

Testimony of Barry Dickey

DIRECT EXAMINATION

13

14 BY MR. GREG DAVIS:

15 Q. State your name.

16 A. My name is Barry Gene Dickey,

17 D-I-C-K-E-Y.

18 Q. Okay. Sir, how old a man are you?

19 A. 32 years old.

20 Q. Married?

21 A. Yes, I am.

22 Q. Children?

23 A. Yes, I have.

24 Q. How many children?

25 A. One.

Sandra M. Halsey, CSR, Official Court Reporter

610

1 Q. Okay. What's the child's age?

2 A. Five years old.

3 Q. Boy or girl?

4 A. Boy.

5 Q. All right. Let me ask you: How are

6 you employed at this time?

7 A. I'm president of Graffiti Productions

8 Incorporated.

9 Q. All right. Can you tell us what does

10 Graffiti Productions do?

11 A. Well, we specialize in the production,

12 engineering, composition of music, of audio recordings.

13 Q. Okay. If I'm a musical artist then, I

14 come into your studio, and you do the recording for me?

15 A. Yes, sir.

16 Q. All right. Are there other things

17 that you do there besides just record music?

18 A. Yes. We produce jingles for music.

19 Like you would see Burger King's jingles, industrial

20 spots, short film clips like you would see on the

21 Discovery Channel, and so forth like that.

22 Q. Can you tell us a little bit about

23 your educational and your professional background before

24 you started up Graffiti Productions?

25 A. Yes. Basically, graduated from high

Sandra M. Halsey, CSR, Official Court Reporter

611

1 school, received the physics award. Attended University

2 of Texas at Arlington for two years under electrical

3 engineering degree. And basically, after that, worked

4 under a company called Sound Concepts, in which I
5 produced, arranged, composed, processed, and I think at
6 that time I was responsible for some business activities.
7 After that, I was with True Colors
8 Recording Studios. This was from -- I was with Sound
9 Concepts from '84 until '86. From the years of '86 until
10 '89 I was with True Colors Recording Studios, basically
11 doing the same thing.

12 Q. Okay. Then, have you been in the
13 recording business then around 12 years?

14 A. Yes, I have.

15 Q. Now, at Graffiti Productions, would it
16 be fair to say that you have -- you have a lot of
17 equipment out there I take it?

18 A. Yes, sir.

19 Q. Okay. Do you have a sound board where
20 you control the sound for the recordings?

21 A. Yes. We have a variety of gear for
22 not only processing, but for maintaining a clear and
23 consistent signal that doesn't degrade any of the
24 original recordings in anyway.

25 Q. Do you have a computer system out
Sandra M. Halsey, CSR, Official Court Reporter
612

1 there also?

2 A. Yes. We have several different
3 digital audio work stations. These are used for a
4 variety of purposes. But basically what it is, they
5 maintain audio in its purest form so that there's no
6 degradation. No matter how many times you listen to
7 something, it does not wear down.

8 Whereas, with analog tape, any time
9 that you listen to it, as the heads contact the tape,
10 they wear off part of the surface of the tape. And it
11 will degrade the recording after listening to it for a
12 certain amount of time. Whereas with the digital work
13 stations, there's none of this.

14

15 MR. GREG DAVIS: Let me approach, if I
16 may, your Honor.

17 THE COURT: You may.

18

19 BY MR. GREG DAVIS:

20 Q. Mr. Dickey, let me show you what has
21 been admitted into evidence as State's Exhibit No. 18.
22 Do you recognize this, sir?

23 A. Yes, I do.

24 Q. Okay. Did I ask you to make a copy of
25 State's Exhibit 18 at some point?

1 A. Yes, you did.

2 Q. Now, State's Exhibit 18, does that use
3 certain equipment that's produced by Dictaphone?

4 A. Yes, it is.

5 Q. All right. When you made your copy,
6 did you use Dictaphone equipment, or did you make a copy
7 that could be listened to, or analyzed on different
8 equipment?

9 A. I used Dictaphone's equipment to
10 actually play back the tape, and it was actually
11 transferred to a DAT tape, which is a digital audio tape.
12 It's newer technology.

13 Q. Okay. So, I mean, I take it, there's
14 kind of two worlds. You've got this analog world.
15 Right?

16 A. Yes, sir.

17 Q. Which is kind of the old world?

18 A. Yes.

19 Q. But State's Exhibit 18, is that
20 analog?

21 A. Yes, it is.

22 Q. All right. And then you've got this
23 newer world, which is digital. Correct?

24 A. Yes, sir.

25 Q. And digital, you can play it a million
Sandra M. Halsey, CSR, Official Court Reporter
614

1 times and the millionth time it sounds just as good as
2 the first time. Right?

3 A. Yes, sir.

4 Q. Analog, if you play it over and over,
5 I guess, it deteriorates with use. Right?

6 A. Yes. Each time that you run the tape
7 past the head, you have some degradation of the tape.

8 Q. Okay. Now, at the time that I first
9 contacted you in this case, had you and I ever spoken
10 with each other before?

11 A. No, we hadn't.

12 Q. Had you ever done any work for the
13 Dallas County District Attorney's Office before?

14 A. No, I have not.

15 Q. All right.

16 A. Nor has my company.

17 Q. All right. Do you have experience in
18 making DAT copies of audio tapes?

19 A. Yes. We have used -- we have

20 transferred and saved libraries. Digital libraries that
21 we have made for other companies. Since the year 19 -- I
22 guess, '89, to 1990. We have preferred this format.

23 Q. Okay.

24

25 MR. GREG DAVIS: May I approach again,
Sandra M. Halsey, CSR, Official Court Reporter
615

1 your Honor?

2 THE COURT: You may.

3

4 (Whereupon, the following
5 mentioned item was

6 marked for

7 identification only

8 as State's Exhibit 18-B,

9 after which time the

10 proceedings were

11 resumed on the record

12 in open court, as

13 follows:)

14

15

16 BY MR. GREG DAVIS:

17 Q. Mr. Dickey, let me show you what has

18 been marked as State's Exhibit 18-B. If you would, take

19 a look at that and tell us whether or not you recognize

20 that, sir.

21 A. Yes. This is the tape that I made

22 from the Rowlett Police Department, which I transferred
23 it from the analog deck into a Sony deck that we use.

24 And it has my handwriting, signifying that it is the 911

25 call from the Rowlett Police Department.

Sandra M. Halsey, CSR, Official Court Reporter

616

1 Q. Let me just ask you: Concerning

2 State's Exhibit 18-B, sir, did you -- when you took

3 State's Exhibit 18, and you made the copy of 18-B, did

4 you alter the contents of this tape 18 in any fashion

5 while making State's Exhibit 18-B?

6 A. No, I did not in any fashion

7 whatsoever.

8 Q. Okay. Is State's Exhibit 18-B a true,

9 and exact copy, digital copy of State's Exhibit 18?

10 A. Yes, it is.

11 Q. All right. The only difference being

12 this is in digital form, State's Exhibit 18-B, and 18 is

13 in the analog form; is that right?

14 A. Yes. But there is no difference in
15 the information contained in each of the recordings.
16 It's strictly just on a different format.

17

18 MR. GREG DAVIS: Okay. Your Honor, at
19 this time we'll offer into evidence State's Exhibit 18-B.

20 MR. RICHARD C. MOSTY: No objection.

21 THE COURT: State's Exhibit 18-B is
22 admitted.

23

24 (Whereupon, the above
25 mentioned item was
Sandra M. Halsey, CSR, Official Court Reporter
617

1 received in evidence
2 as State's Exhibit Number
3 18-B, for all purposes
4 after which time,
5 the proceedings were
6 resumed on the record,
7 as follows:)

8

9 BY MR. GREG DAVIS:

10 Q. Now, Mr. Dickey, in order to play
11 State's Exhibit 18-B, would you have to have what you
12 call a DAT player?

13 A. Yes, you would.

14 Q. So, this isn't something we just put
15 into a cassette player like we might have. You have to
16 have a special machine for that. Right?

17 A. Yes, sir.

18 Q. All right. Now, did I ask you after
19 you had made your DAT copy, State's Exhibit 18-B, did I
20 ask you to analyze the content of the conversation of the
21 911 call that is contained on State's Exhibit 18-B?

22 A. Yes, you did.

23 Q. All right. And, did I ask you to
24 attempt to pull up any and all conversations that may be
25 contained on 18-B?

Sandra M. Halsey, CSR, Official Court Reporter
618

1 A. Yes, you did.

2 Q. And, did you, in fact, do that?

3 A. Yes, I did.

4 Q. Now, if you could, if you could
5 briefly describe for the members of the jury how you went
6 about analyzing State's Exhibit 18-B. What equipment did
7 you use, the process, just as briefly as you can, how you

8 went about that analysis, sir?

9 A. Okay. Basically, there are several
10 different software programs, software combined with
11 hardware that conform to a variety of computers out
12 there.

13 Now, what we use is called the Sonic
14 Solution System. It is a very high-quality-end system.
15 It actually -- let me put it this way: It measures the
16 noise -- one of the things I did was, you can measure the
17 noise. If you've ever recorded like on just a handheld
18 recorder or something, and you played it back, you're
19 familiar with the hiss that comes off of the tape.

20 What our software does is, it analyzes
21 this hiss, this exterior noise that is just part of the
22 recording, and it will actually remove that without
23 changing any of the material, the information that is
24 contained on that tape. Therefore, lowering the noise
25 floor makes sounds that were covered up in the noise

Sandra M. Halsey, CSR, Official Court Reporter
619

1 floor all of a sudden hearable, so that you can --
2 they're audible to you. And, when you play it back you
3 can hear things that normally you would not hear on the
4 analog recording.

5 Q. Okay. So, do I understand you to say
6 basically you're trying to eliminate the background noise
7 to get down to the conversations; is that right?

8 A. Yes, sir. And --

9 Q. Okay.

10 A. And, on top of that, there are several
11 other applications that we do. There's an application
12 called band-stop filters, in which we eliminate a whole
13 spectrum of frequencies in order to isolate where the
14 voice is focused at.

15 In other words, most of the telephone
16 lines focus the voice at about one kilohertz, 1-K, and
17 that's what the phone system actually operates at, as far
18 as the human voice. That's what gets transferred the
19 most of.

20 So, the more of that you have compared
21 to the other frequencies, the less background noise you
22 pick up.

23 Q. Okay. And, let me just ask you a
24 couple of questions here: You, in fact, did that, and
25 did you, after you had run this DAT tape through the

Sandra M. Halsey, CSR, Official Court Reporter
620

1 computer and the software programs that you had, did you
2 then transfer that to another medium?

3 A. Yes.

4 Q. And did you, in fact, transfer what
5 you had been able to filter through to a laser disk?

6 A. Yes.

7 Q. Okay.

8 A. Yes, I did.

9

10 (Whereupon, the following

11 mentioned item was

12 marked for

13 identification only

14 as State's Exhibit 18-C,

15 after which time the

16 proceedings were

17 resumed on the record

18 in open court, as

19 follows:)

20

21

22 BY MR. GREG DAVIS:

23 Q. And let me just show you then State's

24 Exhibit 18-C and ask you whether or not State's Exhibit

25 18-C is, in fact, the laser disk that you produced after

Sandra M. Halsey, CSR, Official Court Reporter

621

1 running that tape through your computer using your
2 software?

3 A. Yes, it is.

4 Q. And let me just make sure it's 18-C.

5 Did it alter any of the contents of that DAT tape?

6 A. No, it did not. There is the original

7 recording on there, and there is also a very, very

8 slightly processed recording. But in both cases we

9 checked for what would be referred to as artifacts.

10 Which artifacts are something that if we use too much

11 processing, it might generate some audible or unheard

12 noise that wasn't generally there. And we have to

13 reference that against the original recordings.

14 Q. Okay. So, you didn't change the

15 conversations? You didn't add to the conversations; is

16 that correct?

17 A. No. Not in any form or any way.

18 Q. Even in the processed portion; is that

19 right?

20 A. Yes, sir, that is right.

21 Q. Okay. So this, just to make it clear,

22 we have a purely audio version of that 911 tape on this;

23 is that correct?

24 A. Yes, sir.

25 Q. Then we have a processed audio version
Sandra M. Halsey, CSR, Official Court Reporter
622

1 that also has a video transcript of that conversation.

2 Is that also correct?

3 A. Yes, you do.

4 Q. And they're both true and correct

5 copies of this DAT tape; is that also correct, sir?

6 A. Yes, sir, they are.

7

8 MR. GREG DAVIS: Your Honor, at this

9 time we'll offer State's Exhibit 18-C

10 MR. RICHARD C. MOSTY: No objection.

11 THE COURT: State's Exhibit 18-C is

12 admitted.

13

14 (Whereupon, the item

15 Heretofore mentioned

16 Was received in evidence

17 As State's Exhibit No. 18-C

18 For all purposes,

19 After which time, the

20 Proceedings were resumed

21 As follows:)

22

23 THE COURT: Ladies and gentlemen, by

24 agreement, we're going to begin by breaking about this

25 time for lunch for reasons already explained to the jury.

Sandra M. Halsey, CSR, Official Court Reporter

623

1 If you'll be back at 10 minutes after 1:00, please.

2

3 (Whereupon, a short

4 recess was taken,

5 after which time,

6 the proceedings were

7 Resumed on the record,

8 in the presence and

9 hearing of the defendant

10 but outside the presence

11 of the jury,

12 as follows:)

13

14

15 THE COURT: All right. Let the record

16 reflect that these proceedings are being held outside the

17 presence of the jury and all parties in the trial are
18 present.

19 MR. RICHARD C. MOSTY: The video
20 portion of this does not have a complete statement of
21 everyone who's talking. For instance, it does not have
22 the operator on it, who is the communications officer,
23 who says, for instance, "Don't touch anything."
24 She said, "I touched a knife." And we
25 don't think that that's a fair portrayal when they've
Sandra M. Halsey, CSR, Official Court Reporter
624

1 only taken half of the conversation, or the responses
2 that are coming from the other end without having all of
3 the transcript.

4 In the transcript we have, which the
5 State provided, and appears to follow this, has
6 everything in it and not just Mrs. Routier.

7 THE COURT: All right. So you're
8 objecting to this being shown to the jury.

9 MR. RICHARD C. MOSTY: I'm objecting
10 to the video transcript being shown to the jury. The
11 State has a written transcript, which I presume that they
12 will also offer, and we could have the jury -- if the
13 question is, to make sure the jury does it, the jury can
14 follow along with the written transcript which has
15 everything on it and is a complete rendition.

16 THE COURT: All right. Overruled. Be
17 seated, please.

18 MR. RICHARD C. MOSTY: Mr. Hagler
19 might want to add something.

20 THE COURT: Oh, by all means.

21 MR. JOHN HAGLER: All right. Judge, I
22 have one thing to add. The transcript, which is a
23 complete transcription of the tape, as opposed to the
24 video, which takes out portions of it, which places undue
25 emphasis on certain portions of the statements made
Sandra M. Halsey, CSR, Official Court Reporter
625

1 during the tape is misleading, and potentially confusing
2 to the jurors, as the true nature of the 911
3 conversation.

4 For that reason we would ask that the
5 testimony be limited to the transcript itself, as opposed
6 to the confusing and unduly prejudicial video.

7 THE COURT: All right. Overruled. We
8 will show the video to the jury.

9 Is the jury ready to come in, Bailiff?

10 THE BAILIFF: Yes.

11 THE COURT: All right. Let's bring
12 the jury in, please.
13
14 (Whereupon, the jury
15 Was returned to the
16 Courtroom, and the
17 Proceedings were
18 Resumed on the record,
19 In open court, in the
20 Presence and hearing
21 Of the defendant,
22 As follows:)
23
24 THE COURT: All right. Let the record
25 reflect that all parties in the trial are present and the
Sandra M. Halsey, CSR, Official Court Reporter
626

1 jury is seated.
2 All right, Mr. Davis, you may
3 continue.
4 MR. GREG DAVIS: Thank you.
5
6
7 DIRECT EXAMINATION (Resumed)
8
9 BY MR. GREG DAVIS:
10 Q. Sir, again, your name is Barry Dickey.
11 Correct?
12 A. Yes, sir, it is.
13 Q. And you were testifying before lunch
14 before we took the break; is that right?
15 A. Yes, I was.
16 Q. Mr. Dickey, let me talk to you again
17 about the laser disk just for a moment, some of the
18 things we're going to see on that laser disk. Now,
19 there's a portion of that disk which contains a video
20 transcript of the 911 call; is that correct?
21 A. That's correct.
22 Q. Now, on that do we identify who is
23 speaking by certain abbreviations?
24 A. Yes, there are.
25 Q. All right. For instance, do we have
Sandra M. Halsey, CSR, Official Court Reporter
627

1 the female caller identified as FC?
2 A. Yes, it is.
3 Q. And do we have a male caller
4 identified as MC?

5 A. Yes, he is.

6 Q. Do we have background voice identified
7 by BV?

8 A. Yes, it is.

9 Q. Do we have police officer at the scene
10 identified by PO?

11 A. Yes, he is.

12 Q. And lastly, do we have sounds
13 individually defined shown by the abbreviation SND?

14 A. Yes, it is.

15 Q. And as we watch this video tape, these
16 voices, and let me just ask you: Are they color coded
17 also?

18 A. Yes, they are.

19 Q. For instance, as the female caller is
20 speaking, will we see her dialogue highlighted in green?

21 A. Yes, it is.

22 Q. All right. So female caller will be
23 green?

24 A. Green.

25 Q. The male caller, will his dialogue be
Sandra M. Halsey, CSR, Official Court Reporter
628

1 highlighted by the color orange?

2 A. Yes, it is.

3 Q. The background voice, will that be
4 shown as red?

5 A. Yes, it is.

6 Q. The police officers, will that be
7 shown in blue?

8 A. Yes, it is.

9 Q. And finally, will the sounds
10 individually defined be shown in the color purple?

11 A. Yes, they are.

12 Q. Now, there are other voices that
13 you'll hear on this video transcript in addition; is that
14 right?

15 A. Yes, you will.

16 Q. Will that be the communications
17 officer 1, the communications officer 2 and the police
18 and fire radio channels?

19 A. Yes.

20 Q. Will their dialogue actually be shown
21 on the video transcript?

22 A. No, the dialogue does not appear.

23 Q. All right. The dialogue that we will
24 actually see on the screen, will that be then the sounds
25 and the voices that are coming from 5801 Eagle Drive?

1 A. Yes, they are.

2 Q. Although we'll still be able to hear

3 the dispatcher, radio traffic, et cetera. Correct?

4 A. Yes, sir.

5 Q. Now, let me just ask you: On this

6 laser disk, in order to access this information, have we

7 prepared some bar codes like you might see at the

8 Albertsons or HEBS?

9 A. Yes, they are.

10 Q. Same kind of thing found on a can of

11 tomatoes, and you scan over that and it reads it. Right?

12 A. Yes. As you scan it, it scans the

13 beginning of each bar code section that has been marked.

14 Q. Okay. And we've got bar codes, do we

15 not, for the portion of this laser that just simply has

16 sound, correct?

17 A. Yes.

18 Q. So that if anyone wanted to play just

19 the portion that has the sound without the video

20 transcript, they could just simply read off of that bar

21 code. Right?

22 A. Yes, they could.

23 Q. Then do we not have another bar code

24 where if somebody wanted to see the entire video

25 transcript with the sound, they just simply read that bar

Sandra M. Halsey, CSR, Official Court Reporter

630

1 code. Right?

2 A. Yes, they would, and they are marked

3 on the bar codes.

4 Q. Right. And then do we not have 1, 2,

5 3, 4, 5, 6, 7 other bar codes that go to certain portions

6 of the video transcript that have the dialogue on the

7 screen?

8 A. Yes, there are.

9 Q. Okay. And these are necessary in

10 order to play this thing. Right?

11 A. Yes, they are.

12

13 MR. GREG DAVIS: May I approach, your

14 Honor?

15 THE COURT: You may.

16

17 (Whereupon, the following

18 mentioned item was

19 marked for

20 identification only
21 as State's Exhibit 18-D,
22 after which time the
23 proceedings were
24 resumed on the record
25 in open court, as
Sandra M. Halsey, CSR, Official Court Reporter
631

1 follows:)

2

3 BY MR. GREG DAVIS:

4 Q. Let me show you, Mr. Dickey, State's
5 Exhibit 18-D, and ask you whether or not those are, in
6 fact, the bar codes that allow us to read the laser disk.

7 A. Yes, they are.

8

9 MR. GREG DAVIS: Your Honor, at this

10 time we'll offer State's Exhibit 18-D

11 MR. RICHARD C. MOSTY: No objection.

12 THE COURT: State's Exhibit 18-D is

13 admitted.

14

15 (Whereupon, the item

16 heretofore mentioned

17 was received in evidence

18 as State's Exhibit No. 18-D

19 for all purposes,

20 after which time, the

21 proceedings were resumed

22 as follows:)

23

24 BY MR. GREG DAVIS:

25 Q. Very briefly, can you explain why

Sandra M. Halsey, CSR, Official Court Reporter

632

1 we've limited the video dialogue on the screen to persons
2 in 5801 Eagle Drive?

3 A. Well, there were a couple of reasons.

4 The times were allotted, because of the fact that it's

5 very hard to keep up with -- there are certain sounds and

6 so forth that happen within one second of each other.

7 And so, it's very confusing.

8 The other thing is, it was my charge

9 to isolate what was coming from inside the house, not

10 necessarily in background traffic or so forth in those

11 manners from the fire or police radios. I merely

12 isolated what was coming from the house so that the

13 actions that took place in the house could therefore be

14 deciphered.

15 Q. Okay.

16

17 MR. RICHARD C. MOSTY: Your Honor,

18 prior to the State playing this, may I take the witness

19 on voir dire?

20 THE COURT: You may indeed.

21

22

23

24

25

Sandra M. Halsey, CSR, Official Court Reporter

633

1 VOIR DIRE EXAMINATION

2

3 BY MR. RICHARD MOSTY:

4 Q. Mr. Dickey, if I understand what

5 you're proposing to show the jury is not a complete

6 transcript of what happened on this tape?

7 A. It is -- the sound is a complete

8 transcript of the tape.

9 Q. Well, the sounds. But the video, the

10 wording -- the wording that is on this screen, that would

11 appear on the screen, is not a complete transcript?

12 A. That is correct.

13 Q. And it doesn't have the officer, for

14 instance, talking to Darlie Routier?

15 A. No, it does not have the officer's

16 written response, but you can hear the audible --

17 Q. Well, I understand that, but what the

18 jury is going to be able to see does not have Darlie

19 Routier on it, does it? Does not have the officer on it,

20 does it?

21 A. Yes, it does contain a police officer.

22 Q. It has that written on the screen?

23 A. It has PO, which is the abbreviation

24 in the transcript.

25 Q. Okay. And what about the

Sandra M. Halsey, CSR, Official Court Reporter

634

1 communication's officer. Is that on there?

2 A. No, CO1 or CO2 does not appear on

3 there.

4 Q. But you could do that, couldn't you?

5 You could have done that?

6 A. Well, it would have been -- it would

7 have scaled past at such a rate that would have not been

8 able to be followed.

9 Q. Mr. Dickey, that's not my question.

10 You could have done it, couldn't you? You could have
11 brought the jury a complete transcript of everything on
12 that screen.

13

14 MR. GREG DAVIS: I'm sorry, could I
15 ask: What's the purpose of voir dire? This sounds like
16 cross. What is the purpose of this voir dire?

17 THE COURT: Well, what is it?

18 MR. RICHARD C. MOSTY: Over the
19 admissibility of the document.

20 THE COURT: Okay. Well, answer the
21 question if you know it.

22 THE WITNESS: Could you repeat it,
23 please.

24 MR. GREG DAVIS: Excuse me, if I'm not
25 mistaken, this exhibit was admitted into evidence prior
Sandra M. Halsey, CSR, Official Court Reporter
635

1 to us going to lunch.

2 THE COURT: It is.

3 MR. GREG DAVIS: Okay.

4 THE COURT: I'll let you ask this one
5 question, and then let's get on with it, please.

6 THE WITNESS: Could you repeat it,
7 please.

8

9 BY MR. RICHARD C. MOSTY:

10 Q. You could have put every person on
11 there, on the written word, couldn't you?

12 A. That was not my charge.

13 Q. Could you have done it?

14 A. That was not my charge.

15 Q. Do you understand the --

16

17 THE COURT: This is more in the nature
18 of cross-examination. Let's get on with it, you can
19 cover that in cross.

20

21 BY MR. RICHARD C. MOSTY:

22 Q. Well, whose suggestion was it? Whose
23 suggestion was it that you only put Mrs. Routier and what
24 was happening at the house? Was that your idea?

25

Sandra M. Halsey, CSR, Official Court Reporter

636

1 THE COURT: All right. Thank you.
2 Please be seated. We have gone through this. This is
3 not voir dire. This is cross-examination. We will go on
4 with the tape.
5 MR. RICHARD C. MOSTY: We would renew
6 our objections that we previously made and would like to
7 go on with voir dire to develop those objections.
8 THE COURT: Thank you. Overruled.
9 Let's go ahead. Someone has got to
10 start it.
11
12 DIRECT EXAMINATION (Resumed)
13
14 BY MR. GREG DAVIS:
15 Q. Mr. Dickey --
16
17 MR. GREG DAVIS: If I may approach,
18 Your Honor.
19 THE COURT: Yes, sir.
20 MR. GREG DAVIS: Briefly.
21 THE COURT: Yes, sir.
22
23 BY MR. GREG DAVIS:
24 Q. Mr. Dickey, you did produce a written
25 transcript of what's contained on State's Exhibit 18-C;
Sandra M. Halsey, CSR, Official Court Reporter
637

1 is that correct?
2 A. Yes, I did.
3 Q. So if anybody wanted to read, or
4 wanted to follow along as they go along with this, and
5 actually see what is being said by CO1 or CO2 or the
6 radio, they could do that. Right?
7 A. Yes, they could, as well as the exact
8 times they happened from the beginning of the phone call.
9 Q. And if you would, if you'll just look
10 at State's Exhibit 18-E, please, and tell me whether or
11 not that is the written transcript that you, yourself,
12 produced in this case.
13 A. I just want to make sure all the pages
14 are here.
15 Q. Okay.
16 A. Yes, it is, in complete.
17 Q. Okay.
18
19 MR. RICHARD C. MOSTY: I'm sorry, did
20 you say incomplete?
21 THE WITNESS: No, it is in -- it is
22 complete.

23 MR. RICHARD C. MOSTY: Your Honor, we
24 would like for the jury to go ahead have that during this
25 transcription.
Sandra M. Halsey, CSR, Official Court Reporter
638

1 MR. GREG DAVIS: Well, we have one
2 copy. I don't know how 12 people will read it.

3 MR. RICHARD C. MOSTY: I think it's --
4

5 BY MR. GREG DAVIS:

6 Q. Let me just ask you, Mr. Dickey --
7

8 (Whereupon, the following
9 mentioned item was
10 marked for
11 identification only
12 as State's Exhibit 18-E,
13 after which time the
14 proceedings were
15 resumed on the record
16 in open court, as
17 follows:)

18
19 MR. GREG DAVIS: Well, first of all,
20 is it admitted? I'll offer it at this time, as State's
21 Exhibit 18-E.

22 MR. RICHARD C. MOSTY: Is that the
23 same one you've given us previously?

24 MR. GREG DAVIS: Yes, it has bar codes
25 on there also so that they can play with both portions
Sandra M. Halsey, CSR, Official Court Reporter
639

1 there with the video.

2 MR. RICHARD C. MOSTY: We have no
3 objection to that, your Honor.
4 We would like to go ahead and make 16
5 copies of that so the jury can follow along with that.

6 THE COURT: That's fine. I'll do
7 that. All right. Let's go in order. You have no
8 objection to 18-E?

9 MR. RICHARD C. MOSTY: No, Your Honor.

10 THE COURT: 18-E is admitted.

11

12 (Whereupon, the item
13 Heretofore mentioned
14 Was received in evidence
15 As State's Exhibit No. 18-E
16 For all purposes,

17 After which time, the
18 Proceedings were resumed
19 As follows:
20
21 BY MR. GREG DAVIS:
22 Q. Mr. Dickey, again, if the jury wants
23 to look at this in the jury room, for instance --
24
25 THE COURT: Well, we can break -- how
Sandra M. Halsey, CSR, Official Court Reporter
640

1 long will it take to get copies of this made? Do you
2 have -- why don't you have Ms. Henderson come in.
3 MR. RICHARD C. MOSTY: It will just
4 take a couple of minutes to make copies of this.
5 THE COURT: Just a minute. I think we
6 can have Ms. Henderson come in. Just a minute.
7 How long would it take to get 16
8 copies of this made?
9 MS. HENDERSON: About 5 minutes.
10 THE COURT: All right.
11
12 BY MR. GREG DAVIS: Okay. Mr. Dickey --
13
14 THE COURT: All right. If we can, by
15 agreement, ask some questions not germane to this, can we
16 go ahead with the witness?
17 MR. GREG DAVIS: Yes, sir. What I
18 thought I would do is I could go ahead -- we can show
19 this once and then we can show it a second time when they
20 have the transcript.
21 THE COURT: Does that meet with both
22 sides' agreement?
23 MR. RICHARD C. MOSTY: Why don't we
24 just do it one time when they have got the transcripts?
25 There's no sense in redoing it.
Sandra M. Halsey, CSR, Official Court Reporter
641

1 THE COURT: Well, we're going to have
2 it in 5 minutes. Mr. Davis will show it once now and
3 we'll reshoot it with the transcript. Thank you.
4 MR. GREG DAVIS: Thank you, your
5 Honor.
6 THE COURT: All right. Go ahead with
7 it now and when the copies get in, the jury will have
8 them and we'll show it over again.
9 MR. GREG DAVIS: All right. Yes, sir.
10

11

12 BY MR. GREG DAVIS:

13 Q. Mr. Dickey, if you don't mind, if you

14 can step down here and just make sure that everything is

15 running properly.

16

17 (Whereupon, the witness

18 Stepped down from the

19 Witness stand, and

20 Approached the jury rail

21 And the proceedings were

22 Resumed as follows:)

23

24 THE COURT: All right.

25

Sandra M. Halsey, CSR, Official Court Reporter

642

1 (Tape played for the jury)

2

3 (Whereupon, the witness

4 Resumed the witness

5 Stand, and the

6 Proceedings were resumed

7 On the record, as

8 Follows:)

9

10 BY MR. GREG DAVIS:

11 Q. Mr. Dickey, let me ask you -- while

12 we're waiting for the copies of the transcript, let me

13 just ask you a couple of questions. Prior to the jury

14 coming back into the courtroom this afternoon, did we

15 witness this video transcript here in this courtroom?

16 A. Yes, we did.

17 Q. Okay. And was the defendant present

18 in the courtroom during the time that you showed that

19 video transcript?

20

21 MR. RICHARD C. MOSTY: Excuse me, Your

22 Honor. We're going to object to what was done outside

23 the presence of the jury. That's why it was done outside

24 the presence of the jury.

25 THE COURT: Overruled. Go ahead.

Sandra M. Halsey, CSR, Official Court Reporter

643

1 MR. RICHARD C. MOSTY: May we approach

2 the bench on this, your Honor.

3 THE COURT: You may.

4

5 (Whereupon, a short
6 Discussion was held
7 Off the record, after
8 Which time the
9 Proceedings were resumed
10 As follows:)

11
12 MR. RICHARD C. MOSTY: Your Honor, I
13 understand our objection is sustained.
14 THE COURT: It is sustained.

15
16 BY MR. GREG DAVIS:
17 Q. Mr. Dickey, let me ask you again,
18 before we view some individual portions of that video
19 transcript again, let me ask you about a couple of terms
20 that we may be using. The first one is going to be the
21 term ambiance, or ambiance.

22 A. Yes.

23 Q. Okay. Can you just explain to us what
24 is ambiance?

25 A. Well, in general terms, ambiance would
Sandra M. Halsey, CSR, Official Court Reporter
644

1 be the difference between, as if you were talking in say
2 a living room that is carpeted, or as you walk into your
3 bathroom and you hear multiple reflections, almost as if
4 you're singing in what would be referred to as reverb.
5 That would be two different examples of ambiance.

6 Q. Okay. When we talk about a room --
7 let's say a family room is carpeted. Is that -- what
8 kind of ambiance is that kind of room going to have?
9 What would you call that?

10 A. It is going to have more of a dampened
11 ambiance. It will have less reflections.

12 Q. Noise is not going to bounce around as
13 much?

14 A. Yes, sir.

15 Q. What about if we take a kitchen, for
16 instance, that's got a linoleum floor instead of carpet.
17 Is that going to be dampened, or is that going to have
18 more of the noise bouncing around the room?

19 A. You're going to have more reflections
20 in the harder surfaces.

21 Q. And as you were listening to this tape
22 of this 911 call, is that something that you can look
23 for, or listen for on this tape?

24 A. Yes, it is. We have the ability to do
25 that.

1 Q. Okay. And is that something you
2 actually did with certain portions of this tape?
3 A. Yes, it is.
4 Q. Okay. Now, well, we hope this works.
5 But I want to go to a portion of the video script here,
6 Mr. Dickey, that begins at 43 seconds and 15. And as we
7 time it, what is it 43, and then you've got a dot, 15.
8 How do you break down time on this tape?
9 A. On the transcript it will be written.
10 You will have, the first two digits will designate
11 minutes, the second two digits will designate seconds,
12 and the fifth and sixth digits will be what is referred
13 to as subframes. It is partials of a second.
14 Q. Okay. So --
15
16 THE COURT: May we -- I have these
17 transcripts back now. I believe that they are to be
18 given to the jury. Here they are.
19 Will you pass those out, please, Ms.
20 Biggerstaff.
21 There should be 16. Just take one and
22 pass it on.
23 All right. Let the record reflect
24 that the members of the jury now have a copy of State's
25 Exhibit 18-E, the transcript of the 911 call at 5801
Sandra M. Halsey, CSR, Official Court Reporter
646

1 Eagle Drive, on June the 6th, 1996.
2 THE WITNESS: As soon as it comes up
3 to speed, you should be able to scan and it should go
4 right back to it.
5 MR. GREG DAVIS: Okay. Again, if the
6 jurors will look now to the portion of the transcript
7 that begins at 43.15, with the female caller.
8
9 BY MR. GREG DAVIS:
10 Q. Would that be the first individual
11 clip that we're looking at here?
12 A. Is there anyway I could have a copy of
13 it?
14
15 THE COURT: Here, I have given him the
16 Court's copy right there.
17 THE WITNESS: At 43.15?
18
19 BY MR. GREG DAVIS:

20 Q. Yes.
21 A. Yes, it would be.
22 Q. All right. Okay. Again, if you would
23 step down here one more time.
24
25 (Whereupon, the witness
Sandra M. Halsey, CSR, Official Court Reporter
647

1 stepped down from the
2 witness stand, and
3 approached the jury rail
4 and the proceedings were
5 resumed as follows:)

6
7 BY MR. GREG DAVIS:
8 Q. Okay. Again if you will look at
9 43.15.

10 A. Okay.
11 (Tape played for jury.)
12

13 BY MR. GREG DAVIS:
14 Q. Okay. So, as we see on the first
15 clip, then we started with the female caller's first line
16 at 49 seconds is "Who was breathing?" And then there's
17 the male caller, unintelligible; is that right?

18 A. Yes, sir.
19 Q. And then the female caller's next
20 response is unintelligible. "Are they still laying
21 there, unintelligible." Correct?

22 A. Yes, sir.
23 Q. All right. Now, as you looked at this
24 sequence here, when the female caller was making this
25 statement, "Who was breathing?" Did you try to make a
Sandra M. Halsey, CSR, Official Court Reporter
648

1 determination of whether that person was in a dampened
2 room or a room that has more bounce to it?

3 A. Yes, I did, and let me explain a
4 little bit about that.

5
6 MR. RICHARD C. MOSTY: Excuse me, your
7 Honor, I'm going to object to that. The question was:
8 "Did he make a determination?" The answer was "yes"
9 That's it.

10 THE COURT: Overruled. Go ahead.

11 BY MR. GREG DAVIS:

12 Q. That means you can answer.

13 A. Yes. The explanation in addition to

14 that would be: You have to compare one ambiance to
15 another. It wouldn't be appropriate to just take an
16 ambiance from any situation and designate it a certain
17 area. So, you have to take certain reflective surfaces
18 and relate them to a certain area, and then you can make
19 a judgment from that point. Okay?
20 In other words, you have to designate
21 what could be referred to as the dampened area before you
22 can make a determination of a more reflective area.
23 Q. All right. And when it comes to this
24 line: "Who was breathing?" What was your opinion? Was
25 this statement being made in a dampened room or in a more
Sandra M. Halsey, CSR, Official Court Reporter
649

1 reflective room?

2

3 MR. JOHN HAGLER: Excuse me, your
4 Honor, we'd object to this line of testimony to this
5 particular question. The fact that it hasn't been
6 established that he either has the factual basis to make
7 such an opinion or that this so-called expert opinion is
8 based on any type of accepted scientific theory under the
9 Rule 702.

10 THE COURT: Overruled. Answer the
11 question.

12 THE WITNESS: Yes. My determination
13 was it was in a slightly dampened area.

14

15 BY MR. GREG DAVIS:

16 Q. All right. And the type of room that
17 would be dampened, would that be with carpeting?

18 A. It would be consistent with a room of
19 carpeting.

20

21 MR. JOHN HAGLER: Could we have a
22 running objection to this line of testimony?

23 THE COURT: You may have a running
24 objection. Thank you.

25

Sandra M. Halsey, CSR, Official Court Reporter
650

1 BY MR. GREG DAVIS:

2 Q. Okay. Now, this first segment then
3 ends with the line, "Are they still laying there?
4 Unintelligible." And again, that's on Page 2, at 51
5 seconds and 15; is that correct?

6 A. Yes, it is.

7 Q. All right. Now, for the jury's

8 benefit, the second series that we're going look at will
9 begin at the same 51.15 on Page 2, and it will run
10 through 1 minute and 2 seconds and 13. So, essentially,
11 Mr. Dickey, what we're going to do is we're going to pick
12 up from this and we're going to go right on through; is
13 that right?

14 A. Yes, sir.

15 Q. Okay.

16 (Tape played for jury.)

17

18 BY MR. GREG DAVIS:

19 Q. Okay. Now, again, looking at this
20 sequence, we actually begin with 55 seconds and 6 with
21 the statement, "Oh my God. What do we do?" Is that
22 correct?

23 A. I think it actually --

24

25 (Tape played for jury)

Sandra M. Halsey, CSR, Official Court Reporter
651

1 THE WITNESS: Actually it starts at
2 51.15 again and picks up.

3

4 BY MR. GREG DAVIS:

5 Q. The first line now shown on the screen
6 is, "Oh my, what do we do?"

7 A. Yes, sir.

8 Q. And that is at 55 seconds and 6.

9 Correct?

10 A. That's correct.

11 Q. So we're talking approximately four
12 seconds after the statement, "Are they still laying
13 there." Correct?

14 A. That's correct.

15 Q. And the person talking is the female
16 caller again; is that right?

17 A. That is correct.

18

19 (Tape played for jury.)

20

21 BY MR. GREG DAVIS:

22 Q. Okay. We'll pull it up here on the
23 screen and I would like to ask you a question.

24 Mr. Dickey, on this screen we now see
25 the statement, "Oh my God, what do we do?" Now, did you
Sandra M. Halsey, CSR, Official Court Reporter
652

1 try to make a determination, sir, of whether this
2 statement, "Oh my God, what do we do," whether that
3 statement was made in a dampened or a more reflective
4 room?

5 A. This statement that begins, "Are they
6 still laying there," as the progression of the
7 conversation moves from 51 to 55. The female caller
8 moves from a slightly dampened area into a more
9 reflective, very reflective in relationship to the
10 dampened.

11 Q. And --

12

13 MR. JOHN HAGLER: Your Honor, so we're
14 clear on this. Again, our objection is that there is
15 no -- as far as this testimony coming in, under Rule 702,
16 we're saying again that there's not an evidentiary basis
17 for such an opinion, and there has been no showing on the
18 part of the State that this type of opinion testimony is
19 accepted and valid under Rule 702. We want the record to
20 be clear that we have a running objection to each and
21 every reference.

22 THE COURT: That's right. You do have
23 a running objection.

24 MR. JOHN HAGLER: Thank you.

25

Sandra M. Halsey, CSR, Official Court Reporter
653

1 BY MR. GREG DAVIS:

2 Q. Can you tell the members of the jury
3 how you determined that beginning at 51 and going to 55,
4 that this female caller was moving from a more dampened
5 room to a more reflective room? Did you do that just on
6 your own or did you use equipment? What did you do to do
7 that?

8 A. Yes. It's a measurement of the
9 equipment. It's actually the decay time that comes as
10 the female caller stops speaking and the decay time
11 stops. In a more dampened area you don't have as long a
12 reflection. It does not have as long a trail coming off
13 of it. And as you move into a more reflective area, of
14 course the trail is longer. It seems to put more depth
15 to the words. And that is the measurement that you take.
16 It's referred to as the decay time.

17 Q. Okay. How about if I'm sitting at the
18 bottom of a well and I'm talking. Is there going to be a
19 lot of decay in that kind of situation?

20 A. Yes, there would be.

21 Q. All right. Now, in a more reflective
22 room, would that be consistent with a room that has

23 linoleum flooring as opposed to carpeting?

24 A. Yes, it would be.

25 Q. And at the time that this statement is
Sandra M. Halsey, CSR, Official Court Reporter
654

1 made, "Oh my God, what can we do," was that made in a
2 more reflective room consistent with having a linoleum
3 floor?

4 A. Yes, it would.

5 Q. How about the statement that follows,
6 "Oh my God. Oh my God" Are they made in a more
7 reflective room also or are we back to a dampened room at
8 that point?

9 A. By the second "Oh my God," we are back
10 to a more of a dampened room.

11 Q. Okay. Now, if we can, if we can go
12 forward in this tape to the third segment which will be
13 at 1 minute, 55 seconds, and that's going to be on Page 5
14 of the transcript. And I believe, Mr. Dickey, at that
15 point the first statement that we should see up on the
16 screen -- on the transcript we have the communications
17 officer saying, "What is going on;" is that correct?

18 A. Yes.

19 Q. And actually the first statement that
20 we will see is made by the female caller; is that
21 correct?

22 A. Yes, it is.

23

24 (Tape played for jury.)

25

Sandra M. Halsey, CSR, Official Court Reporter
655

1 BY MR. GREG DAVIS:

2 Q. Okay. Again, the first line that we
3 see on the screen is the female caller saying, "Somebody
4 came in while I was sleeping. Me and my little boys were
5 sleeping downstairs;" is that correct?

6 A. Yes, it is.

7 Q. The next statement by the female
8 caller is, "Some man came in, stabbed my babies, stabbed
9 me. I woke up. I was fighting. He ran out through the
10 garage. Threw the knife down. My babies are dying.
11 They're dead. Oh my God;" is that correct?

12 A. That is correct.

13 Q. Now, this statement, do you recall, as
14 you sit there now, whether you made a determination
15 whether the female caller was in a more dampened or a
16 more reflective room at this point?

17 A. Those are both consistent with just
18 slightly dampened.

19 Q. More consistent with or being back in
20 a carpeted room as opposed to a linoleum floor room?

21 A. Yes.

22 Q. Okay. Now, the fourth clip that we're
23 going to look at, Mr. Dickey, that will begin on Page 7,
24 and that's going to begin at 3 minutes and 44 seconds.

25 With the communication's officer statement, "You don't
Sandra M. Halsey, CSR, Official Court Reporter
656

1 know who did this;" is that correct?

2 A. Yes, it is.

3 Q. And so the first line of dialogue that
4 we'll see on the screen will be by police officer at
5 3:45, "Look for a rag;" is that correct?

6 A. Yes, it would be.

7 Q. Okay.

8

9 (Tape played for jury.)

10

11

12 BY MR. GREG DAVIS:

13 Q. Okay. Again, the blue represents the
14 police officer; is that right?

15 A. Yes, it would.

16 Q. And his first statement is, "Look for
17 a rag." Correct?

18 A. Yes, it is.

19 Q. The response by the female is, "They
20 killed our babies." Right?

21 A. Yes, it is.

22 Q. And his next statement as shown on the
23 screen is, "Lay down. Okay. Just sit down.
24 Unintelligible." Correct?

25 A. Yes, it is.

Sandra M. Halsey, CSR, Official Court Reporter
657

1 Q. And the female caller's response that
2 follows is, "No, he ran out, or they ran out in the
3 garage. I was sleeping;" is that correct?

4 A. Yes, it is.

5 Q. In that last statement actually, is it
6 true, Mr. Dickey, that the female caller first uses the
7 word he and then in mid-sentence changes it to they; is
8 that right?

9 A. Yes, that is correct.

10 Q. Now, the fifth clip that we will

11 listen to will begin on Page 9, and it will begin at 4
12 minutes and 26 seconds --

13

14 MR. RICHARD C. MOSTY: Your Honor, I'm
15 going to object. That last one, we don't need Mr. Dickey
16 to interpret what the transcript read. He didn't say
17 anything about dampening, which is his alleged area of
18 expertise which we objected to.

19 We object to him simply reading for
20 the jury, his interpretation of what this says. They can
21 do that.

22 THE COURT: Well, I'll let him read.

23 I'm going to let him read. Overrule the objection.

24 Go ahead, please.

25 Listen to the question.

Sandra M. Halsey, CSR, Official Court Reporter

658

1 BY MR. GREG DAVIS:

2 Q. All right. At 4:26, Mr. Dickey, as we
3 pick that up, will we begin on the screen with the female
4 caller's comment; is that right?

5 A. Yes, you would.

6

7 MR. RICHARD C. MOSTY: Excuse me.

8 What page again?

9 MR. GREG DAVIS: Page 9 at 4.26, the
10 female caller.

11 THE WITNESS: Actually you will begin
12 with the last part of that sentence at 4 minutes and 26
13 seconds.

14 MR. GREG DAVIS: Right. Okay.

15 THE COURT: That's 4:24?

16 THE WITNESS: 4:24 is the previous
17 statements.

18 MR. RICHARD MOSTY: Then it goes to
19 4:31.

20 MR. DOUGLAS MULDER: Judge, we'd just
21 like to have the same one the jury has got so we can mark
22 it accordingly.

23 THE COURT: Can we get the same copy?

24 I thought we had -- we have 16 copies to the jury. We
25 can share.

Sandra M. Halsey, CSR, Official Court Reporter

659

1 THE JUROR: If you need a copy, we can
2 look together.

3 MR. DOUGLAS MULDER: I don't mind.

4 Let's just make another copy.

5 MR. RICHARD C. MOSTY: We don't have
6 one that says 4:26.
7 THE COURT: Well, I would like for
8 them to have that.
9 THE JUROR: May I offer this one here,
10 Judge?
11 THE COURT: Well, okay. Let Mr.
12 Mulder have it.
13 MR. GREG DAVIS: I guess that is
14 another one.
15 MR. RICHARD C. MOSTY: Do I have a
16 different version?
17 MR. DOUGLAS MULDER: Apparently so.
18 MR. GREG DAVIS: They have two copies.
19 THE COURT: Is that the original copy
20 you just gave to the defense?
21 MR. DOUGLAS MULDER: I will go make a
22 copy.
23 THE COURT: Well, just have a seat.
24 We'll get it made.
25 MR. GREG DAVIS: If I could please
Sandra M. Halsey, CSR, Official Court Reporter
660

1 present my testimony I'd appreciate it.
2 THE COURT: You can present your
3 testimony. While you're waiting we'll have a copy made.
4 MR. RICHARD C. MOSTY: And since I
5 don't have a copy could I get one made?
6 THE COURT: We will get one made. All
7 right.
8
9 (Tape played for jury.)
10
11 BY MR. GREG DAVIS:
12 Q. Again, as we look through the tape
13 here, again, the blue will be the police officer; is that
14 right?
15 A. Yes.
16
17 (Tape played for jury.)
18
19 BY MR. GREG DAVIS:
20 Q. Okay. On the screen right now do we
21 see a statement made by a police officer in blue,
22 "Nothing's gone, Ms. Routier?"
23 A. Yes, you do.
24 (Tape played for jury.)
25

1 BY MR. GREG DAVIS:

2 Q. Okay. And then do we continue on here
3 as the screen rolls with another police officer's
4 statement of, "Unintelligible, the problem, Mrs.
5 Routier"?

6 A. Yes, you do.

7 Q. All right. Now, the sixth individual
8 clip should begin at 5 minutes and 1 second,
9 communication officer statement, "You need to let the
10 police officers in the front door."

11

12 (Tape played for jury.)

13

14 BY MR. GREG DAVIS:

15 Q. The only comments we see up on the
16 screen are made by the female caller; is that right?

17 A. That's right.

18 Q. And throughout here, we just have one
19 female caller. Right?

20 A. Yes, that is correct.

21 Q. Okay. And the last individual clip,
22 Mr. Dickey, I show to begin on Page 10, at 5 minutes and
23 18 seconds with the dispatcher saying, "Ma'am, hang on.
24 Hang on a second."

25

1 (Tape played for jury.)

2

3 BY MR. GREG DAVIS:

4 Q. So on this last individual clip, what
5 we see on the screen are actually four statements by the
6 female caller, followed by an unintelligible statement by
7 the police officer; is that right?

8 A. That's correct.

9 Q. Okay. And that's the last individual
10 clip that's going to be shown on the bar code exhibit; is
11 that right?

12 A. Yes, it is.

13 Q. Okay. So, again, on the bar code, we
14 have the sound only, we have the entire video script and
15 then we have the seven individual clips that we've now
16 shown to the jury; is that right?

17 A. That's right.

18

19 MR. GREG DAVIS: Do you want to use

20 this?

21 MR. RICHARD C. MOSTY: I doubt very
22 seriously that I'm qualified to operate it.

23 MR. GREG DAVIS: Well, you see I'm
24 not.

25 MR. RICHARD C. MOSTY: Let's push it
Sandra M. Halsey, CSR, Official Court Reporter
663

1 back.

2 MR. GREG DAVIS: Okay.

3 THE COURT: All right. That's all?

4 MR. GREG DAVIS: I'll pass the
5 witness, your Honor.

6 THE COURT: Mr. Mosty.

7

8 CROSS EXAMINATION

9

10 BY MR. RICHARD MOSTY:

11 Q. Mr. Dickey, when were you first
12 contacted by the District Attorney's Office to assist?

13 A. Sometime in September, I think it was.

14 Q. All right. When did you complete your
15 work?

16 A. Sometime in December. I would say
17 middle to late December.

18 Q. Okay. Did you participate in this
19 trial that they had up in Dallas, up at the courtroom?

20 A. No, I didn't.

21 Q. Did you go up and practice with the
22 other officers?

23 A. No, I did not.

24 Q. Okay. When you get a job like this,
25 do you -- I guess you do a work order or something?

Sandra M. Halsey, CSR, Official Court Reporter
664

1 A. You could call it that.

2 Q. All right. And I guess part of the
3 time is you're sitting there and just listening to this
4 stuff?

5 A. That's true.

6 Q. Back and forth through it?

7 A. Yes.

8 Q. And you're taking notes of what you
9 hear or see or important things you want to take down?

10 A. Well, I don't know exactly what you're
11 getting at.

12 Q. Well, what notes did you take in, you
13 know, you sat there and described all of this stuff on

14 this tape, and what notes do you take, or what reports
15 did you make?

16 A. The conclusions that were drawn --

17 Q. No, no. I'm interested in what notes
18 did you take.

19 A. The notes, there are no notes,

20 supposed notes.

21 Q. Well, what do you mean "supposed

22 notes"? Did you --

23 A. Well, you're asking me about notes

24 that weren't taken.

25 Q. Well, that's all I was asking you.

Sandra M. Halsey, CSR, Official Court Reporter

665

1 Did you take one note whatsoever to remember and document
2 what you just testified here?

3 A. All the measurements were done on the
4 computer.

5 Q. Well, where is that computer print
6 out?

7 A. There is no computer printout, it is
8 on the computer.

9 Q. Well, for instance, on this part you

10 say here in this one part that at a certain time it's

11 dampened, what note -- how did you remember that? You

12 didn't take any notes to tell you what part was dampened

13 or what wasn't?

14 A. That's easily detectable for me.

15 Q. Well, but -- and you can remember

16 that?

17 A. Yes, I can.

18 Q. At what point in the tape, for

19 instance, did the dog bark?

20 A. Well, I would have to see the tape.

21 If you're talking about a timeline, but if you're asking

22 me about ambiance, that's a whole 'nother (sic) question.

23 Q. Okay. But you didn't take any notes

24 to tell me what the difference in that ambiance was?

25 A. The notes that were taken on the

Sandra M. Halsey, CSR, Official Court Reporter

666

1 timeline, you have a copy of it.

2 Q. No, I'm talking about your notes.

3 A. Those are my notes.

4 Q. Where on here does the word ambiance

5 appear on quote your notes?

6 A. The ambiance -- there is no word

7 ambiance on there.

8 Q. Now, what reports did you write?

9 A. I gave no report as such, as far as
10 what you're asking a written report on ambiance.

11 Q. And we've already -- you've already
12 told us, have you not, that this transcript, this part of
13 this, that is Mr. -- it only has one side of a
14 conversation, or the house side of the conversation on
15 it. That was done at Mr. Davis's request?

16 A. The charge was given to try to isolate
17 and focus upon the actions and the sounds that were
18 inside the residence --

19 Q. Mr. Dickey, my question was simple:

20 Who made the --

21 A. I'm trying to answer that.

22 Q. No. Listen to the first part of it.

23 The question is who. Who told you what to put on that
24 tape?

25 A. That was the consideration between
Sandra M. Halsey, CSR, Official Court Reporter
667

1 myself and Mr. Davis.

2 Q. All right. And that was the sole
3 charge was to identify what happened at the house; is
4 that right?

5 A. That is correct.

6 Q. And as a matter of fact, it's sort of
7 hard, is it not, to sit with the jury transcript that
8 they've got over there that you prepared that. Right?

9 A. Yes, I believe so. It's, in fact, a
10 copy of what has been given to the Court.

11 Q. And it's really a little bit hard to
12 try to be reading on this and be reading on the screen at
13 the same time, isn't it? Going back and forth?

14 A. I would say to do both, that would be
15 correct.

16 Q. It's hard. It would be a lot easier
17 to either read the transcript by itself or read the
18 screen by itself, wouldn't it?

19 A. Yes, that would be correct.

20 Q. Okay.

21 A. May I --

22 Q. No, sir. Now, as I understand it, you
23 have gone through and picked out seven particular parts
24 of this tape?

25 A. There were seven parts of the tape
Sandra M. Halsey, CSR, Official Court Reporter
668

1 that were bar coded.

2 Q. And by bar coded, that's what we saw
3 on the screen?

4 A. Yes.

5 Q. Okay. And who chose those seven parts
6 of the tape?

7 A. That was a collaboration between
8 myself and Mr. Davis of collected evidence.

9 Q. So you and Mr. Davis as a team are
10 deciding what evidence you want to present to the jury?

11 A. That is not correct.

12 Q. Well, was it a collaboration?

13 A. Well, what -- let me clarify myself.

14 Q. Was it a collaboration between you and
15 Mr. Davis?

16

17 THE COURT: Let him speak and answer
18 the question. Answer the question.

19 THE WITNESS: To clarify myself, I
20 would say that those are the points that I felt strongest
21 about. They are not the points that Mr. Davis told me to
22 pick and leave others out.

23

24 BY MR. RICHARD MOSTY:

25 Q. Okay. Did you come up -- when you
Sandra M. Halsey, CSR, Official Court Reporter
669

1 started your work, what were you given?

2 A. What was I given?

3 Q. Right.

4 A. I was given nothing. I was asked to
5 make a copy of the tape.

6 Q. Well, were you given a copy of the
7 tape?

8 A. No, I was not given a copy, I made the
9 copy at the Rowlett Police Department.

10 Q. I'm not trying to be picky with you.

11 Did you have possession of a tape ever that you used to
12 make a copy of it? That's correct, isn't it?

13 A. That is correct.

14 Q. Okay. Did anybody ever give you a
15 transcript of the 911 --

16 A. No.

17 Q. -- conversation?

18 A. No.

19 Q. The State never gave you one of what
20 they thought was on the 911 tape?

21 A. No, they didn't.

22 Q. So this creation, State's Exhibit

23 18-E, is solely yours?

24 A. Yes, it is.

25 Q. And I take it that you never have
Sandra M. Halsey, CSR, Official Court Reporter
670

1 created a complete transcript of the 911 call that shows
2 all of the words and all of the sounds together?

3 A. The most complete transcript that I
4 completed, you have a copy of it.

5 Q. No, I'm talking about the laser disk
6 that has the sounds from the laser plus the screen. Is
7 that the most complete one you've ever done?

8 A. As far as what was -- the transcript
9 being transferred to laser disk?

10 Q. To the screen.

11 A. Yes, that is correct.

12 Q. I don't understand laser disks. So,
13 when I talk about it, I talk about sound and screen.

14 A. Okay. I would agree with that.

15 Q. The most complete one that has ever
16 been done is the one the jury saw?

17 A. I would agree with that.

18 Q. And there's never been any attempt
19 made to do a complete one that had all of the words on
20 the screen?

21 A. Are you referring to the words marked
22 unintelligible?

23 Q. No, I said words.

24 A. Well, I don't know what you're
25 referring to.

Sandra M. Halsey, CSR, Official Court Reporter
671

1 Q. You don't?

2 A. No, I don't.

3 Q. For instance, the communications
4 officer, her words.

5 A. It is complete on there. It is
6 complete as I could render it.

7 Q. Mr. Dickey, maybe you and I are having
8 trouble communicating. I'm talking about what appeared
9 on this screen. Has there ever been a full transcript of
10 Exhibit 16-E (sic) that has appeared on this screen or
11 any other screen that you have prepared?

12 A. Not in the fashion as you have it on
13 paper.

14 Q. All right. Why -- I guess that's
15 because you and Mr. Davis collaborated on what would be
16 put on the screen?

17 A. No, that would not be true. That
18 would probably be more to my discretion that I felt that
19 that was a better portrayal of the sounds and the actions
20 and the words that came out on 5801 Eagle Drive.

21 Q. Even though you've already told us
22 that we're trying to read this transcript and trying to
23 follow that screen is confusing?

24 A. What I told you was either or would
25 not be, but both at the same time would probably be
Sandra M. Halsey, CSR, Official Court Reporter
672

1 confusing for myself.

2 Q. Now, I guess what -- there are two
3 times in this tape that you were able to testify about
4 the ambiance; is that right?

5 A. I would agree with that.

6 Q. Okay. All right. Have you ever been
7 out to the house?

8 A. No, I have not.

9 Q. Has it been described to you?

10 A. I did ask for general proportions of
11 the floorplan.

12 Q. What's the wall material, for
13 instance? Is it rock, these interior walls?

14 A. I thought that the room was wood.

15 Q. Wood?

16 A. I thought that there was at least one
17 wall of wood. There might have been some brick, if I
18 understood correctly. There's also carpet on the floors.
19 It's also connected to an adjoining room.

20 Q. Okay. And what is between the rooms?

21 A. From what I understand a slight
22 island-bar type, I guess you would refer to it.

23 Q. Okay.

24 A. Counter maybe.

25 Q. Now, were you able to detect when she
Sandra M. Halsey, CSR, Official Court Reporter
673

1 was standing on a carpet runner?

2 A. Could I --

3 Q. I'll ask the questions.

4 A. Okay.

5 Q. Can you detect when someone is
6 standing on, for instance, a carpet runner?

7 A. Not for what you're --

8 Q. Could you detect -- go ahead, finish.

9 A. I would say no, not from just that
10 amount of information and nothing to compare it to.

11 Q. Well, if this -- if this is a
12 depiction -- and if you would like to look at this,
13 you're welcome to, if you can't see it.
14 A. Just so I can answer correctly.
15 Q. All right. If this is a depiction of
16 the house and this family room is carpeted, you had at
17 least one of your sessions that was consistent with this
18 person being in the carpeted area?
19 A. Yes, that is true.
20 Q. Okay.
21 A. At least.
22 Q. And you had another that was
23 consistent with a more reflective --
24 A. A very reflective area.
25 Q. Okay. Like a kitchen?
Sandra M. Halsey, CSR, Official Court Reporter
674

1 A. Yes, more like a kitchen.
2 Q. Okay. So, what you've got -- and how
3 far apart were those in time frame?
4 A. In time I think the movement was
5 between 4 to 6 seconds, something like that.
6 Q. Okay. So, that would be consistent
7 with, if I were standing in a carpeted room and I walk to
8 a sink quickly to get a towel, and I were talking on the
9 phone while I was doing that, I would move to the
10 reflective room, for instance? It doesn't take me but
11 about a couple of seconds to walk that far, does it?
12 A. Not if you walked at a brisk pace, I
13 guess.
14 Q. Well, you would suspect that a person
15 that was talking, as you heard on this tape, would be
16 walking at a brisk pace, wouldn't you?
17
18 MR. GREG DAVIS: I'm going to object
19 to that. It calls for speculation on the part of this
20 witness.
21 THE COURT: Sustained. Move on.
22
23 BY MR. RICHARD MOSTY:
24 Q. Assume with me that someone does walk
25 briskly. That would be consistent with the conversation
Sandra M. Halsey, CSR, Official Court Reporter
675

1 going in a period of seconds from a slightly dampened
2 room, from a carpeted room, into a more reflective room
3 like a kitchen?
4 A. What I observed on the tape was more

5 of a movement into the complete kitchen. Not necessarily
6 just to the edge of the kitchen, or so forth. And I
7 don't -- what I see is a sink on the very edge of the
8 kitchen there. Am I correct?

9 Q. Right here?

10 A. No.

11 Q. Well, no, that is a sink.

12 A. Okay. That's the range.

13 Q. I'm sorry, this is the sink, it's
14 closer.

15 A. That would be my point.

16 Q. Okay. So, that -- but this matter of
17 a few seconds is consistent with someone walking from a
18 dampened room into an undampened room. Right?

19 A. That is correct.

20 Q. Okay. And if this is linoleum in
21 here, that would be consistent with an undampened, more
22 reflective room, in the kitchen?

23 A. That is correct.

24 Q. And if this is carpet over here,
25 that's a more dampened room?

Sandra M. Halsey, CSR, Official Court Reporter

676

1 A. That is correct.

2 Q. Okay. And then those are the only two
3 you're able to detect in this tape?

4 A. To be completely sure, yes, sir.

5 Q. Okay.

6 A. And that is all I have testified to.

7 Q. Okay. And so, during -- how many
8 times -- that was -- this whole tape is how long?

9 A. It's 5 minutes 44 seconds and some
10 frames.

11 Q. Okay. And you identified how many
12 seconds? There were two sequences right behind each
13 other where you testified about dampened room, more
14 reflective room. Right?

15 A. Yes.

16 Q. Okay. And how long is that sequence?

17 A. As I answered before, I think it's a 4
18 to 6 second span.

19 Q. Well, I'm talking about the whole time
20 that you played the tape, where you were able -- out of
21 this whole tape, you were only able to find 4 to 6
22 seconds where you could determine dampened or undampened?

23 A. As a professional, to make that
24 opinion clarified, what I would say is it was the only
25 for sure dampening that I could find. In the other

1 circumstances, there were the possibilities of a person
2 facing a certain way, or the volume in which they were
3 speaking, which is also directly relative to the amount
4 of reflection that you get.

5 Q. Okay.

6 A. So there were a lot of circumstances
7 in which there were other ambiances, however they weren't
8 conclusive.

9 Q. Well, Mr. Dickey, is the answer to my
10 question that out of this 5 and a half, or 5-45 tape, you
11 were able to find 4 to 6 seconds in which you could
12 determine the difference in ambiance?

13 A. That wouldn't be absolutely true.

14 Q. Well, how many seconds does that
15 exchange take?

16 A. Are you talking about that one
17 particular spot?

18 Q. I'm talking about the two exchanges
19 when you talked about ambiance.

20 A. Okay. That I was asked about.

21 Q. How long is that span?

22 A. It's 4 to 6 seconds, that you're
23 speaking of.

24 Q. Okay. So, 4 to 6 seconds, out of this
25 5 minute and 45 tape, you have found something consistent

1 with a person moving from a dampened to an undampened
2 room; is that right?

3 A. That's correct.

4 Q. Okay.

5 A. And if I'm following you correctly,
6 back to a dampened room.

7 Q. Well, I'm not interested in you
8 following me correctly, I'm interested in me following
9 you correctly.

10 A. Okay.

11 Q. So this 4 to 6 second period is
12 dampened, undampened, dampened?

13 A. It's more slightly dampened, to very
14 reflective, to slightly dampened.

15 Q. Okay. Slightly dampened, to very
16 reflective, to what is the next one -- from slightly
17 dampened, to very reflective to dampened?

18 A. To slightly dampened.

19 Q. Back to slightly dampened.

20 A. Yes.

21 Q. Okay. And that's in a 4 to 6 second
22 time frame?

23 A. Yes. That time frame right there that
24 you're speaking of.

25 Q. And as to the rest of the tape, you
Sandra M. Halsey, CSR, Official Court Reporter
679

1 weren't able to draw any conclusions about dampened,
2 reflective, slightly dampened?

3 A. Not as conclusive as that, no.

4 Q. Okay. Well, you wouldn't be -- those
5 are the only ones you feel comfortable, as a
6 professional, to testify about?

7 A. Yes, that is correct.

8 Q. And anything else would not be, in
9 your opinion, reliable?

10 A. That's correct.

11 Q. Okay. How should I say this: Could
12 not detect?

13 A. Well, those would not be my words.

14 Q. Tell me what your words would be.

15 That you're unable to draw a conclusion?

16 A. Right.

17 Q. Okay. Unable to draw conclusion as to
18 rest of 911 call. Is that fair?

19 A. That is fair.

20 Q. Okay. Now, do you have a copy of the
21 transcript up there.

22 A. No, I don't. But I have been given
23 one.

24 Q. Well, you might have to bear with me
25 because I ended up taking notes on two different ones. I

Sandra M. Halsey, CSR, Official Court Reporter
680

1 just wanted to ask you about a couple of the sections
2 that -- now, did you have a copy of this that had the
3 sections that Mr. Davis was going to point out to you?

4 A. Repeat that one more time.

5 Q. Have you ever had a copy of yours,
6 like a work copy, that said, you know, from one point two
7 five, to -- we're going to talk about this section, if
8 this is section 1, section 2 and section 3?

9 A. No.

10 Q. Okay. Is that shown on this exhibit?

11 Is this the exhibit? I'm looking for the bar code
12 exhibit.

13 A. All of individual sections were drawn

14 from a complete transcript.

15 Q. Okay. All right. Let's just talk

16 about some of the sections that you and Mr. Davis talked

17 about real quickly. Let's see if I got them right.

18 Okay. What I wrote down -- at 344.05. Now that's my

19 version. Let me see, I'm sure there's a more modern

20 version.

21 I see it. 345.19, that's the section

22 that you testified about?

23 A. That was the section that was bar

24 coded.

25 Q. Okay. And is that the fourth section

Sandra M. Halsey, CSR, Official Court Reporter

681

1 that was bar coded or the third?

2 A. I couldn't tell you.

3 Q. Okay. Don't remember that?

4 A. Well, I can't recall which one was bar

5 coded.

6 Q. Did it begin with "look for a rag," I

7 believe?

8 A. I think it began with, "You don't know

9 who did this?"

10 Q. All right. And the section that you

11 and Mr. Davis chose to put on the screen that y'all

12 collaborated on was at 352.13? It says, "No, he ran out

13 of the garage. They ran out of the garage"?

14 A. Well, I don't know that you're

15 entirely correct in that you keep repeating that you and

16 Mr. Davis, this was of my choosing of the parts that I

17 felt comfortable with, not just Mr. Davis.

18 Q. Well, you didn't testify about

19 ambiance on this one, did you?

20 A. No, I did not.

21 Q. So, you felt comfortable pointing out

22 the section that says, "No, he ran out -- they ran out of

23 the garage. I was sleeping." You felt comfortable for

24 you to point that out?

25 A. Yes, I did.

Sandra M. Halsey, CSR, Official Court Reporter

682

1 Q. And what -- did that indicate

2 something important to you, I take it?

3 A. I felt it did.

4 Q. All right. Now let's go on after that

5 and go down to 401.28.

6 A. Okay.

7 Q. Okay. Now, you know, because you

8 listened to this tape very carefully --
9 A. Yes, I did.
10 Q. 401.28, the police officer is there.
11 Correct?
12 A. Yes, I do.
13 Q. Okay. But there's only one police
14 officer there. Right?
15 A. I haven't testified to that.
16 Q. Can you tell us?
17 A. I would not -- I would not -- that
18 would be a conclusive statement on my part.
19 Q. Okay. But what she says there is,
20 "Y'all go look out in the garage." Y'all refers to more
21 than one person, doesn't it?
22 A. Yes, I would -- well, in normal
23 discourse I would agree with that.
24 Q. Where did you grow up, Mr. Dickey?
25 A. In Grand Prairie, Texas.
Sandra M. Halsey, CSR, Official Court Reporter
683

1 Q. Okay. So you're familiar with the
2 term "y'all"?
3 A. Yes, I am.
4 Q. And that's more than one, isn't it?
5 A. I would say that. I don't know who
6 she's referring to y'all as. It could be her husband and
7 the policeman. It could be two policemen. It could
8 be -- I have no way of knowing. I have made no
9 determination.
10 Q. So your idea is that what she's saying
11 is y'all, and telling her husband, who is attending to
12 one of her dying children, "Y'all get up. Darin,
13 y'all -- you and the police officer, y'all get up and go
14 look in the garage for them"? That's what you were
15 thinking?
16 A. No. I made no determination of that,
17 period.
18 Q. So "y'all" might refer to one police
19 officer?
20 A. If you would like to say that, yes.
21 Q. So some people mess up in their
22 syntax, don't they, in their English?
23 A. I would agree with that.
24 Q. For instance, have you ever seen
25 presidential candidates? They never say, "Would you --
Sandra M. Halsey, CSR, Official Court Reporter
684

1 that I appreciate your vote," do they? They always say,
2 "We appreciate the vote."
3 A. I think I've heard it both ways,
4 but --
5 Q. They usually say, you know, "vote for
6 us."
7 A. I can't make a determination on what
8 you're saying.
9 Q. Well, you've heard presidential
10 candidates say that kind of thing, haven't you?
11 A. Well, I've heard a lot of things said.
12 I don't know that.
13 Q. "We're so happy we won the
14 presidency."
15 A. Maybe referring to their family, I'm
16 not sure.
17 Q. Well, how many presidents do we have?
18 A. Well, we have one president.
19 Q. And one vote, don't you?
20 A. One first family.
21 Q. One vote for one person, don't you?
22 A. Well, one vote per person who is
23 voting, yes.
24 Q. Anyway, Darlie Routier says, "Y'all
25 look out in the garage. Look out in the garage," does
Sandra M. Halsey, CSR, Official Court Reporter
685

1 she not?
2 A. Yes, that is what is spoken.
3 Q. And I guess you didn't feel
4 comfortable suggesting that this phrase be put up on your
5 screen?
6 A. I did not feel that there was any
7 inconsistency in it.
8 Q. Okay. Let's talk about your --
9
10 THE COURT: I think right now,
11 gentlemen, we'll take a 10 minute break.
12
13 (Whereupon, a short
14 Recess was taken,
15 After which time,
16 The proceedings were
17 Resumed on the record,
18 In the presence and
19 Hearing of the defendant
20 But outside the presence.
21 Of the jury, as follows:)
22

23 THE COURT: All right. Are both sides
24 ready to bring the jury back?
25 MR. GREG DAVIS: Yes, sir, the State
Sandra M. Halsey, CSR, Official Court Reporter
686

1 is ready.
2 MR. DOUGLAS MULDER: The defense is
3 ready.
4
5 (Whereupon, the jury
6 Was returned to the
7 Courtroom, and the
8 Proceedings were
9 Resumed on the record,
10 In open court, in the
11 Presence and hearing
12 Of the defendant,
13 As follows:)
14
15 THE COURT: Let the record reflect
16 that all parties in the trial are present and the jury is
17 seated.
18 Mr. Mosty, you may continue.

19
20
21 CROSS EXAMINATION (Resumed)
22
23 BY MR. RICHARD MOSTY:
24 Q. All right. Mr. Dickey, I just have a
25 couple of more things I wanted to cover with you. Again,
Sandra M. Halsey, CSR, Official Court Reporter
687

1 do you have this transcript up there in front of you?
2 A. Yes.
3 Q. These seven excerpts, are all those
4 the ones that you felt -- how did you say that -- that
5 you felt comfortable with?
6 A. Yes.
7 Q. All right. Now, your charge was to
8 enhance this tape? To enhance it and make it the highest
9 quality?
10 A. Well, to interpret what was being said
11 through whatever means. Not necessarily just enhancing
12 it, because that wouldn't be my procedure.
13 Q. Okay. By interpret it, you took that
14 as your charge to decide what you thought might be
15 important or not important?
16 A. No. No.

17 Q. That's not part of your job?

18 A. No, that would not be correct.

19 Q. Okay. So you aren't -- when you

20 enhance something, or when you pick out these sections,

21 you weren't worried with whether or not they were

22 consistent with some side of the story, or inconsistent,

23 or whether they were an inconsistency or consistency,

24 that wasn't part of your idea?

25 A. No.

Sandra M. Halsey, CSR, Official Court Reporter

688

1 Q. Okay. Let's --

2 A. If what you're saying is my transcript

3 was developed around one side of the story, that's

4 completely incorrect.

5 Q. That's not what I'm talking about.

6 I'm talking about the excerpts from your transcript, 1

7 through 7. These excerpts that you put on this screen.

8 A. Yes, sir.

9 Q. And I pointed out that one a minute

10 ago where you -- where you did not include the part about

11 "Y'all go search the kitchen." Is that part of your

12 interpretation to determine whether to include that

13 y'all?

14 A. No, that didn't even enter my mind.

15 Q. I thought you, a minute ago, told me

16 that you didn't think that was inconsistent.

17 A. I didn't think there was any

18 inconsistency in the sentence itself.

19 Q. Okay. Well, were you looking -- when

20 you were choosing these seven sections, were you looking

21 for inconsistencies?

22 A. Yes, at certain times I was.

23 Q. Okay. So you were doing a little bit

24 more than just listening to the words and bringing us the

25 words, you were doing some interpretation as well,

Sandra M. Halsey, CSR, Official Court Reporter

689

1 weren't you?

2 A. I pointed out several sections that I

3 thought would be important.

4 Q. Pointed it out to Mr. Davis?

5 A. Yes, I did.

6 Q. Okay. Let's go to section -- what I

7 call section 6, bottom of page 9. It starts with, "You

8 need to let the officer in the front door. The knife was

9 laying over there and I already picked it up."

10 "Okay. It's all right. It's okay.

11 "God, I bet if we could have gotten
12 prints maybe." Correct?
13 A. Yes.
14 Q. And that's one of the sections that
15 you and Mr. Davis chose?
16 A. That was something that I thought was
17 important.
18 Q. Okay. And did you suggest to Mr.
19 Davis it was important?
20 A. I pointed it out.
21 Q. Okay. Now, you don't know who she's
22 talking to there, do you? "The knife was lying over
23 there and I already picked it up."
24 A. I wouldn't make a determination on
25 that.
Sandra M. Halsey, CSR, Official Court Reporter
690

1 Q. Okay. By this time the arresting
2 officer is there, isn't he?
3 A. Yes, the officers are there.
4 Q. And the very first time the knife ever
5 comes up, going back in the transcript, is when the 911
6 operator says, "Don't touch anything." Isn't that right?
7 A. I wouldn't --
8 Q. You don't remember that?
9 A. Well, let me just look at it.
10 Q. Why don't you look at it. You see --
11 A. I think that the actual first time the
12 knife is mentioned was a sequence of events in which she
13 describes to the operator something about a knife was --
14 he threw the knife down.
15 Q. Okay. What did the operator say back?
16 A. She --
17 Q. She said, "Don't touch anything,"
18 didn't she?
19 A. No, I think this is at two minute and
20 14 seconds and 23 frames. The operator responds, "Okay.
21 Stay on the phone with me."
22 Q. Okay.
23 A. She just explained to the operator,
24 "Some man came in and stabbed my babies, stabbed me. I
25 woke up. I was fighting. He ran out through the garage
Sandra M. Halsey, CSR, Official Court Reporter
691

1 and threw the knife down."
2 Q. Okay. Look at 408. 405.03, pick up
3 there. That's my phrase, "Y'all look out in the garage."
4 A. Yes.

5 Q. And CO1, "There's a knife. Don't
6 touch anything." And the response, "I already touched it
7 and picked it up."

8 A. Yes, I see that.

9 Q. So the first time anybody talks about
10 touching a knife is when the CO, the communications
11 officer says, "Don't touch anything"?

12 A. Could you repeat that.

13 Q. First time there is any reference
14 about touching evidence, and I'm not talking about the
15 description of somebody being stabbed, about touching the
16 knife is when communication officer says, "Don't touch
17 anything. There's a knife, don't touch anything"?

18 A. Okay.

19 Q. The female caller answers, "I already
20 touched it and I picked it up." Isn't that right?

21 A. Looking through the transcript of what
22 I have interpreted, yes, if you're speaking specifically
23 of touching the knife, yes.

24 Q. Okay. That's what I'm speaking of.

25 A. Okay.

Sandra M. Halsey, CSR, Official Court Reporter
692

1 Q. And then when you go to -- then when
2 you go to section 6, that we're just starting to talk
3 about 501.15.

4 A. Yes, sir.

5 Q. The 911 operator says, "You need to
6 let the police officers in the door."

7 The female caller, "The knife was
8 laying over there and I already picked it up." She could
9 have been talking to the police officer there, couldn't
10 she?

11 A. Yes, she could have.

12 Q. Matter of fact, that's what it sounds
13 like on the tape, doesn't it?

14 A. As I recall, she could have been
15 speaking to somebody in the room.

16 Q. Okay.

17 A. I couldn't make a determination of who
18 was in the room that she was speaking to.

19 Q. Okay. Now, then, let's go to frame 7.

20 And there's the statements in there about female caller,
21 "There's nothing touched. There's nothing touched," in
22 that phrase. Now the police officer had already told her
23 that a good bit earlier, hadn't he? They didn't touch
24 anything?

25 A. I think the police officer told her

1 that "Nothing was gone. Nothing's gone." I don't think
2 he said, "Nothing is touched."
3 Q. Does that make any difference? I
4 mean, that's the same phraseology, isn't it? "Nothing's
5 gone. Nothing's touched. They didn't take anything"?
6 A. No, I wouldn't agree with that.
7 Q. You don't agree that those are the
8 same things?
9 A. Nothing is gone would -- my
10 interpretation would be maybe, "Nothing was stolen.
11 Nothing was taken from the house valuable."
12 Q. You don't think you would walk in your
13 house and say, "There's nothing touched?" That's not the
14 same thing as saying "Nothing is taken." "They didn't
15 touch a thing."
16 A. I think the police officer's words
17 were, "Nothing is gone, Mrs. Routier."
18 Q. But in any event, the first reference
19 to touching the knife, "Don't touch the knife," comes
20 from the communication's officer, doesn't it?
21 A. That I can detect on the tape.
22 Q. And the first reference to "Nothing's
23 stolen," comes from the police officer. Or "Nothing is
24 gone," or whatever it was he said. That also came from
25 the police officer, didn't it?

1 A. Yes, I would agree with that.
2 Q. Okay.
3 A. As the transcript is written.
4 Q. If I understand your -- how much did
5 all this stuff cost?
6 A. Is that -- do I have to answer an
7 exact figure?
8 Q. Well, I mean --
9 A. Because I haven't finished billing.
10 Q. Okay. You're still -- you're not home
11 yet, huh?
12 A. No.
13 Q. Okay. Well, give me what you know
14 then. How much are you charging for your testimony here
15 today?
16 A. I'm not being paid for my testimony
17 today. I'm being paid for the work previous.
18 Q. Okay. Well, what was that -- how much
19 did all that cost?

20 A. It will run about \$10 thousand, with
21 all of the prep, with the laser disks, with everything
22 else.
23 Q. Okay. Now, and you said that the only
24 thing you were given was, I think it's maybe 18-A -- or
25 did -- that's right, you started with the big tape.
Sandra M. Halsey, CSR, Official Court Reporter
695

1 Right? That's called a Dictaphone tape?
2 A. Yes, I did.
3 Q. And that was the only thing you were
4 given?
5 A. Yes, it is.
6 Q. How did you identify the voices?
7 A. Just -- I did not identify the voices
8 as particular people, I identified them as male or
9 female, very generic terms.
10 Q. Well, how did you identify the
11 difference between a male caller and a police officer?
12 They're both males, aren't they?
13 A. Yes, they are.
14 Q. How did you know which one was which?
15 A. There is one that is texture in voice.
16 Q. Okay. So --
17 A. There's a thing called thermal
18 imaging, in which you compare the voice prints.
19 Q. Okay. And so you did that on Officer
20 Waddell to determine which one was him and which one was
21 Darin Routier?
22 A. Yes.
23 Q. And you got a voice sample from
24 Waddell?
25 A. No, I did not.
Sandra M. Halsey, CSR, Official Court Reporter
696

1 Q. Did you get a voice sample from Darin
2 Routier?
3 A. No, I did not
4
5 MR. RICHARD C. MOSTY: I'll pass the
6 witness.
7 THE COURT: Anything else, Mr. Davis?
8 MR. GREG DAVIS: Yes, sir.
9
10 REDIRECT EXAMINATION
11
12 BY MR. GREG DAVIS:
13 Q. Mr. Dickey, I have a couple of

14 questions for you. If we could, let's go to that part of
15 the tape where the female caller is saying, "Who is
16 breathing," and then, "Are they still laying there?"
17 Do you recall that portion of the
18 tape?

19 A. Yes, I do.

20 Q. And as I recall, you testified, those
21 are made in the slightly dampened room. Correct?

22 A. Yes.

23 Q. And then by the time the female caller
24 is saying, "Oh my God. What do we do? Oh my God," that
25 she has now moved into a very reflective room; is that
Sandra M. Halsey, CSR, Official Court Reporter
697

1 right?

2 A. That is true.

3 Q. Now, looking at the floorplan that Mr.

4 Mosty was showing to you, let me just ask you, sir, if
5 that would be consistent with the female caller being
6 initially in the family room when she was making the
7 statement, "Who is breathing? Are they still laying
8 there?"

9 And then moving deep into the kitchen
10 when she is saying, "Oh my God, what do we do? Oh my
11 God." Would that be consistent with what you heard on
12 that tape?

13 A. Yes, it would be.

14 Q. Let me ask you too, during that
15 portion of the tape, where we have the female caller
16 going into that reflective room, and saying, "Oh my God,
17 what do we do? Oh may God. Oh my God." While she's in
18 this very reflective portion of the house, sir, do you
19 hear any sound on that tape that you would interpret to
20 be running water?

21 A. No. It would have been listed. There
22 was -- I detected no sound like that.

23 Q. Okay. So if you had detected that,
24 the sound of running water, would you have placed that on
25 the transcript that the jurors have?

Sandra M. Halsey, CSR, Official Court Reporter
698

1 A. Yes, I would.

2 Q. And it's not on there, is it?

3 A. No, it's not.

4 Q. Because you didn't hear it?

5 A. No, I did not.

6 Q. Okay. And Mr. Dickey, again, the
7 laser disk that is now evidence, just so we're clear,

8 if -- you can access the 7 portions of testimony that Mr.
9 Mosty was referring to. Correct?

10 A. Yes, you can.

11 Q. But if you choose to access the entire
12 video transcript, starting from 00, all the way down
13 through the end of the transcript there at 5:44.28, you
14 can access that and you can see that in it's entirety,
15 can't you?

16 A. Yes. In two forms, one with
17 transcript and one completely without.

18 Q. All right. So there's actually two
19 choices. If you just want to hear the sound all the way
20 through, you can do that, right?

21 A. That's correct.

22 Q. If you want to view the video
23 transcripts we've used you can do that?

24 A. That is correct.

25 Q. If you want to view just one of the
Sandra M. Halsey, CSR, Official Court Reporter
699

1 seven individual clips, you can do that also, right?

2 A. That is correct.

3 Q. Let me ask you, Mr. Mosty (sic), in
4 our dealings throughout this case, have I ever suggested
5 to you in anyway what ought to be on your final
6 transcript there?

7 A. No, you have not.

8

9 MR. GREG DAVIS: I'll pass the witness

10

11

12 RE CROSS EXAMINATION

13

14 BY MR. RICHARD MOSTY:

15 Q. Mr. Dickey, just to follow up real
16 quickly on what Mr. Davis said. If I understand, every
17 sound that you heard, you identified?

18 A. Every sound that was audible to me is
19 on the transcript.

20 Q. Okay. Now, and that included, did it
21 not, a dog barking?

22 A. Yes.

23 Q. That dog was upstairs, or could you
24 tell?

25 A. I could not tell where the dog was in
Sandra M. Halsey, CSR, Official Court Reporter

700

1 proximity to the phone.
2 Q. But you heard the dog?
3 A. Yes. There is a sound of a barking
4 dog.
5 Q. Okay. Mr. Dickey, tell me what was on
6 television that night while this was playing?
7 A. I could not tell you what was
8 programed that night.
9 Q. Well, how come you couldn't hear the
10 TV? Why aren't you able to tell me what the program was,
11 what was being said on the TV that was on?
12 A. It obviously wasn't in close enough
13 proximity to the telephone.
14 Q. So you heard the dog, but did not hear
15 the TV. Am I right?
16 A. That's right.
17
18 MR. RICHARD C. MOSTY: Okay. What is
19 my next exhibit number?
20 MR. DOUGLAS MULDER: 17.
21 MR. RICHARD C. MOSTY: Your Honor, we
22 would offer Defendant's 17.
23 MR. GREG DAVIS: We will object to it
24 as being hearsay.
25 THE COURT: Sustained.
Sandra M. Halsey, CSR, Official Court Reporter
701

1 BY MR. RICHARD MOSTY:
2 Q. Does Exhibit 17 fairly depict what you
3 have testified to as I have written it down as you have
4 said it?
5 A. Could you be a little more specific?
6 Q. Well, I mean, I wrote these down,
7 didn't I, as your words and as you testified?
8 A. Maybe not in complete but -- I don't
9 understand why there is a particular phrase as "Darlie,
10 y'all look out."
11 Q. How about Darlie said, "Y'all look out
12 in the garage"?
13 A. How about female caller?
14 Q. Okay. FC said, "Y'all look out in the
15 garage." What I've written up here fairly describes what
16 you've testified to here today, isn't it?
17 A. Parts of what I have testified to,
18 true.
19 Q. Right. But everything that is up
20 there is a fair depiction of something you testified to?
21 A. True.
22

23 MR. RICHARD C. MOSTY: I'll offer 17
24 again.

25 MR. GREG DAVIS: We will re-urge or
Sandra M. Halsey, CSR, Official Court Reporter
702

1 objection as still hearsay.

2 THE COURT: Same ruling. Let's move
3 on. Any other questions?

4 MR. JOHN HAGLER: Your Honor, it's
5 simply a summary of his prior testimony. It's not
6 hearsay. It's offered under oath in Court. That's
7 fair --

8 MR. GREG DAVIS: Well, let me just
9 ask. If all of these exhibits -- it's my understanding
10 that these exhibits -- whatever exhibits are contained
11 here on this pad, that they're being offered, that they
12 were offered for demonstrative purposes only. Is that my
13 understanding?

14 MR. DOUGLAS MULDER: Well, Judge,
15 they're like anything else. They came in and they were
16 in for all purposes. There is no restriction on them.

17 THE COURT: Well, yours came in
18 because there was no objection made. An objection was
19 made to this -- it is in the nature of notes, and Mrs.
20 Halsey is the official notetaker.

21 MR. RICHARD C. MOSTY: But that wasn't
22 the objection, Your Honor.

23 THE COURT: Well, I still -- it's
24 hearsay. If the Court has made an error, you can appeal
25 that to the Court of Appeals later on. That's my ruling.
Sandra M. Halsey, CSR, Official Court Reporter
703

1 That's what it's going to be. So let's go ahead with the
2 next question or get the witness off the stand.

3 MR. RICHARD C. MOSTY: Pass the
4 witness.

5 MR. GREG DAVIS: No further questions.

6 THE COURT: You may step down. Thank
7 you for coming. I'm sure this witness will be going back
8 to Dallas?

9 MR. GREG DAVIS: Yes, sir.

10 MR. RICHARD C. MOSTY: Your Honor, I
11 think there's something that we're required by law to
12 take up outside the presence of the jury right now.

13 THE COURT: Well, can I see both
14 sides?

15

16 (Whereupon, a short

17 discussion was held off
18 the record, at the side
19 of the bench, and
20 outside the hearing of
21 the jury, after which
22 time the proceedings
23 were resumed on the
24 record as follows:)
25
Sandra M. Halsey, CSR, Official Court Reporter
704

1 THE COURT: Well, let's step outside
2 the Courtroom, please, ladies and gentlemen. Just go
3 back to the jury room.

4
5 (Whereupon, the jury
6 Was excused from the
7 Courtroom, and the
8 Proceedings were held
9 In the presence of the
10 Defendant, with her
11 Attorney, but outside
12 The presence of jury
13 As follows:)

14
15 THE COURT: Let the record reflect
16 that these proceedings are being held outside the
17 presence of jury and all parties of trial are present.
18 Mr. Mosty.

19 MR. RICHARD C. MOSTY: Yes, your
20 Honor, the defendant objects to the comment that the
21 Court just made about that we may take it up on appeal,
22 or whatever.

23 The word appeal is the operative word
24 here. That if we have an objection, we can take it up on
25 appeal suggests that the defendant would be convicted,
Sandra M. Halsey, CSR, Official Court Reporter
705

1 and is a comment by the Court, and we'd move for a
2 mistrial.

3 THE COURT: Motion for mistrial
4 denied.

5 Bring the jury back in, please. Thank
6 you.

7

8 (Whereupon, the jury
9 Was returned to the
10 Courtroom, and the

11 Proceedings were
12 Resumed on the record,
13 In open court, in the
14 Presence and hearing
15 Of the defendant,
16 As follows:)