 A THIS IS THE C

24 MR BAITY YOUR HONOR, AT THIS TIME I
25 WOULD OFFER HIS CV INTO --

002441

1 MR BRACKETT NO OBJECTION

2 MR GREELEY NO OBJECTION

3 THE COURT BE RECEIVED WITHOUT OBJECTION

4 (DEFENSE EXHIBIT NUMBER 66 CURRICULUM

5 VITAE RECEIVED INTO EVIDENCE)

6 Q DR KASSIN, WHAT AREAS OF SPECIALIZATION SERVE
7 AS A BASIS FOR THE STUDY OF CONFESSIONS?

8 A EARLY SOCIAL AND COGNITIVE PSYCHOLOGY

9 Q AND PLEASE SPEAK UP SO WE CAN ALL HEAR YOU
10 WHAT IS THE SUBJECT MATTER OF SOCIAL PSYCHOLOGY

11 A SOCIAL PSYCHOLOGISTS STUDY PERSUASION, WE STUDY
12 COMPLIANCE, CONFORMITY, OBEDIENCE TO AUTHORITY WE
13 STUDY THE WAYS IN WHICH SOCIAL FORCES INFLUENCE
14 PEOPLE AND THEIR BEHAVIOR

15 Q AND WHAT IS THE SUBJECT MATTER OF COGNITIVE
16 PSYCHOLOGY?

17 A COGNITIVE PSYCHOLOGISTS STUDY, THEY ARE THE
18 PSYCHOLOGISTS THAT ACTUALLY DO STUDY THE MIND THEY
19 STUDY THINKING AND LANGUAGE AND MEMORY COGNITIVE
20 PSYCHOLOGISTS HAVE STUDIED THE WAYS IN WHICH PEOPLE
21 PROCESS INFORMATION THEN MAKE DECISIONS ON THE BASIS
22 OF THAT INFORMATION

23 Q AND ARE YOU FAMILIAR WITH ALL OF THOSE SUBJECTS?

24 A YES, I AM

25 Q AND IS THE STUDY OF CONFESSIONS, THE STUDY OF

1 CONFESSIONS, AN AREA THAT YOU ARE ALSO FAMILIAR WITH?

2 A YES

3 Q WHAT WERE YOU ASKED TO DO IN THIS CASE, DR
4 KASSIN?

5 A BASICALLY TO DETERMINE WHETHER OR NOT -- IN
6 LOOKING AT THE MATERIALS WHETHER OR NOT THERE WAS A
7 RELEVANT SCIENCE THAT COULD BE APPLIED TO HELP
8 UNDERSTAND THESE MATERIALS AND MY ANSWER WAS YES

9 Q AND WHAT WERE SOME OF THE MATERIALS THAT YOU
10 USED AND RELIED UPON IN THIS CASE?

11 A MY PRIMARY MATERIALS WERE THE DEFENDANT'S
12 STATEMENTS THERE WERE THREE HANDWRITTEN -- WELL,
13 TWO HANDWRITING AND, TWO HANDWRITTEN STATEMENTS,
14 TYPED STATEMENTS, AND THEN THERE WAS AN AUDIO TAPE
15 ACCOMPANIED BY A TRANSCRIPT AND THE VIDEO TAPE
16 RE-ENACTMENT, SO ESSENTIALLY THAT WAS THE MAIN
17 MATERIAL

18 IN ADDITION I LOOKED AT THE POLICE
19 REPORTS, I LOOKED PRIOR TESTIMONY FROM DETECTIVES
20 BAKER, BLACKWELDER, WALDROP, AND I FORGET WHO THE
21 FOURTH

22 Q CABANISS?

23 A CABANISS THAT'S RIGHT, CAPTAIN CABANISS I
24 LOOKED AT POLICE REPORTS, I LOOKED AT THOSE PRIOR
25 TESTIMONIES, AND ALL OF THE DEFENDANT'S STATEMENTS

1 I'M TRYING TO THINK IF THERE WAS ANYTHING ELSE I
2 THINK THAT'S IT

3 Q WERE YOU FAMILIAR WITH THE POLYGRAPH EXAM THAT
4 WAS --

5 A YES

6 Q ---GIVEN TO MR COPE IN THIS CASE?

7 A YES

8 Q WERE YOU GIVEN A COPY OF THE STATEMENT THAT WAS
9 GIVEN BY THE POLYGRAPH EXAMINER?

10 A I WAS GIVEN DETECTIVE BAKER'S STATEMENT, THE
11 PROTOCOL, YES

12 Q ALL RIGHT

13 A AS WELL AS HIS TESTIMONY

14 Q ALL RIGHT WERE THERE ANY MATERIALS THAT YOU
15 WOULD HAVE LIKED TO HAVE HAD BUT YOU WERE NOT
16 PROVIDED?

17 A WELL, THEY WERE NOT AVAILABLE IN AN IDEAL
18 WORLD I WOULD HAVE LIKED TO HAVE HAD A VIDEO TAPE
19 VIDEO OF THE ENTIRE INTERVIEW AND INTERROGATION

20 Q AND TO YOUR KNOWLEDGE THERE IS NO SUCH THING?

21 A TO MY KNOWLEDGE IT WAS VERY SELECTIVE THERE
22 WAS THAT ONE AUDIO TAPE AND THEN SOME OFF TAPE
23 INTERVIEWS BEFORE AND AFTER AND THEN THERE WAS THAT
24 ONE VIDEO TAPE RE-ENACTMENT WITH OFF TAPE MATERIAL
25 BEFORE AND AFTER, SO IT WAS PIECE MEAL

002444

1 Q ALL RIGHT, SIR AND YOU RECEIVED THIS
2 INFORMATION FROM MY OFFICE AND FROM MR MORTON'S
3 OFFICE, IS THAT CORRECT?

4 A YES, THAT'S CORRECT

5 Q AND WE CAME TO VISIT WITH YOU IN MASSACHUSETTS
6 TO PROVIDE YOU WITH THAT MATERIAL?

7 A YES

8 Q DID YOU PERSONALLY INTERVIEW THE DEFENDANT BILLY
9 WAYNE COPE?

10 A NO

11 Q WHY DID YOU NOT INTERVIEW HIM OR SEEK TO
12 INTERVIEW HIM?

13 A WELL, IT'S NOT MY ROLE TO JUDGE HIM OR HIS
14 STATEMENT IT WAS MY ROLE, I FELT, TO APPLY THE
15 RELEVANT SCIENCE WHICH DOESN'T REQUIRE MY
16 INTERVIEWING OF A DEFENDANT BUT SIMPLY TO TALK ABOUT
17 THE EXPERIENCES AND THE MATERIALS THAT I RELY ON
18 ARE NOT FOR EXAMPLE WHAT THE DEFENDANT WOULD TELL ME
19 HAPPENED, BUT WHAT I CAN DETERMINE HAPPENED FROM
20 ACTUAL OBJECTIVE MATERIALS, SO THE TAPES AND THE
21 TRANSCRIPTS AND THE MATERIALS THAT CAN ACTUALLY BE
22 USED OBJECTIVELY WITHOUT SOMEONE ELSE'S SELF REPORT,
23 THAT'S THE MATERIAL THAT I RELY ON, AND THAT'S THE
24 REASON A FULL VIDEO TAPED PROTOCOL WOULD HAVE BEEN
25 IDEAL

002445

1 Q DOCTOR, IS IT TRUE THAT SOMETIMES PEOPLE CONFESS
2 TO CRIMES THAT THEY DID NOT COMMIT?

3 A YES

4 Q AND HOW OFTEN WOULD YOU ESTIMATE THAT THIS
5 OCCURS?

6 A CAN'T ESTIMATE OTHERS HAVE TRIED I THINK
7 IT'S NOT POSSIBLE TO DERIVE A NUMBER PART OF THE
8 PROBLEM IS THAT WE KNOW MORE ABOUT POST CONVICTION
9 DNA EXONERATIONS FOR EXAMPLE FOR WHICH PEOPLE HAVE
10 CONFESSED, WE HAVE COME TO KNOW WHAT THOSE NUMBERS
11 LOOK LIKE, WHAT WE KNOW LESS ABOUT, SITUATIONS IN
12 WHICH PEOPLE CONFESS TO CRIMES WHICH THEY DIDN'T
13 COMMIT AND THEN WERE EXONERATED AND NEVER TRIED AND
14 THERE IS A WHOLE NUMBER OF THOSE CASES AND WE KNOW
15 LESS ABOUT VERY, VERY LOW PROFILE CASES THAT NEVER
16 REALLY REACH MEDIA OR SOCIAL SCIENTIFIC ATTENTION
17 SO THERE IS AN INVISIBLE NUMBER OF CASES THAT HAVE
18 LEAD SOME RESEARCHERS RECENTLY WHO REVIEWED 125
19 RECENT FALSE CONFESSIONS CASES TO ARGUE THAT THAT
20 SAMPLE THAT THEY WERE LOOKING AT WAS THE TIP OF A
21 MUCH LARGER ICEBERG, BUT THEY ACKNOWLEDGED AS I WOULD
22 THAT NOBODY REALLY KNOWS THE SIZE OF THAT ICEBERG
23 Q ALL RIGHT NOW YOU MENTION THE TERM FALSE
24 CONFESSION, HOW DO YOU KNOW IN YOUR STUDY IN THE
25 COURSE OF YOUR FOCUS IN YOUR CAREER HOW DO YOU KNOW

002446

1 WHEN A CONFESSION IS FALSE?

2 A THE ONLY WAY TO KNOW IF A CONFESSION IS FALSE IS
3 TO KNOW THE FINAL OUTCOME ON A PARTICULAR CASE, SO
4 FOR EXAMPLE THERE ARE CASES IN WHICH SOMEBODY
5 CONFESSES TO A CRIME, THEY OFTEN GIVE A VERY DETAILED
6 CONFESSION OF WHAT THEY DID, AND THEN AT SOME POINT
7 AFTERWARD IT IS DISCOVERED THAT THAT CRIME WAS NEVER
8 ACTUALLY COMMITTED IN THE FIRST PLACE AND SO THERE
9 ARE THOSE TYPES OF EXAMPLES WHERE IT TURNS OUT THAT
10 CRIME NEVER OCCURRED AND THAT PERSON IS RELEASED AND
11 TYPICALLY NOT TRIED WHICH AGAIN THOSE BECOME PART OF
12 A POPULATION OF CASES THAT WOULDN'T MAKE IT INTO A
13 NUMBER

14 THEN THERE ARE CASES WHERE A PERSON GIVES
15 A CONFESSION TO A CRIME, AGAIN OFTEN VERY, VERY
16 DETAILED CONFESSION TO A CRIME AND OFTEN STATEMENTS
17 ABOUT WHY THEY DID WHAT THEY DID, ONLY LATER TO FIND
18 OUT THAT ANOTHER CULPRIT IS APPREHENDED OR STEPS
19 FORWARD AND GIVES A CONFESSION OR EVIDENCE THAT WAS
20 NOT OTHERWISE AVAILABLE SHOWING THE INNOCENCE OF THE
21 FIRST PERSON THERE ARE A WHOLE NUMBER OF THOSE
22 TYPES OF CASES

23 THEN THERE ARE A NUMBER OF CASES IN WHICH
24 SCIENTIFIC EVIDENCE, LIKE DNA, SHOWS IN FACT THAT THE
25 PERSON WHO GAVE THE CONFESSION, OFTEN A VERY DETAILED

1 STATEMENT, WAS NOT THE CULPRIT, WAS NOT THE
2 PERPETRATOR SO THOSE ARE THE METHODS AND THESE
3 AGAIN ARE CASES THAT HAVE BEEN RESOLVED SO THAT THERE
4 ISN'T A DISPUTE

5 Q SO WHEN YOU REFER TO FALSE CONFESSIONS THAT YOU
6 HAVE STUDIED, THESE ARE THE TYPES OF CASES THAT YOU
7 HAVE STUDIED, IS THAT WHAT YOU ARE SAYING?

8 A YES

9 Q THAT HAVE BEEN SHOWN IN THE METHOD THAT YOU JUST
10 DESCRIBED TO BE UNTRUE OR INCORRECT?

11 A CORRECT

12 Q ARE THERE DIFFERENT TYPES OR KINDS OF FALSE
13 CONFESSIONS?

14 A YES

15 Q COULD YOU EXPLAIN WHAT THOSE ARE?

16 A SEVERAL YEARS AGO AND THIS GOES BACK ABOUT 20
17 YEARS WHEN I WAS LOOKING INTO THE TOPIC OF FALSE
18 CONFESSIONS AND THAT WAS THE POINT AT WHICH I
19 REALIZED IT WAS ABSOLUTELY IMPOSSIBLE TO DERIVE AN
20 HONEST ESTIMATE OF HOW OFTEN THIS HAPPENS WE KNOW
21 IT HAPPENS WITH SOME REGULAR FREQUENCY BUT WE DON'T
22 KNOW THE SIZE OF THAT FREQUENCY WHAT I DID DO IS GO
23 BACK OVER THE PAGES OF HISTORY LOOKING AT ACTUAL
24 KNOWN CASE STUDIES OF FALSE CONFESSIONS, PEOPLE WHO
25 WERE FOUND INNOCENT SUBSEQUENT TO CONFESSING, AND I

1 FOUND THAT THEY NATURALLY SERVED THEMSELVES INTO
2 THREE PILES AND I DID THIS WORK WITH A
3 PROFESSOR/MENTOR PROFESSOR LAWRENCE WRIGHTSMAN OF THE
4 UNIVERSITY OF KANSAS AND WHAT WE DISCOVERED WAS THAT
5 THERE WERE THREE TYPES OF FALSE CONFESSIONS
6 ESSENTIALLY AND THERE ARE DIFFERENT WAYS YOU CAN
7 CATEGORIZE, IT'S KIND OF LIKE, YOU KNOW, THE SLICES
8 OF A PIE, YOU CUT IT IN DIFFERENT WAYS, BUT
9 ESSENTIALLY WHAT WE FOUND IS THERE ARE A CATEGORY OF
10 KNOWN VOLUNTARY FALSE CONFESSIONS THESE SEEM KIND
11 OF PUZZLING BUT EVERY NOW AND THEN WE COME ACROSS A
12 CASE AND IT TURNS OUT A SIZABLE NUMBER OF THESE WHERE
13 PEOPLE CONFESS VOLUNTARILY TO CRIMES THEY DIDN'T
14 COMMIT THEY WEREN'T PRESSURED INTO IT, THEY WEREN'T
15 INTERROGATED FOR LONG HOURS, THEY SIMPLY WALKED IN OR
16 CALLED IN A CONFESSION AN EXAMPLE, A HISTORIC
17 EXAMPLE WHEN CHARLES LINDBERGH'S BABY WAS KIDNAPPED
18 IN THE 1930'S 200 PEOPLE CALLED IN CONFESSIONS
19 NOW AS A SOCIAL PSYCHOLOGIST I'M
20 INTERESTED IN THE SITUATIONS THAT MAKE PEOPLE BEHAVE
21 AND THE SITUATIONS THAT LEAD PEOPLE TO MAKE CERTAIN
22 DECISIONS A VOLUNTARY FALSE CONFESSION SAYS MORE
23 ABOUT THE CONFESSOR THAN IT DOES ABOUT THE SITUATION
24 HE'S IN, SO IT TURNS OUT THAT THE REASONS PEOPLE GIVE
25 VOLUNTARY FALSE CONFESSIONS, SOMETIMES IT'S TO

1 PROTECT SOMEBODY ELSE, SOMETIMES THEY ARE FEELING
2 GUILTY ABOUT SOMETHING THEY'VE DONE IN THE PAST OR
3 GUILTY ABOUT MAYBE NOT BEING THERE FOR THE VICTIM IN
4 THIS PARTICULAR CRIME, SOMETIMES THEY SIMPLY WANT TO
5 GET ATTENTION IT'S NOT UNCOMMON FOR PEOPLE TO
6 CONFESS TO HIGH PROFILE CRIMES THAT ARE ON TV AND IN
7 THE NEWS AND SO THERE ARE A NUMBER OF DIFFERENT
8 REASONS AND MY READING OF THOSE CASES TELLS ME THE
9 POLICE ARE PRETTY GOOD GENERALLY AT BEING ABLE TO
10 SORT OUT THOSE VOLUNTARY CONFESSIONS THAT ARE FALSE
11 FROM THOSE THAT HAVE SOME TRUTH TO THEM AND THE WAY
12 THEY DO THAT IS TO SEEK OUT CORROBORATION THEY ASK
13 THEMSELVES QUESTIONS LET'S LOOK AT THE STATEMENT
14 THAT'S BEING GIVEN TO ME VOLUNTARILY, IS THAT
15 STATEMENT CLEAR AND CONSISTENT OR DOES IT CONTRADICT
16 ITSELF IN ODD WAYS DOES THAT STATEMENT MATCH THE
17 ACTUAL KNOWN FACTS OF THE CRIME AND TYPICALLY
18 BECAUSE THIS IS COMMON POLICE PRACTICE IN
19 INTERVIEWING A SUSPECT YOU'D WANT TO KNOW THAT THE
20 SUSPECT IS ABLE TO PROVE THE GUILT BEHIND THE
21 ADMISSION THAT I DID IT AND HOW DO YOU PROVE GUILT?
22 WELL, YOU DON'T TELL THE SUSPECT CERTAIN THINGS ABOUT
23 THE CRIMES, CERTAIN PRIVILEGED DETAILS SO ONLY THE
24 PERPETRATOR CAN KNOW THOSE DETAILS AND WHAT POLICE
25 ARE OFTEN PRETTY GOOD AT DOING WHEN A VOLUNTARY FALSE

1 CONFESSION COMES IN, AND I'VE SEEN MULTIPLE VOLUNTARY
2 FALSE CONFESSIONS IN A SINGLE CASE, IS THEY DEMAND
3 CORROBORATION THEY ASK A SUSPECT THE CONFESSOR TO
4 ESSENTIALLY PROVE IT, TO PROVE TO ME THAT YOU WERE
5 THERE, PROVE TO ME THAT YOU KNOW THINGS THAT NOBODY
6 ELSE COULD HAVE KNOWN EXCEPT FOR THE PERPETRATOR
7 AND SO IN A CASE LIKE THAT THEY DEMAND THAT THE
8 CONFESSOR GIVE THEM INFORMATION THEY DIDN'T ALREADY
9 KNOW OR LEAD THEM TO EVIDENCE LIKE A WEAPON OR
10 CLOTHING OR A PURSE THAT THEY DIDN'T ALL READY HAVE
11 AND SO THERE ARE A NUMBER OF THESE CASES OUT THERE
12 THEY REALLY ARE THE DOMAIN MORE FOR A CLINICAL
13 PSYCHOLOGIST WHO STUDIES MENTAL ILLNESS, PEOPLE WHO
14 HAVE A PATHOLOGICAL NEED FOR FAME OR RECOGNITION OR
15 ATTENTION THAN A SOCIAL PSYCHOLOGIST, BUT THERE IS
16 THAT CATEGORY AND IT IS SUBSTANTIAL

17 THE OTHER TWO CATEGORIES OF CONFESSIONS
18 THAT -- I HOPE I'M NOT TALKING FOR TOO LONG

19 Q NO

20 A ARE THE KINDS OF CONFESSIONS THAT COME FROM
21 INTERROGATION, POLICE INDUCED TYPES OF CONFESSIONS,
22 AND HERE THERE WERE TWO TYPES THE MOST COMMON SENSE
23 TYPE, PSYCHOLOGICALLY THE TYPE THAT WE ALL COULD
24 UNDERSTAND, ARE WHAT WE REFER TO IN 1985 AS COERCED
25 COMPLIANT FALSE CONFESSIONS COMPLIANCE IS A TERM

1 THAT SOCIAL PSYCHOLOGISTS USE TO DESCRIBE WHAT PEOPLE
2 SOMETIMES DO WHEN THEY GO ALONG WITH THE CROWD OR
3 OBEY A COMMAND, PRIVATELY THEY DON'T AGREE WITH IT,
4 PRIVATELY THEY KNOW WHAT THE TRUTH IS, BUT PUBLICLY
5 THEY GO ALONG BECAUSE THEY JUST DON'T WANT TO STAND
6 OUT THEY DON'T WANT TO BE RIDICULED COMPLIANCE,
7 THAT TERM, APPLIED TO COERCED COMPLIANT FALSE
8 CONFESSIONS, THESE ARE CONFESSIONS WHERE SOMEBODY
9 MIGHT CONFESS TO A CRIME COMPLETELY KNOWING HE'S
10 INNOCENT BUT HE'S IN A SITUATION WHERE BECAUSE OF A
11 COMBINATION OF STRESS AND THE KINDS OF INTERROGATION
12 TACTICS THAT ARE USED THE SITUATION HAS JUST GOTTEN
13 SO UNPLEASANT FOR SO LONG THAT THE SUSPECT IS LOOKING
14 FOR A WAY OUT AND SO HE GIVES A CONFESSION IN THE
15 HOPE OF TERMINATING A BAD SITUATION OR AVOIDING SOME
16 THREATENED OR IMPLIED HARM OR TRYING TO GAIN SOME
17 REWARD, MAYBE GAINING LENIENCY, AND DOES IT KNOWING
18 THAT HE'S INNOCENT PRIVATELY HE KNOWS WE KNOW
19 THOSE CASES BECAUSE THE MOMENT THE PERSON LEAVES THIS
20 PRESSURE FILLED SITUATION USUALLY TURNS TO A LAWYER
21 AND SAYS I CONFESSED BUT I DIDN'T DO IT AND THOSE
22 ARE THE KINDS OF STATEMENTS, THOSE ARE THE KINDS OF
23 CONFESSIONS THAT ARE PROBABLY THE MOST COMMON OF
24 FALSE CONFESSIONS THESE WERE EXHIBITED, TO GIVE ONE
25 EXAMPLE JUST LIKE THAT IN THE RECENT CENTRAL PARK

1 JOGGER CASE THIS IS A CASE IN 1989

2 MR BRACKETT YOUR HONOR, I OBJECT

3 THE COURT I SUSTAIN THE OBJECTION MOVE

4 ON

5 MR BAITY YOUR HONOR --

6 MR MORTON ONE SECOND

7 MR BAITY YOUR HONOR, COULD WE TAKE UP

8 SOMETHING OUTSIDE THE PRESENCE OF THE JURY

9 THE COURT LET THE JURY GO TO THE JURY
10 ROOM

11 (THE JURY EXITS THE COURTROOM AT 02 46
12 PM)

13 THE COURT I THOUGHT I MADE IT CLEAR THAT
14 I WOULDN'T ALLOW TESTIMONY REGARDING FACTORS IN A
15 CONFESSION, AND I THOUGHT I MADE IT CLEAR THAT I DID
16 NOT WANT TESTIMONY THAT, I HATE TO USE SENSATIONAL,
17 BUT BORDERS ON SENSATIONAL I DON'T WANT THIS JURY
18 PUT IN FEAR THAT THEY ARE GOING TO HAVE TO LIVE THE
19 REST OF THEIR LIVES IF THEY PUT AN INNOCENT MAN IN
20 JAIL BECAUSE THE JOGGERS AND ALL THIS OTHER STUFF
21 HAPPENED I WANT THEM, IF YOU WANT TO HELP THE JURY,
22 THEN I THOUGHT MY RULING WAS GIVE THEM THE TOOLS, NOT
23 THE EXAMPLES I THOUGHT THAT'S WHAT I RULED

24 MR BAITY YES, YOUR HONOR, AND IF I MAY,
25 THE POINT THAT WE'RE TRYING TO MAKE HERE IS THAT THIS

1 IS A RELATIVELY RECENT SCIENCE THAT'S HEAVILY
2 DEPENDENT ON CASE STUDY AND THAT THE FACTORS THAT HE
3 WISHES TO IDENTIFY FOR THE BENEFIT OF THE JURY TO SEE
4 IF THEY CAN RECOGNIZE THEM IN THIS CASE, ARE
5 DEPENDENT ON CASE STUDIES AND, WHICH HE WAS
6 ATTEMPTING TO GO INTO NOW PERHAPS IT WOULD BE
7 BETTER NOT TO MENTION THE FAMOUS CENTRAL PARK JOGGER
8 CASE BUT A CASE IN WHICH, I'M NOT SURE EXACTLY HOW
9 YOU CAN SAY IT, BUT IF HE JUST DOESN'T PUT A NAME TO
10 IT BUT JUST SAYS THAT THERE WAS A CASE STUDY THAT, IN
11 WHICH THIS OCCURRED THESE ARE CASE SPECIFIC, THESE
12 ARE CASE STUDIES FROM WHICH THESE FACTORS WHICH ARE
13 VERY IMPORTANT, WE BELIEVE, IN THIS CASE AND ARE VERY
14 EXISTENT IN THIS CASE THAT HE HAS LEARNED FROM
15 WORKING ON OR STUDYING THESE PARTICULAR FALSE
16 CONFESSION CASES IF I CAN USE THAT TERM AND I MET
17 WITH DR KASSIN IN THE BREAK AND HE BASICALLY SAID HE
18 DOESN'T KNOW HOW HE CAN ILLUSTRATE OR FULLY
19 EXPLAIN --

20 THE COURT THAT'S NOT THE COURT'S
21 PROBLEM THE COURT'S PROBLEM IS OR THE COURT'S
22 SITUATION IS THIS IS SUPPOSED TO HELP THE JURY ITS
23 PROBATIVE VALUE HAS TO BE OUTWEIGHING THE
24 PREJUDICIAL I THINK YOU ARE CROSSING THE LINE WHEN
25 YOU MOVE INTO THE SENSATION AND THESE CASES TEND TO

1 BE SENSATION, BUT HE CAN TESTIFY, HE'S SUPPOSED TO BE
2 AN EXPERT, HE'S SUPPOSED TO BE SMARTER THAN THE REST
3 OF US OR HE WOULDN'T BE HERE

4 MR MORTON YOUR HONOR --

5 THE COURT SO HE OUGHT TO BE ABLE TO
6 TESTIFY AS TO WHAT THE, WHAT FACTORS HE LOOKS AT

7 MR BAITY AND HE'S TRYING, FOR HIM
8 SIMPLY TO SAY THERE WAS A CLINICAL STUDY AND THIS WAS
9 THE RESULT, I MEAN, THAT IS ONLY A PORTION OF HIS
10 SCIENCE, THAT IS A PORTION OF IT, BUT THEN THERE IS A
11 VERY LARGE PORTION OF IT THAT IS CASE SPECIFIC ON
12 THESE OTHER CASES THAT HE'S DEALT WITH NOW MAYBE,
13 YOU KNOW, YEARS DOWN THE ROAD WE MIGHT HAVE A PURELY
14 CLINICAL SCIENCE THAT WE CAN PRESENT, BUT THAT'S NOT
15 WHAT'S GOING ON WE HAD OUR HANDWRITING EXPERT UP
16 HERE THE OTHER DAY THAT ILLUSTRATED HOW CERTAIN
17 THINGS THAT HE'S LOOKING FOR, HE DOESN'T HAVE A
18 SPECIFIC QUANTIFIABLE SCIENCE THAT HE WAS TALKING
19 ABOUT, BUT HE CAN STATE HIS OPINION AND HE COULD
20 DRAW, SOMETIMES WHEN PEOPLE TRY TO DO THIS THEIR HAND
21 SHAKES AND HE ILLUSTRATED THAT, THIS IS PRECISELY THE
22 SAME TYPE OF OPINION TESTIMONY THAT DR KASSIN IS
23 TRYING TO GET ACROSS

24 THE COURT WELL, NOBODY RAISED THE ISSUE
25 OF PREJUDICIAL VALUE OUTWEIGHING PROBATIVE AND I'M

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1 FINDING THAT IT DOES IF HE CAN'T TESTIFY WITHOUT IT
2 THEN HE CAN'T TESTIFY

3 MR BAITY YOUR HONOR --

4 THE COURT I'M NOT GOING TO ARGUE

5 MR BAITY I'M NOT TRYING TO ARGUE I'M
6 JUST TRYING TO UNDERSTAND YOUR RULING

7 THE COURT MR MORTON WANTS TO TALK,
8 ALTHOUGH USUALLY HAVE THE PERSON WHO HAS THE WITNESS
9 IS THE ONE WHO DEFENDS THAT WITNESS' POSITION

10 MR BAITY YES, SIR

11 THE COURT UNLESS --

12 MR BAITY I'LL BE HAPPY TO YIELD --

13 THE COURT YOU CAN'T YIELD TO HIM UNLESS
14 COUNSEL WAIVES THE RULE IN HIS FAVOR DO YOU MIND
15 MR MORTON SAYING ANYTHING?

16 MR BRACKETT YOUR HONOR, I WILL DO
17 NOTHING THAT WILL ASSIST IN MAKING THIS HAPPEN
18 BECAUSE IT IS SO TERRIBLE PREJUDICIAL

19 THE COURT ALL RIGHT

20 MR MORTON SO HE DOESN'T WANT ME TO
21 RESPOND

22 THE COURT RIGHT AND USUALLY ONE PERSON

23 MR MORTON CAN I --

24 THE COURT YOU CAN TALK TO HIM COACH
25 HIM ALL YOU WANT BUT

1 MR BAITY YOUR HONOR, THANK YOU FOR
2 THAT YOUR HONOR, WE WOULD LIKE TO PROFFER DR
3 KASSIN'S TESTIMONY FOR YOU TO HEAR AND TO MAKE A
4 DECISION AS TO THE PREJUDICIAL VALUE, ALLOW HIM TO BE
5 CROSS EXAMINED, WE BELIEVE THAT IS THE ONLY WAY THAT
6 WE'RE GOING TO BE ABLE TO GET THIS TESTIMONY IN, WE
7 BELIEVE IT'S BEEN ALLOWED IN OTHER CASES, AND
8 THEREFORE IF YOU ARE NOT GOING TO ALLOW HIM TO MAKE
9 ANY REFERENCE TO ANY OTHER CASE STUDIES, I CERTAINLY
10 UNDERSTAND YOUR RULING, BUT WE WOULD AT THIS TIME
11 REQUEST THAT YOU ALLOW US TO JUST PRESENT HIS
12 TESTIMONY OUTSIDE THE PRESENCE OF THE JURY AS A
13 PROFFER SUBJECT TO CROSS EXAMINATION, JUST LET US GET
14 THROUGH THIS AND PRESERVE THE RECORD

15 THE COURT ALL RIGHT

16 MR BAITY THANK YOU, YOUR HONOR MAY I
17 PROCEED?

18 THE COURT CERTAINLY

19 MR BAITY THANK YOU I CAN'T REMEMBER
20 EXACTLY WHERE WE WERE I BELIEVE --

21 THE COURT WE'RE IN CENTRAL PARK
22 IN CAMERA DIRECT EXAMINATION BY MR BAITY

23 Q YES, SIR WE WERE ON COERCED COMPLIANT FALSE
24 CONFESSIONS?

25 A YES AND I DON'T, I HOPE NOT TO BE

1 SENSATIONALISTIC, BUT SIMPLY TO POINT OUT THAT THERE
2 WAS A CASE WHERE THOSE NOW KNOWN TO BE FALSE
3 CONFESSIONS WERE NOT EVER BELIEVED BY THE DEFENDANTS,
4 THEY CONTESTED THEM THE MOMENT THEY WERE DONE, THE
5 ARGUMENT THAT THEY SAID IS EVERYONE OF THEM AND THEIR
6 FAMILIES BELIEVED THEY WERE GOING TO GET A CHANCE TO
7 GO HOME AFTERWARDS AND THAT'S AN EXAMPLE OF
8 COMPLIANCE PUBLICLY THEY WENT ALONG, PRIVATELY THEY
9 MAINTAINED THEIR INNOCENCE AND THAT'S REALLY ALL I
10 WANTED TO SAY ABOUT THAT CENTRAL PARK CASE

11 Q AND ARE THERE OTHER DOCUMENTED INSTANCES OF HAVE
12 TYPE OF COERCED COMPLIANT FALSE CONFESSION?

13 A YES WHEN WE SORTED THOSE CASES WE LOOK AT INTO
14 PILES THERE WERE A NUMBER OF THEM THAT FIT JUST RIGHT
15 THERE, AND IT GETS AT AN IMPORTANT QUALITY OF
16 DECISION-MAKING IN THE INTERROGATION ROOM WHAT A
17 SUSPECT DOES DECIDING TO CONFESS OR TO CONTINUE
18 DENIAL IS A DECISION-MAKING PROCESS AND IT'S A
19 DECISION-MAKING PROCESS LIKE THE ONE THAT
20 PSYCHOLOGISTS HAVE STUDIED FOR YEARS, AND WHAT WE
21 KNOW ABOUT THAT IS THAT PEOPLE IN MAKING DECISIONS
22 ARE PARTICULARLY INFLUENCED BY SHORT-TERM COSTS AND
23 BENEFITS, SHORT TERM CONSEQUENCES, MUCH MORE SO THAN
24 DELAYED CONSEQUENCES, SO CONSEQUENTLY, AND THERE ARE
25 A NUMBER EXPERIMENTS, LABORATORY EXPERIMENTS THAT

1 SHOW PEOPLE PREFER SHORT-TERM BENEFITS AND REWARDS TO
2 LONG TERM BENEFITS AND REWARDS, SO WHAT THAT TELLS US
3 IN THE DECISION-MAKING CONTEXT IN THE INTERROGATION
4 ROOM IS THAT VERY OFTEN PEOPLE WILL CONFESS TO
5 SOMETHING THEY DIDN'T DO AS AN ACT OF EXPEDIENCE IN
6 ORDER TO TERMINATE IN THE SHORT RUN A BAD SITUATION
7 AND WORRY LATER ABOUT THE CONSEQUENCES AND THAT'S
8 WHAT THESE COERCED COMPLIANT FALSE CONFESSIONS ARE
9 LIKE

10 Q WHEN YOU TALK ABOUT COERCION USED IN THIS
11 PROCESS, CAN THIS BE, IS THIS ALWAYS OVERT COERCION
12 OR CAN IT MORE BE SO SUBTLE?

13 A IT CAN BE SUBTLE AND I DON'T MEAN TO USE THE
14 TERM COERCION IN A LEGAL SENSE I SIMPLY MEAN THIS
15 IS AN INDUCED, A SITUATION IN WHICH THE PERSON IS
16 UNDER SOME DEGREE OF PRESSURE TO GIVE A CONFESSION
17 AND HAS TO MAKE A DECISION ABOUT HOW TO RESPOND TO
18 THAT PRESSURE SO AGAIN I DON'T MEAN IT IN A LEGAL
19 SENSE, BUT THIS IS NOT VOLUNTARY IN THE SENSE I DON'T
20 WALK IN AND VOLUNTEER THIS CONFESSION IT COMES AS A
21 PROCESS, AS A FUNCTION OF INTERROGATION

22 Q COULD YOU TELL US ABOUT THE OTHER TYPE OF FALSE
23 CONFESSION?

24 A THE THIRD TYPE WHERE THE COERCED INTERNALIZED
25 FALSE CONFESSIONS, THESE WERE AT THE TIME IN 1985 A,

1 FOR US, DIFFICULT TO UNDERSTAND AND IN PART THAT THE
2 PSYCHOLOGY OF MEMORY HADN'T YET CAUGHT UP TO WHAT
3 THESE CONFESSIONS ILLUSTRATE THESE WERE CASES WHERE
4 INDIVIDUALS WOULD NOT ONLY CONFESS TO A CRIME UNDER
5 THESE INTERROGATION CIRCUMSTANCES, BUT COME TO DOUBT
6 THEIR OWN INNOCENCE AND THEN ULTIMATELY CONFESS TO
7 SOMETHING THEY DIDN'T DO AND BELIEVE THAT CONFESSION
8 AND THESE ARE CASES AND THEY FOLLOW A VERY
9 PREDICTABLE SCRIPT AND WITHOUT GETTING INTO SPECIFIC
10 CASE STUDIES WHAT THEY DEMONSTRATE IS THAT, IF YOU
11 HAVE AN INDIVIDUAL WHO IS VULNERABLE TO MANIPULATION,
12 WHOSE MEMORY IS VULNERABLE TO MANIPULATION, AND IT
13 MIGHT BE THAT WAY BECAUSE THEY ARE SLEEP DEPRIVED OR
14 UNDER GREAT STRESS OR THEY MAY HAVE BEEN FATIGUED AND
15 EXHAUSTED OR THEY HAVE BEEN UNDER THE INFLUENCE OF
16 DRUGS, WHATEVER IT IS THEY ARE NOW VULNERABLE TO
17 MANIPULATION AND WHEN PRESENTED WITH FALSE EVIDENCE,
18 AND I MENTION THIS SCRIPT BECAUSE EVERY SINGLE
19 COERCED INTERNALIZED FALSE CONFESSION FOLLOWS EXACTLY
20 THE SAME PATTERN OF EVENTS AND THEY RESEMBLE THE
21 KINDS OF MEMORY IMPAIRMENTS AND MEMORY
22 RECONSTRUCTIONS THAT WE SEE IN OTHER CONTEXTS SO
23 YOU HAVE A PERSON WHO IS VULNERABLE TO MANIPULATION,
24 PRESENTS THEM WITH APPARENTLY UNIMPEACHABLE OBJECTIVE
25 EVIDENCE, THAT PERSON NOW HAS TO TRY TO RECONCILE ON

1 THE ONE HAND, I HAVE NO MEMORY, WITH ON THE OTHER
2 HAND BUT THEY TELL ME AND I BELIEVE IT THAT THERE IS
3 OBJECTIVE EVIDENCE THAT I DID THIS SO THEY NOW HAVE
4 TO RECONCILE THIS EVIDENCE WITH THEIR LACK OF MEMORY
5 AT WHICH POINT THEY ENTERTAIN THE IDEA THAT THEY
6 COMITTED THIS ACT AND NOT HAD A CONSCIOUSNESS, THAT
7 THEY HAD DISASSOCIATED OR AMNESIC FOR IT, HAD
8 REPRESSED IT FROM MEMORY, AND DID THIS ACT OFTEN IN
9 THESE CASES THEY THEN GO THROUGH A PROCESS OF
10 IMAGINATION WHETHER THEY TRY TO IMAGINE HOW THEY
11 WOULD HAVE COMMITTED THIS ACT FOR WHICH THEY HAVE NO
12 DIRECT MEMORY THAT IMAGINATIONAL PROCESS ULTIMATELY
13 RESULTS IN THEIR MAKING A FALSE CONFESSION WHICH
14 ALWAYS SOUNDS EXACTLY THE SAME, I GUESS I DID I
15 MUST HAVE DONE IT I MUST HAVE DONE IT AND BLOCKED
16 IT OUT YOU GET THOSE KINDS OF STATEMENTS IN VERY
17 TENTATIVELY FRAGMENTARY LANGUAGE IN THESE CASES
18 THAT PERSON IS LATER EXONERATED, WE KNOW THAT IN FACT
19 THEY WERE INNOCENT, YET THEY ALWAYS FOLLOW THAT
20 PATTERN AND THEY FOLLOW THAT PATTERN, WHAT IS THE
21 COMMON INGREDIENT IN THEM IS THE PRESENTATION OF
22 FALSE EVIDENCE THAT PUTS THEM OVER THE EDGE IT
23 DISORIENTS THEIR VIEW OF REALITY AND THEY BEGAN TO
24 QUESTION THEIR OWN MEMORY

25 Q DOCTOR, ARE THERE DOCUMENTED CASES WHERE THIS

1 INTERNALIZED OR COERCED INTERNALIZED FALSE CONFESSION
2 HAS OCCURRED THAT YOU HAVE ACTUALLY STUDIED AND
3 WORKED WITH?

4 A YES THESE IN FACT WERE THE CASES THAT I
5 INITIALLY HAD TO LOOK AT WHEN DR WRIGHTSMAN AND I
6 CAME UP WITH THIS CLASSIFICATION SCHEME AND SO WE
7 KNOW THEY EXIST, THEY CONTINUE TO EXIST AND AGAIN
8 THEY ALL KIND OF RESEMBLE EACH OTHER IN A WAY WE
9 THEN TAKE IN THAT PHENOMENA AND BROUGHT INTO A
10 LABORATORY SITUATION TO SEE IF WE CAN ALTER PEOPLE'S
11 MEMORY FOR EVENTS OR ACTS THAT THEY DID OR DID NOT
12 COMMIT AND WE FOUND THAT UNDER CERTAIN, AGAIN CERTAIN
13 CIRCUMSCRIBED SET OF CIRCUMSTANCES WE CAN DO THAT
14 THE REST OF MEMORY RESEARCH HAS ALSO CAUGHT UP
15 SHOWING THAT WHETHER WE'RE TALKING ABOUT PEOPLE'S
16 MEMORY OR SOMETHING THEY HEARD, A CONVERSATION, A
17 WORD LIST, SOMETHING THEY SAW, AN EXPERIENCE THEY
18 HAD, AN ACT THEY COMMITTED, IT IS POSSIBLE TO GET
19 PEOPLE TO THINK THEY SAW OR HEARD OR DID SOMETHING
20 THAT THEY DIDN'T DO, THAT THE EXPERIMENTER KNOWS THEY
21 DIDN'T DO THROUGH THE SAME KIND OF TECHNIQS

22 Q IS THERE AN EXAMPLE THAT YOU COULD POINT OUT
23 THAT BARE A RESEMBLANCE TO THIS CASE ON THAT?

24 A WELL, IT'S A FAIR RESEMBLANCE IN THE SENSE THAT
25 IT TALKS ABOUT THE CREATION OF A FALSE MEMORY THERE

1 ARE STUDIES, FOR EXAMPLE, BY A COGNITIVE PSYCHOLOGIST
2 BY THE NAME OF ELIZABETH LOFTIS WHERE SHE HAS A,
3 SUBJECT'S COME INTO THE LABORATORY AND SHE ARRANGES
4 SO THAT SOMEBODY IN THEIR LIFE REMINDS OF AN EVENT IN
5 THEIR LIFE THAT NEVER HAPPENED, LIKE BEING LOST IN A
6 SHOPPING MALL OR SPENDING TIME IN A HOSPITAL, AND SHE
7 FINDS THAT AFTER REPEATED INTERVIEWS, AFTER REPEATED
8 EFFORTS TO REMEMBER SOMETHING THAT WAS PRESENTED TO
9 THEM THROUGH FALSE EVIDENCE BY SOMEONE IN THEIR LIVES
10 MANY OF THEM COME TO FORM A MEMORY AND MANY OF THEM
11 NOT ONLY START TO REMEMBER THAT THAT HAPPENED TO THEM
12 BUT THEY ACTUALLY EMBELLISH THE DETAILS AND FABULATE
13 DETAILS CONSISTENT WITH THAT NEW BELIEF AND SO
14 THAT'S AN EXAMPLE IN A NON-FORENSIC CONTEXT OF THE
15 SAME PHENOMENA YOU GET SOMEONE WHO IS VULNERABLE TO
16 MANIPULATION, PRESENT THEM WITH FALSE EVIDENCE,
17 WHETHER THAT FALSE EVIDENCE IS IN THE FORM OF FAMILY
18 MEMBER OR FRIEND OR SOMETHING ELSE IN A LABORATORY
19 AND LO AND BEHOLD THEY BEGIN TO THINK THAT THEY
20 SIMPLY HAD LACKED A MEMORY FOR AN EVENT THAT THEY ARE
21 NOW TOLD THAT HAD OCCURRED

22 Q SO IT'S POSSIBLE TO MAKE A PERSON THINK THAT HE
23 WAS INVOLVED IN SOMETHING THAT HE WASN'T ACTUALLY
24 INVOLVED IN?

25 A YES

002463

1 Q HOW DO YOU KNOW THAT CAN, THAT THAT OCCURS? HOW
2 CAN YOU KNOW THAT? IS THERE A PSYCHOLOGY RESEARCH ON
3 THAT PARTICULAR?

4 A THERE IS AN AWFUL LOT OF RESEARCH IN A NUMBER OF
5 DIFFERENT CONTEXTS AS I SAID IN 1985 IT WAS A
6 PUZZLING PHENOMENA WE LOOKED AT THESE AND SAID
7 THERE IS NOTHING THAT WE KNOW OF IN THE SCIENCE OF
8 MEMORY TO EXPLAIN HOW THIS CAN HAPPEN AT THAT TIME
9 WE THOUGHT THAT MEMORY OPERATED MORE LIKE A VIDEO
10 TAPE RECORDER AND THAT YOU PROCESSED INFORMATION, IT
11 LAY DORMANT SOMEWHERE IN THE BRAIN TO BE RETRIEVED AT
12 A LATER TIME WE NOW KNOW THAT IN FACT MEMORY CAN BE
13 CHANGED IT CAN CONSTRUCTED AND IT CAN BE
14 RECONSTRUCTED WHEN WE DEVELOP THAT CLASSIFICATION
15 SCHEME WE WERE LOOKING AT A WHOLE BUNCH OF CASES LIKE
16 ONE CASE FOR EXAMPLE AND I GUESS AT THIS POINT

17 Q AT THIS POINT IT'S FINE

18 A A CASE BY THE NAME OF, A MAN BY THE NAME OF
19 PETER RILEY WHO CAME HOME ONE DAY AND HIS MOTHER WAS
20 DEAD AND HE CALLED THE POLICE AND THEY ARRIVED AND
21 BROUGHT HIM IN FOR QUESTIONING AND AFTER SEVERAL
22 HOURS OF QUESTIONING THEY OFFERED TO ADMINISTER A
23 POLYGRAPH HE SAID, FINE, I'LL TAKE THE POLYGRAPH
24 HE FAILED THE POLYGRAPH AND BEGAN TO DOUBT HIS OWN
25 MEMORY ASKED THE QUESTION IS IT POSSIBLE SOMEBODY

002464

1 COULD COMMIT AN ACT LIKE THIS AND NOT BE AWARE OF IT
2 AND THE DETECTIVE WHO IS INTERVIEWING HIM SAID, YES,
3 THAT SORT OF THING CAN HAPPEN AT WHICH POINT HE
4 STARTED TO IMAGINE WHAT HE MUST HAVE DONE, TALKED
5 ABOUT BEING ANGRY AT HIS MOTHER FOR DISCIPLINING HIM
6 AND OTHER DETAILS, AND ULTIMATELY GAVE A CONFESSION
7 IT TURNED OUT THAT THERE WAS EXCULPATORY INFORMATION
8 AND AFTER TWO OR THREE YEARS IN JAIL HE WAS RELEASED
9 AND DA'S OFFICE DIDN'T GO BACK TO RETRY CASE

10 THERE WAS ANOTHER AND I'LL JUST GIVE ONE
11 MORE CASE BECAUSE IT WAS A VERY CLOSE RESEMBLANCE TO
12 THIS ONE, OF A 41-YEAR-OLD MAN BY THE NAME OF GARY
13 GEIGER OF ILLINOIS WHO COMES HOME TO FIND HIS PARENTS
14 HAD BEEN SLAUGHTERED AND HE CALLS 911 HE IS THEN
15 BROUGHT IN FOR INTERROGATION HE IS ADMINISTERED A
16 POLYGRAPH AFTER EXTENSIVE INTERROGATION HE'S TOLD
17 THAT HE FAILED THE POLYGRAPH AT WHICH POINT HE
18 STARTS TO CONCLUDE THAT I MUST HAVE DONE IT AND I
19 BLACKED OUT ULTIMATELY HE CONFESSES TO BRINGING, TO
20 COMING UP FROM BEHIND HIS PARENTS, YANKING THEIR
21 HEADS BACK BY THE HAIR, AND SLITTING THEIR THROAT
22 IT TURNS OUT THAT THE SURVEILLANCE TAPE LATER PICKED
23 UP A MOTORCYCLE GANG IN WHICH ONE OF THE MEMBERS WAS
24 BRAGGING ABOUT THIS PARTICULAR MURDER IN DETAIL AND
25 KNEW ALL ABOUT IT AND SO HE WAS AGAIN EXONERATED BUT

1 THERE WAS A CASE WHERE HE QUESTIONED HIS OWN MEMORY
2 AND WHEN, WHAT'S PUZZLING ABOUT THESE CASES IS WHEN
3 HE EVEN LEAVING THE SITUATION OF THE INTERROGATION
4 ROOM AND SPEAKS FOR EXAMPLE TO A LAWYER, THE LAWYER
5 SAYS, WHAT HAPPENED HE SAYS, WELL, I DON'T KNOW I
6 THINK I MAY HAVE DONE THIS THEY ARE JUST NOT SURE
7 THEIR MEMORY HAS BEEN IMPAIRED IN THIS WAY YES

8 Q WHAT MAKES PEOPLE VULNERABLE TO THIS TYPE OF
9 MEMORY ALTERATION?

10 A THE VULNERABILITY CAN BE SOMETHING ABOUT THE
11 PERSON, IT CAN BE THAT THEY ARE MENTALLY RETARDED AND
12 HIGHLY SUGGESTIBLE IT CAN BE THAT THEY ARE YOUNG
13 AND NAIVE, FOR EXAMPLE, ABOUT CERTAIN TYPES OF
14 QUESTIONING SITUATIONS OR IT COULD BE THAT THEY ARE
15 SIMPLY STRESSED, THEY ARE GRIEF STRICKEN, THEY ARE
16 FATIGUED, SLEEP DEPRIVATION PLAYS A ROLE, PEOPLE HAVE
17 DIFFICULTY THINKING CLEARLY, AND OFTEN MAKE SHORT
18 CITED DECISIONS WHEN SLEEP DEPRIVED SO THERE ARE
19 ANY NUMBER OF VULNERABILITY FACTORS IN SOME CASES
20 DRUGS ARE INVOLVED, SO THEY VARY THEY CAN BE ISSUES
21 PERTAINING TO THE INDIVIDUAL OR THEY CAN BE ISSUES TO
22 THE SITUATION HE'S IN

23 Q ARE THERE CERTAIN TECHNIQUES THAT ARE COMMONLY
24 USED TO OBTAIN CONFESSIONS?

25 A YES, THERE ARE I MEAN THERE ARE PRESCRIBED

002466

METHODS OF INTERROGATIONS, NOT ALL TECHNIQUES ARE IDENTICAL, BUT THEY ALL FIT PRETTY MUCH THE SAME PATTERN AND AGAIN I WOULD APPEAL TO THE INBAU AND RFID TECHNIQUE WHICH IS THE MOST, I APPEAL TO THAT BECAUSE IT'S IN SOME WAYS THE MOST ARTICULATE AND THE MOST ELABORATE PRESENTATION OF WHAT COMMONLY IS USED, AND BASICALLY IT REQUIRES ISOLATING A SUSPECT AND THEN CONFRONTING THAT, THIS ALL COMES ONCE A DECISION IS MADE ABOUT THE SUSPECT'S GUILT AND THAT'S A WHOLE OTHER PROCESS OF INTERVIEWING THE TERMS INTERVIEWING INTERROGATION ARE NOT SYNONYMOUS AN INTERVIEW IS A NON-CONFRONTATIONAL, NON-ACCUSATORY QUESTION AND ANSWER SESSION IN WHICH THE GOAL IS FOR AN INVESTIGATOR TO DETERMINE WHETHER OR NOT THE SUSPECT WAS LYING OR TELLING THE TRUTH IT'S NOT CONFRONTATIONAL YOU DON'T PRESSURE THE SUSPECT TO GET A CONFESSIONS THE GOAL IS TO ASK QUESTIONS AND TO OBSERVE THE SUSPECT CLOSELY TO SEE HOW THAT SUSPECT REACTS TO THOSE QUESTIONS IN ORDER TO MAKE THAT JUDGMENT IF THE JUDGMENT, IN THE EYE OF INTERROGATOR IS THAT THIS SUSPECT IS TELLING THE TRUTH AND IS PROBABLY INNOCENT, THEY SEND THEM HOME IF THE JUDGMENT IS THAT THE SUSPECT IS LYING THEY LEAD THEM ON TO INTERROGATION AT WHICH POINT INTERROGATION BECOMES A MULTI-STEP PROCESS AND TO

002467

1 MAKE A LONG STORY SHORT, IT INVOLVES FIRST OF ALL
2 ISOLATING THE SUBJECT THESE INTERROGATIONS
3 TYPICALLY TAKE PLACE IN POLICE STATIONS, NOT OUT IN
4 THE STREET OR IN THE LIVING ROOM THIS IS, SO THE
5 SUSPECT IS ISOLATED FROM ALL THAT IS FAMILIAR THE
6 SECOND STEP IS CONFRONTATION, SOMETIMES REFERRED TO
7 AS THE POSITIVE CONFRONTATION THE ACCUSATION IS
8 MADE WE KNOW YOU ARE GUILTY, WE KNOW YOU DID IT,
9 AND WE DON'T WANT TO HEAR ANYMORE LIES BECAUSE AT
10 THIS POINT THE JUDGMENT IS MADE THAT THE PERSON IS
11 GUILTY THE PERSON IS LIKELY TO CONTINUE TO MAINTAIN
12 SOME DENIALS AND THEN THERE ARE TECHNIQUES INVOLVED
13 FOR RESTRICTING THOSE DENIALS AND NOT ALLOWING THE
14 PERSON TO MOUNT A DEFENSE ESSENTIALLY BREAKING THAT
15 SUSPECT DOWN INTO A STATE OF DISPAIR THE SUSPECT IS
16 IN A BAD SITUATION, IT'S UNPLEASANT, HE'S ISOLATED
17 AND HE'S COMING TO FIND OUT THAT DENIAL IS NOT AN
18 ADEQUATE ESCAPE HATCH YOU CONTINUE TO DENY THE
19 CHARGES THAT IS NOT A MEANS OF ESCAPE THAT IS
20 SOMETIMES BUT NOT ALWAYS ACCOMPANIED, THAT TECHNIQUE
21 OF CONFRONTATION, BY THE PRESENTATION OR INSINUATION
22 THAT WE HAVE EVIDENCE THE REID TECHNIQUE, FOR
23 EXAMPLE, ADVISES TO SOMETIMES IMPLY THAT THERE IS
24 EVIDENCE EVEN THOUGH YOU MAY NOT HAVE IT WHAT WOULD
25 YOU SAY, FOR EXAMPLE, IF YOU KNEW WE HAD DNA MATERIAL

002468

1 TO BE TESTED, THAT BLUFF IS DESIGNED TO SCARE THE
2 GUILTY PERSON INTO CONFESSION IT SHOULDN'T HAVE
3 THAT AFFECT ON THE INNOCENT PERSON SOMETIMES THAT
4 PRESENTATION GOES SO FAR AS TO LITERALLY LIE ABOUT
5 THE EVIDENCE AND TO PRESENT FALSE EVIDENCE ALL OF
6 THAT IS DESIGNED TO BREAK THE SUSPECT DOWN INTO A
7 STATE OF DESPAIR AND HOPELESSNESS, TO BELIEVE THAT
8 DENIAL IS, I WANT TO GET OUT OF HERE AND DENIAL IS
9 NOT MY WAY OUT

10 THE THIRD PROCESS THAT WEAVES ITS WAY IN
11 AND OUT OF INTERROGATION IS TO PROVIDE A PALATABLE
12 ALTERNATIVE LET'S PROVIDE AN ESCAPE HATCH AND SO IN
13 THE REID TECHNIQUE, FOR EXAMPLE, A FORM OF
14 MINIMIZATION IS USED THEY PRESENT WHAT THEY OFTEN
15 REFER TO AS AN ALTERNATIVE SCENARIO YOU KNOW WHAT,
16 IT IS POSSIBLE THAT YOU ARE A GOOD PERSON, WHAT YOU
17 DID CAME ACCIDENTALLY OR YOU WERE PROVOKED OR YOU
18 WERE PRESSURED BY YOUR FRIENDS IN THIS WAY IT
19 PROVIDES A MORE FACE SAVING ALTERNATIVE, A FORM OF
20 MORAL JUSTIFICATION, A BETTER EXPLANATION THAT MAKES
21 FOR A MORE PALATABLE CONFESSION THAT IS DESIGNED TO
22 ENABLE THAT SUSPECT AT THAT POINT TO CONFESS TO
23 SOMETHING THAT DOESN'T SEEM SO BAD AND THOSE ARE THE
24 PRIMARY STEPS OF INTERROGATION

25 Q ARE THESE TECHNIQUES COMMONLY USED IN POLICE

002469

1 INTERROGATION?

2 A YES

3 Q IF SO, HOW DO YOU KNOW THAT?

4 A WE KNOW IT AGAIN FROM THE MANY CASE STUDIES,
5 BOTH CASE STUDIES OF PEOPLE WHO CONFESS TO CRIMES
6 THEY DID COMMIT AND CASE STUDIES WHO CONFESSED TO
7 CRIMES THEY DID NOT COMMIT RICHARD LEO IN THE LATE
8 1990'S PUBLISHED A STUDY BASED ON LIVE AND VIDEO
9 TAPED OBSERVATIONS OF POLICE INTERROGATIONS AND HE
10 CODED FOUR KINDS OF TECHNIQUES THAT WERE USED OTHER
11 RESEARCHERS IN ENGLAND HAVE DONE THE SAME THING IN
12 BRITISH INTERROGATION ROOMS THE U S SUPREME COURT,
13 IN FACT, IN MIRANDA IN 1967 CITED AN OLD
14 OBSERVATIONAL STUDY SHOWING THAT THESE TECHNIQUES
15 THAT I JUST DESCRIBED ARE COMMON PLACE IN THE
16 INTERROGATION ROOM SO WE KNOW FROM OBSERVATIONAL
17 STUDIES AND ACTUAL CASE STUDIES

18 Q DOCTOR, ARE THERE BEHAVIORS IN AN INTERVIEW OR
19 FOR THAT MATTER IN AN INTERROGATION THAT INDICATE A
20 PERSON'S GUILT?

21 A DEPENDING ON HOW YOU PHRASE THE QUESTION IT
22 TURNS OUT IT'S VERY, VERY DIFFICULT TO MAKE THAT
23 INITIAL DETERMINATION SOCIAL PSYCHOLOGISTS FOR 40
24 YEARS NOW HAVE BEEN STUDYING PEOPLE'S ABILITY TO KNOW
25 WHEN SOMEBODY IS TELLING THE TRUTH OR LYING AND IT

1 TURNS OUT WE'RE NOT VERY GOOD LIE DETECTORS AS HUMAN
2 BEINGS, EXCLUDING OF COURSE POLYGRAPHS ADDITIONAL
3 RESEARCH SHOWED THAT PEOPLE WHO ARE EXPERTS,
4 PROFESSIONALS, AT LIE DETECTION, WHO DO IT FOR A
5 LIVING, CUSTOMS INSPECTORS, INVESTIGATORS,
6 PSYCHIATRISTS, ARE NOT MUCH BETTER THAN THE AVERAGE
7 PERSON THEIR PERFORMANCE IS SLIGHTLY BETTER BUT
8 WHAT WE'RE TALKING ABOUT HERE IS A SITUATION WHERE
9 THOSE JUDGMENTS ARE MADE AT MOST AT ABOUT A 60 TO 65
10 PERCENT LEVEL OF ACCURACY AND MORE TYPICALLY AT 55
11 PERCENT LEVEL OF ACCURACY IS IT POSSIBLE TO TRAIN
12 PEOPLE TO BE BETTER JUDGES? SO FAR THE RESEARCH
13 SHOWS NO IN FACT THE RESEARCH SHOWS THAT PEOPLE WHO
14 ARE SPECIALLY TRAINED ARE NOT MORE ACCURATE BUT THEY
15 ARE MORE CONFIDENT IN THEIR JUDGMENT ABILITIES AND
16 THAT RESEARCH IS NOW FOUND IN THE UNITED STATES, IN
17 CANADA, IN ENGLAND, IN SWEDEN, IN SPAIN, JUST A
18 NUMBER OF RESEARCH LABS ACROSS THE WORLD HAVE FOUND
19 THAT PEOPLE ARE NOT GOOD LIE DETECTORS THE
20 PROFESSIONALS ARE NOT ON AVERAGE BETTER THAN THE
21 AVERAGE PERSON AND PART OF THE PROBLEM IS THAT THE
22 CUES THEY OFTEN RELY ON ARE NOT DIAGNOSTIC OF TRUTH
23 AND DECEPTION

24 NOW SOMEWHAT DIFFERENT QUESTION PERTAINS
25 TO WHAT DOES THE LAW ENFORCEMENT COMMUNITY OF TRAINED

002471

1 INTERROGATORS BELIEVE ABOUT CAN I DETERMINE TRUTH AND
2 DECEPTION AND THERE ARE CERTAIN BELIEFS THAT IN FACT
3 ARE COMMON PLACE AND THERE MAY BE, HAVING BEEN
4 TESTED, MAYBE SOME TRUTH TO THEM FOR EXAMPLE, IF
5 YOU LOOK AGAIN AT THE REID TECHNIQUE, IN THE INBAU
6 MANUAL THEY SAY IF YOU OFFER A POLYGRAPH AND IF THE
7 SUSPECT IS RETICENT TO TAKE THE POLYGRAPH OR
8 RELUCTANT OR SIMPLY REFUSES TO TAKE THE POLYGRAPH,
9 THAT'S AN INDICATION THAT HE HAS SOMETHING TO HIDE
10 IF HE IS WILLING TO TAKE THE POLYGRAPH, THAT'S AN
11 INDICATION OF INNOCENCE IS IT A GUARANTEE? OF
12 COURSE NOT BUT THEY INDICATE THAT AS ONE OF A
13 NUMBER OF CUES THAT CAN BE USED TO DETERMINE IF A
14 PERSON IS TRUTHFUL OR LYING, BEING EVASIVE OR
15 COOPERATIVE SO THERE ARE THOSE KINDS OF CUES
16 THERE ARE CUES THAT ARE SUPPOSED TO INDICATE TRUTH,
17 CUES THAT ARE SUPPOSED TO INDICATE DECEPTION
18 Q AND THOSE CUES YOU ARE TALKING ABOUT WOULD THAT
19 NORMALLY COME OUT IN AN INTERVIEW PROCESS AND PERHAPS
20 LEAD TO INTERROGATION OR PERHAPS LEAD TO A RELEASE OF
21 THAT INDIVIDUAL?
22 A YES --
23 Q IS THAT THE THEORY?
24 A IN THIS PREINTERROGATION INTERVIEW
25 Q WELL, JUST CONCENTRATING ON INTERROGATION, ARE

002472

1 CERTAIN TECHNIQUES COMMONLY TAUGHT AND USED BY
2 POLICE?

3 A YES

4 Q IN INTERROGATION PRACTICE?

5 A YES

6 Q HEAR ABOUT THAT A LITTLE BIT?

7 A AGAIN THIS INVOLVES ISOLATING THE SUSPECT,
8 MAKING A POSITIVE CONFRONTATION OF THE SUSPECT'S
9 GUILT, SOMETIMES TRYING TO BLUFF THE SUSPECT WITH THE
10 INSINUATION THAT WE HAVE EVIDENCE THAT COULD BE
11 TESTED, MAKING IT DIFFICULT IF NOT IMPOSSIBLE FOR A
12 SUSPECT TO DENY THE CHARGES, AND TO MOUNT A DEFENSE,
13 AND THEN PROVIDING A PALATABLE FACE SAVING
14 ALTERNATIVE USING MINIMIZATION TECHNIQUES TO MAKE
15 CONFESSION REASONABLE DECISION AT THAT POINT IN TIME

16 Q WHAT'S THE THEORY BEHIND THESE TECHNIQUES?

17 A THE THEORY VERY CLEARLY AND IN FACT THE REID
18 PEOPLE AND OTHER INTERROGATION MANUALS OFTEN CONTAIN
19 CHAPTERS IN THEIR BOOKS ON THE PSYCHOLOGY UNDERLYING
20 THIS INTERROGATION AND THE THEORY IS TO MAKE
21 CONFESSION APPEAR THE MORE DESIRABLE OUTCOME, THE
22 MORE DESIRABLE ROUTE TO ESCAPE, AND THE GOAL IS TO
23 ALTER THE SUSPECT'S CONTINGENCIES, SENSE OF
24 CONTINGENCIES ABOUT WHAT WILL HAPPEN TO ME IF I DENY
25 THE CHARGES, WHAT WOULD HAPPEN TO ME IF I CONFESS,

002473

1 AND THE GOAL HERE AND THE NOTION IS, AND IT'S A GOOD
2 NOTION, IS THAT WITH THIS KIND OF PRESSURE A GUILTY
3 PERSON WILL CAPITULATE AND CONFESS AND AN INNOCENT
4 PERSON WILL STEADFASTLY MAINTAIN HIS INNOCENCE

5 Q WHAT HAPPENED IF THESE TECHNIQUES THAT WE HAVE
6 BEEN TALKING ABOUT ARE TAKEN TO AN EXTREME?

7 A IF TAKEN TO AN EXTREME, AND THERE IS NO BRIGHT
8 LINE THAT TELLS US HOW EXTREME IS TOO EXTREME THERE
9 IS NO SURGICAL MECHANISM THAT SAYS THIS IS THE RIGHT
10 AMOUNT OF PRESSURE, BUT WHAT WE DO KNOW IS WHEN
11 PRESSURE BECOMES EXTREME IN ONE WAY OR ANOTHER NOT
12 ONLY ARE THE GUILTY PEOPLE CONFESSING BECAUSE IT
13 TURNS OUT ON AVERAGE GUILTY PEOPLE WHO CONFESS
14 CONFESS WITHIN THE FIRST TWO HOURS BUT IF YOU LOOK
15 AT DRIZZON AND LEO 2004 STUDY OF 125 FALSE CONFESSION
16 CASES THE VAST MAJORITY OF THOSE PEOPLE WERE
17 INTERROGATED FOR MORE THAN SIX HOURS AT THE POINT
18 AT WHICH YOU START TO BREAK A PERSON DOWN THROUGH
19 FATIGUE OVER TIME YOU ARE NOT ONLY GETTING GUILTY
20 CONFESSIONS, YOU ARE NOW INCREASING THE LIKELIHOOD
21 THAT YOU ARE GETTING SOME INNOCENT CONFESSIONS AS
22 WELL DO WE KNOW EXACTLY THE MOMENT THAT HAPPENS?
23 NO BUT WE KNOW THAT THERE ARE MARKERS AND THAT TIME
24 IS ONE OF THOSE MARKERS

25 Q ARE THERE CERTAIN APPROACHES IN PARTICULAR THAT

002474

1 ARE PROBLEMATIC IN THIS SUBJECT?

2 A THE TWO APPROACHES THAT APPEAR PROBLEMATIC IN
3 PART BECAUSE THEY JUST APPEAR CONSISTENTLY IN ALMOST
4 EVERY FALSE CONFESSION CASE IS EXCESSIVE AMOUNTS OF
5 TIMES AGAIN AN INTERROGATION THAT RUNS FOR, YOU
6 KNOW, AND THE REID PEOPLE FOR RECOMMEND THAT AN
7 INTERROGATION SHOULD RUN AN HOUR OR TWO OR FOUR AT
8 THE MOST, SO EXCESSIVE AMOUNTS OF TIME IS IMPLICATED
9 IN FALSE CONFESSION CASES AS IS THE PRESENTATION OF
10 FALSE EVIDENCE WITH A PERSON, AGAIN SOMEONE WHO IS
11 VULNERABLE TO MANIPULATION THAT PRESENTATION OF FALSE
12 EVIDENCE CAN DISORIENT THEM ABOUT REALITY AND FORCE
13 THEM SOMETIMES NOT ONLY TO CONFESS BUT TO BELIEVE THE
14 CONFESSION SO THE PRESENTATION OF THE FALSE
15 EVIDENCE IS IMPLICATED AS IS EXCESSIVE ELEMENTS OF
16 TIME

17 NOW OTHERS WOULD ARGUE THERE ARE OTHER
18 TECHNIQUES LIKE MINIMIZATION THAT PUT PEOPLE AT RISK
19 AND THERE ARE ARGUMENTS TO BE MADE BUT I THINK
20 MINIMIZATION IN AND OF ITSELF ISN'T GOING TO PUT AN
21 INNOCENT PERSON OVER THE EDGE

22 Q HOW DO YOU KNOW IN A PARTICULAR CASE STUDY IF,
23 WHAT INTERROGATION TECHNIQUES WERE USED? HOW WOULD
24 YOU KNOW?

25 A WELL, AGAIN IN AN IDEAL SITUATION AND YOU HAVE

002475

1 THIS IDEAL SITUATION VERY OFTEN, YOU HAVE A FULL
2 AUDIO TAPE OR A FULL VIDEO TAPE OF ALL SESSIONS, FROM
3 INTERVIEWING ON THROUGH INTERROGATION THERE ARE A
4 COUPLE OF STATES, THREE STATES NOW THAT ACTUALLY
5 MANDATE IT, IT'S MANDATORY IN MANY, MANY OTHER
6 JURISDICTIONS IT'S NOT MANDATORY BUT TAKEN ON A
7 VOLUNTARY BASIS IN FACT, THERE IS A RECENT STUDY OF
8 MORE THAN A 100 JURISDICTIONS THAT FULLY VIDEO TAPE
9 INTERVIEWS AND INTERROGATIONS SO IN AN IDEAL WORLD
10 THAT'S THE MATERIAL YOU HAVE SHORT OF THAT, YOU
11 HAVE TESTIMONY FROM THOSE WHO DID THE INVESTIGATION,
12 THOSE WHO DID THE INTERROGATION, SOMETIMES YOU HAVE
13 TESTIMONY FROM THE DEFENDANT, AND IN CASES WHERE THEY
14 DISAGREE ABOUT WHAT TRANSPIRED, ESSENTIALLY YOU KIND
15 OF HAVE TO SAY, OKAY, WE DON'T REALLY KNOW WHAT
16 HAPPENED IN THOSE CASES OFTEN POLICE REPORTS
17 CONTAIN INFORMATION ABOUT WHAT WAS SAID AND DONE,
18 WHAT TECHNIQUES WERE USED, BUT OF COURSE THOSE ARE
19 NOT, THAT'S NOT GOOD INFORMATION BECAUSE IT RELIED ON
20 MEMORY AND MEMORY IS FALLIBLE SO IN AN IDEAL WORLD
21 WE HAVE AUDIO TAPES AND VIDEO TAPES
22 Q IS THERE ANY REASON, ANY PARTICULAR REASON THAT
23 YOU KNOW OF AN INTERROGATION SHOULD NOT BE TAPED IN
24 ANY PARTICULAR --

25 A NO IN FACT, THE SULLIVAN STUDY THAT WAS

002476

1 RECENTLY RELEASED SHOWED THAT IN ALL OF THE
2 JURISDICTIONS STUDIED THAT HAVE GONE VOLUNTARILY TO
3 VIDEO TAPING SESSIONS THEY ARE UNIFORMLY HAPPY WITH
4 IT IN FACT, IN FACT, THEY FIND THAT IT IS MUCH MORE
5 BENEFICIAL TO THE PROSECUTION THAN TO THE DEFENSE
6 BECAUSE THEY GET TO CLEAR AWAY A NUMBER OF FRIVOLOUS
7 CLAIMS OF COERCION WHERE THERE WAS NO COERCION AND
8 THE POLICE OFFICERS IN THOSE JURISDICTIONS ARGUE THAT
9 THEY SPEND A LOT LESS TIME DEFENDING THEIR TACTICS
10 AND THEY ALSO SAY THAT THEY OFTEN GET INFORMATION
11 FROM A SUSPECT WHO DOESN'T TECHNICALLY CONFESS BUT
12 MAKES AN INCRIMINATING PRESENTATION NEVERTHELESS AND
13 THAT APPEARS ON THAT TAPE SO THERE ARE A NUMBER OF
14 REASONS THAT IT SEEMS UNIFORMLY A POSITIVE
15 DEVELOPMENT

16 Q WHAT ARE THE WAYS THERE ARE TO RECORD A
17 CONFESSION?

18 A THE PRIMARY WAY IS TO AUDIO TAPE OR TO VIDEO
19 TAPE NOTE-TAKING AGAIN RELIES ON THE FALLIBILITY OF
20 THE HUMAN MEMORY SO NOTE-TAKING IS NOT NEARLY AS
21 EFFECTIVE A TECHNIQUE

22 Q SPECIFICALLY IN YOUR CASE STUDIES HOW DO YOU GO
23 ABOUT EVALUATING A PARTICULAR CONFESSION?

24 A AGAIN USING WHATEVER INFORMATION IS AVAILABLE
25 AND ACKNOWLEDGING UP FRONT THAT THERE ARE GAPPING

002477

1 HOLES SOMETIMES IN THAT INFORMATION THERE ARE SOME
2 CASES THAT I HAVE LOOKED AT WHERE THERE IS A FULL SET
3 OF TAPES AVAILABLE SO THAT ANYBODY CAN LOOK AT
4 EXACTLY WHAT WAS DONE SO THAT THAT FINAL STATEMENT,
5 THAT FINAL CONFESSION, WHICH IS VERY MUCH LIKE A
6 HOLLYWOOD PRODUCTION, THAT FINAL AUDIO TAPE OR THAT
7 FINAL VIDEO TAPE IS THE END PRODUCT OF A PROCESS OF
8 INFLUENCE AND YET TYPICALLY WE DON'T HAVE ACCESS TO
9 SEE THAT PROCESS OF INFLUENCE UNFOLD NOW WHY IS IT
10 IMPORTANT? IT'S IMPORTANT TO KNOW WHAT PRECIPITATED
11 THAT DEFENDANT, THAT SUSPECT, FROM MOVING FROM DENIAL
12 TO CONFESSION WHAT WAS THAT TRANSITION POINT? WHAT
13 PROMPTED THAT TO HAPPEN? AND SECOND AND THIS IS A
14 PARTICULARLY IMPORTANT DETAIL IS AGAIN BECAUSE SO
15 MANY FALSE CONFESSIONS CONTAIN VIVID SENSORY DETAILS,
16 THEY SOUND SO GOOD, THEY SOUND SO REAL, BUT WHAT WE
17 KNOW IS THAT WHILE OFTEN THEY CONTAIN TRUE
18 INFORMATION, ACCURATE INFORMATION, A SECOND QUESTION
19 THAT ONE HAS TO DETERMINE IS WHERE THAT INFORMATION
20 COME FROM, AND SOMETIMES IT TURNS OUT THE INFORMATION
21 IS DERIVED FROM SECOND HAND SOURCES YOU CAN HEAR
22 SOMETIMES IN THESE TAPES THAT AN ITEM OF INFORMATION
23 ACTUALLY COMES FROM THE QUESTION NOT THE ANSWER AND
24 THE ONLY WAY TO GO BACK AND KNOW THAT AND TO TRACK
25 THE SOURCE OF A DETAIL IS TO HEAR THE PROCESS OF

002478

1 INFLUENCE THAT GAVE RISE TO THAT DETAIL

2 Q IN THE TYPICAL CASE STUDY THAT YOU PARTICIPATE
3 IN HOW WOULD YOU NORMALLY KNOW WHAT WEIGHED IN ON IN
4 A CONFESSION OR IN A STATEMENT AND WHAT TECHNIQUES
5 WERE USED? I MEAN IF YOU SAY, FOR EXAMPLE, IF YOU
6 DON'T HAVE A VIDEO TAPE OR A AUDIO TAPE?

7 A WELL, THEN YOU DO THE BEST YOU CAN ON THE BASIS
8 OF TESTIMONY AND IN POINTS OF AGREEMENT VERY OFTEN,
9 FOR EXAMPLE, THE POLICE WHO ARE PRESENT AND THE
10 DEFENDANT WHO IS PRESENT WILL TESTIFY TO THE SAME SET
11 OF EVENTS, THE SAME SERIES OF EVENTS IN CASES WHERE
12 THEY AGREE I ASSUME THERE IS A REALITY BASE TO THAT
13 AGREEMENT IN CASES OF DISAGREEMENT PERSONALLY I SET
14 IT ASIDE AND ACKNOWLEDGE THAT I SIMPLY DON'T KNOW
15 WHAT HAPPENED ON THAT FRONT A DEFENDANT MIGHT OFTEN
16 CLAIM THAT HE WAS THREATENED WITH THE ELECTRIC CHAIR
17 WELL, IF THERE IS NO OTHER EVIDENCE FOR THAT THREAT,
18 THEN TO ME THAT DIDN'T HAPPEN SO VERY
19 CONSERVATIVELY POINTS OF AGREEMENT COME THROUGH
20 POLICE REPORTS AND OTHER INDIRECT FORMS OF TESTIMONY,
21 POINTS OF AGREEMENT BECOME THE BASIS FOR KNOWING WHAT
22 HAPPENED

23 Q DOCTOR, LET ME ASK YOU TO COMMENT ON ONE OTHER
24 SUBJECT BEFORE WE TURN SPECIFICALLY TO THE COPE CASE
25 WHAT ABOUT A CONFESSION THAT IS FILLED WITH VIVID

002479

1 DETAIL, SPECIFIC DETAIL, ISN'T A VERY PERSUASIVE
2 CONFESSION?

3 A IT IS VERY PERSUASIVE AND THIS IS THE PROBLEM
4 WITH IN FACT MAKING A DISTINCTION BETWEEN TRUE AND
5 FALSE CONFESSIONS JUST BY LOOKING AT THEM SEVERAL
6 YEARS AGO THERE WAS A PSYCHOLOGIST EXPERT WITNESS
7 CLAIMING THAT HE COULD TELL THE DIFFERENCE BETWEEN
8 THE TRUE AND THE FALSE CONFESSION THE SCIENCE
9 DOESN'T GIVE US THAT WE CAN'T TELL THE DIFFERENCE
10 BETWEEN TRUE AND FALSE CONFESSION BY LOOKING AT THE
11 CONFESSION

12 NOW PEOPLE CAN MAKE JUDGMENTS BY COMPARING
13 THE STATEMENT AND COMPARING IT TO THE FACTS OF THE
14 CASE DOES IT, IS THIS A STORY ABOUT WHAT ACTUALLY
15 HAPPENED OR IS THERE SOME GLARING DISPARITY BETWEEN
16 THE STORY AND THIS CONFESSION AND THE OTHER EVIDENCE
17 DOES THE STORY CONTRADICT ITSELF THOSE ARE WAYS IN
18 WHICH YOU CAN MAKE THAT DETERMINATION, BUT SIMPLY
19 LOOKING AT A CONFESSION JUST LIKE LOOKING AT A DENIAL
20 WE CAN'T DO IT AND IN FACT I HAVE GOT A STUDY AGAIN
21 THAT IS BEING PUBLISHED IN LAW AND HUMAN BEHAVIOR
22 SHOWING THAT THE AVERAGE PEOPLE INCLUDING LAW
23 ENFORCEMENT PEOPLE CANNOT TELL TRUE CONFESSIONS FROM
24 FALSE CONFESSIONS JUST BY LOOKING AT THEM SO WHAT
25 WE NEED TO DO IS GET OUTSIDE OF THAT LOCAL PRODUCTION

002480

1 AND COMPARE THAT CONFESSION TO WHAT ELSE WE KNOW
2 ABOUT A PARTICULAR CASE AND THAT'S WHY I WOULD NEVER
3 TESTIFY ABOUT A PARTICULAR CONFESSION BEING TRUE OR
4 FALSE BECAUSE IT WOULD REQUIRE ME TO DO WHAT A JURY
5 SHOULD DO WHICH IS TO TAKE THAT CONFESSION AND
6 COMPARE IT TO OTHER THINGS THAT ARE PRESENTED IN THIS
7 CASE SO, FOR EXAMPLE, YOU MIGHT LOOK AT A
8 CONFESSION AND ASK, OR A SERIES OF CONFESSIONS AND
9 ASK THE QUESTION, DO THEY CONTRADICT EACH OTHER? ARE
10 THERE MULTIPLE STATEMENTS THAT CONTRADICT EACH OTHER?
11 AND MORE IMPORTANTLY YOU LOOK AT THAT SERIES OF
12 STATEMENTS AND ASK WHETHER THOSE STATEMENTS MATCH THE
13 ACTUAL FACTS OF THE CRIME AND VERY OFTEN IN FALSE
14 CONFESSION CASES THE ANSWER IS YES IN FACT, WHAT
15 YOU HAVE IN THESE CASES IS ACCURATE VIVID DETAILS TO
16 THE CRIME, APPARENTLY THAT ONLY THE PERSON, THE
17 CULPRIT SHOULD KNOW BUT THERE IS A SECOND LEVEL OF
18 ANALYSIS HERE AND THIS AGAIN IS OFTEN DIFFICULT FOR
19 PEOPLE, PARTICULARLY WITHOUT VIDEO TAPE, IS YOU HAVE
20 TO QUESTION THE SOURCE OF THAT INFORMATION IT'S ONE
21 THING TO DEMONSTRATE THAT A SUSPECT GAVE FACTS ABOUT
22 A CRIME THAT ARE ACCURATE, THE SECOND QUESTION IS
23 WHERE DID THOSE FACTS COME FROM FROM A PERSONAL
24 EXPERIENCE OR FROM SOME OTHER SECONDHAND INDIRECT
25 SOURCE

002'81

1 THERE ARE CASES, FOR EXAMPLE, THAT TO
2 EVERYBODY'S PUZZLEMENT CONTAINS DETAILS THEN IT TURNS
3 OUT THAT THE SUSPECT IN THAT CASE WAS SHOWN
4 PHOTOGRAPHS OR TAKEN TO THE CRIME SCENE OR OVERHEARD
5 CONVERSATIONS IN THE POLICE DEPARTMENT THAT CONTAIN
6 DETAILS THAT HE OTHERWISE DIDN'T KNOW, AND SO THERE
7 ARE SECONDHAND SOURCES OF INFORMATION SOMETIMES A
8 NEWSPAPER ARTICLE, PARTICULARLY A HIGH PROFILE CASE
9 THAT'S IN THE NEWS IT'S IMPORTANT TO BE ABLE AND
10 THAT'S WHY VIDEO TAPING IT I THINK IS SO IMPORTANT TO
11 BE ABLE TO TRACK THE SOURCE OF THAT INFORMATION

12 Q AND YOU'VE BEEN INVOLVED IN CASE STUDIES OF
13 CASES WHERE THERE WERE VIVID, DETAILED CONFESSIONS
14 THAT TURNED OUT ULTIMATELY TO BE PROVABLE AND
15 DOCUMENTABLY FALSE?

16 A YES

17 Q NOW LOOKING AT THIS CASE, DR KASSIN, HOW DO YOU
18 KNOW WHAT WENT ON DURING THE INTERROGATION THAT
19 RESULTED IN THESE CONFESSIONS?

20 A I HAVE TWO POLICE REPORTS FROM NOVEMBER 29 AND
21 THEY SIMPLY IN NARRATIVE FORM DESCRIBE THAT HE WAS
22 QUESTIONED AND THIS IS WHAT HE SAID AND THIS IS WHAT
23 HE DENIED AND THEN I HAVE THAT AUDIO TAPE AND A
24 TRANSCRIPT OF THAT TAPE FROM NOVEMBER 29 THAT
25 EXTENDED OVER INTO NOVEMBER 30, THAT THREE AND A HALF

002482

1 HOUR TAPE, IN WHICH HE IS INTERROGATED AND CONTINUES
2 TO MAINTAIN HIS DENIALS THAT'S THE TAPE IN WHICH HE
3 ASKS FOR A POLYGRAPH THE NEXT STEP, I HAVE THE
4 WRITTEN REPORT FROM DETECTIVE BAKER WHO ACTUALLY
5 CONDUCTED THE POLYGRAPH, FOLLOWED BY A STATEMENT FROM
6 THE DEFENDANT, AND THEN I UNDERSTAND THE DEFENDANT
7 WAS IN CUSTODY OVER THE WEEKEND, WAS HELD OVER THE
8 WEEKEND, AND CAME BACK MONDAY DECEMBER THIRD TO
9 PROVIDE A WRITTEN STATEMENT IN THE MORNING, A VIDEO
10 TAPED RE-ENACTMENT SHORTLY AFTER THAT, THEN A SECOND
11 STATEMENT THAT WAS TYPED UP BY DETECTIVE BLACKWELDER
12 IN THE AFTERNOON, THAT BEING THE FINAL FIFTH, IN SOME
13 WAYS, FIFTH AND FINAL CONFESSION THAT'S THE
14 INFORMATION I HAVE

15 Q WERE THE TECHNIQUES THAT YOU DESCRIBED EARLIER
16 IN YOUR TESTIMONY HERE TODAY WERE ANY OF THOSE
17 TECHNIQUES USED ON MR COPE?

18 A YES

19 Q HOW DO YOU KNOW THAT THOSE TECHNIQUES WERE USED?

20 A I HEARD THEM ON THE TAPE NOW THAT INITIAL
21 TAPE, THAT INITIAL TAPE OF INTERROGATION ON THE NIGHT
22 OF THE 29, SLIPPING OVER INTO THE EARLY MORNING OF
23 THE 30, YOU CAN HEAR THE SEEDS PLANTED OF
24 INTERROGATION TECHNIQUES THIS WAS AN INTERROGATION
25 HE WAS CONFRONTED WITH ACCUSATIONS OF HIS GUILT HE

OC2483

1 WAS NOT BELIEVED WHEN HE DENIED THERE WAS A
2 PERSISTENCE TO THOSE CHARGES THE IMPLICATION WAS
3 MADE, IT WAS INSINUATED THAT WAS OTHER EVIDENCE,
4 BLUFFING, BAITING TECHNIQUES WERE USED, YOU KNOW,
5 WHAT, FOR EXAMPLE, DO YOU THINK WOULD HAPPEN IF WE
6 WERE TO TEST THE DNA HE WAS ASKED THOSE KINDS OF
7 BAITING QUESTIONS AND THERE WAS AN IMPLICATION OF
8 MINIMIZATION BEING USED AS WELL MINIMIZATION AT ONE
9 POINT THE SUGGESTION WAS THAT THERE WAS POSSIBLY THAT
10 THIS WAS AN ACCIDENT, SOMETHING THAT ESCALATED OUT OF
11 CONTROL AND IN ADDITION TO THAT THERE WAS AT LEAST
12 THE SEED PLANTED OF A BLACK OUT, THE NOTION THAT
13 SOMEBODY MIGHT BLACK IT OUT IN FACT AT ONE POINT HE
14 RESPONDS VERY QUICKLY BACK TO SAY, I'M AWARE OF WHAT
15 I DO IN OTHER WORDS, AT THAT POINT IN TIME HE
16 WASN'T GOING TO HAVE THAT BLACK OUT IDEA THE NEXT
17 MORNING EVERYTHING HAD CHANGED SO I DO KNOW FROM
18 THAT EVENING AND THEN OF COURSE I HAVE THE VIDEO TAPE
19 WHICH ARE BOTH, YOU KNOW, IN A SENSE RECORDINGS, LIVE
20 CONTEMPORANEOUS RECORDINGS OF STATEMENTS THAT HE WAS
21 GIVING

22 Q IS THERE ANYTHING ABOUT THESE TECHNIQUES THAT
23 YOU KNOW OCCURRED IN THIS CASE THAT CAUSE YOU ANY
24 CONCERN?

25 A THE PRESENTATION OF FALSE EVIDENCE AND THE

002484

1 EXCESSIVE LENGTH AND THIS IS SOMETHING THAT, BY
2 OBJECTIVE MEASURES, THE EXCESSIVE LENGTH BECAUSE WE
3 KNOW THAT IT IS A MARKER OF FALSE CONFESSIONS, THE
4 EXCESSIVE LENGTH OF CUSTODY AND INTERROGATION THE
5 FACT, FOR EXAMPLE, THAT THE VIDEO TAPE REENACTMENT
6 CAME AFTER HE WAS IN CUSTODY FOR THREE AND A HALF
7 DAYS SO CERTAINLY THERE ARE TECHNIQUES THAT ARE
8 USED THERE IS A PSYCHOLOGICAL IMPLAUSIBILITY, I
9 MIGHT EVEN GO SO FAR TO SAY IT'S AN IMPOSSIBILITY IN
10 WHICH THE STATEMENT HE GAVE ON VIDEO TAPE INTERNALLY
11 CONTRADICTS ITSELF TO A POINT OF ABSOLUTELY
12 IMPLAUSIBLE AND ALL OF THAT IS IN EVIDENCE AS FAR
13 AS I'M CONCERNED THAT'S WHAT I CAN ACTUALLY SEE NOW
14 THE STATEMENTS DO CHANGE, THEY CHANGE FROM TIME TO
15 TIME, BUT I CAN ONLY, THE TWO TAPES ARE AGAIN THE
16 MATERIALS I CAN RELY ON BECAUSE I'M SEEING IT COME
17 OUT OF HIS MOUTH

18 Q WHAT YOU SAY THE PRESENTATION OF FALSE EVIDENCE,
19 SPECIFICALLY WHAT ARE YOU REFERRING TO IN THIS CASE?

20 A WELL, THERE WAS AN IMPLICATION, AN INSINUATION,
21 DURING THAT THERE MAY BE DNA, BUT THERE WAS NO
22 PRESENTATION OF FALSE EVIDENCE THE PRESENTATION OF
23 FALSE EVIDENCE COMES WITH THE POLYGRAPH HE VERY
24 CLEARLY AND ADAMANTLY AND REPEATEDLY ON THE NIGHT OF
25 THE 29 AND 30 REQUEST THE POLYGRAPH HE SEEMS IN A

002485

1 NUMBER OF WAYS TO HAVE NO CONSCIOUSNESS OF GUILT HE
2 SEEMS IN A NUMBER OF WAYS TO BE CONFIDENT IN HIS OWN
3 EXONERATION, SO HE ASKED TO TAKE A POLYGRAPH IN
4 FACT I THINK HE ASKS FOUR OR FIVE TIMES FINALLY AT
5 THE LAST TIME HE ASKED THE QUESTION WAS RAISED TO
6 HIM, YOU HAVE A LOT OF FAITH IN THE POLYGRAPH, DON'T
7 YOU AND HE SAID YES WELL, THAT MADE HIM VULNERABLE
8 TO MANIPULATION ESSENTIALLY WHAT HE IS SAYING IS I
9 TRUST THE RESULT OF THE POLYGRAPH YOU GIVE ME THE
10 RESULTS OF THE POLYGRAPH AND THAT WILL TELL YOU THE
11 TRUTH THE NEXT MORNING HE WAS ADMINISTERED THE
12 POLYGRAPH AND TOLD THAT HE FAILED THAT FEEDBACK,
13 NOT THE ADMINISTRATION ITSELF, BUT THE FEEDBACK
14 SHORTLY THEREAFTER THAT YOU FAILED AND NOW THE BURDEN
15 IS ON HIM TO SOMEHOW RECONCILE HIS LACK OF MEMORY,
16 HIS BELIEF IN HIS OWN INNOCENCE, WITH THIS APPARENTLY
17 UNIMPEACHABLE EVIDENCE THAT HE PLACED SO MUCH, BY HIS
18 OWN ADMISSION, PLACED SO MUCH FAITH IN HE NOW HAD
19 TO RECONCILE THOSE TWO AND AT THAT POINT STARTED TO
20 ASK QUESTION ABOUT IS IT POSSIBLE TO BLACK OUT VERY
21 CLASSIC QUESTION THAT A PERSON OFTEN ASKS AFTER THE
22 PRESENTATION OF FALSE EVIDENCE
23 Q WHAT ABOUT THE FACT THAT MR COPE ACTUALLY
24 REENACTED THE CRIME THAT HE WAS ACCUSED OF?
25 A IT'S ANOTHER, AGAIN THIS IS NOW FOUR - FOUR AND

A HALF DAYS OF HIS BEING IN CUSTODY AND HE'S UNDER ARREST AT THIS POINT, HE GAVE A STATEMENT EARLIER, APPARENTLY THAT STATEMENT WASN'T SUFFICIENT, SO THEY WENT IN AND REENACTED IT'S AN INTERESTING REENACTMENT IT DOESN'T MATCH THE FACTS OF THE CRIME AS THEY ARE NOW KNOWN, BUT MORE IMPORTANTLY IT IS IN MANY WAYS CONTRADICTORY AND IN FACT AS I MENTION EARLIER, HE DESCRIBES TRANSITIONS IN HIS OWN MENTAL STATE THAT ARE SIMPLY NOT POSSIBLE WHICH IS TO SAY, THERE ISN'T A PSYCHOLOGY, STUDY, CASE STUDY, EXPERIMENT, FIELD STUDY, EXAMPLE, OR OTHERWISE TO DEMONSTRATE THE MEMORY PHENOMENA HE SEEMS TO BE DESCRIBING IT'S JUST NOT POSSIBLE

Q WHICH OF THE CATEGORIES OF FALSE CONFESSION WOULD HAVE CHARACTERISTICS THAT ARE COMMON WITH THIS PARTICULAR CASE THAT YOU DISCUSSED EARLIER?

A THE COERCED INTERNALIZED FALSE CONFESSION HAVE THE INGREDIENTS WHERE SOMEBODY WHO IS VULNERABLE, PERHAPS BEING FATIGUED OR SLEEP DEPRIVED IS CONFRONTED WITH EVIDENCE, FALSE EVIDENCE, THAT PUTS THEM OVER THE EDGE, THAT THERE IS THEN TALK ABOUT A BLACK OUT SOME DISCUSSION ABOUT, WELL, LET'S TRY TO CONSTRUCT HOW YOU WOULD HAVE DONE IT IN FACT, HE WAS ASKED A QUESTION HOW WOULD YOU HAVE DONE IT IN THE HYPOTHETICAL AND THAT WAS ON TAPE IT HAS THOSE

002487

1 INGREDIENTS ULTIMATELY RESULTING IN THAT STATEMENT
2 THEN I MUST HAVE DONE IT I MUST HAVE DONE IT IS THE
3 HALLMARK FIRST TRANSITION MOMENT IN THESE COERCED
4 INTERNALIZED FALSE CONFESSIONS IT'S NOT A STATEMENT
5 BASED IN MEMORY IT'S NOT I DID IT OH, YEAH, NOW I
6 REMEMBER I DID IT IT'S I GUESS I MUST HAVE DONE IT
7 THAT IS TO SAY, I DON'T KNOW FOR SURE BUT I INFER IT
8 MUST HAVE HAPPENED

9 Q AND DOCTOR, I'D LIKE YOU TO COMMENT ON THE FACT
10 THAT AFTER THIS INITIAL CONFRONTATION WITH, AS YOU
11 SAY, FALSE EVIDENCE FROM A POLYGRAPH AND AFTER THAT
12 LEAD TO HIS PERHAPS INTERNALIZING, WHAT ABOUT WHEN
13 TWO OR THREE DAYS LATER HE INITIATED CONTACT WITH THE
14 POLICE AND SAID I HAVE SOMETHING ELSE TO SAY, I HAVE
15 MORE TO GO INTO, WHAT, WOULD YOU COMMENT ON THAT?

16 A WELL, MY UNDERSTANDING AT THAT POINT IS THAT HE
17 WAS IN CUSTODY AND UNDER ARREST, HAD SPENT THE
18 WEEKEND ISOLATED IN THE HOLDING CELL, AND KNEW THAT,
19 IN FACT, HE WAS ARRESTED SUBSEQUENT TO ISSUING THE
20 DENIALS SO MY GUESS IS HE KNEW AND FELT TRAPPED AND
21 WAS LIKE MOST SUSPECTS DO AT SOME POINT IN THE
22 PROCESS LOOKING FOR A WAY OUT, AND CLEARLY WHAT HE
23 HAD, THE STATE HE WAS IN WAS NOT SATISFACTORY SO HE
24 WAS LOOKING FOR A WAY OUT NOW THAT DOESN'T MAKE THE
25 STATEMENT HE SUBSEQUENTLY GAVE TRUE OR FALSE IT

002488

1 SIMPLY MEANS HE FELT THE NEED TO CHANGE THE SITUATION
2 HE WAS IN AND DO SOMETHING DIFFERENT

3 Q DOCTOR, HOW OFTEN HAVE YOU BEEN ASKED TO TESTIFY
4 AS AN EXPERT ON FALSE CONFESSIONS?

5 A BETWEEN 800 AND A THOUSAND

6 Q AND WHY DO YOU SUPPOSE THAT YOU RECEIVE SO MANY
7 REQUESTS?

8 A WELL, I HAVE PUBLISHED A LOT OF PAPERS IN THE
9 AREA AND I'VE DONE SO FOR A LONG PERIOD OF TIME SO
10 MY WORK IS CITED I HAVE WRITTEN SOME OF THE REVIEWS
11 LIKE THAT 1997 CHAPTER

12 Q AND HOW OFTEN HAVE YOU ACTUALLY AGREED TO
13 TESTIFY IN A CASE LIKE THIS?

14 A ABOUT 20 OR 25, 30 MAYBE

15 Q AND THOSE CASES WHERE YOU DID NOT AGREE TO
16 TESTIFY, WHY DID YOU CHOOSE NOT TO TESTIFY?

17 A WELL, MORE OFTEN THAN NOT THE PHONE CALL I WOULD
18 RECEIVE WOULD BE FROM A LAWYER WHERE A GUILTY CLIENT
19 WHERE THERE IS OTHER EVIDENCE TO CORROBORATE THE
20 CONFESSION, WHERE THE CONFESSION IS TAKEN UNDER
21 RELATIVELY NON-COERCISIVE CIRCUMSTANCES, AND THE
22 CONFESSION IN MANY WAYS CORROBORATES ITSELF, SO THEY
23 SEEM LIKE RELIABLE STATEMENTS SO IN THOSE CASES, MANY
24 OF THOSE CASES, I SIMPLY SAY NO IN OTHER CASES
25 WHERE IT LOOKS LIKE THERE MAY BE SOMETHING WORTH

002489

1 INVESTIGATING BECAUSE I TYPICALLY, I JUST DON'T LIKE
2 TO SPEND MY TIME IN COURTROOMS I'D RATHER BE IN THE
3 RESEARCH LAB, I WILL OFTEN THEN REFER THOSE CASES OUT
4 AS WELL SO IN THE VAST MAJORITY OF CASES I SIMPLY
5 DON'T SEE THE GENERAL PRINCIPLES AND THE SCIENCE
6 APPLICABLE TO THAT PARTICULAR CASE

7 Q AND I THINK I ALREADY ASKED YOU THIS BUT WOULD
8 YOU OR HAVE YOU EVER TESTIFIED FOR THE STATE IN A
9 CASE WITH A DISPUTED CONFESSION?

10 A I WAS PREPARED TO ONCE AND WASN'T NEEDED

11 Q ANSWER ANY QUESTIONS --

12 THE COURT WELL, I DON'T NEED TO HEAR
13 ANYTHING FROM THE STATE BECAUSE THE QUESTION IS
14 WHETHER OR NOT WHAT YOU WERE GOING TO ASK IS
15 ADMISSIBLE SO I'M READY TO RULE I'M GOING TO ALLOW
16 THE TESTIMONY IF YOU'LL CONFINE IT TO WHAT HE
17 TESTIFIED TO AT THIS POINT I'M GOING TO ALLOW HIM
18 TO TESTIFY TO WHAT HE TESTIFIED TO, AS LONG AS HE
19 DOESN'T GO OFF ON A TANGENT, UP TO WHERE YOU ASKED
20 HIM ANYTHING IN THIS CASE GIVE YOU CAUSE FOR CONCERN
21 HE HAD ALREADY GIVEN TECHNIQUES HE HAD SOME CONCERN
22 ABOUT, BUT I'M NOT GOING TO LET YOU ASK HIM HIS
23 CAUSES FOR CONCERN FIRST, IT'S SORT OF A VEILED WAY
24 OF SAYING THIS IS A FALSE CONFESSION AND HE SAID HE
25 COULDN'T DO THAT SECOND, IT'S NOT NECESSARY FOR THE

002490

1 JURY TO HEAR HIS CONCERNS, THAT'S WHAT THEY CAN DO
2 THEY CAN ANALYZE, THEY CAN USE THESE TECHNIQUES HE
3 SAID BLUFFING, BAITING, MINIMIZING, BLACK OUT, THEY
4 CAN USE THESE TECHNIQUES WITHOUT HAVING EXPERT
5 TESTIMONY TO AID THEM AND IN ESSENCE WHAT HE STATED
6 IN HIS CAUSES FOR CONCERN ARE SIMPLY A JURY ARGUMENT
7 THAT'S BETTER LEFT TO COUNSEL SO I'M GOING TO LET
8 HIM TESTIFY UP TO THE POINT WHERE YOU ASKED HIM WHAT
9 GIVES YOU CAUSE FOR CONCERN AND THAT'S IT

10 MR BAITY YOUR HONOR, COULD I NOT ASK
11 HIM, AND I BELIEVE IT'S VERY IMPORTANT THAT HE BE
12 ALLOWED TO TESTIFY TO THE TECHNIQUES THAT HE HAS
13 IDENTIFIED THAT HE CAN ALSO IDENTIFY IN THIS CASE I
14 MEAN --

15 THE COURT I SAID THAT YOU ASKED HIM
16 WELL WHAT ABOUT THE COPE CASE WHAT TECHNIQUES DID
17 YOU FIND? HE SAID BLUFFING, BAITING, MINIMIZING,
18 BLACK OUT I SAID YOU COULD ASK THOSE

19 MR BAITY ALL RIGHT, SIR I UNDERSTAND
20 THE COURT BUT THEN YOU ASKED HIM HIS
21 CAUSE OF CONCERN AND THAT'S WHY, THAT GIVES ME CAUSE
22 FOR CONCERN ALL RIGHT

23 MR BRACKETT PLEASE THE COURT

24 THE COURT YES, SIR

25 MR BRACKETT I HAVE NO PROBLEM WITH

002491

1 THAT HE MENTIONED TWO CASES SPECIFIC, THE RILEY
2 CASE AND THE, IT BEGAN WITH AN R

3 A GARY GEIGER

4 MR BRACKETT GEIGER, AND I SUBMIT HE CAN
5 MAKE THE POINT THAT HE MADE WITHOUT REFERENCING THE
6 FACTS AND CIRCUMSTANCES

7 THE COURT I'LL HAVE HIM LEAVE THOSE
8 CASES OUT TOO

9 MR BRACKETT THAT IS THE ONLY TWO HE
10 MENTIONED AS FAR AS I COULD TELL

11 THE COURT LET'S TAKE A SHORT BREAK AND
12 THEN WHEN WE COME BACK WE WILL GET THE JURY IN AND
13 MOVE ON DOCTOR, YOU CAN TAKE A BREAK

14 A THANK YOU

15 (COURT'S IN RECESS AT 03 34 PM)

16 (COURT RESUMES AT 03 40 PM AND ALL PARTIES
17 ARE PRESENT)

18 THE COURT BRING IN THE JURY

19 (THE JURY RETURNS TO THE COURTROOM AT
20 03 41 PM)

21 THE COURT MR BAITY

22 MR BAITY PLEASE THE COURT, YOUR HONOR
23 DIRECT EXAMINATION CONTINUED BY MR BAITY

24 Q DR KASSIN, BEFORE WE TOOK A BREAK I BELIEVE WE
25 WERE TALKING ABOUT VOLUNTARY FALSE CONFESSIONS GIVE

002492

1 US AN EXAMPLE AND MY NEXT QUESTION WOULD BE, WOULD
2 THE POLICE BE ABLE TO TELL IF THE STATEMENT GIVEN WAS
3 A VOLUNTARY FALSE CONFESSION IS, ARE THERE ANY
4 TECHNIQUES POLICE OFFICERS CAN USE TO FERRET THOSE
5 OUT?

6 A TYPICALLY WHAT POLICE DO WHEN HANDLING A
7 VOLUNTARY CONFESSION IS THEY LOOK FOR CORROBORATION
8 THEY ASK THEMSELVES THE QUESTION WHETHER OR NOT THE
9 STATEMENT IS CLEAR AND CONSISTENT AND NOT
10 SELF-CONTRADICTORY, IT DOESN'T JUMP FROM ONE POINT TO
11 ANOTHER AND CHANGE FACTS WITHIN THE STATEMENT, BUT
12 THEN MOST IMPORTANTLY THEY DEMAND CORROBORATION
13 THEY WANT TO KNOW CAN THIS SUSPECT TELL ME SOMETHING
14 ABOUT THIS CRIME, THAT IF HE ACTUALLY DID IT HE MUST
15 KNOW, AND SO ONE LITMUS TEST IS CAN THE SUSPECT TELL
16 ME SOMETHING I DON'T ALREADY KNOW OR CAN THE SUSPECT
17 LEAD ME TO SOME EVIDENCE THAT I DON'T ALREADY HAVE
18 AND THAT IS A FORM OF CORROBORATION YOU HAVE TO
19 ESSENTIALLY GET OUTSIDE OF THE STATEMENT ITSELF TO
20 SEE WHETHER THAT PERSON CAN PROVE THE GUILT
21 UNDERLYING THAT STATEMENT

22 Q DOCTOR, YOU HAD BEGUN TO TALK ABOUT VARIOUS
23 TYPES OF FALSE CONFESSIONS THAT YOU HAVE STUDIED I
24 BELIEVE THE FIRST ONE WAS THE VOLUNTARY FALSE
25 CONFESSION NOW LET'S GET BACK INTO GOING THROUGH

1 THAT LIST I BELIEVE THE NEXT ONE WOULD BE COERCED
2 COMPLIANT FALSE CONFESSION?

3 A CORRECT

4 Q PLEASE TELL THE JURY ABOUT THAT

5 A THE COERCED COMPLIANT FALSE CONFESSION ARE THE
6 CASES, AND THESE ARE PROBABLY THE MOST COMMON, IN
7 WHICH SOMEBODY CONFESSES NOT BECAUSE THEY, NOT
8 BECAUSE THEY, THIS IS AN INNOCENT PERSON CONFESSING
9 NOT BECAUSE THEY KNOW THEY COMMITTED THE CRIME BUT
10 BECAUSE THEY ARE TRYING TO PUT AN END TO A BAD
11 SITUATION EITHER BECAUSE OF THE DEGREE OF STRESS THEY
12 ARE UNDER OR FATIGUE OR SLEEP DEPRAVATION OR WHATEVER
13 THEIR STATE MIGHT BE AND AS WELL THE KINDS OF
14 PRESSURES THAT THEY ARE UNDER IF YOU ARE UNDER A
15 CERTAIN DEGREE OF PRESSURE WHAT PSYCHOLOGISTS HAVE
16 FOUND FOR YEARS WHO STUDY DECISION MAKING IS THAT
17 PEOPLE OFTEN BECOME VERY SHORT-SIGHTED WE DO
18 WHATEVER IT TAKES TO GET OUT OF A BAD SITUATION
19 WHETHER IT'S BECAUSE I NEED SLEEP, I WANT TO CALL MY
20 WIFE, I'VE GOT TO GET SOME FOOD IN MY BODY, WHATEVER
21 IT IS I WILL OFTEN DO WHATEVER IT TAKES TO GET OUT OF
22 A BAD SITUATION ARE THERE POSSIBLE NEGATIVE
23 CONSEQUENCES LATER? I'LL DEAL WITH THAT WHEN THE
24 TIME COMES AND SO DECISION-MAKING RESEARCH IN ALL
25 SORTS OF CONTEXTS FOR YEARS HAS SHOWN THAT PEOPLE

002494

1 MAKE DECISIONS BASED MORE ON SHORT-TERM CONSEQUENCES
2 THAN LONG-TERM CONSEQUENCES AND IN THE INTERROGATION
3 SETTING THAT'S WHAT THESE FALSE CONFESSORS HAVE DONE
4 AND THERE ARE CASE AFTER CASE AFTER CASE WHERE THEY
5 SAY THINGS LIKE I JUST WANTED TO GO HOME WHY DID
6 YOU CONFESS IF WE NOW KNOW THAT YOU ARE INNOCENT?

7 WELL, I JUST WANTED TO GET HOME ESSENTIALLY GET TO
8 A POINT WHERE THEY HAVE HAD ENOUGH AND THEY

9 SURRENDER, THEY KNOW THEY ARE INNOCENT, BUT THEY

10 SURRENDER WE KNOW THAT THEY KNOW BECAUSE THE SECOND

11 THEY GET OUT OF THE PRESSURE OF THE SITUATION AND A

12 LAWYER ENTERS THE PICTURE THEY SAY TO THE LAWYER I

13 CONFESSED BUT I DIDN'T DO IT SO THERE ARE A LOT OF

14 CASES OF PEOPLE WHO WE FIND OUT LATER THEY ARE

15 INNOCENT BUT THEY CONFESS JUST TO GET OUT OF A BAD

16 SITUATION

17 Q NOW DOCTOR, YOU ARE TALKING ABOUT COERCED

18 COMPLAINT FALSE CONFESSION, IS THE COERCION IN THAT

19 TYPE OF CONFESSION, DOES IT HAVE TO BE OVERT AND

20 PHYSICAL OR CAN IT BE MORE SUBTLE?

21 A NO, IT CAN BE SUBTLE IT HAS TO DO WITH TIME,

22 IT HAS TO DO WITH CIRCUMSTANCE, IT HAS TO DO WITH

23 WHAT THIS PERSON IS BEING DEPRIVED OF, OR THE FACT

24 THAT THIS PERSON MAY SIMPLY HAVE BEEN IN A ROOM FOR

25 ENOUGH TIME, DENIAL DOESN'T WORK, NOTHING I SAY SEEMS

002495

1 TO BE WORKING, THERE IS PERSISTENCE, IT SEEMS THAT
2 THERE IS NOTHING I CAN DO TO EXTRICATE MYSELF FROM
3 THIS BAD SITUATION IT BECOMES MORE AND MORE
4 FATIGUED AS I GET MORE AND MORE WORN DOWN, YOU START
5 TO DO WHATEVER IT TAKES TO END IT THEY KNOW THEY
6 ARE INNOCENT PRIVATELY BUT THEY DO WHAT IT TAKES
7 OVERTLY TO CONFESS

8 Q ALL RIGHT NOW IN ADDITION TO VOLUNTARY FALSE
9 CONFESSIONS AND THESE COERCED COMPLIANT CONFESSIONS
10 YOU JUST DESCRIBED IS THERE ANOTHER CATEGORY THAT
11 YOU'VE PUT FALSE CONFESSIONS INTO?

12 A YES THERE IS A THIRD AND WHEN WE FIRST
13 DISCOVERED THIS WAS THE MOST PUZZLING OF THEM ALL
14 WE CALLED THEM COERCED INTERNALIZED FALSE CONFESSION
15 AND OTHERS NOW HAVE USED THE TERM BECAUSE IT'S CLEAR
16 THERE ARE A NUMBER OF CASES AND THESE, AT THE TIME IN
17 1985 WHEN WE DISCOVERED THIS, IT IS VERY CONFUSING
18 BECAUSE WE DIDN'T HAVE THE MEMORY SCIENCE THEN THAT
19 WE HAVE NOW, AND WHAT WE WERE SEEING WERE CASES WHERE
20 PEOPLE WHO WERE INNOCENT NOT ONLY DID THEY CONFESS
21 BUT THEN THEY STARTED TO BELIEVE THAT THEY ACTUALLY
22 COMMITTED THE CRIME NOW WE FIND OUT LATER THAT IN
23 FACT THEY DIDN'T NOW THESE ARE INTERESTING CASES
24 BECAUSE WHAT HAPPENS IS PRIVATELY THEY ARE CONVERTED,
25 THEY ARE PERSUADED ALMOST AS A FORM OF BRAIN WASHING

002496

BUT THAT'S NOT A SCIENTIFIC TERM, BUT ESSENTIALLY
WHAT HAPPENS IS PEOPLE WHO ARE IN SOME WAYS
VULNERABLE TO MANIPULATION AND THE WAY THIS HAPPENS
IS VERY PREDICTABLE, THERE ARE A LOT OF CASES JUST
LIKE THIS, YOU GET SOMEBODY WHO IS VULNERABLE TO
MANIPULATION NOW WHY WOULD THEY BE VULNERABLE? ON
THE ONE HAND IT MIGHT BE SOMETHING ABOUT THEM
PEOPLE WHO ARE MENTALLY RETARDED, CHILDREN ARE
VULNERABLE, HIGHLY SUGGESTABLE, BUT IT MIGHT ALSO NOT
HAVE ANYTHING TO DO WITH THE PERSON IT MIGHT BE
THAT THEY ARE IN A BAD SITUATION THAT DOESN'T STOP
THEY MAY BE SLEEP DEPRIVED THEY MAY HAVE BEEN THERE
FOR A LONG TIME AND NOT HAVE ANY CONTACT WITH FAMILY
SO THERE ARE A NUMBER, THEY MAY BE PARTICULARLY
STRESSED, BUT THEY ARE VULNERABLE TO MANIPULATION AND
THEN WHAT HAPPENS, AND AGAIN THESE THINGS FOLLOW A
PREDICTABLE SEQUENCE, BUT IN THESE CASES IF SOMEONE
WHO IS VULNERABLE AND THEN AT SOME POINT IN THEIR
INTERROGATION THEY ARE PRESENTED WITH FALSE EVIDENCE,
THEY ARE TOLD THAT THERE IS OBJECTIVE EVIDENCE OF
THEIR GUILT, SOMETIMES SCIENTIFIC EVIDENCE, OF THEIR
GUILT AT WHICH POINT THEY HAVE THIS PUZZLE TO
RESOLVE IN THEIR HEADS -- I DON'T REMEMBER DOING
ANYTHING, I'M INNOCENT, BUT THERE IS THIS OBJECTIVE
EVIDENCE THAT TELLS, THAT SEEMS TO SUGGEST THAT I WAS

002497

1 INVOLVED, HOW CAN I RECONCILE THIS EVIDENCE WITH MY
2 LACK OF MEMORY NOW FOR PEOPLE WHO ARE VULNERABLE TO
3 MANIPULATION THAT'S THE POINT AT WHICH AND AGAIN IT'S
4 ALMOST LIKE A SCRIPT BECAUSE THERE ARE LOTS OF CASES
5 THAT FOLLOW EXACTLY THE SAME PATTERN, ONCE THEY ARE
6 CONFRONTED WITH THE DEVASTATING EVIDENCE THAT SAYS,
7 GUESS WHAT, WE HAVE INDEPENDENT KNOWLEDGE THAT YOU
8 DID IT, THEY OFTEN THEN START TO ENTERTAIN THE IDEA
9 AND OFTEN ASK THE QUESTION OF THEIR QUESTIONER, IS IT
10 POSSIBLE THAT I DID THIS AND DIDN'T REALIZE IT, COULD
11 I DO IT AND NOT KNOW IT, COULD I HAVE BLACKED IT OUT,
12 AND IN ALL OF THESE CASES THEY START TO ENTERTAIN THE
13 IDEA THAT THEY MUST HAVE DONE IT EVEN THOUGH THEY
14 CAN'T REMEMBER AT WHICH POINT YOU GET, AGAIN VERY
15 PREDICTABLY, THIS TENTATIVE, FRAGMENTARY LANGUAGE,
16 THEY SAY THINGS, THEY DON'T IN THESE CASES, AND AGAIN
17 THESE ARE PEOPLE WE KNOW LATER ARE INNOCENT, THEY
18 DON'T SAY I DID IT, I REMEMBER DOING IT THEY SAY I
19 MUST HAVE DONE IT, I GUESS I DID IT, BECAUSE THEY ARE
20 NOT REPORTING FROM MEMORY THEY ARE REPORTING A
21 GUESS, THEY ARE REPORTING, THEY ARE REPORTING, WELL,
22 IF YOU HAVE THIS EVIDENCE AND I DON'T HAVE A MEMORY I
23 MUST HAVE DONE IT AND NOT HAVE THE MEMORY AND THEY
24 ALL HAVE THAT IN COMMON WHAT THEY OFTEN THEN GO
25 THROUGH IS, WELL THEN TELL US HOW YOU WOULD HAVE DONE

1 IT THERE IS AN IMAGINATION LIKE EXERCISE WHERE THEY
2 ARE ASKED HYPOTHETICAL QUESTIONS, OKAY, YOU DON'T
3 HAVE A MEMORY NOW, BUT HOW WOULD YOU HAVE DONE IT
4 OFTEN WHAT THIS RESULTS IN IS YOU GET A COERCED
5 INTERNALIZED FALSE CONFESSION WHERE NOT ONLY DO THEY
6 SAY THEY COMMITTED THE CRIME BUT THEY COME TO BELIEVE
7 IT AND THEY GIVE A VERY DETAILED CONFESSION THEY
8 SAY WHAT THEY DID, HOW THEY DID IT, WHO THEY WERE
9 WITH, WHERE THEY WERE, WHAT TIME IT WAS, IN FACT, IN
10 ALMOST ALL OF THESE STATEMENTS THEY EVEN GIVE YOU A
11 STATEMENT ABOUT THEIR MOTIVE THEY TELL YOU WHY THEY
12 DID IT WHY THEY DID IT IS OFTEN PART OF THIS
13 CONSTRUCTION THAT TURNS OUT TO BE FALSE AGAIN IN A
14 NUMBER OF CASES JUST LIKE THIS, THE WAY WE KNOW LATER
15 THAT IT'S FALSE IS BECAUSE INDEPENDENT EVIDENCE SHOWS
16 IT WAS IMPOSSIBLE, THEY DIDN'T DO IT, THEY COULDN'T
17 HAVE DONE IT, BUT, YES, THERE ARE A NUMBER OF CASES
18 THAT RESULT IN THAT KIND OF MEMORY IMPAIRMENT AND
19 PSYCHOLOGISTS, AS I MENTIONED EARLIER IN 1985, WE
20 COULDN'T QUITE EXPLAIN THIS BUT WE NOW KNOW THAT
21 THERE ARE A LOT OF STUDIES SHOWING THAT FALSE
22 MEMORIES ARE IMPLANTED THROUGH VARIOUS TYPES OF
23 STRATEGIES ALL HAVING TO DO WITH THE PRESENTATION OF
24 FALSE EVIDENCE

25 Q WOULD THIS BE SIMILAR TO A SITUATION WHERE

002499

1 SOMEONE SAID COULD I HAVE BEEN DOING IT IN MY SLEEP
2 OR COULD I HAVE BEEN DOING IT AND DREAMING SOMETHING
3 ELSE?

4 A YES IN FACT A NUMBER OF THESE COERCED
5 INTERNALIZED FALSE CONFESSIONS INCLUDE STATEMENTS
6 ABOUT HAVING DONE THIS IN A DREAM STATE AND SO
7 WHATEVER THE MENTAL STATE IS, I'M DISSOCIATED, I'M
8 AMNESIC, I'M SLEEPING, I'M SLEEP WALKING, WHAT'S
9 CLEAR IS THEY DON'T REALLY HAVE A DIRECT MEMORY
10 THEY ARE TRYING TO SORT THIS THING OUT AND SO THEY
11 CAN'T EVEN FULLY SAY I'M INNOCENT THEY SAY I'M NOT
12 SURE SO WHEN A LAWYER THEN ENTERS THE PICTURE THE
13 FIRST THING THEY SAY IS, WELL, I CONFESSED WELL,
14 DID YOU DO IT? I'M NOT REALLY SURE THEY BECOME
15 DISORIENTED BY REALITY WHY? BECAUSE THEY TRUST
16 THAT THIS INFORMATION THAT IS GIVEN TO THEM IS
17 RELIABLE AND IN FACT IT'S NOT

18 Q DOCTOR, HOW DO YOU KNOW THAT THIS CAN OCCUR?
19 HOW DO YOU KNOW THAT THIS HAS OCCURRED IN THE PAST?

20 A ANY NUMBER OF WAYS THERE ARE, FIRST OF ALL
21 THERE ARE ACTUAL CASES, INNUMERABLE ACTUAL CASES
22 WHERE THIS HAS HAPPENED, WHERE WE HAVE VERY TEXTURED,
23 DETAILED CONFESSIONS INCLUDING A SUSPECT WHO SAID I
24 THINK I MAY HAVE DONE IT, I'M NOT SURE, BUT IT LOOKS
25 LIKE I DID IT, WHO TURNS OUT TO BE INNOCENT SO WE

002500