

Testimony of Alan Brantley

MR. TOBY L. SHOOK: Judge, so it's
19 clear, are we doing a 705 hearing? Is that what you are
20 requesting?

21 MR. RICHARD C. MOSTY: Yes, sir.

22 MR. TOBY L. SHOOK: It's my
23 understanding from reading 705, Judge, then for the
24 hearing, it's a voir dire, that the expert will give his
25 opinions, if asked, and then disclose the underlying
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1 facts or data --

2 THE COURT: That is correct.

3 MR. TOBY L. SHOOK: -- so we can get
4 into what those are, and that is all it's limited to and

5 that voir dire is supposed to be conducted, of course, by
6 the defense counsel.

7 THE COURT: That's right. All right.

8 Proceed.

9

10

11 VOIR DIRE EXAMINATION

12

13 BY MR. DOUGLAS MULDER:

14 Q. Mr. Brantley, tell your us your full
15 name, please, sir.

16 A. Alan Brantley.

17 Q. You are an FBI agent; is that correct?

18 A. I'm a supervisory special agent with
19 the FBI, that is correct.

20 Q. All right. And, how many years have
21 you been an FBI agent?

22 A. About 13 and a half years.

23 Q. Okay. Would you acquaint the Court
24 with your educational background and experience?

25

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1 MR. TOBY L. SHOOK: Excuse me, Mr.

2 Mulder. Judge, this is outside the scope of a 705
3 hearing. A 705 hearing is only to elicit his opinions
4 and then what the underlying factors are for those
5 opinions --

6 THE COURT: Sustained. Let's get
7 right into the opinions. Ask what the opinions are and
8 the basis for them, please.

9

10 BY MR. DOUGLAS MULDER:

11 Q. All right. Mr. Brantley, you have
12 apparently -- I don't know why you are here. Are you
13 here to testify with respect to fingerprints?

14 A. My understanding is, I'm here to talk
15 about crime analysis and the analysis of this particular
16 crime scene.

17 Q. All right. Have you analyzed this
18 crime scene?

19 A. I have, yes, sir.

20 Q. And when was that done?

21 A. Well, I first encountered this case
22 back in June of '96. I was in Dallas on another matter
23 and was aware that this had occurred, and was actually
24 assigned this case, September 20th.

25 Q. All right.

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1 A. Which I received a letter from the
2 prosecutors office at the FBI Academy at that time. I
3 received all the case materials on September the 23rd,
4 and began reviewing all of the case materials at that
5 time, and began also formulating my opinion at that time,
6 and certainly continued to do that up until the time that
7 I arrived here this week.

8 Q. When did you arrive here?

9 A. I came in --

10

11 MR. TOBY L. SHOOK: Judge, again, we
12 will object. That is outside of the scope of 705.

13 THE COURT: Sustained. Let's stay

14 right on the point, please.

15

16 BY MR. DOUGLAS MULDER:

17 Q. All right. Well, just tell us what
18 information that you have received from the prosecution.

19

20 MR. TOBY L. SHOOK: Judge, again, this
21 is outside scope of 705.

22 MR. DOUGLAS MULDER: Well, Judge we
23 have a right to look at what he has reviewed.

24 MR. TOBY L. SHOOK: As long as they do
25 it according to 705.

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1 THE COURT: That is right. All we
2 need to do, is elicit from him what his opinions will be,
3 and the underlying basis of them, please.
4 MR. RICHARD C. MOSTY: It's the
5 underlying facts or data upon which he bases his opinion
6 is how the rule says, and that's the question --
7 MR. DOUGLAS MULDER: That's right.
8 THE COURT: Do that, and do that
9 briefly, please.
10 MR. DOUGLAS MULDER: All right.
11
12 BY MR. DOUGLAS MULDER:
13 Q. All right. Well, tell us all of the
14 underlying facts and data upon which you base your --
15 first, tell us what your opinion is.
16 A. My opinion based on a comprehensive
17 review of all the facts and circumstances and information
18 that was provided to me by the prosecutors and
19 investigators, it's my opinion that this crime scene was
20 staged, and that both Devon and Damon were killed by
21 someone that they knew, and someone that they knew very
22 well.
23 Q. Is that the extent of your conclusion?
24 A. That is it in summary form. Of
25 course, I looked at a variety of features at that crime
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1 scene in arriving at that opinion, and certainly have
2 some thoughts on those particular features.
3 Q. Yes, sir. Mr. Brantley, what I would
4 like from you is your -- just give us the entire opinion
5 that you intend to project to the jury?
6 A. That's it.
7 Q. You are not going to flower it up a
8 little bit?
9 A. Well, it depends on your questioning
10 and the questions from the prosecutor, but I also intend,
11 again, to talk about how I arrived at that opinion, and
12 again, the major features that I considered.
13 Q. Have you prepared a report?
14 A. No, I have not.
15 Q. Okay. Well, tell the Court the data
16 that you reviewed, and how you have arrived at that
17 decision?
18 A. If I may refer to my notes?
19 Q. You bet.
20 A. The materials I reviewed included --
21 excuse me -- crime scene photos, crime scene video,
22 autopsy photos, autopsy reports, I looked at aerial

23 photographs, crime scene sketches, also medical reports.

24 Q. Let me -- I'm trying to write these

25 down; crime scene photos, videos, autopsies?

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1 A. That's correct.

2 Q. Aerial photos?

3 A. That's correct.

4 Q. What else? Crime scene diagrams?

5 A. Crime scene sketches or diagrams.

6 Q. Sketches?

7 A. That's right.

8 Q. Okay.

9 A. Medical reports, forensic reports,
10 investigative reports or police reports.

11 Q. All right. Just a second. Forensic

12 reports?

13 A. That's correct.

14 Q. Okay.

15 A. Court documents, affidavits for arrest

16 and search.

17 Q. Okay.

18 A. Newspaper accounts and media accounts
19 of what occurred.

20 Q. All right.

21 A. Witness statements.

22 Q. Witness statements by whom?

23 A. By neighbors, friends and relatives of

24 the defendant, also Mrs. Routier's statement and Mr.

25 Routier's statement.

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1 Q. Okay.

2 A. Transcript of the 911 call that was

3 made, and a variety of consultations with the

4 prosecutors, and the investigators.

5 Also, I visited the residence at 5801

6 Eagle Drive.

7 Q. Okay.

8 A. I looked around in the vicinity of

9 that particular neighborhood. Consulted with forensic

10 experts that have also testified, and also consulted with

11 one of the medical examiners, Dr. Townsend-Parchman, I

12 believe.

13 Q. Did you talk with Mr. Bevel?

14 A. I did, yes, sir.

15 Q. Okay. When did you talk with him?

16 A. This was in October of '96, when I
17 travelled to Dallas for a pretrial consultation with the
18 prosecutors, investigators and forensic experts.
19 Q. Did you testify in their mock court,
20 mock trial?
21 A. No, sir.
22 Q. You didn't? Were you there for that?
23 A. No, sir.
24 Q. Okay. Let me see if I have got the --
25 everything that you tell me you based your opinion on?
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1 Crime scene photos, videos of the crime scene, autopsy
2 protocol, crime scene sketches and diagrams?
3 A. Autopsy photos, also.
4 Q. Crime scene sketches and diagrams?
5 A. That's correct.
6 Q. Aerial photographs?
7 A. That's correct.
8 Q. Medical reports?
9 A. That is also correct.
10 Q. Is that -- would that be the autopsy
11 protocols?
12 A. No. I included in the medical reports
13 reports of Mrs. Routier's injuries and wounds.
14 Q. Okay. Forensic reports?
15 A. That's correct.
16 Q. By whom?
17 A. Mr. Bevel, and I believe, Mr. Linch.
18 Also contained in that would have been, well, some
19 information from the medical examiner's autopsy protocol,
20 and I considered the forensic -- or the toxicology
21 results.
22 Q. Okay. Court documents?
23 A. That's correct.
24 Q. What court documents?
25 A. Well, affidavits for arrest and search
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1 warrant, primarily.
2 Q. Okay.
3 A. And investigative reports or police
4 reports, their entire file.
5 Q. Okay. Media accounts, witness
6 statements, and could you tell me who you had witness
7 statements from?
8 A. Well, they were numerous. I have not
9 listed them out, but for the most part, these were

10 employees of the Routiers' or coworkers, neighbors,
11 relatives.

12 Q. Okay. That would be Basia, or Barbara

13 Jovell?

14 A. Again, I have not delineated any.

15 Q. Okay. You don't remember the names?

16 A. No, sir.

17 Q. The young lady from Poland, that

18 speaks with an accent?

19 A. I am aware of the information that she

20 has provided to the prosecutors and the investigators and

21 that information was relayed to me.

22 Q. So you have not talked to her in

23 person?

24 A. No, I have not.

25 Q. Okay. All right. Friends and

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1 relatives?

2 A. When I'm talking about witness

3 statements and witness interviews, I'm not talking about

4 interviews that I have conducted myself. These are

5 accounts or reports of these interviews.

6 Q. All right. Things that came to you

7 second or third-hand?

8 A. Well, things that came to me from the

9 prosecutor and the investigators.

10 Q. Were these related to you orally or in

11 writing?

12 A. A combination.

13 Q. Okay. I assume you would have made

14 notes as to the oral revelations and the written ones you

15 have in your file?

16 A. That's correct.

17 Q. You have your file with you, don't

18 you?

19 A. Not the complete file, but I brought a

20 considerable amount of the case file information with me

21 to review while I have been here.

22 Q. Where is the complete file?

23 A. Most of it is back at Quantico.

24 Q. Well, I mean, why would you come to

25 Kerrville to testify and leave your file back in

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1 Quantico?

2 A. Well, the information that I left back

3 in Quantico I had finished with, plus I talked to the

4 prosecutor and they had a complete file here.
5 So I had, just to give you an idea of
6 what I have looked at, I had almost a thousand 8 by 10
7 color photographs of the crime scene, and aerial
8 photographs, autopsy reports, that stuff. That is a
9 rather sizable carry, if you will.

10 Q. You had a thousand photographs?

11 A. Well, 975, to be exact.

12

13 MR. DOUGLAS MULDER: Judge, we asked
14 for all of the photographs, and we do not have 975
15 photographs.

16 THE COURT: Fine. Let's continue with
17 the hearing, please.

18

19 BY MR. DOUGLAS MULDER:

20 Q. Would you show me what you brought of
21 your file?

22 A. I certainly can, if the Judge would
23 permit me to step down?

24

25 THE COURT: You may step down, by all
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1 means.

2

3 (Whereupon, the witness

4 Stepped down from the

5 Witness stand, and

6 Approached the jury rail

7 And the proceedings were

8 Resumed as follows:)

9

10 BY MR. DOUGLAS MULDER:

11 Q. Is this the extent of your file?

12 A. This is the extent of what I brought
13 with me here to Kerrville.

14 Q. All right. What about that envelope
15 you have on the --

16 A. These are personal notes.

17 Q. Are these photographs that you
18 selected out to --

19 A. These, I believe, were representative,
20 and very descriptive of some of the features that I
21 focused on.

22 Q. I just -- were these photographs taken
23 according to some FBI protocol?

24 A. No, sir.

25 Q. Are you sure about that?

1 A. These were taken by the local police
2 department investigators.

3 Q. Okay.

4

5 MR. DOUGLAS MULDER: I'll just need a
6 minute to look this over.

7 THE COURT: All right. Go ahead.

8 MR. DOUGLAS MULDER: Do you want me to
9 do it now?

10 THE COURT: Yes, sir.

11 MR. DOUGLAS MULDER: I was going to do
12 it during the --

13 MR. JOHN HAGLER: Your Honor, while
14 he's looking at those documents, to save some time for
15 the Court, I'd like to go ahead and make some objections
16 now, based on what has been testified to.

17 THE COURT: That will be fine, Mr.

18 Hagler.

19 MR. JOHN HAGLER: Okay, Your Honor.

20 May I just put my book up here?

21 THE COURT: Oh, by all means, Mr.

22 Hagler.

23 MR. JOHN HAGLER: Your Honor, as I
24 understand the witness has already stated that he is
25 going to testify essentially, that in his opinion, that
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1 this is a staged crime scene; and secondly, that whoever
2 the assailant was was apparently well known to the
3 victims in this case.

4 First, your Honor, we would reurge all
5 of our previous objections that were voiced to the
6 testimony of Mr. Bevel, you know, under Daubert and
7 Robinson.

8 And I might also point out to the
9 Court, obviously, Daubert is a Supreme Court case, and
10 Robinson is a Texas Supreme Court case. The significant
11 fact is, your Honor, that they are interpreting Rule 702.

12 And Rule 702, as the Court well knows, applies both to --
13 is virtually identical as far as the civil and criminal
14 codes of evidence.

15 Now, so far, your Honor, this witness,
16 and our objection would be that; one, that under the
17 Daubert and Robinson standards, of course, this Court now
18 has the responsibility of reviewing expert testimony, and
19 determining whether or not it's relevant, whether it's

20 reliable, and whether it's based on a proven scientific
21 and valid principle.

22 In -- and our objection under Rule
23 702, 703 and 705, is the fact that essentially what this
24 witness is going to be testifying to, is that there is no
25 basis under any scientific technique or principle or
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1 theory that would validate his personal opinion. It's
2 simply mere speculation on his part as to what actually
3 happened.

4 Secondly, your Honor, there is no
5 adequate and reliable evidentiary base. In other words,
6 he is stating what he is basing his opinion on. It's
7 basically on various types of matters, documents or
8 photographs interviews, that in many cases are going to
9 be hearsay. Their reliability is unestablished and
10 unproven. We have no idea as to what the source of the
11 underlying facts, upon which he is basing his so-called
12 scientific opinion.

13 Now, in this respect, your Honor, I
14 might also mention that it denies us the opportunity of
15 effectively confronting and cross examining his -- the
16 underlying sources or witnesses that have provided him
17 with the information upon which his expert opinion is
18 based.

19 In that respect, it would constitute a
20 violation of the Sixth Amendment, and Article 1, Section
21 10 of the Texas Constitution.

22 Now, we're fully aware, your Honor,
23 that under Rule 704, that the Courts have liberalized
24 admission of expert testimony to the extent that an
25 expert witness can now, if in fact, he is a proven expert
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1 and his testimony is based on a valid scientific
2 technique or theory, can testify as to all of the
3 conditions of fact.

4 However, there is a close and fine
5 line as to what an ultimate issue in a case is, and what
6 a final issue is. And a final issue, I'm referring to
7 it, as a witness's opinion as to an individual's guilt or
8 innocence.

9 Now, in this case, if this witness
10 testifies, your Honor, we're going to cross that line.
11 He is not here simply to testify as to a particular
12 location of a so-called piece of evidence, or this type
13 of thing.

14 What he is going to be testifying to
15 is, if you objectively and fairly examine his testimony,
16 he is going to testify to this Jury, that the defendant
17 committed the offense. That is what it boils down to.
18 He is going to cross that line, and if
19 that be the case, it goes further than the intent of 704.
20 It's, in effect, -- this witness's expression as to his
21 personal opinion as to the guilt of the defendant.
22 Now, in that respect, again, it's
23 based on -- it's a violation of 702, 703 and 705. We've
24 effectively been denied our right of cross examining the
25 underlying sources of his opinion which, again, goes
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1 beyond the scope of Rule 704.
2 THE COURT: That's it?
3 MR. JOHN HAGLER: Well, we also,
4 obviously, your Honor, we have a 703 situation, a
5 balancing -- I think, even, you know, in the unlikely
6 event the Court would admit this testimony, we would
7 submit that clearly, clearly by -- we have had 13 days of
8 testimony, and now they bring in at the last minute one
9 witness, who says that he has examined a few photographs,
10 and has talked to some neighbors, and looked at a few
11 reports. And in his opinion the defendant is guilty.
12 We would submit that is clearly going
13 to be misleading, confusing and, again, would constitute
14 a violation of the Fourteenth Amendment.
15 THE COURT: Well, I think the opinion
16 is that both Damon and Devin Routier were killed by
17 someone they knew well and the crime scene was staged.
18 I think that is the opinion; is that
19 correct?
20 THE WITNESS: That is correct, your
21 Honor.
22 THE COURT: All right.
23 MR. JOHN HAGLER: One other thing too,
24 your Honor, is that he is again basing -- he has already
25 stated his source of some of those underlying facts, and
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1 again, it's broad. It's going to include hearsay
2 statements from other individuals, that we have been
3 denied our opportunity to confront and cross examine, so
4 his opinion is going to be based on inadmissible or
5 testimony that we would submit would be hearsay testimony
6 and therefore would constitute a violation of the Sixth
7 Amendment, and Article 1, Section 10.

8 THE COURT: All right. Objection
9 overruled, and with the 401, 403 balancing test, the
10 Court feels that it's relevant and the Court feels the
11 prejudicial effect is far outweighed by the probative
12 value and it would help the jury come to a just verdict
13 in this particular case.
14 MR. RICHARD C. MOSTY: Of course,
15 we're not through with our examination of him yet.
16 THE COURT: We understand that, and we
17 likewise understand Mr. Hagler's objections.
18 MR. DOUGLAS MULDER: Judge, this is
19 going to take some time. And, I might point out to the
20 Court, they have reports in here, that we have never seen
21 before. As the Court may well understand, and I am going
22 to need to read these reports.
23 THE COURT: Well, how long do you
24 think it will take you?
25 MR. DOUGLAS MULDER: Well, I don't
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1 know, I'm reading them as I go along, but I don't know
2 how many there are.
3 MR. RICHARD C. MOSTY: Here is
4 information that he has based on -- for instance, on this
5 stack here is the Dallas Morning News, which if I -- my
6 recollection is, that it has not been admitted into
7 evidence, nor will it be, ever in this trial.
8 It is going to take us a while to go
9 through all this stuff.
10 THE COURT: Well, do you think --
11 MR. TOBY L. SHOOK: Well, Judge the
12 basis of the hearing is to go over the underlying facts
13 and data. It's not -- they can read the file before they
14 cross examine him though. We can move forward.
15 THE COURT: Well, I understand that.
16 The hearing is here and what we intend to do is go ahead.
17 Before you cross examine the witness, I certainly will
18 give you time to read the file.
19 MR. RICHARD C. MOSTY: We're entitled
20 in this hearing to direct our examination to the
21 underlying facts and data fully, not partially, but
22 fully. And, we have got to have adequate time to do
23 that.
24 THE COURT: And how long will that
25 take?
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1 MR. DOUGLAS MULDER: Well, I can't --
2 I can't do it until I read the file. And I have -- I got
3 the file about five minutes ago.
4 THE COURT: Well, you are experienced
5 attorneys, and how long do you think it will take you to
6 read it?
7 MR. DOUGLAS MULDER: Judge, I don't
8 know. A couple days? I don't know. Well, you know, it
9 may take me a half hour. I don't know.
10 THE COURT: I'm happy to recess.
11 MR. DOUGLAS MULDER: I don't want to
12 reread stuff I have already read.
13 THE COURT: I understand.
14 MR. DOUGLAS MULDER: But there are
15 things in here that I have never seen before, and I need
16 to read it.
17 THE COURT: Well, if we recess for 30
18 minutes and see what it's like then, is that fair enough?
19 MR. DOUGLAS MULDER: Sure.
20 THE COURT: Fine. Let's do that then.
21 MR. RICHARD C. MOSTY: May we know
22 that we have everything?
23 MR. DOUGLAS MULDER: What do we have
24 up there, Mr. Brantley?
25 THE WITNESS: My notes.
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1 MR. DOUGLAS MULDER: Could we see
2 those too?
3 THE WITNESS: Certainly.
4 THE COURT: All right. We will recess
5 until 10:00 o'clock, and see how it goes at that time.
6 MR. DOUGLAS MULDER: Where can we go
7 to confer?
8 THE COURT: You can go in Judge Proh's
9 office if you want to.
10
11 (Whereupon, a short
12 recess was taken, after
13 which time, the
14 proceedings were
15 resumed in open court,
16 in the presence and
17 hearing of the
18 Defendant, being
19 represented by his
20 Attorney, but outside of
21 the presence of the jury
22 as follows:)

23

24 MR. RICHARD C. MOSTY: Your Honor, we
25 need a few more minutes.
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1 THE COURT: How much longer?

2 MR. RICHARD C. MOSTY: Well, I don't
3 know. Mr. Mulder is trying to read it as fast as he can.

4 You know, this lady is on trial for her life.

5 THE COURT: We understand that, Mr.

6 Mosty. But, I mean, I have been very generous with the
7 time.

8 We can -- how many more minutes can
9 you have? You have how many lawyers back there?

10 MR. RICHARD C. MOSTY: Well, how many

11 are you going to let cross examine the witness, your

12 Honor? If you let all of us cross examine him, I bet we
13 can be ready in just a minute.

14 THE COURT: This is not discovery, and

15 I think that you are entitled after the witness -- how
16 much time do you need?

17 MR. RICHARD C. MOSTY: This gentlemen

18 is coming in with a crystal ball, and we need a little

19 bit of time to do that, and Mr. Mulder is reading as fast
20 as he can. I think he will be done in a few minutes.

21 THE COURT: 15 more minutes.

22

23 (Whereupon, a short

24 Recess was taken,

25 After which time,

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1 The proceedings were

2 Resumed on the record,

3 In the presence and

4 Hearing of the defendant

5 As follows:)

6

7

8

9 THE COURT: All right. Be seated,

10 please, ladies and gentlemen.

11 Bring the -- tell the lawyers to come

12 back in, please.

13 All right. Mr. Brantley, if you will

14 be kind enough to take the stand, please.

15 MR. DOUGLAS MULDER: Judge, we are

16 reporting -- we would like this on the record. We are

17 reporting back, as instructed by the Court.

18 THE COURT: Thank you.

19 MR. DOUGLAS MULDER: We have not had
20 an opportunity to review the files that Mr. Brantley has
21 used to form his opinion, but he has been cooperative
22 with us and has gone through his notes with us and we
23 have been able to decipher his notes.

24 THE COURT: All right. Thank you.

25 The hearing will continue.

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1 MR. DOUGLAS MULDER: Judge, excuse me,
2 I am not finished yet. Would you mind if I complete.

3 THE COURT: Oh, by all means.

4 MR. DOUGLAS MULDER: Yes, sir. Did
5 you want to go ahead, Judge? I don't want to interrupt
6 you.

7 THE COURT: Oh, no, Mr. Mulder. I
8 want to hear what you have to say.

9 MR. DOUGLAS MULDER: Okay. Very good.
10 It includes some seven pages, and I have looked through
11 the photographs, but I have not read the reports and
12 there are many reports in there that we have not seen.
13 In fact, there are reports by Cron, that Cron did not
14 furnish us when he testified.

15 So, at any rate, I would like an
16 opportunity to go through these. And let the record
17 reflect that the file is approximately, what, Mr.
18 Brantley? Three or three and a half inches thick?

19 THE WITNESS: Well, if I had to call
20 it, I would say maybe around four.

21 MR. DOUGLAS MULDER: Four inches
22 thick. I stand corrected.

23 THE COURT: Thank you. Well, that is
24 fine. I think at the appropriate time you will have a
25 chance to do that, but for this hearing, is there

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1 anything else for this hearing you want to talk about?

2 MR. DOUGLAS MULDER: Yes.

3 I want to ask Mr. Brantley just briefly.

4

5

6 VOIR DIRE (Continued)

7

8 BY MR. DOUGLAS MULDER:

9 Q. We would like to know -- you have
10 given us, Mr. Brantley, your opinion in this case, and

11 that is the sum and substance of your opinion; is that
12 right?

13 A. That's correct.

14 Q. All right. And if you would just
15 articulate for the Judge the basis upon which that
16 opinion was formed?

17 A. Well, the basis of opinion was
18 formulated on a thorough review of all of the case
19 materials that I have already outlined for you.

20 Q. Is there -- and I'm just asking this
21 for my own edification. The learned Judge probably
22 already knows the answer to this question, but is there
23 any empirical way to check the accuracy of your
24 conclusion?

25 A. The analysis that I --
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1

2 MR. TOBY SHOOK: Judge, we will object
3 again. This is going beyond the scope of 705.

4 THE COURT: Sustained. Let's move on.

5 MR. DOUGLAS MULDER: You don't want to
6 know whether or not there is any way to check the
7 accuracy of his analysis?

8 THE COURT: Please ask your next
9 question, Mr. Mulder.

10 MR. DOUGLAS MULDER: Judge, that was
11 my next question.

12 THE COURT: Fine. It's been objected
13 to. The objection is sustained. Ask the next one.

14 MR. RICHARD C. MOSTY: Your Honor, we
15 would request the ability to go into that under Daubert.
16 That is, under Daubert and Robinson, that is one of the
17 tests as the Court well knows, the Court is the
18 gatekeeper for scientific opinion or speculative opinion,
19 whichever it is, and the Court is the gatekeeper and
20 unless there is some empirical manner of testing the
21 accuracy of it, the testimony should not be allowed.

22 THE COURT: Thank you.

23 MR. RICHARD C. MOSTY: That is a part
24 of this hearing and the Court is telling us we cannot do
25 that, if I understand.

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1 THE COURT: No, I'm just telling Mr.

2 Mulder to ask your next question.

3 MR. DOUGLAS MULDER: Judge, that was

4 my next question. I would think that you, in keeping the

5 gate, that you would want to know whether or not there is
6 any way that -- the accuracy of his conclusion.

7 THE COURT: Well, is there?

8 THE WITNESS: Based on the standards
9 within my profession, again, there has been numerous
10 publications and text books where this information is
11 reported on, and certainly anyone with the background,
12 education and training and experience that I have had,
13 would come to, I believe, the same conclusion.
14 Certainly, the people that I work with at the FBI Academy
15 are all in agreement with my conclusion.

16

17

18 VOIR DIRE (Continued)

19

20 BY MR. DOUGLAS MULDER:

21 Q. Do you traditionally review each
22 other's work before you testify?

23 A. That is correct. Not necessarily
24 before we testify, but it's a collaborative, group
25 process that we engage in. That's correct.

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1 Q. Before you issue some sort of an
2 opinion?

3 A. At times, again, it varies. It's not
4 mandated that we do that, but just as a matter of course,
5 we try to that whenever possible.

6 Q. Do you have a committee?

7

8 MR. TOBY L. SHOOK: Judge, again, I am
9 going to object.

10 THE COURT: Mr. Mulder, can we keep

11 the questions on the basis --

12 MR. DOUGLAS MULDER: Well, I think I
13 am getting into things that I am going to cross examine
14 him on, Judge.

15 THE COURT: Thank you. We can do that
16 at the appropriate time. Anything else for this hearing?

17 MR. DOUGLAS MULDER: Well, Judge, we
18 simply suggest to the Court, and we would like to develop
19 the fact that there is no empirical test upon which the
20 accuracy of his proclamation or his conclusion can be
21 tested and judged.

22 THE COURT: I understand what you are
23 saying. The Court has heard that. Anything else?

24 MR. DOUGLAS MULDER: No, if you are
25 denying me any opportunity to go further on that?

1 THE COURT: I think he already
2 answered that question.
3 MR. RICHARD C. MOSTY: Well, your
4 Honor, he didn't answer that question. What he said was
5 that there was a lot of literature in the field. And
6 that is not the question. My question is not -- Mr.
7 Mulder's question is not whether or not there is a bunch
8 of literature because there is a lot of literature in all
9 sorts of idiotic fields and drawing idiotic conclusions.
10 The question is -- am I interrupting a conversation?
11 THE COURT: Oh, by no means.
12 MR. RICHARD C. MOSTY: The question is
13 not whether or not there is literature or whether or not
14 there is information on it. The question is whether or
15 not something can be empirically, objectively tested
16 beyond the opinion and say, yes, in 60 percent of these
17 times, this is right; or 95 percent or whatever.
18 There is no method to empirically test
19 whether or not he is accurate. He can just get up there
20 and spout an opinion, based upon non-testimony and
21 non-evidence, and there is no way that anybody can say,
22 is he right or is he wrong?
23 THE COURT: Well, I think you can
24 develop that on cross examination. Anything else for
25 this hearing?

1 MR. RICHARD C. MOSTY: Judge, that is
2 the gatekeeping that the Court is supposed to do --
3 THE COURT: Mr. Mosty, please, I have
4 already ruled. If I have made an error, I think I (sic)
5 have preserved it, please.
6 MR. DOUGLAS MULDER: Let me ask him
7 this last thing, and as the gatekeeper I would think you
8 would want to know this.
9 THE COURT: Okay.
10 MR. DOUGLAS MULDER: In fact, you may
11 be thinking of it already.
12
13
14 VOIR DIRE (Continued)
15
16 BY MR. DOUGLAS MULDER:
17 Q. But I want to know, Mr. Brantley, if
18 the information upon which you based your opinion and
19 conclusion is totally accurate?

20

21 MR. TOBY SHOOK: Judge, again, we will
22 object, they are going outside of the scope of the
23 hearing.

24 THE COURT: I think that is within the
25 province of the jury. I'll sustain the objection. Let's
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1 move on. Anything else?

2 MR. JOHN HAGLER: Your Honor, could I
3 just wrap this up by finalizing our objections?

4 THE COURT: Oh, yes, by all means, Mr.
5 Hagler. I would encourage that.

6 MR. JOHN HAGLER: Okay. Your Honor,
7 as to the so-called expert opinion testimony, first, we
8 would submit that it's been a failure for the State as
9 the proponent of this expert testimony, to establish --
10 to lay the predicate with the four Daubert factors; and
11 also, the subsequent Robinson factors, that have been
12 incorporated by the Supreme Court. We would submit have
13 been further extended to Rule 702.

14 Secondly, your Honor, there has been
15 no showing of reliability or relevancy of this witness's
16 testimony; and in that connection, there has been a
17 failure of a showing of methodology, in which an opinion
18 could be properly formed, as to whether or not there was
19 in fact staging.

20 I might also point out, your Honor,
21 that the cases have held, that a witness's opinion, his
22 self-serving statements, as to his own methodology, and
23 what have you, fail to establish a proper predicate under
24 Daubert and Robinson.

25 In addition, your Honor, there is a
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1 failure of establishing proper qualifications for this
2 witness to testify as to his opinion, as have been stated
3 to the Court. And, in this respect, your Honor, we would
4 further urge that there has been a total lack of a
5 showing of a evidentiary base, of a reliable evidentiary
6 base.

7 This witness has already advised the
8 Court that his opinion is based on various statements of
9 certain individuals, those individuals, that evidence is
10 not before the Court. It's hearsay on hearsay.

11 And allowing his opinion testimony
12 would constitute a violation of our 6th Amendment right
13 to confront and cross examine those witnesses; and also

14 would be a violation of Article 1, Section 10 of the
15 Texas Constitution.

16 Now, your Honor, in summary, our
17 objection is, that this actually is not expert testimony,
18 it is not valid expert opinion testimony. It's merely
19 speculation, it's a creation of testimony, and that it
20 goes beyond the intent of Rule 704 and the fact that it's
21 an expression of guilt as to the defendant's guilt or
22 innocence, as opposed to a mere ultimate issue in the
23 case.

24 Consequently, the admission of this
25 evidence and this testimony would constitute a violation
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1 of the Fifth and Fourteenth Amendments to the United
2 States Constitution, Article 1, Section 10 of the Texas
3 Constitution; Rules: 701, 702, 703 and 705 of the Texas
4 Rules of Criminal Evidence. And we would also ask for a
5 403 ruling, please.

6 THE COURT: All right. Objection is
7 overruled. The Court -- Mr. Brantley has revealed the
8 underlying basis and facts of his testimony, it will be
9 permitted.

10 The 401 and 403 ruling will be that
11 the Court considers it relevant. The probative value far
12 outweighs any prejudicial effect it might add, in the
13 fact that it might -- it would assist the jury in coming
14 to a just verdict in this particular case.

15 With that in mind, we will bring in
16 the jury and commence the testimony.

17 MR. JOHN HAGLER: Could we have a
18 running objection to all of his testimony, your Honor?

19 THE COURT: Oh, yes, you may.

20 THE COURT: All right.

21

22 (Whereupon, the jury

23 Was returned to the

24 Courtroom, and the

25 Proceedings were

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1 Resumed on the record,

2 In open court, in the

3 Presence and hearing

4 Of the defendant,

5 As follows:)

6

7 THE COURT: Good morning, ladies and
8 gentlemen.
9 Let the record reflect that all of the
10 parties in the trial are present and the jury is seated.
11 Ladies and gentlemen of the jury, this
12 witness has already been sworn outside of your presence.
13 Go ahead, please, Mr. Shook.
14 MR. TOBY L. SHOOK: Thank you, Judge.
15
16
17 Whereupon,
18
19 **ALAN BRANTLEY**,
20
21 was recalled as a witness, for the State of Texas, having
22 been previously duly sworn by the Court to speak the
23 truth, the whole truth, and nothing but the truth,
24 testified further in open court, as follows:
25
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1
2 DIRECT EXAMINATION
3
4 BY MR. TOBY L. SHOOK:
5 Q. State your name, please.
6 A. Alan Brantley.
7 Q. And how are you employed, sir?
8 A. I'm a supervisory special agent with
9 the Federal Bureau of Investigation.
10 Q. And, where are you currently assigned?
11 A. I'm currently assigned to the National
12 Center for the Analysis of Violent Crimes, which is part
13 of the Critical Incident Response Group at Quantico,
14 Virginia.
15 Q. How long have you been with the FBI?
16 A. Approximately 13 and a half years.
17 Q. And, what positions have you held with
18 the FBI?
19 A. Other than being an investigative
20 agent in the field, I have been assigned to the National
21 Center since 1988, and in that position have been
22 responsible for the analysis of violent crimes, and the
23 providing of information of lead value to investigators
24 that are confronted with repetitive violent crimes,
25 unusual and particularly vicious types of violent
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1 offenses as well.

2 Q. And what is your current position?

3 A. I am a supervisory special agent as I
4 have said, but I am also the Program Manager of the
5 Forensic Psychiatry Fellowship in conjunction with the
6 Armed Forces of the United States out of Walter Reed Army
7 Medical Center in Washington D.C.
8 I am also the program manager of the
9 component at the National Center, that addresses
10 individuals that threaten and/or attempt to use weapons
11 of mass destruction. These are primarily weapons
12 involving nuclear, biological and chemical threats or
13 entities.

14 Q. What are your duties with your current
15 position with the FBI?

16 A. Well, I am primarily responsible for
17 supervising others at the National Center in the areas
18 that I have already outlined, and also, working a variety
19 of violent offenses, including homicides and threats
20 against others.

21 Q. Tell the jury your educational
22 background.

23 A. I received a Bachelor's of Arts in
24 1972 from Appalachian State University with an
25 undergraduate degree in psychology.
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1 I completed a Master's degree in
2 counseling and psychology, also at Appalachian State in
3 1976 after I served a tour as an officer in the Marine
4 Corps.

5 From that point, I did post-master's
6 work at Appalachian State, also at North Carolina State
7 University and Virginia Tech.

8 Q. And how were you employed prior to
9 joining the Bureau?

10 A. Prior to my joining the FBI, I was
11 employed as a psychologist in a maximum security prison
12 in the State of North Carolina for about six years.

13 Q. What were your duties there?

14 A. A combination of things, but primarily
15 I evaluated and assessed the inmates in that population,
16 all adult males. I provided evaluations for the court,
17 and presentencing studies, and also did reviews and
18 analysis of inmate cases for consideration of release
19 back into the community and parole.

20 Q. Okay. Do you have any specialized
21 training?

22 A. My specialized training, while in the

23 FBI, is centered on information about violent crime,
24 death investigation, crime scene analysis, forensic
25 pathology, forensic dentistry, almost any type of course
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1 that might help us to understand not only the behavior of
2 violent criminals, but some of the things relating to the
3 forensic evidence that they may leave behind as well.

4 Q. Have you served on any faculties?

5 A. I am on the faculty at the FBI
6 Academy, and also an adjunct faculty member of the
7 University of Virginia.

8 Q. In what particular areas have you
9 lectured or taught?

10 A. Primarily, on the violent crime scene
11 analysis, and the assessment of dangerousness, also,
12 criminal psychology. While at the FBI Academy, I taught
13 a course at the National Academy on applied criminal
14 psychology. Also, I taught the new FBI trainees that
15 same course on applied criminal psychology.

16 Q. Have you made presentations in your
17 field?

18 A. I have.

19 Q. What types?

20 A. Well, again, centering on violent
21 crime, crime scene analysis, and criminal psychology, and
22 we provide presentations in schools, ranging from
23 week-long schools, to one and two-hour presentations, to
24 law enforcement audiences, attorneys and judges, mental
25 health professionals, academics, students, it's just a
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1 very broad range of audiences.

2 Q. And, are you a member of any
3 professional organizations?

4 A. I am. I'm a member of the American
5 Academy of Criminal Justice Sciences, also the
6 International Homicide Investigators Association, Harvard
7 Associates in Police Science and the Association of
8 Threat Assessment Professionals.

9 Q. And what is the Criminal Investigative
10 Analysis Program?

11 A. Well, for the most part, when you talk
12 about criminal investigative analysis, or crime scene
13 analysis, we're talking about the analysis of the
14 behavior displayed at a crime scene by an offender.
15 What we look at, to determine this
16 assessment, is primarily in three areas: Victimology, in

17 other words, what is it about a particular victim that
18 increases his or her risk of becoming a victim of a
19 violent crime. We also look at investigative reports and
20 police reports. And we also concern ourselves and focus
21 on crime scene photos and information about that crime
22 scene.

23 We believe since all crimes are
24 committed by human beings, that some stage along this
25 crime commission process, there is going to be a display
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1 of human behavior, that lends itself to analysis,
2 interpretation, and from that analysis, information of
3 lead value that could be provided to investigators, to
4 prosecutors and to jurors, like yourselves, to hopefully
5 get a little better understanding of the types of
6 criminal behavior that you are not as likely to encounter
7 in your life experiences, as I am to encounter in what I
8 do for a living.

9 Q. Have you personally received case
10 materials to review in regards to a murder that occurred
11 in Rowlett, Texas on June 6th, 1996?

12 A. I have.

13 Q. Involving Devon and Damon Routier?

14 A. That's correct.

15 Q. Okay. What materials did you utilize
16 in your review?

17 A. The materials that I had to review,
18 were crime scene photographs, crime scene video, autopsy
19 photographs, autopsy reports, investigative reports, or
20 police reports, forensic reports, I saw some aerial
21 photographs, I also looked at medical reports. I looked
22 at some legal or court documents, the affidavits for
23 search warrant and arrest. Considered information that I
24 was able to obtain in consultations with investigators
25 and prosecutors.

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1 I also visited 5801 Eagle Drive and
2 did a survey of not only the location of that residence
3 but also the immediate vicinity. I met with some of the
4 forensic experts and also talked with Dr.
5 Parchman-Townsend, one of the medical examiners that did
6 the autopsy on one of the victims.

7 Q. After reviewing all that, were you
8 able to form some opinions about the case?

9 A. I was.

10 Q. Okay. And what is that opinion?

11 A. My opinion is that in this particular
12 case, and this particular crime scene, that this crime
13 scene had been staged, and in all likelihood whoever
14 killed both Devon and Damon, was someone that they knew,
15 and someone that they knew very well.

16 Q. When you say a crime scene is staged,
17 what do you mean?

18 A. What I mean by staging is that the
19 crime scene had been altered. There had been things that
20 had been moved, or things that had been disturbed that
21 you don't ordinarily see disturbed in crime scenes like
22 this. And there are some other things that you would
23 expect to be disturbed that were left alone or left
24 untouched.

25 Q. What is staging?

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1 A. Well, staging is -- when we see
2 staging, it suggests to us a couple or three things.
3 First and foremost, the reason that
4 the offender will stage crime scenes is to divert
5 attention away from the most logical suspect and/or the
6 most logical motive. There are some other occasions when
7 scenes are altered or scenes are staged where there is
8 not necessarily any intent, really, to cover a criminal
9 act, but because of embarrassment to a family, who may
10 have discovered a loved one that has committed suicide,
11 they may move some things, take some things away before
12 discovery, again, just to prevent some embarrassment
13 either to themselves, or to the deceased.

14 Q. Now, what factors did you use in
15 forming your opinion in this particular case?

16 A. Well, I looked at some major features.

17 And generally, when we start looking at these kinds of
18 offenses, we try to incorporate as much information as we
19 can.

20 But first and foremost, at least I do,
21 I always ask the question: Are there any similar or
22 related events in the area? I'm trying to get an
23 assessment of the crime rate; is it a high crime rate
24 area or a low crime rate area?

25 Unless I am able to establish that, in

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1 this case I was informed it was a very low crime rate
2 area. As a matter of fact, certainly no other homicides
3 like this, to my knowledge, ever, and the homicides that
4 had occurred had been resolved, or had been effectively,

5 you know, ruled one way or the other.
6 Also, what I am trying to do with my
7 assessment of the crime rate, I'm trying to determine
8 risk factors; risk factors to the victims, and risk
9 factors for the offender, which is also very important.
10 I think the vast majority of offenders
11 that I have ever encountered do not want to get caught.
12 So, they are going to attempt to commit their crimes in
13 such a way as to prevent that.
14 Well, they are going to take into
15 consideration, for instance, whether there are any
16 witnesses around, for instance.
17 In this particular case, I looked at
18 the location of the home and how it was surrounded by
19 homes on almost every side. I also looked --
20 Q. Did you -- let me just interrupt
21 you -- did you look at photographs, aerial photographs of
22 the neighborhood?
23 A. I did.
24 Q. And you also went to that neighborhood
25 yourself; is that right?
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1 A. That's correct.
2
3 MR. TOBY SHOOK: Okay. Could I have
4 the witness step down for a moment? Please step down.
5 THE COURT: Yes, you may step down.
6
7 (Whereupon, the witness
8 Stepped down from the
9 Witness stand, and
10 Approached the jury rail
11 And the proceedings were
12 Resumed as follows:)
13
14 BY MR. TOBY SHOOK:
15 Q. Let me show you what has been entered
16 into evidence as State's Exhibit 7. Do you recognize
17 this as being one of the aerial photographs?
18 A. I do.
19 Q. Okay. Is the -- turning this to the
20 jury, so we can all see. What is it about the particular
21 neighborhood that you consider as one of the risk -- as
22 you call them risk factors; is that right?
23 A. Well, as I suggested, this victim
24 residence is completely surrounded, actually, by
25 residences on all sides. Certainly, it would increase

1 the observation of others, and somebody being detected
2 coming in and out of that area. That is certainly
3 something that I think that most criminals are going to
4 take into consideration.
5 Also, I looked at other factors, and
6 considered that the vehicle was in front of the home,
7 suggesting to someone that might have been motivated to
8 burglarize that home, that there may be somebody there.
9 Certainly, that is a deterrent, that is a risk factor for
10 burglars that don't want to get caught, or don't want
11 anyone else to know what they are up to.
12 Also, was able to learn from
13 investigators and from reports, that there were people
14 sleeping downstairs, and there were lights on. So there
15 was light emanating from the inside.
16 Someone coming around to the back of
17 the house certainly would have been able to see that
18 there was light on downstairs. Again, suggesting to an
19 offender motivated to either rob, rape or murder that
20 obviously, from these lights being on, then someone may
21 be down there occupying that space. That is certainly
22 another risk factor.
23 Q. Let me ask you, Agent Brantley, is
24 there anything about the make-up of the neighborhood or
25 the way the streets are constructed that is valuable
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1 information to you, in regards, again, to the risk
2 factors?
3 A. Well, you look at neighborhood
4 permeability, and again, you look at people that live
5 right on a major thoroughfare, certainly that increases
6 their risk of coming into contact with a variety of
7 people, because it is a high trafficked area.
8 But when you consider other areas,
9 like a cul-de-sac, it's a little more secure, and people
10 coming back into that location, they need to be going
11 back there, and are more likely to be observed or
12 contacted.
13 Plus, if an offender is detected in
14 his intention to flee or escape, then his options for
15 escaping successfully are also more limited when he goes
16 into a development which is surrounded by homes and other
17 obstacles and certain access roads. It doesn't
18 necessarily give them a direct access out to a major
19 thoroughfare and escape.

20 Q. Okay. You can go back to your seat.
21
22 (Whereupon, the witness
23 Resumed the witness
24 Stand, and the
25 Proceedings were resumed
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1 On the record, as
2 Follows:)

3
4 BY MR. TOBY L. SHOOK:

5 Q. Now, Agent Brantley, in regards -- you
6 looked at the neighborhood itself, and what type of
7 neighborhood it is. Then do you move, in what you call
8 the risk factors, you look at the home itself where the
9 crime occurred?

10 A. Certainly. And again, I start from a
11 broader, expansive view of the neighborhood and the
12 surrounding area and start moving in and start focusing a
13 little more. Certainly, focusing on the alleged point of
14 entry and escape, that window and that cut screen.
15 As you look at that, and you look at
16 the outside, you see that once someone has negotiated or
17 gotten beyond that 6-foot fence, then you have some other
18 interesting considerations.

19 I think first and foremost, when you
20 look into that garage, what you are confronting almost
21 immediately is an extremely large animal cage, or what
22 one would surmise was the cage of an animal. I think if
23 you were a stranger, and you don't know who lives there,
24 or what you are likely to encounter, you may suspect
25 reasonably, that there may be a rather large animal, or a
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1 large dog.
2 And certainly a dog cannot only
3 confront the would be offender, but can also alert on the
4 fact that someone is there, and cause people to
5 investigate and again identify whoever is trying to gain
6 access.

7 Q. Is that what you call -- what your --
8 in your analysis, called a risk factor?

9 A. A risk indicator, a risk factor,
10 certainly, for the offender, something that would
11 increase his risk.

12 Q. Okay. A person that is going to be
13 trying to get into the house, or commit a crime or

14 whatever?

15 A. Right. I would think so.

16 Q. Now, when you are doing this analysis,

17 again, what are you basing this on? What type of

18 training do you have, when you are conducting this type

19 of analysis?

20 A. Well, primarily, in addition to the

21 all the education, training and specialized course work

22 that I have had, it's just a matter of experience. We

23 are -- we work literally hundreds of violent offenses and

24 homicides annually. And so, based on that database, or

25 that base of experience, that is primarily what we work

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1 from.

2 Q. Okay. So as far as risk factors, you

3 all are looking at things which would worry, I guess,

4 someone that is going to commit an offense?

5 A. Exactly. I might also add, that in my

6 years of experience in the prison setting where I

7 interviewed hundreds of violent felons, we also got into

8 these kinds of issues, and I was able to determine there

9 MO, and some of their rituals.

10 And then since that time, since being

11 at the FBI Academy, we have done a number of research

12 projects, where we go out into the prisons, and we

13 interview offenders that commit violent crimes and

14 homicides, and we ask them these same kinds of questions:

15 "What is it that you consider when you are attempting to

16 assault or when you are planning your assault? What is

17 it you consider while you are there committing the actual

18 homicide? And what do you consider what you do

19 post-offense, once you have exited?"

20 And again based on that body of

21 information and that body of knowledge, we use that to

22 incorporate that into it too.

23 Q. And what you were just saying is, at

24 the point of entry at that window, there was some type of

25 animal cage; is that right?

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1 A. That's correct. And in addition to

2 that, I think on the outside, there are some animal bowls

3 or water and food dishes also, that might suggest to

4 someone motivated to break in, that there in all

5 likelihood is an animal present.

6 Q. Okay. Let me show you what's been

7 marked as State's Exhibit 40-B. Is this a photograph, I

8 guess on the inside, of the large cage that you're
9 talking about?

10 A. That's correct.

11 Q. That is the type of thing, I guess,

12 someone coming in is going to be a little wary of if they
13 see an animal cage?

14 A. I believe so. Someone not familiar

15 with the area, not knowing what kind of animal might be
16 contained in that size of cage is reasonably going to be
17 concerned, I would think.

18 Q. Okay. You said you recall bowls of
19 food on the outside patio?

20 A. That's correct.

21 Q. Okay. For animals?

22 A. Yes. It's reasonable to assume,

23 for -- on the part of an offender, that those are animal
24 dishes.

25 Q. Is that another factor that, again,

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1 you consider about --

2 A. Certainly.

3 Q. Okay. You said, I believe, your

4 information was that the -- that back patio door, that
5 there was a TV visible from the outside?

6 A. Light.

7 Q. Okay. What does that -- is that

8 another risk factor you consider?

9 A. Certainly. Again, for the most part,

10 individuals that are motivated at least to rob or

11 burglarize, they are going to want to go into a residence

12 that no one is home. And when you have these indicators

13 that someone is there, I think for some, not all

14 certainly, they are less likely to select that house.

15 Again, victim selection is important

16 to these people. And what they are keeping in mind, is

17 risk to themselves.

18 Q. What about the point of entry itself,

19 the cut screen? What did that tell you?

20 A. In terms of risk, not anything

21 significant, but, I think it was unusual in the way that

22 it was cut. In our experience when we see screens that

23 are cut, and we have seen screens that have been cut

24 before in the commission of an offense, they are

25 generally small cuts that they use to gain access to a

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1 lock or a latch or something else that they can throw,
2 and then they will gain entry through a window or through
3 a door. But quite often, they will pull the screen off
4 after they have slit the screen to open the lock.

5 Q. So that is not really a risk factor,
6 that is another --

7 A. I didn't consider that so much a risk
8 factor.

9 Q. Okay. I might be getting a little
10 more ahead of myself. Let's stick along these risk
11 factors as to the offender. What else about the crime
12 scene in the house do you feel would be a risk factor?

13 A. I think as you move into the
14 residence, and again, if you are to believe that this is
15 someone that is unfamiliar with the floorplan of the
16 home, and as compressed as it is, and was much, as many
17 personal effects that are in that garage, it's a very
18 narrow route.

19 And again, for someone to come in
20 there and negotiate, through that area and not knock into
21 something or not knock something over, that is a factor.
22 And again, as you proceed on in, again, if you consider
23 that it was dark up until the time that they got into
24 maybe the utility room or the kitchen, and then the Roman
25 room or the den, that is something that was considered.

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1 But I think what becomes more
2 important, from the standpoint of risk, is that the
3 offender in this particular case, which is very
4 contradictive of my experience, focused on the children,
5 went to the children, assaulted them first. And again,
6 their wounds, the nature and severity of their wounds was
7 significantly different than the wounds of Mrs. Routier.
8 Now, what that suggests to us, and
9 what that tells us, is very contradictory, is that for
10 the most part, offenders coming into an environment like
11 that that encounter victims, or potential victims, they
12 generally are attempting to limit their risks, by dealing
13 with, or dispatching the adult members first. Because
14 again, the adults, especially male adults, would
15 represent the greatest threat or greatest risk. In this
16 case, that was not accomplished.
17 Also, after the kids are stabbed, and
18 either dead or dying, and Mrs. Routier is assaulted, here
19 we have an offender who is just, in his own mind, has to
20 believe committed a homicide, a multiple homicide, and
21 then here is a lady, that gets up, and chases or pursues
22 this individual, who has already stabbed two boys, in all

23 likelihood killed these two boys, and assaulted her and
24 armed with this knife.

25 And then he is chased by this lady who
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1 is about 5'2" I understand, certainly not nearly the size
2 that the alleged offender was described to be, and he
3 runs away from her. Which again, increases his risk,
4 because now he has left a living witness, someone that
5 can not only identify him possibly, but also somebody
6 that can sound the alarm, and either get her husband to
7 come downstairs or call the police.

8 That also is a major risk factor, and
9 a major, glaring error in the behavior of criminals that
10 do these kinds of things.

11 And then, proceeds on out of the
12 residence and I think increasing his risk further,
13 because if she continued to pursue, then he throws down
14 this weapon, or drops this weapon. So, he no longer has
15 that to defend himself, or to silence this potential
16 witness, or at least to stop her from continuing to
17 pursue him.

18 That also is something I think that
19 increases his risk and something you don't ordinarily
20 see.

21 Q. Okay. When you are making an
22 assessment of a crime scene, from your standpoint, are
23 you looking at, kind of, contradictions, or what's wrong
24 with this?

25 A. Exactly. And that is what we start
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1 with. I guess, fundamentally is, "What's wrong with this
2 picture?" And what we're looking for, are behavioral
3 contradictions, and forensic contradictions. And things
4 that just don't line up with our experience and what
5 these people have told us in past interviews.

6 Q. Okay. Are there any other risk
7 factors that you took into consideration?

8 A. Well, I think primarily that was all,
9 but what was interesting, and what I did note, was
10 that -- it kind of goes back to the sock that was found.
11 If you are to believe that the offender, after exiting
12 the residence, then proceeds in that direction, instead
13 of running away from the development or getting out of
14 the development in the quickest way, he seems to run back
15 into the development again, which might increase his risk
16 of being seen by others, or confronted by others.

17 Plus, if he is not familiar with that
18 development and those roads, he could get back in there
19 and get turned around and get lost, and again, he
20 increases his risk of maybe being discovered.

21 Q. Okay. Is that primarily all of the
22 risk factors you were considering then?

23 A. I believe so. I believe that is it.

24 Q. Okay. Now, you talked about -- you
25 are looking at the victimology, and that there are high
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1 risks or low risks, what do you mean by that? What is
2 victimology?

3 A. Exactly. Victimology, again, is
4 basically, what is it about a particular victim or
5 victims that increases his or her risk of becoming a
6 victim of a violent crime? It's lifestyle kinds of
7 things. It's where are they employed? Who have they
8 angered in the past? Are they having any extramarital
9 affairs, or things that might create friction or conflict
10 with others? Do they abuse alcohol or drugs? Those kind
11 of things, lifestyle questions.

12 When you consider this case, and these
13 victims, I think I would classify them as extremely low
14 risk, probably the most low-risk victims that there are.

15 So for a stranger, or for someone else
16 motivated, for whatever purposes to come into this
17 location, and assault or focus on these two young
18 children, that I think goes directly to motive. That
19 they were obviously the focus of the offender's interest
20 and the offender's assault.

21 And this was a very personal style of
22 assault. No indication of robbery, and again, we start
23 trying to assess motive early on. Nothing is taken,
24 certainly, there were an incredible amount of valuables
25 there for the taking.

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1 You had no indication of sexual
2 assault anywhere. So you have to look at that personal
3 motive. When we see personal motive, we start
4 considering, well, what represents personal motive? You
5 are talking about anger, revenge, financial gain, talking
6 about maybe somebody with a serious mental disorder,
7 maybe somebody that just wants to eliminate the victims
8 because they represent some kind of an obstacle to a
9 goal. Those are what we consider in personal kinds of
10 assaults or personal motives.

11 Q. You say that children at that age, 5
12 and 6, almost 7, they are very low-risk victims. Why is
13 that?

14 A. Well, because for the most part, their
15 life experiences, they have got their circle of peers and
16 friends, and they go to school. I mean, they are not
17 involved in a lot of the risky kinds of activities that
18 we consider elevates a victim's risk.
19 I mean, they are not going out into
20 high crime rate neighborhoods at night, going to bars,
21 picking up people for one-night stands, doing those kinds
22 of things, again, that certainly would elevate one's
23 risk.

24 Q. The method that they were killed, the
25 two children, was that important to you; and compared to
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1 the contrast to the injuries that Mrs. Routier received?

2 A. Well, it's basically what we consider
3 the nature and severity of the trauma was incredibly more
4 significant than Mrs. Routier sustained. Certainly, that
5 is a dramatic difference. Also, to us, represented a
6 major contradiction; why she was left alone, seemingly
7 left alive, and the kids were killed.

8 Q. Okay. And you believe, from looking
9 at the crime scene and the method of the killing, that
10 the children were the object of the attack?

11 A. Certainly. There is no question about
12 it. Because again, just the number of wounds, the
13 placement of the wounds, all focused right in the chest
14 area here, almost as if the offender is going for the
15 heart, or going for the most vital regions of the body.
16 The depth of the penetration of the
17 wounds certainly suggests anger and force and a focus.
18 When you look at Mrs. Routier's
19 wounds, you see that they are certainly, obviously,
20 avoiding any of the vital areas, but they've been
21 described as superficial. You have here in the shoulder
22 and the forearm, and a scratch here, and a cut across the
23 neck. Again, very, very, dramatically different from the
24 focus of the wounds that were sustained by the young
25 children.

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1 Q. Okay. Now, you talked about staging,
2 and that you believe this crime scene may have been
3 staged.

4 A. That's correct.

5 Q. What factors do you look at when you
6 are considering that?

7 A. Well, in addition to everything we
8 have described, we're looking for things that have been
9 done or manipulated at the scene. Things that just don't
10 occur, what we consider naturally. And again, as you
11 proceed on in, and we look at what's happened to the
12 children, we look at what's -- what else has been done at
13 the scene. What else is either out of place, missing or
14 has been brought there by the offender.

15 And I think what stands out, what is a
16 stark contrast, is you have a maximum, human devastation
17 and loss here, but an absolute minimum of breakage or
18 property damage. And this is very, very curious to us.
19 It's almost like our offender had no
20 real regard for the children, they just wanted the
21 children eliminated. But yet, when it comes to the
22 protection and preservation of the material items in the
23 home, he was very careful, very cautious not to break
24 anything.

25 Some things were disturbed, but no
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1 real breakage other than this wine glass apparently and
2 this screen being cut. What stranger, motivated to come
3 in there and murder, is going to be concerned with the
4 personal possessions of the residence, unless it's
5 someone that has a vested interest in preserving those
6 items.

7 That is what we refer to as a
8 proprietary interest. And that also suggests to us that
9 that is someone obviously that has got a connection with
10 those items, beyond just being there on that particular
11 occasion.

12 Q. So, it's not only things that may have
13 been disturbed, but things that -- showing the lack of
14 things being disturbed?

15 A. Certainly. And when you consider that
16 you have this violent struggle, the assault and killing
17 of two young children and an adult, you would certainly
18 have expected to see much more in the way of disruption
19 and breakage and damage, and things turned over, and
20 evidence, just evidence that someone else was there,
21 other than the people that live there.

22 Q. What kinds of things did you consider
23 when coming to that opinion, there in the room itself?

24 A. Well, I started to focus on some major
25 features again, not wanting to over analyze or reach, but

1 I looked at the lamp shade that was off of the lamp, I
2 looked at the coffee table, and the flower arrangement
3 that was on the coffee table, it was turned over. I also
4 looked at the other items in that room, and certainly the
5 glass table tops and the other decorative items that were
6 on top of these glass tables.

7 Certainly, when you look at that room,
8 or that den, the Roman room, I guess it's called, it's
9 very compressed, it's a very small area. And for two
10 adults to be in there fighting and struggling with one
11 another, you would have expected to see some more
12 dislodged.

13 Of course, then you proceed on out of
14 that room, and you get into the kitchen area where the
15 wine rack and the glass was broken. There's some things
16 about the wine rack that certainly seemed to be
17 contradictions.

18 You also look at the vacuum cleaner,
19 and the position of the vacuum cleaner, and the bloody
20 footprints that are found or discovered underneath the
21 vacuum cleaner. Again, very, very, curious from our
22 perspective.

23 Also, the way the cord seemingly is
24 stacked or placed underneath the base of the vacuum
25 cleaner. It certainly indicates or suggests that this is
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1 not something that has been thrown or knocked over in the
2 struggle, but something that has been deliberately placed
3 there and then turned over.

4 Then again, you go further, if you are
5 to assume that the avenue of escape for the offender is
6 through the utility room and out the garage, and then out
7 that cut screen. You look for any other disruption. You
8 look for blood, transfer of blood, or any sign that
9 someone else has been through there, that has just been
10 engaged in a violent struggle. And there is none of
11 that.

12 You look for disruption in the yard,
13 the flower bed and the mulch, any sign of blood, or of
14 fingerprints, or any other scuffs, or tears or material
15 items on the fence, the gate. Nothing.

16 Again, also very, very, curious.

17 Q. Okay. Let's kind of start, I guess,
18 in the room itself.

19 Well, let's look at the bottom

20 right-hand corner here. These are rather large. Here on
21 State's Exhibits 35-A, is this what you are talking
22 about, about the glass table, and the -- I guess, the
23 flower arrangement that is knocked over there?

24 A. Yes, it is.

25 Q. Why is that important to you, again?

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1 A. Well, again, not only that it's there,
2 and it's disrupted, but the severity of the disruption.
3 Again, it's just kind of pushed to the side. This very,
4 light based, papier-mache vessel, and then these dried
5 flowers and things, which is very light, is just kind of
6 tipped over, it's not knocked off at all, and there is
7 nothing broken, none of these stems or these leaves or
8 anything are really out of place.
9 Again, somebody hitting into that
10 during the course of a violent struggle, you would have
11 anticipated more disruption.

12 Q. What about this glass coffee table
13 that it rests upon?

14 A. Well --

15 Q. I think it shows it, maybe not in this
16 photo, maybe clearer in another one, but that was
17 somewhat askewed?

18 A. Yes.

19 Q. Does that, again, does that enter into
20 your indications anyway? Here it is in State's Exhibits
21 47-A and 47-B?

22 A. Well, it's moved, and again, but not
23 dramatically so. Again, when you ask, "What's wrong with
24 this picture?" I mean, are there signs, indications that
25 there has been a tremendous struggle here, and a
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1 homicide, or is it something other than that.

2 Q. Okay. You also mentioned a lamp shade
3 that had been knocked off at the top of the lamp.

4 A. Certainly. The lamp shade was down
5 over the, I guess, the pillar there of the lamp, but as
6 they examined the base of the lamp, the lamp base has not
7 been moved at all.

8 So it looks like this has been hit and
9 the lamp shade falls, but no destruction whatsoever.

10 Now, I understand that there was no clasp or no screw at
11 the top of this lamp shade to hold that in place, so it
12 was just kind of balanced. So, it wouldn't take a lot of
13 force or a lot of energy, at least to knock that lamp

14 shade down.

15 And again, it appears that that is

16 exactly what happened, not a lot of force or energy taken

17 to cause that lamp shade to come down.

18 Q. You described, I believe, you referred

19 to it as the Roman room, that is what some people call

20 it; is that right?

21 A. That's correct.

22 Q. The area where the murders occurred?

23 A. Yes, sir.

24 Q. Were there a lot of items that could

25 be broken in there?

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1 A. Certainly. Especially the -- I guess

2 the sofa table behind one of the sofas there. There were

3 quite a few items on that table that were all in place.

4 And, again, nothing broken or damaged.

5 Q. Okay. Again, the sofa table, are we

6 talking about -- could I have the witness step down for

7 just a moment?

8

9 THE COURT: Please step down.

10

11 (Whereupon, the witness

12 Stepped down from the

13 Witness stand, and

14 Approached the jury rail

15 And the proceedings were

16 Resumed as follows:)

17

18 THE WITNESS: This table right here,

19 with the statuette and the candles, and all of the other

20 decorative items in the photograph, and when you compare

21 that with the activity here, in front of this couch, and

22 if you believe from the statements, that the offender

23 then encounters Mrs. Routier, and exits or leaves the

24 area, he comes from this area, which is very, very,

25 narrow, there are two tables there. There is a table

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1 here with a flower arrangement, and some diapers, and

2 then there is this table. For an adult male to go

3 through there, especially at a high rate of speed and not

4 to have touched or knocked into any of that, it seems,

5 again, strange.

6 However, someone could have gone

7 through there without knocking any of those items, but in

8 doing so, again, someone would have to be careful not to
9 do that. Again, what stranger who has just killed two
10 children and assaulted an adult, is going to be worried
11 about going through that area very carefully.

12

13 BY MR. TOBY L. SHOOK:

14 Q. Then you mentioned, I believe, the
15 wine rack; is that right?

16 A. That's correct.

17 Q. And what is it specifically that you
18 noted about the wine rack?

19 A. Well, again, the contradictions. The
20 wine glass was knocked off and broken, and there is a
21 decanter that is knocked over on its side and the wine
22 bottle is laying on its side. But there are other items
23 there that are more fragile, and I think lighter items
24 that were not disturbed.

25 Q. Okay. If we can hold the exhibit up
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1 for the members of the jury to see?

2

3 THE COURT: Can all the members of the
4 jury see that?

5 THE JURY: Yes, sir.

6 THE COURT: Make sure you can see.

7 All right. Thank you.

8

9 BY MR. TOBY L. SHOOK:

10 Q. Looking here at 36-D and the
11 photographs here in the upper right of the line, is that
12 the wine rack you are talking about?

13 A. This is exactly what I'm talking about
14 here. You see the glass broken here on the floor, and
15 the decanter here that is on its side. But there are
16 some very small glasses up here that are seemingly
17 undisturbed.

18 You have one wine bottle here, leaning
19 in that direction. But what is interesting, and what I
20 believe is a contradiction, is you have got this ice
21 bucket, and you have got some utensils that go along with
22 that ice bucket, that are in place, and not disturbed.

23 Especially down here, you have a
24 corkscrew item, and you have a can opener and a bottle
25 opener and some other device, that is carelessly balanced
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1 on this corkscrew, and they are still sitting there very
2 symmetrical.
3 You also have two glasses on either
4 side of this ice bucket, and they also are very
5 symmetrically placed. And, it looks like they haven't
6 been disturbed at all.
7 So if you are to believe someone hits
8 into this wine rack, with enough force to cause this wine
9 glass to come up over that obvious holder or lip, which
10 is almost like a, I guess, a U-shape, then why wasn't
11 there enough force applied to dislodge some of those
12 other items: Contradiction.
13 Q. Okay. Again, you mentioned the vacuum
14 cleaner that we see here at the bottom of the Exhibit,
15 lying there on the floor.
16 A. Certainly. You look at this vacuum
17 cleaner, and you look at how it's positioned. You notice
18 and you understand that there are bloody footprints
19 underneath. Certainly the bloody footprints were there
20 before the vacuum cleaner was overturned. It's take no
21 behavioral scientist, or no rocket scientist to come in
22 here and talk about those kinds of things.
23 You also have a significant amount of
24 blood up here on the handle, indicating or suggesting
25 that someone grabbed this, transferred that blood, and
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1 placed it over. I looked at the position of the cord,
2 and this doesn't depict it as accurately as some other
3 photos that I have seen. But you can see that the cord
4 is kind of piled up, or stacked underneath the base of
5 this vacuum cleaner.
6 If someone had grabbed this and thrown
7 it in an attempt to create an obstacle for someone
8 pursuing or for any other reason, you would have expected
9 that cord to be in a different position.
10 Q. Okay. Go and ahead and have a seat,
11 Agent Brantley.
12
13 (Whereupon, the witness
14 Resumed the witness
15 Stand, and the
16 Proceedings were resumed
17 On the record, as
18 Follows:)
19
20 BY MR. TOBY L. SHOOK:
21 Q. Were there any other areas in the
22 house that you were looking at as far as this staging

23 that was important to you in your analysis?
24 A. Well, as you come out past the
25 kitchen, and you go to the utility room, and I think
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1 what's noted is there was blood droplets leading up and
2 into that utility room, and they just cease, they stop.
3 And there is no other indication
4 beyond that, at least on escape, that anyone has gone
5 through there, that anyone has disturbed any dust or dirt
6 on the windowsill, that there has been a transfer of
7 blood in the garage, and that there has been a transfer
8 to the outside in the back yard, the mulch or anything
9 else has been disturbed, or that there has been anything
10 touching or disturbing the fence or the gate.

11 Q. Okay. Now, you have looked at some
12 forensic reports involving a bread knife that was in the
13 residence that had some material on it; is that right?

14 A. That's correct.

15 Q. Okay. Did that form any part of your
16 analysis?

17 A. Certainly. That is something else
18 that is an obvious major contradiction.

19 If you are to believe that the
20 offender gains access, and how an offender gains access
21 to a residence is very important to us. How does this
22 offender gain access?

23 If you are to believe that the
24 offender cuts the screen with that particular knife that
25 has microscopic evidence of rubber particles and glass
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1 particles, then that's extremely curious.
2 Why would an offender break into a
3 home, or gain access to this home, and then take that
4 knife and then go back outside and cut the screen, to
5 come back in? That is ludicrous.
6 And certainly, if the offender is
7 already there, and he gets this knife and he is using
8 that to escape, we have seen no cases where an offender
9 breaks out of a residence like that, where they come
10 through and then cut the screen and then go out.
11 And then they go back and replace the
12 knife into the butcher block before they run through it.
13 Again, that is very contradictory, and very unusual.
14 But beyond that, you look at this
15 knife that was used to cut the screen, and then after the
16 cutting of the screen that knife is replaced, and then

17 the offender takes another knife out of this butcher
18 block to use as the murder weapon. Why so much
19 variation? Why are you taking one knife, using it for
20 that purpose, having the time and the forethought to put
21 that back and then use another knife.
22 Something else that is interesting to
23 us from the standpoint of stranger versus someone who may
24 not be a stranger, and that is the proprietary interest I
25 described earlier.
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1 We all have patterns of relating to
2 our environment, and patterns of doing things. For
3 instance, people go and they take knives from a certain
4 location, they use that knife and they replace that knife
5 right back into its rightful position or place. What
6 stranger is going to take a knife, and use it, and then
7 go back and be concerned about replacing it in its
8 rightful position?
9 Again, this is suggestive of someone
10 that is used to doing that, and this is just part of
11 their pattern. Because a stranger is not going to have
12 any concern for that. They can throw the knife down, as
13 they did with the other knife, leave it on the counter
14 top, throw it in the garage, take it with them because he
15 may know that this weapon, certainly the knives or
16 anything he touched, it is obvious -- that it has an
17 obvious evidentiary value.
18 And most offenders are cognizant or
19 aware of that fact, and they don't want to leave that
20 behind for the police to discover or use in a court of
21 law.
22 Q. Going back to, from your analysis, it
23 looks as if the children were the object of the attack?
24 A. Yes.
25 Q. Did the fact that a knife, the butcher
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1 knife, a kitchen knife from the home is used to do the
2 killing, is that significant to you?
3 A. It is. And again, weapon selection is
4 important, and another feature that we consider.
5 In our experience, most offenders that
6 go to a residence to commit a homicide, they are going to
7 take a weapon with them, something that they are
8 comfortable with, something that they can use to commit
9 the homicide, or another weapon, take a gun, a ligature.
10 The fact that nothing apparently was taken to the scene,

11 but the offender goes to the scene, obtains a weapon
12 there, uses that weapon, and then leaves it behind, is
13 important.

14 Q. Okay. Let's take the bread knife out
15 of the picture for a moment, the knife that had the
16 microscopic characteristics consistent with the screen.

17 A. Certainly.

18 Q. Okay. Does that change your opinion
19 in any way?

20 A. No.

21 Q. And why is that?

22 A. Well, because that is just one
23 feature. There are many other features that we took into
24 consideration. And what we look at, when we do our
25 assessment and our analysis, is not one individual
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1 feature, or behavior, it's the totality of the
2 circumstances. And an awful lot of these kinds of
3 features are interrelated, they are tied to one another.
4 So you really can't look at one in isolation and
5 determine anything.

6 Q. Okay. Again, you looked at possible
7 motives from an outside party coming in. Robbery, in
8 this case, were you aware of, well, I guess, it was
9 various items left around in the residence; is that
10 right?

11 A. That's correct.

12 Q. Okay. Do you remember what types of
13 items we're talking about?

14 A. Well, primarily, the jewelry, the
15 large amount of jewelry that was left there in plain
16 view, and certainly, this also seemed to be in this path
17 of entry and escape, and so, I mean, it was right there
18 for the taking, and all someone had to do was just reach
19 over and grab it.

20 Also, you looked at the purses that
21 were in the area, and whether they were disturbed, or
22 whether anyone was attempting to steal money, cash or
23 credit cards. And there is no indication that anything
24 like that has occurred.

25 As a matter of fact, nothing was
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1 disturbed. Nothing of value in that home seemed to be of
2 interest whatsoever to the offender in this case.

3 Q. Okay. Well -- I may not can find it,
4 but are you talking about on the island there, there was

5 various rings left?

6 A. That's correct.

7 Q. And, on the table top, I mean?

8 A. Yes, sir.

9 Q. And also, a watch in the kitchen left

10 on the island there?

11 A. That's correct.

12 Q. Okay. Now, we talked about another

13 motive for maybe going in the house is a sexual assault.

14 Will offenders go in, and you have studied, I guess, guys

15 that go in, rapists --

16 A. Yes, sir.

17 Q. -- go in to the homes to sexually

18 assault women?

19 A. Yes.

20 Q. Do they do that when children are

21 present?

22 A. Yes, that is a common practice, as a

23 matter of fact. For a rapist to go in, either they are

24 going to primarily select a female alone in the

25 residence, or a female with young children. And the

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1 reason they select females with young children, is that

2 they can use the threat of violence directed against

3 these children, as a way to control the female victim.

4 For instance, "If you just do what I

5 tell you and you give me what I want, I'll leave your

6 children alone. But if you don't, I'll hurt the

7 children."

8 So that is a very effective control

9 maneuver that they will implement.

10 Q. Looking at it from a standpoint of

11 perhaps maybe this was a party coming in to sexually

12 assault Mrs. Routier, the killing of the children, was

13 that a contradiction from what you are used to seeing?

14 A. It is a major contradiction in that

15 behavior and that belief on their part, because again,

16 they want those children alive. It's the threat of the

17 harm that they use to control the victim. If they have

18 already stabbed and hurt the children and killed the

19 children, they can forget about any cooperation on the

20 part of that female victim, than -- that victim is much

21 more inclined to fight, and to fight for their life.

22 Q. Has that then, from what you have

23 seen, if someone starts harming a mother's children, what

24 is going to happen?

25 A. Well, it depends on that relationship

1 that the mother has with the children, but most of the
2 mothers that I have known, and I have talked to quite a
3 few surviving mothers that have lost their children, when
4 they have the opportunity, they are going to fight you,
5 and they are going to fight for not only their lives, but
6 the lives of their children.

7 Q. That is just a natural reaction?

8 A. Yes, in my experience, that is what
9 they described.

10 Q. Now, you have been doing this type of
11 crime scene analysis for how long?

12 A. Well, I have been assigned to the unit
13 there since 1988.

14 Q. Okay. And when is the first time you
15 talked to our office in regards to this case?

16 A. I believe this was the 19th of June of
17 1996.

18 Q. Okay. And then you have come to
19 Dallas, and talked with some of the prosecutors; is that
20 right?

21 A. That's correct.

22 Q. How many times have you come to
23 Dallas?

24 A. Besides this time, there was one other
25 time, and that was in October of 1996.

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1 Q. Okay. And then how long were you in
2 Dallas on that particular occasion?

3 A. The first time, I believe, it was two
4 or three days.

5 Q. Okay. You said you went out to the --
6 you didn't, on that occasion you didn't go into the
7 residence itself, did you?

8 A. No, I did not go into the residence,
9 that's correct.

10 Q. Okay. Just outside the residence?

11 A. That's correct.

12 Q. All right. And then, of course, you
13 have spoken on the phone with me numerous times?

14 A. That's correct.

15 Q. Okay. You have been doing this
16 analysis since, you say, 1988?

17 A. 1988, I was assigned to that unit.

18 However, I was one of our field coordinators before that,
19 and was involved in some training, and some work with the

20 unit before I actually was assigned there.

21 Q. Okay. And you assist -- on a daily
22 basis, do these things come into your office?

23 A. Oh, certainly.

24 Q. Okay.

25 A. We literally provide services to
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1 legitimate law enforcement agencies, not only nationally,
2 but from around the world. I have just gotten back from
3 a trip to Israel, and provided training to the Israeli
4 National Police on violent crime scene analysis, so that
5 we get quite a few requests.

6 Q. Okay. So, you don't just concentrate
7 on crimes here in the nation, you do it world-wide also?

8 A. The vast majority of cases are
9 obviously from this nation, but we do take some
10 international cases as well.

11 Q. Okay. And this analysis you do, is
12 usually with law enforcement officials?

13 A. Law enforcement officials and
14 prosecutors, that's correct.

15 Q. Okay. And the opinions, you are
16 basing these on, is your experience and training and
17 everything you have seen throughout the years?

18 A. Certainly.
19

20 MR. TOBY L. SHOOK: Just one moment,
21 Judge.

22 THE COURT: Okay.

23 MR. TOBY L. SHOOK: Judge, that's all
24 of the questions I have at this time.

25 THE COURT: All right. In view of the
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1 time, and this will probably be a lengthy cross
2 examination, let's recess now until 1:15 and be back at
3 that time. In fact, let's make it 10 minutes after so
4 everybody gets back at 1:15. Make it 10 minutes after
5 1:00, and we will pick it up at that time.

6 All right. Will everybody remain
7 seated please while the jury clears the courthouse.
8 Thank you.

9

10 (Whereupon, a short

11 Recess was taken,

12 After which time,

13 The proceedings were

14 Resumed on the record,
15 In the presence and
16 Hearing of the defendant
17 And the jury, as follows:)
18
19 THE COURT: All right. Let's go back
20 on the record. And we're back on the record in the
21 Darlie Routier case.
22 Are both sides ready to bring the jury
23 in and resume this trial?
24 MR. GREG DAVIS: Yes, sir, the State
25 is ready.
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1 MR. DOUGLAS MULDER: The defense is
2 ready.
3 THE COURT: All right. Bring the jury
4 in, please.
5
6 (Whereupon, the jury
7 Was returned to the
8 Courtroom, and the
9 Proceedings were
10 Resumed on the record,
11 In open court, in the
12 Presence and hearing
13 Of the defendant,
14 As follows:)
15
16 THE COURT: Good afternoon, ladies and
17 gentlemen. Let the record reflect that all parties in
18 the trial are present and the jury is seated.
19 All right. Mr. Mulder, will you be
20 cross-examination?
21 MR. DOUGLAS MULDER: Yes, Judge.
22 THE COURT: All right.
23 MR. DOUGLAS MULDER: And I'll try to
24 be brief.
25
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1 CROSS EXAMINATION
2
3 BY MR. DOUGLAS MULDER:
4 Q. Mr. Brantley, did you prepare a
5 report?
6 A. No, I didn't.
7 Q. Mr. Hoover doesn't provide you all

8 with typewriters anymore?

9 A. I don't type, sir, no. Most of my
10 documentation are in the form of personal notes. Now,
11 when I get back to the Academy, what I will do is, I will
12 memorialize the nature of my testimony, and that will be
13 made the matter of our record.

14 Q. I guess you will send us all a copy?

15 A. If you would like a copy --
16

17 MR. TOBY L. SHOOK: Judge, I'll object
18 to the side-bar.

19 THE COURT: Sustain the objection.

20 Let's don't get into any side-bars, Mr. Mulder.

21 MR. DOUGLAS MULDER: Judge, that
22 wasn't a side-bar. That was directed to the witness.

23 THE COURT: Thank you. We understand
24 what you mean.

25

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1 BY MR. DOUGLAS MULDER:

2 Q. Mr. Brantley, you have prepared some
3 notes, I guess, in the course of your work; is that
4 right?

5 A. That's correct.

6 Q. And I believe you, in the Bureau, you
7 have opened a case, opened a file in this particular
8 case, on September the 20th, and you were assigned to the
9 case at that time; is that right?

10 A. Well, in actuality, the case was
11 already opened, but I had it assigned to me in our unit
12 on that date.

13 Q. Well, what I do have, in the way of a
14 report, which is in the form of your personal notes,
15 which I will mark for identification and record purposes
16 as Defendant's Exhibit No. 64. Is this a copy of your
17 notes?

18 A. That is.
19

20 (Whereupon, the above
21 mentioned item was
22 marked for
23 identification only
24 after which time the
25 proceedings were

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1 resumed on the record
2 in open court, as
3 follows:)

4

5 BY MR. DOUGLAS MULDER:

6 Q. They are rather difficult to read, but
7 you have been good enough to translate for us where we
8 needed to, haven't you?

9 A. That's correct.

10 Q. And it says here, 9-20-96, case
11 opened, and assigned to me; is that right?

12 A. That's correct.

13 Q. Okay. That would be September the
14 20th of '96?

15 A. That's correct.

16 Q. All right. And then, it goes on to
17 say, that on September the 30th of 1996, through October
18 the 3rd of 1996, some four days or so, you met with the
19 prosecution, the police, the forensic people and the
20 medical examiner's people; is that correct?

21 A. That's correct.

22 Q. Okay. You didn't go in the house, but
23 you went out and looked at the house?

24 A. That is also correct.

25 Q. Now, I think risk factor was one of
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1 the things that you considered, and you said that you
2 considered the location of the house, and whether it was
3 in a development and the access to, I guess, avenues of
4 escape, that a perpetrator would consider, if they gave a
5 crime like this some thought?

6 A. I looked at not only avenues of escape
7 but avenues of approach also. Those are two
8 considerations that I look at.

9 Q. Okay. And as a matter of fact, it's
10 just a block or two off Dalrock Road, which is a major
11 thoroughfare there in Rowlett, is it not?

12 A. I believe that's fair to say, yes,
13 sir.

14 Q. Okay. And, is it fair to say that
15 it's about two minutes going one way from Highway 66, and
16 going the other way to Interstate 30?

17 A. I believe that's correct.

18 Q. Okay. So anybody interested in
19 getting out of the area could probably, if it took the
20 police two or three minutes to respond, they could be on
21 I-30 or Highway 66 in the same amount of time, couldn't
22 they?

23 A. I believe that's correct, also.

24 Q. It's fair to say, isn't it?

25 A. Yes, sir.

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1 Q. Now, I noticed in your notes, and I
2 still have difficulty reading your notes, but I noticed
3 there, that you had, as one of your considerations -- and
4 let me stop right there.

5 But is it fair to say, that your
6 opinion, for whatever it's worth, is no more valid than
7 the validity of the information that you received?

8 A. Well, I think certainly, it's fair to
9 say that you need to have accurate information or as
10 accurate as possible to come up with an accurate
11 assessment.

12 Q. I mean, it's the old garbage
13 in/garbage out type of deal that we have?

14 A. That is fair to say, certainly.

15 Q. So, if you received misinformation,
16 that could certainly affect the validity of your
17 conclusion?

18 A. It could.

19 Q. And I understand that you have not
20 pointed the finger at anybody in this courtroom, but you
21 have, by what you've said, certainly narrowed things
22 down, haven't you?

23 A. I believe that is accurate, yes, sir.

24 Q. Okay. And you said that the children
25 were killed by someone you felt who knew them, and knew
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1 them well?

2 A. That is what I said, yes, sir.

3 Q. Okay. Now, one of the things that you
4 said -- and you are primarily, Mr. Brantley, a -- what
5 they call a profiler, for lack of a better word?

6 A. They refer to us -- the title is
7 supervisory special agent, but we have been called
8 profilers, we have been called violent crime specialists,
9 crime scene analysts, we go by a variety of terms and
10 labels.

11 Q. Okay. I'm sure you do. I read a book
12 by one of your colleagues, John Douglas. I had no way of
13 anticipating that you would be with us this month, or
14 next month, or however long we are going to be here. But
15 he is -- John Douglas is one of the -- was he the -- I
16 think he calls himself the originator, or what is he?

17 A. I don't know if he calls himself that.
18 He certainly was involved in this program for quite a
19 number of years, but there were people that predated him,
20 certainly.
21 Q. Well, he may have exaggerated his own
22 position. Have you read his book?
23 A. I have, sir.
24 Q. Okay.
25 A. I am cited in it, as I recall.
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1 Q. All right. All right. Do you -- you
2 know, I read that thing and it's interesting, because
3 you, as a profiler, you will go and review the
4 information of a particular crime scene or an event, and
5 then, at least Mr. Douglas would -- I don't know whether
6 you have this, well, I'm sure you do, whether you have
7 the ability -- but Mr. Douglas would, after he looked at
8 a crime scene, he would say the victim or the perpetrator
9 is a white male, 21 to 23, lives in the -- within two or
10 three blocks of where the crime was committed, probably
11 stays with some relatives, is dysfunctional in some
12 respects, and will do this again, and drives a
13 Volkswagen, probably red.
14 Do you remember things like that that
15 he would write in this deal, where he would even predict
16 the color of the Volkswagen?

17 A. I don't believe that is accurate, no,
18 sir.

19 Q. Do you remember where he predicted the
20 color of the Volkswagen that the man was driving?

21 A. Well, on occasion what we do, and I
22 can't speak for John or what he has written or account
23 for that, but what we do on occasion, we may talk about
24 the type of vehicle that someone may drive, but as far as
25 I go, and my understanding of the limitations of this
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1 process, we don't get into predicting or assessing
2 vehicle color. I don't.

3 Q. All right. Well, you don't. But if
4 you will go back and reread, you will find that he
5 predicted even the color of the man's car. And I
6 wondered at that time, and I'll ask you, do you all keep
7 statistics as to when you are wrong?

8 A. Well, first of all, I think I know
9 your understanding of this process so far has been based
10 on that one book, but I think a lot of that book is

11 accurate, a lot of it is inaccurate.
12 I think what you have to understand,
13 first of all, I think you are describing a profile, and
14 what we did in this case was not provide a profile.
15 Q. No, I understand, that wasn't an
16 answer, I appreciate the information, that wasn't an
17 answer to my question.
18 What you did in this case, you took
19 the answer and you worked backwards. You came in after
20 Mrs. Routier had been arrested and indicted and her trial
21 was set, and we were fixing to pick a jury, and you
22 worked backwards from the fact, didn't you?
23 A. Well, I did get involved after she had
24 already been identified, that's correct.
25 Q. Yes, sir. You -- let me ask you this:
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1 If you interviewed people who were friends and associates
2 of Mrs. Routier, did you do that?

3 A. No, sir.

4 Q. Did you have reports of people who
5 were friends and associates of hers?

6 A. I did.

7 Q. And who might that be, for example?

8 A. I would have to go back and look, to
9 be exact, several neighbors, as I recall, and coworkers,
10 I believe there was a report, an interview with a
11 housekeeper or maid.

12 Q. Okay. Did you put particular stock in
13 the -- what the coworker said and what the housekeeper
14 said?

15 A. No. And what I did, and again, I was
16 wanting to take in all of the information available,
17 there was obviously some information that I discounted or
18 thought was unimportant from the standpoint of what I do.
19 Primarily, what I was looking at was victimology,
20 information about the victims.

21 Q. Yes, sir, yes, sir, if you would
22 just -- we're going to get through this -- I think your
23 time is very valuable.

24 A. Thank you.

25 Q. And I'm going to go through this just
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1 as quick as I can, and if you will just answer my
2 question instead of giving a dissertation.

3

4 MR. TOBY L. SHOOK: Well, Judge, I'll

5 object to that.

6 THE COURT: Sustain the objection.

7 MR. DOUGLAS MULDER: Well, Judge, if
8 you will caution the witness to just answer my question,
9 we are going to get along fine. I am not going to drag
10 this out.

11 THE COURT: Mr. Mulder, ask your next
12 question, please.

13

14 BY MR. DOUGLAS MULDER:

15 Q. Yes, sir. Did you put any particular
16 credence in what the -- as you have termed her
17 housekeeper or what the coworker said?

18 A. Again, I reviewed it. I took it into
19 consideration. But I didn't -- I don't believe I
20 weighted that quite as much as I did other case
21 materials.

22 Q. Well, before you weighted it at all,
23 would it be important to you the mental health and
24 whether or not either one or both of those women had been
25 institutionalized?

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1 A. Certainly.

2 Q. How would that affect your judgment in
3 evaluating the coworker's information?

4 A. Well, it would be important.

5

6 MR. TOBY L. SHOOK: Judge, I'm going
7 to object here for going into facts not in evidence, and
8 for going way out --

9 THE COURT: I'll sustain the
10 objection.

11 MR. DOUGLAS MULDER: Well, Judge, I'd
12 like to be heard on this then, outside of the presence of
13 the jury. Let me have my exhibit and let him --

14 MR. TOBY L. SHOOK: Judge, could we
15 approach the bench for a moment?

16 THE COURT: Yes, you may. What do you
17 have? Let's see what we have.

18 MR. TOBY L. SHOOK: Could we bring
19 this exhibit with us, please?

20 THE COURT: Would the jury please step
21 outside into the jury room briefly, please.

22 All right.

23

24 (Whereupon, the jury
25 Was excused from the

1 Courtroom, and the
2 Proceedings were held
3 In the presence of the
4 Defendant, with his
5 Attorney, but outside
6 The presence of jury
7 As follows:)

8
9 THE COURT: Let the record reflect
10 that these proceedings are being held outside the
11 presence of the jury, and all parties in the trial are
12 present.

13 All right, Mr. Mulder, you may
14 proceed.

15 MR. DOUGLAS MULDER: Judge, my
16 position is simple. This man said he had received
17 information, and if this is the woman, and we have not
18 established that yet, but if this is the coworker and he
19 took her information into account, and he said her mental
20 health would be important, then he has a right to know
21 that she is a nut. It is that simple.

22 MR. TOBY L. SHOOK: Judge --

23 MR. DOUGLAS MULDER: She has been
24 diagnosed as having a borderline personality disorder,
25 and he will know this, that one of their characteristics
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1 is that they are untruthful.

2 THE COURT: Let the record reflect,
3 that the Court is holding Defendant's Exhibit 45 which
4 was admitted for record purposes only. It was not
5 admitted earlier in the trial.

6 And, the -- so what you want to do is
7 get it admitted now for all purposes; is that correct?

8 MR. DOUGLAS MULDER: No. I just want
9 the witness to look at it, and I don't want him to take
10 my word for the fact that she has been diagnosed as
11 having a borderline personality disorder. I'll let him
12 look at it himself.

13 THE COURT: All right. I'll sustain
14 your objection, Mr. --

15 MR. TOBY L. SHOOK: Judge, I'll object
16 to him going into any line of questioning about her
17 mental history. You have already ruled directly when the
18 witness was on the stand that that particular exhibit and
19 questions going into that exhibit were not admissible.

20 So you can't bring it in through the
21 back door, through the agent, who just testified that he
22 looked at some witness statements of a coworker and he
23 already --
24 THE COURT: I'll sustain the
25 objection.
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1 MR. RICHARD C. MOSTY: Your Honor,
2 here's a stack six inches thick of things that he has
3 considered, including newspaper clippings that are not in
4 evidence.
5 And he gets to let the State give him
6 evidence, things that are not in evidence, and draw his
7 conclusions, and we're precluded from giving him
8 information that might change his opinion.
9 THE COURT: We're speaking
10 specifically about Exhibit 45. That is my ruling.
11 Please let's proceed.
12 MR. DOUGLAS MULDER: Judge, excuse me,
13 if I just might be heard on this so that my position is
14 clear. May I have permission from the Court to speak?
15 THE COURT: Well, yes.
16 MR. DOUGLAS MULDER: Thank you.
17 THE COURT: By all means.
18 MR. DOUGLAS MULDER: Judge, he has
19 stated that he considered her opinion. He said he would
20 also consider her mental health or lack thereof.
21 You know, they have got to take the
22 bad with the good. If they want to put him up and they
23 want him to consider people like Ms. Jovell, then they
24 have to take the bad along with that. Her baggage comes
25 with her, you know.
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1 THE COURT: Thank you. The Court's
2 ruling remains the same. Objection is sustained. Next
3 question.
4 MR. TOBY L. SHOOK: Judge, if that's
5 all we have along these lines, then we will ask --
6 THE COURT: I guess we will, until we
7 see what the next question is.
8 MR. DOUGLAS MULDER: Well, Judge, I
9 would prefer to question him in front of the jury, if
10 that is all right with the Court?
11 THE COURT: Are you through with this
12 hearing now?
13 MR. DOUGLAS MULDER: Yes, you have cut

14 me off. You won't let me --
15 MR. TOBY L. SHOOK: Well, then, Judge,
16 we will object further to any interrogation along those
17 lines. And you know, if that is what we're going to
18 have, we need to get that hashed out now.
19 THE COURT: Well, I don't think Mr.
20 Mulder will go into those other things.
21 MR. DOUGLAS MULDER: Why don't you
22 just cut me off from all cross examination?
23 THE COURT: Well, no, I can't do that,
24 Mr. Mulder. We'll bring the jury in, you may continue.
25 MR. RICHARD C. MOSTY: We can't
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1 provide him any information that he might use in
2 formulating his opinion?
3 THE COURT: We will go question by
4 question, and Mr. Mulder is handling this, and he will do
5 all the talking for the defense.
6 MR. RICHARD C. MOSTY: Can I make
7 objections outside of the jury's presence and comments
8 for the Court?
9 THE COURT: Right now, you may, yes.
10 MR. RICHARD C. MOSTY: Thank you.
11 MR. DOUGLAS MULDER: So, he can confer
12 with me too, can't he?
13 THE COURT: Oh, yes, he can, as long
14 as it is done in soft tones.
15 MR. DOUGLAS MULDER: We'll confer in
16 sign language, Judge.
17 THE COURT: Well, no, that will not be
18 necessary.
19 Bring the jury back, please.
20
21 (Whereupon, the jury
22 Was returned to the
23 Courtroom, and the
24 Proceedings were
25 Resumed on the record,
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1 In open court, in the
2 Presence and hearing
3 Of the defendant,
4 As follows:)
5
6 THE COURT: Let the record reflect
7 that all parties in the trial are present and the jury is

8 seated.

9 You may continue, Mr. Mulder.

10

11

12 CROSS EXAMINATION (Resumed)

13

14 BY MR. DOUGLAS MULDER:

15 Q. Yes, Mr. Brantley, I believe I had

16 asked you, if you all kept, you, the FBI and the

17 Behavioral Science Unit, if you kept statistics as to how

18 often you're wrong?

19 A. Well, we don't look at it in terms of

20 how often we're wrong. I think we like to consider how

21 often we're accurate or correct, but we do keep

22 statistics, we do keep some figures. We are attempting

23 to collect more and more of those, say over the past year

24 or so, but we do try to do that. That is correct.

25 Q. Is that -- will you translate for me?

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1 Was that a yes or a no?

2 A. Well --

3 Q. Do you keep statistics as to how often

4 you are wrong?

5 A. I don't, but there are people at our

6 unit that do. I guess that is probably the best way to

7 answer that.

8 Q. Okay. And certainly you don't have

9 those with you, do you?

10 A. I do not.

11 Q. Okay. And you don't know what your

12 batting average is, or do you?

13 A. The best way I have of assessing that

14 is the overwhelming amount of requests that we receive

15 for our services on a daily basis. I think the consumers

16 determine that what we do is beneficial.

17 Q. Well, sure. I mean, it's impressive

18 to have an FBI agent come in here and work backwards from

19 the answer, isn't it?

20

21 MR. TOBY L. SHOOK: Judge, I'll

22 object. That is improper questioning, and it's

23 argumentative.

24 THE COURT: I'll sustain the

25 objection.

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1

2 BY MR. DOUGLAS MULDER:

3 Q. Let me ask you this: You said one of
4 the risk factors that you consider, when I looked in your
5 notes, you said there was a car in the Routier garage; is
6 that correct?

7 A. I don't believe I said that.

8 Q. You didn't?

9 A. I said, I believe it was in front of
10 the house.

11 Q. Okay. I'm sure you are right,

12 Professor.

13

14 MR. TOBY L. SHOOK: Judge, again, I'm
15 going to object to the improper questioning and the
16 side-bar comments.

17 THE COURT: I'll sustain your
18 objection.

19 MR. DOUGLAS MULDER: He is a
20 professor. He testified that he teaches at --

21 THE COURT: Mr. Mulder, please cease
22 the side-bar. Ask your next question, please.

23

24 BY MR. DOUGLAS MULDER:

25 Q. What does this say? I'm showing you
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1 what's been marked for identification and record purposes
2 as Defendant's Exhibit No. 64. What does that say?

3 A. You are showing me a copy of my notes
4 and work papers.

5 Q. Yes, sir.

6 A. And I have got this down. Again, a
7 lot of this I was not prepared to testify to, because I
8 later learned that it was inaccurate. The question I had
9 before I arrived here, or wanted to confirm was where the
10 location of the vehicle was. I wanted to know whether it
11 was in the garage or where it was located. I was
12 informed it was located in front of the residence.

13 Q. Okay. When you were so good as to
14 read that -- can I have it back, please?

15 A. Sure.

16 Q. You have got a copy of it right up
17 there, don't you?

18 A. That is my original, yes, sir.

19 Q. When you were so good as to translate
20 this for me because I couldn't read your writing, you
21 didn't tell me that that was one of your questions, did
22 you?

23 A. I don't believe you asked me that. I
24 mean, you were just having me read that for you.
25 Q. Well, you said evidence that occupants
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1 are home, the TV on -- well, let's see what you wrote
2 down. And, when did you make these notes?

3 A. Now that copy -- what I did is I had a
4 lot of other notes that I consolidated.

5 Q. No, no, my question was: When did you
6 make these notes?

7 A. Probably within the last two weeks.

8 Q. Okay. So you knew within the last two
9 weeks your question about the car in the garage had been
10 answered, hadn't it?

11 A. I don't know if I understand your
12 question.

13 Q. Do you think there was a car in the
14 garage right now, as you sit here today?

15 A. My understanding is there was not a
16 car in the garage.

17 Q. Well, why did you -- you put evidence
18 that occupants are home; TV on, light in Roman room, and
19 shades or blinds up, and vehicle in garage. Why did you
20 put that in your consideration?

21 A. Those were things that I wanted to
22 understand, or make sure that I had as accurate
23 information.

24 Q. Matter of fact, the car wasn't in the
25 garage and you now know that, don't you?
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1 A. That is my understanding.

2 Q. Okay. Matter of fact, the vehicle
3 that the -- that Mrs. Routier drove was parked out in
4 front, wasn't it?

5 A. That is -- my understanding was there
6 was a vehicle in front of the house.

7 Q. And the car her husband drove, the
8 Jaguar, the 1987 Jaguar, traditionally was parked not in
9 the garage but in the driveway, wasn't it?

10 A. My understanding was that is also
11 accurate, right.

12 Q. Of course, it had been in that garage
13 for the last two days, that was your understanding too.
14 So for all outward appearances, anyone who knew that
15 house, or knew that area, would think that the wife was
16 home and the husband was gone; is that reasonable?

17 A. All I was looking at, again, not
18 necessarily who specifically was home, but just that
19 there was some indication that someone was home.
20 Q. Well, you quarrel -- of course, the
21 object of the intruders crime in this case could well
22 have been the mother or the woman of the house, couldn't
23 it?
24 A. It could have been.
25 Q. All right. And anyone, like I said,
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1 anyone familiar with that house and with the occupants
2 would know or would assume that the husband was gone
3 because his car was gone.
4 A. That's possible.
5 Q. But she was there because her car was
6 there?
7 A. That is possible as well.
8 Q. Okay. You know, you stated, and I
9 wrote it down, that the focus of the assailant was on the
10 children; is that right?
11 A. That's correct.
12 Q. I wrote that down right?
13 A. I'm not sure what you wrote down, but
14 that is what I testified to.
15 Q. Okay. And, how do you know that?
16 A. How do I know that they were the focus
17 of the offender's interest or assault?
18 Q. Yes, sir.
19 A. I think it's fairly obvious from the
20 nature and severity of the trauma they sustained and the
21 location of the trauma. Again, the placement of those
22 wounds for maximum killing efficiency, that pretty much
23 stands out to me.
24 Q. And I think you told us that the
25 children were attacked first?
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1 A. It appears to have been the case,
2 that's correct.
3 Q. Okay. It appears to you but it's not
4 quite as apparent to me. Could you enlighten me as to
5 how you reached that conclusion?
6 A. Well, in part from the witness's
7 description of events.
8 Q. From -- are you talking about Mrs.
9 Routier's?
10 A. That's correct.

11 Q. Oh, she told you the children were
12 attacked first?

13 A. I was able to review her statement.

14 Q. And it says in there the children were
15 attacked first?

16 A. She indicates that, as I recall, that
17 when she awakened that the intruder, a white male, was
18 standing at the foot of her couch and she also had been
19 touched by one of her sons who was already -- had already
20 been wounded, and immediately the intruder started to
21 exit.

22 Q. Okay.

23 A. So I think it's reasonable to assume
24 that the children had already been attacked because that
25 would have left no room for that to have occurred.

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1 Q. If he made his exit, then she had
2 already been attacked to, hadn't she?

3 A. That is reasonable.

4 Q. But I mean, how do you know the
5 children were attacked first?

6 A. Well, again, you wouldn't know for
7 sure and it's tough to accurately or at least
8 specifically reconstruct events, but that is my opinion.

9 Q. All right. Your opinion is that the
10 children were attacked first?

11 A. That's correct.

12 Q. And I'm not going to change your mind,
13 am I?

14 A. Well, if you have additional
15 information that I should consider, I would be willing to
16 entertain that.

17 Q. Consider that. You are not the type
18 of guy who says, I have made up my mind, don't confuse me
19 with the facts, are you?

20 A. I hope not.

21 Q. But you're telling this jury that,
22 based on your expertise, the children were attacked
23 first?

24 A. That's what it appears.

25 Q. Okay. Would you tell the jury the
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1 extent of Mrs. Routier's injuries as you understood them,
2 Mr. Brantley, or Agent Brantley?

3 A. Right. My understanding is she has a
4 wound to the left shoulder, has a wound -- actually two

5 wounds to the right forearm, and she also has a wound to
6 the neck.

7 Q. Okay. And, those were superficial?

8 A. I remember from reading the medical
9 reports that they had been described by the medical
10 professionals as superficial.

11 Q. And what does that mean to you, Mr.
12 Brantley?

13 A. I think they were also qualified
14 further as not life threatening.

15 Q. Is that what that means to you,
16 superficial means not life threatening?

17 A. That certainly was taken into
18 consideration, but I think also, the depth of the wounds,
19 and the amount of structural damage that has been
20 committed.

21 Q. Is the carotid artery, in your
22 vocabulary, a vital organ?

23 A. I would say the carotid is a very
24 important vessel in the body, that's correct.

25 Q. Okay. And you think if the carotid
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1 artery were missed by two millimeters that that is a
2 superficial or a not life threatening or an unimportant
3 injury?

4 A. I certainly looked at that with great
5 interest. And again, relied on the accuracy and
6 reliability of the medical professionals that did the
7 assessment and wrote the reports.

8 Q. Is that where Dr. Parchman-Townsend
9 comes in?

10 A. No, I don't believe so. She was the
11 medical examiner that did the autopsy on Devon, I
12 believe.

13 Q. Did she tell you when she looked at
14 the -- at Mrs. Routier's injuries that they were
15 bandaged?

16 A. I don't recall that we talked as much
17 about the bandaging as we did other issues.

18 Q. Mr. Brantley, can you tell me how many
19 weapons you assumed were involved?

20 A. To my knowledge, based on the facts
21 and circumstances, it looked like two knives in the home
22 were involved. At least those were the only ones that
23 demonstrated through forensics and through examinations
24 that they had come in contact with either blood, fibers,
25 or rubber particles or glass fragments from a window

1 screen.

2 Q. As a special agent you are no doubt
3 aware of the laboratory that the FBI has in Washington
4 D.C., are you not?

5 A. I am.

6 Q. Okay. Do you know whether or not the
7 bread knife was ever submitted to the laboratory in
8 Washington D.C. that is run by the FBI?

9 A. I don't believe that it was.

10 Q. Okay. And if you talked with Mr.
11 Linch you know that he was only able to make -- because
12 of the minute quantities of the fiberglass and the rubber
13 dust, he was only able to make a visual examination in
14 comparison with the screen. Did you know that?

15 A. I'm not sure I understand your
16 question. The visual --

17 Q. He was only able to eyeball it and say
18 it looks the same.

19 A. Well, my understanding, it was a
20 microscopic examination, if that is what you mean.

21 Q. Well, he had to look through his eyes
22 into a microscope.

23 A. Certainly, but not physical with the
24 naked eye, it was microscopic.

25 Q. It was so minute that you couldn't see
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1 it with the naked eye.

2 A. It was microscopic, yes, sir.

3 Q. Okay. And, did you take into
4 consideration that -- and did Mr. Linch tell you, and I
5 don't know where the knife is, but I'll use this, because
6 it really doesn't make any difference. But did Mr. Linch
7 tell you that he didn't know where on the knife he found
8 the fiberglass rod and where on the knife he found the
9 rubber dust?

10 A. I don't recall if we got that
11 detailed. It was just indicated to me that there was the
12 presence of those items on the knife. He may have,
13 however, he may have told me exactly what the location
14 was.

15 Q. Did you examine that screen?

16 A. Did I examine the screen itself?

17 Q. Um-hum. (Attorney nodding head
18 affirmatively.)

19 A. No, sir.

20 Q. To know that you could just -- it's of
21 such a fabric that you could cut it with relative ease,
22 that doesn't surprise you, does it?
23 A. Well, I really couldn't testify to
24 that. I have not examined the screen. I have been told
25 by others that have that the composition of the screen --
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1 Q. Well, would it, as an FBI agent, would
2 it make a difference to you that if the window wasn't
3 raised all the way up, that the knife when it cut the
4 screen, of course, couldn't go in more than about, what
5 two inches?
6 The screen fit over the window, say an
7 inch or two, and if he found what he found up in here, it
8 has absolutely nothing to do with this case. Are you
9 following me?
10 A. I think so. If you go with your
11 theory that the window is closed, again --
12 Q. Well, do you know whether it was open
13 or closed?
14 A. I do not.
15 Q. But that doesn't make any difference
16 to you, does it?
17 A. Well, it could, as you say if the
18 particles are found further up on the knife, then that
19 would suggest that the window was open possibly, and you
20 didn't have that obstruction for the knife.
21 Q. Because that fits your conclusion?
22 A. No, I haven't testified to anything
23 about the condition of the window.
24 Q. Well, I mean that knife may not be
25 involved in this case?
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1 A. The knife you just showed me?
2 Q. Well, the knife I showed you was not
3 the bread knife.
4 A. That's correct.
5 Q. Did you know that when -- that there
6 has been testimony that this knife does not have the
7 blood of Devon Routier on it?
8 A. You're asking me if I am knowledgeable
9 about the testimony that has gone on about the knife?
10 Q. No, I assume you have not been told
11 what the testimony is.
12 A. I have not.
13 Q. But I assumed the prosecutors shared

14 that with you.

15 A. About the testimony that has occurred

16 about the knife?

17 Q. No, no. I assume they knew ahead of

18 time. But this knife, there has been no testimony that

19 there was -- there has been testimony that no blood of

20 Devon Routier is on this knife.

21 Now, did you form an opinion or did

22 you make an assumption as to how many knives were

23 involved in the assault, in the cutting of the three

24 victims?

25 A. Well, I didn't assume that, no. What

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1 I looked at and what I found to be reasonable was that

2 the butcher-styled knife or chef's knife, whatever you

3 want to call it, that was found saturated with blood was

4 indeed used in some assault there at the residence.

5 Again, it was not until later on when

6 it was processed and they came up with the information

7 about the blood types that we went beyond that.

8 Q. Okay. So you do know what the blood

9 types are on the knife?

10 A. My understanding earlier was that it

11 looked like they had blood types of both boys on the

12 knife.

13 Q. Okay. Well, if you have received

14 information -- well, you know you may not have received

15 the same information that this jury has received, or this

16 jury may have received information that contradicts

17 reports that you have received. Can you appreciate that?

18 A. Well, I have no way of knowing that,

19 sir.

20 Q. No, but can you appreciate that? That

21 maybe the reports that you have seen don't jive with what

22 the witnesses have testified to before the jury?

23 A. That could be possible.

24 Q. Okay. Now, you can't tell, I dare

25 say, which of the youngsters was stabbed first?

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1 A. I wouldn't make that assessment, no,

2 sir.

3 Q. But you are telling this jury that you

4 assumed that the one boy had been stabbed some four

5 times, is that right, in the back?

6 A. As I recall, the -- I believe it was

7 Damon, the youngest, had four stab wounds and two fairly

8 large incised wounds to the back for a total of about six
9 wounds to the back.

10 Q. All right. And the other youngster
11 received two primary wounds to the chest?

12 A. Two deep penetrating stab wounds, and
13 some other --

14 Q. And did you assume that all of those
15 wounds were inflicted with the same weapon?

16 A. I didn't assume that they had been,
17 but I believe from my recollection of information of
18 events, that the wounds appeared to be consistent with
19 having been made by that butcher knife.

20 Q. Okay. Was that a yes or no?

21 A. Well, you'll have to ask me that
22 question again. I'm not sure --

23 Q. I asked you if you assumed that the
24 boys were cut and stabbed with the same weapon?

25 A. Again, you say assumed, I looked at
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1 all the possibilities and considered all the information
2 before I make my determination or assessment.
3 Now, again, early on I'm not going to
4 assume anything. If you have additional information that
5 I can consider, I will consider that.

6 Q. Okay.

7 A. Again, my opinion is not locked up or
8 carved in granite.

9 Q. Well, I would think before you get up
10 here and give a jury some opinion about who might have
11 killed or attacked some children, that you would have
12 some idea as to what went on?

13 A. Well, maybe it's a semantic thing that
14 you are talking about assume. I think I'm relating that
15 to kind of quick to react and quick to or jump to
16 conclusions, and that is not what I'm doing.

17 Q. Are you assuming now as we sit here
18 today, that one weapon was used to assault those
19 children?

20 A. It's my opinion that, again, that that
21 butcher knife was used to kill those children.

22 Q. To the exclusion of all others?

23 A. To the exclusion of the others that
24 were discovered at that scene, covered in blood, and
25 reported to be handled by the offender on his exit.

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1 Q. Okay. I just want to make sure I
2 understand, and -- you're saying that that was the only
3 weapon? You have ruled out any other weapon?
4 A. Again, not -- to my knowledge there
5 was no other weapon discovered at that scene that had on
6 it the victim's blood, and that was reportedly carried
7 and dropped or thrown down by the offender as he exited.
8 Q. Okay. All right. Did you assume that
9 Devon, both Devon and Damon Routier's blood was on this
10 weapon?
11 A. The information that I had available
12 to me was that that is indeed the case.
13 Q. That is the case?
14 A. Yes, sir.
15 Q. All right. Thank you. Now, may we
16 assume further that you don't know which of the boys was
17 stabbed first, but did it make sense to you, based on
18 your vast experience that the six injuries to the one
19 youngster, to Damon, were received at approximately the
20 same time?
21 A. I would say they were coincidental to
22 that event, if you consider the event the assault of the
23 three members of that family.
24 Q. So, in other words, the perpetrator,
25 whoever that might be, stabbed Damon and cut him six
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1 times and then stabbed and cut Devon some two times, and
2 then the knife was turned on Darlie; is that right?
3 A. That is -- if that is the order you
4 believe it. I haven't said that that is the order, no,
5 sir. I can't state that.
6 Q. Well, you know, it could have been
7 Devon first, it could have been Damon first, either one?
8 A. It could have.
9 Q. All right. But the boys were before
10 she was assaulted?
11 A. That is my opinion.
12 Q. Okay. And then, after the boys --
13 after the assault was finished on the boys, then she
14 either herself inflicted those wounds or somebody
15 inflicted the wounds upon her, is that -- are we on the
16 same sheet of music?
17 A. I think that is reasonable.
18 Q. Okay. It doesn't make sense to stab
19 one of the boys and then stab the other boy and then cut
20 her and go back and stab the other boys again, does it?
21 A. I'm not sure I understand what you
22 mean by "make sense."

23 Q. Well, I mean, your -- that is what
24 your whole premise is built on is common sense, isn't it?
25 A. Again, I'm not sure I understand what
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1 you are saying. My opinion is based on a number of years
2 of training and experience and education --

3 Q. No, I know all about that.

4 A. -- and working hundreds of these kinds
5 of cases.

6 Q. Yeah, we know all about your education
7 and your training. But the whole thing is based on
8 common sense, isn't it?

9 A. I'll tell you one of the -- if you
10 will allow me to explain this, I believe in the rule of
11 thumb, but be aware of the obvious. I try not to over
12 interpret or over analyze. And I think, again, what I
13 have testified to are major features, things that I
14 believe, most people, once these things are explained to
15 them, and again things that may be beyond what they
16 encounter in their daily lives, I think it really does
17 make sense to people once they have all of the facts and
18 circumstances.

19 Q. The whole thing is based on common
20 sense, isn't it? I know you have got experience. Have
21 you actually worked murder cases?

22 A. I have, yes, sir.

23 Q. Okay. You weren't a street officer
24 with any PD or anything like that, were you?

25 A. No, I was not.

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1 Q. Okay. And, when I say, worked a
2 murder case, would you work murder cases in the District
3 of Columbia?

4 A. I have not. No, sir, not in the
5 District of Columbia.

6 Q. Okay. I take it it is some place
7 other than the District of Columbia?

8 A. That's correct.

9 Q. What did you do with respect to the
10 particular murder case?

11 A. When I was assigned to our office in
12 Connecticut, there was -- we did a nationwide round up of
13 the Hell's Angels motorcycle gang, and there was a
14 homicide that occurred while we were investigating that
15 group. We had to respond to that scene and do some
16 inventories and some data collection.

17 Q. Okay. Is that the extent of the
18 murder cases that you, yourself, have worked?
19 A. On the scene. However, I have worked
20 hundreds of murder cases at the National Center.
21 Q. Yeah. Well, a lot of that stuff is
22 telephone too, isn't it?
23 A. I'm sorry?
24 Q. Where you talk to somebody on the
25 phone and give them advice.
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1 A. Well, we do quite a bit of what we do
2 on the telephone, that's correct. But we also make
3 on-site visits, and we have investigators that come back
4 to the Academy for consultation.
5 Q. Now, in the course of your reviewing
6 the facts, you told us that you read the various reports
7 of the police officers; is that right?
8 A. That's correct.
9 Q. Okay. And I think, you know, one
10 thing that kind of stuck out in my mind, you said you
11 made the inquiry as to whether there had been any similar
12 crimes in the neighborhood?
13 A. That's correct, similar or related
14 offenses.
15 Q. Why is that important?
16 A. Well, if you are trying to consider
17 whether this may be part of a series, that certainly
18 would be important to know.
19 Q. Okay. And I think you also -- I heard
20 you say something but you didn't expound on it, but there
21 was something about a car, a black car that was in front.
22 Do you recall reviewing one of the
23 officer's notes where he questioned the lady directly
24 across the street who said that she was awakened that
25 morning by a scream and thought it was a slumber party
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1 the people next door were having.
2 And she looked out and she saw a small
3 black car out there with dark windows, and she assumed
4 that it was a slumber party, and nothing going on, so she
5 went back to bed.
6 And then she heard the emergency
7 vehicles out there, and then she got up and looked out
8 again, and that vehicle was gone. That small black car
9 with the tinted windows. That didn't belong to anybody
10 in the neighborhood. What did you make of that, Agent

11 Brantley?
12 A. I don't recall reading that.
13 Q. Oh, you don't?
14 A. No.
15 Q. Well, let's see if we can find that
16 for you. Would that make a difference?
17 A. I would certainly take that into
18 consideration.
19 Q. Well, before I go to the trouble of
20 finding it, I want to know if it's going to make a
21 difference.
22 A. A major difference?
23 Q. If not, we'll go on to something else.
24 A. You mean, will I change my opinion?
25 Q. You are not going to change your
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1 opinion, are you?
2 A. Not based on that information, no,
3 sir.
4 Q. All right. I'll just move on to
5 something else then. But you didn't inquire about it or
6 say, "Hey, what is this black car doing at 2:30 in the
7 morning, where it has no business being and nobody knows
8 anything about it? Why is it out there and why does it
9 leave right after the scream for help"?
10 A. I -- not that specific incident or
11 that specific vehicle -- I did ask many, many questions
12 about people that lived in the neighborhood, anybody that
13 might have had a history of problems, or arrests and
14 convictions, I mean, any of that information, certainly,
15 I would want to know ahead of time.
16 Q. Okay. Now, you said you took into
17 consideration this business about no evidence in the den
18 or the Roman room or the family room, call it what you
19 will, of a violent struggle; is that right?
20 A. I don't believe I characterized it
21 quite that way.
22 Q. Well, you were the one that -- I wrote
23 down violent struggle. I mean, I got that from you.
24 A. There was certainly evidence of a
25 violent struggle. Again, whether you -- when you look at
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1 the quality and the nature of that struggle, it would
2 certainly seem to be less than dramatic.
3 Q. Um-hum. (Attorney nodding head
4 affirmatively.)

5 A. Certainly, in the hundreds of cases we
6 have analyzed in the past, when you see a violent
7 struggle between two adults and there is a knife involved
8 as the weapon, and people have been cut, you generally
9 see a considerable amount more of disruption than we saw
10 in that.

11 Q. Hey, I agree with you wholeheartedly.

12 But who told you to look for a violent struggle? You
13 said you read her statement, she didn't say anything
14 about a violent struggle.

15 You just said that she woke up and saw
16 this man walking away from her. She didn't say that she
17 engaged in a violent struggle with him. Why are you
18 looking for a violent struggle?

19 A. Well, I had all of the crime scene
20 photographs. And certainly, they depicted a certain
21 amount of violence. So, it wasn't that I relied on that,
22 but that was obvious, a violent crime scene.

23 And I recall from not only the
24 statement that she had made, but from other interviews
25 and witness statements that she had also talked about
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1 that. So I had gotten that information from them.

2 Q. Okay. I mean because you saw a lot of
3 blood there on the carpet?

4 A. I don't understand your question.

5 Q. I mean, that is why you thought --
6 there was blood on the carpet?

7 A. Because there is a lot of blood on the
8 carpet, did I assume or believe that there had been a
9 violent confrontation there in that location? Is that
10 what you are asking me?

11 Q. Yes.

12 A. Yes, that's reasonable.

13 Q. Okay. You don't know -- and again,
14 you don't know what the first responders, how they may
15 have changed the scene, do you?

16 A. Well, it's certainly a question that I
17 asked.

18 Q. Okay.

19 A. And I wanted to get some information
20 about that, because that is important also to consider.

21 Q. You considered the vacuum cleaner,
22 didn't you?

23 A. I did.

24 Q. Okay. And, I noticed you've made a
25 comment about the cord, didn't you?

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1 A. I did.

2 Q. And you said something about the way
3 the vacuum cleaner cord was coiled up. Didn't you say
4 something about the way the vacuum cleaner cord was
5 coiled up, that gave you some concern?

6 A. I don't know if I said the word
7 coiled, but certainly the way it was underneath the base
8 of the vacuum was of interest, that's correct. It
9 appeared to be more stacked or -- than coiled, I think.

10 Q. And you said it looked like it had
11 been placed in there as part of staging?

12 A. That's correct. I believe that was
13 indicative of the staging that occurred at the scene.

14 Q. Okay.

15

16 (Whereupon, the following
17 mentioned item was

18 marked for

19 identification only

20 after which time the

21 proceedings were

22 resumed on the record

23 in open court, as

24 follows:)

25

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1 BY MR. DOUGLAS MULDER:

2 Q. Let me hand you what's been marked for
3 identification and record purposes as Defendant's Exhibit
4 No. 65. And I'll ask you if that is the photograph that
5 you are talking about?

6 A. No, it's not.

7 Q. Okay.

8

9 (Whereupon, the following
10 mentioned item was

11 marked for

12 identification only

13 after which time the

14 proceedings were

15 resumed on the record

16 in open court, as

17 follows:)

18

19 BY MR. DOUGLAS MULDER:

20 Q. Let me show you what has been marked
21 for identification and record purposes as Defendant's
22 Exhibit No. 61. I'll ask you if that is the photograph?
23 A. No, it's not.
24 Q. Okay. There was another one?
25 A. There are several others.
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1
2 MR. DOUGLAS MULDER: I'll offer into
3 evidence what has been marked for identification record
4 purposes as Defendant's Exhibit 61 and 65.
5 MR. GREG DAVIS: No objection.
6 THE COURT: Defendant's Exhibit 61 and
7 65 are admitted for record purposes.
8
9 (Whereupon, the above
10 mentioned items were
11 received in evidence
12 for record purposes
13 only, after which time,
14 the proceedings were
15 resumed on the record,
16 as follows:)
17
18 BY MR. DOUGLAS MULDER:
19 Q. Well, I'll be happy to -- the cord
20 appears to be in a different position. I don't know
21 whether it's the same or different. Is there another
22 photograph that shows it better?
23 A. There were several of them, yes, sir.
24 Q. Okay.
25
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1 THE COURT: Did you offer that for
2 record purposes only?
3 MR. DOUGLAS MULDER: No, no. I
4 offered for all purposes, but --
5 THE COURT: Any objections?
6 MR. TOBY L. SHOOK: No objection.
7 THE COURT: All right. Both exhibits
8 are admitted for all purposes. Thank you.
9
10 (Whereupon, the above
11 mentioned items were
12 received in evidence
13 as Defendant's Exhibit

14 Nos. 61 and 65,
15 for all purposes, after
16 which time, the
17 proceedings were
18 resumed on the record,
19 in open court,
20 as follows:)
21
22 BY MR. DOUGLAS MULDER:
23 Q. Can you show me the picture that you
24 are talking about?
25 A. Sure, there are 4.
Sandra M. Halsey, CSR, Official Court Reporter
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1 Q. Okay.
2
3 MR. DOUGLAS MULDER: Let me have these
4 marked for identification.
5
6 (Whereupon, the following
7 mentioned items were
8 marked for
9 identification only
10 after which time the
11 proceedings were
12 resumed on the record
13 in open court, as
14 follows:)
15
16 THE COURT: They will be Defendant's
17 Exhibit what, Mr. Mulder?
18 MR. DOUGLAS MULDER: 66, 67 and 68.
19 THE COURT: All right.
20 MR. DOUGLAS MULDER: 69.
21
22 BY MR. DOUGLAS MULDER:
23 Q. Let me show you what has been marked
24 for identification and record purposes as 66, 67, 68 and
25 69. And I'll ask you if those are the photographs that
Sandra M. Halsey, CSR, Official Court Reporter
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1 you were telling us about?
2 A. Yes, they are.
3 Q. Okay. And, what is it that your keen
4 eye caught about the cord?
5 A. I think it's probably best depicted in
6 what you described as Defendant's Exhibit No. 67.
7 Q. Okay.

8 A. Where the cord --

9

10 THE COURT: You may show it to the
11 jury.

12 MR. TOBY L. SHOOK: Judge, so it's
13 clear, are those in evidence?

14 MR. DOUGLAS MULDER: Yeah. I'll offer
15 them into evidence.

16 THE COURT: Are you offering them?

17 All right. Any objection?

18 MR. TOBY L. SHOOK: No objection.

19 THE COURT: All right. Defendant's
20 Exhibit Nos. 66, 67, 68 and 69 are admitted.

21

22 (Whereupon, the items

23 Heretofore mentioned

24 Were received in evidence

25 As Defendant's Exhibit

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1 Nos. 66, 67, 68, and 69,

2 For all purposes,

3 After which time, the

4 Proceedings were resumed

5 As follows:)

6

7 THE WITNESS: Where the cord seems to

8 be underneath the base of the vacuum cleaner and kind of
9 in a focused --

10 THE COURT: You may have to speak a
11 little louder so the end jurors can hear you.

12 THE WITNESS: I'm sorry. Where the

13 cord is underneath the base of the vacuum cleaner and it
14 seems to be focused and kind of stacked on top of one
15 another.

16 It certainly does not present with the

17 appearance that this was been snatched and thrown, or
18 otherwise violently placed in that position.

19 THE COURT: If you could step down and

20 just go down the aisle and show it to all the members of
21 the jury.

22

23 (Whereupon, the witness

24 stepped down from the

25 witness box, and approached

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1 The jury rail, for the
2 purpose of further describing
3 the exhibit to the jury.)

4

5 BY MR. DOUGLAS MULDER:

6 Q. That appears to you that was done with
7 a great deal of concern and design?

8 A. Well, you see here, this cord, seems
9 to be very focused at the bottom of this vacuum cleaner,
10 not stretched out or elongated. As if someone grabbed it
11 or snatched it. You would have anticipated the cord
12 would be elongated, especially if it had been plugged in,
13 obviously.

14 But again, this appears to have been
15 held, placed underneath the vacuum cleaner, the vacuum
16 cleaner base placed on top of it.

17 And then, considering the amount of
18 blood on the handle of the vacuum cleaner, looks like
19 that is the area that was grabbed. So, not thrown off at
20 the top of this.

21 Also again, because of the bloody
22 footprints underneath the vacuum cleaner that were
23 discovered, it was clear that someone had obviously
24 walked through that area just prior to that vacuum
25 cleaner being placed there.

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1 Q. And based on your experience, what you
2 do you make of that? That someone was interrupted while
3 vacuuming?

4 A. Well, in my opinion this vacuum
5 cleaner was placed in this position as part of the
6 staging of the scene.

7 Q. For what?

8 A. To make it look -- I believe that the
9 offender wanted to make it look like a violent struggle
10 had occurred and this had been knocked over during the
11 course of that struggle.

12 But again, because of some things that
13 I have already outlined, this is a major contradiction,
14 of that kind of a theory.

15 Q. Okay. So you think that --

16

17 THE COURT: If you want to have a seat
18 again, please, sir.

19

20 (Whereupon, the witness

21 Resumed the witness

22 Stand, and the

23 Proceedings were resumed
24 On the record, in open
25 Court, as follows:)
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1
2 BY MR. DOUGLAS MULDER:
3 Q. You think that the perpetrator wanted
4 somebody to think that there was a fight going on around
5 the -- not over the vacuum cleaner but around the vacuum
6 cleaner? This is close to the kitchen sink, isn't it?
7 A. It is close to the kitchen sink.
8 Q. You said you read her statements. She
9 didn't say anything about a vacuum cleaner, does she?
10 A. I tell you, that was another thing
11 that was considered. What was conspicuously absent was
12 the comment by anyone about the vacuum cleaner. And
13 again, other things were commented on, but there was
14 absolutely no mention made of this vacuum cleaner, it was
15 totally avoided and I thought that was interesting.
16 Q. Well, now, if I -- I don't know as
17 much as you do, obviously, but if I had wanted to find
18 out how that vacuum cleaner got there, Agent Brantley, I
19 would have asked the first officer on the scene if he saw
20 a vacuum cleaner out of place in the kitchen. And if he
21 said no, then I might think that maybe one of the first
22 responders got it out of the way in their emergency. But
23 did you talk to Waddell?
24 A. I did not personally talk to him
25 but --
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1 Q. Didn't think it was necessary?
2 A. I talked to the prosecutors and the
3 other investigators involved and certainly asked that
4 question, I wanted to know if this was discovered in this
5 position and if this photograph accurately depicted that
6 position of the vacuum cleaner. I was advised that that
7 indeed had not been handled by the paramedics or any of
8 the responding officers.
9 Q. Okay. And, of course, you took that
10 at face value, didn't you?
11 A. Well, I considered that to be accurate
12 information at the time, yes, sir.
13 Q. Okay. Now, you are familiar with
14 staged evidence or throw-down evidence, aren't you?
15 A. I am familiar with staging.
16 Q. You have heard the term throw-down

17 evidence, or I guess if you have not been a street cop
18 and haven't worked a lot of these things, you probably
19 haven't heard the term throw-down evidence?

20 A. Well, I have heard the term, yes.

21 Q. All right. If someone -- let's just
22 use planted evidence, does that have a better
23 connotation? I mean is it clearer?

24 A. I have heard that term used as well.

25 Q. Okay. Assuming that someone wants to
Sandra M. Halsey, CSR, Official Court Reporter
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1 plant evidence to either divert attention from themselves
2 or avert attention to someone else, what is the first
3 thing and the most important thing that they want to
4 achieve? What is the most important thing to them, if
5 somebody is going to plant evidence?

6 A. You mean besides diverting attention
7 away from themselves?

8 Q. Well, isn't the -- if you are going to
9 plant evidence, you don't want to plant evidence that is
10 so subtle the police might, in their zeal, overlook it,
11 do you, if you are going to plant evidence?
12 So the most important thing to
13 somebody who plants evidence, is that the police find the
14 evidence. They can't very well find it themselves, can
15 they?

16 A. I'm not sure I understand your
17 question.

18 Q. It doesn't do any good to plant
19 evidence if the police don't find it, does it?

20 A. That is a fair statement.

21 Q. Okay. So therefore, it must be very
22 important to somebody who plants evidence to see that the
23 police find it.

24 A. All right. I can go along with that.

25 Q. You can go along with that?
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1 A. Yes.

2 Q. Okay. And generally don't you find
3 that planted evidence is overdone?

4 A. I think that is also fair to say,
5 especially with people that don't have a history of
6 committing violent acts. They stage it, they try to make
7 it look like they think it should look, but don't
8 necessarily base that on experience or knowledge of doing
9 it before.

10 Q. Okay. And rather than a sock with a

11 smidgen of blood on it, you find a blood soaked sock at
12 the end of the driveway, or something that is obvious.
13 It's got to be -- of course, for the police to find it,
14 many times it's -- you want something that they are going
15 to find and not something that they are going to
16 overlook. So you want to make it fairly obvious, don't
17 you?

18 A. Well, I have seen that before where
19 people do make things very obvious.

20 Q. Okay.

21 A. Now, if you're saying -- if you are
22 asking me whether I think the sock was placed in an
23 obvious location or not, I could answer that.

24 Q. Well, I know you want to answer it,
25 and I will just wait and let them ask you if you will.

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1 A. All right.

2 Q. I think you have answered it or given
3 us your view on it?

4 A. Well, I --

5 Q. Because you said he had gone back
6 down, you know the perpetrator had gone back down into
7 the development?

8 A. Someone had.

9 Q. Um-hum.

10 A. Whether that was the perpetrator or
11 someone else, I wouldn't be able to make that
12 determination based on the location of the sock.

13 Q. So you are saying that the perpetrator
14 might have been aided by someone else. Is that what you
15 are saying, or there may have been two perpetrators?

16 A. I'm saying that anything is possible.

17 I'm not saying that that is the case either.

18 Q. Okay. Well, let me just ask you this:

19 As an expert, how many perpetrators did you see involved
20 in this event?

21 A. From my review of the case and all the
22 materials, to me it appears that there was only one
23 individual involved in the assault.

24 Q. Okay. In the assault, in the crime,
25 in the planting evidence?

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1 A. Exactly. And again, that was based on
2 my review of the scene and also from the statements from
3 the surviving witness.

4 Q. Can you just give us your -- you say

5 the -- there was one person involved. So the one person
6 killed both of the boys and then cut and slashed Darlie,
7 and then planted this sock, this ruse, this -- as part of
8 the staging?

9 A. It was my opinion that that sock was
10 located out -- and as part of the staging event.

11 Q. Could you please give us, just give
12 the jury a chronology of how this took place, would you
13 please?

14 A. Well, I cannot give you an exact
15 chronology, but what I believe occurred is that the
16 offender in this particular case, I think at some point,
17 at some level realized, hey, this crime scene, for the
18 most part, really does not go beyond the confines of this
19 residence.

20 And maybe I need to leave some sort of
21 a trail to suggest that the intruder, if you will, has
22 come from the outside and again also has exited --

23 Q. I don't want to interrupt you, really,
24 but I want you to tell them at what point this
25 perpetrator realized that? As soon as the two boys were

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1 stabbed, or after her throat was cut, or after her arms
2 were --

3 A. Well, this is after the assault on --

4 Q. Is this after her throat is cut too?

5 A. Well, I couldn't say that.

6 Q. Why not?

7 A. I just don't have enough information
8 to make that call. But I think what I can say is that,
9 that sock was planted after the boys had been stabbed
10 because my understanding is that --

11 Q. Well, that is brilliant, because the
12 boys' blood is on it. I mean, there isn't anybody in
13 this courtroom who couldn't have handled that.

14 A. Great. That was my opinion, also.

15 Q. Well, I mean, it's common sense then,
16 isn't it?

17 A. Well, again, I try to be aware of the
18 obvious.

19 Q. Hey, we know that after the boys'
20 blood was shed the sock was -- it had to be after their
21 blood was shed, we know that?

22 A. That is a fair statement.

23 Q. Okay. All right. Now, tell us,
24 please, sir, what happened next? Was the sock -- when
25 was the sock taken out there?

1 A. Well, I couldn't say with any degree
2 of certainty exactly when that sock was placed there.
3 Q. When was the window cut?
4 A. I couldn't say exactly when that
5 window was cut.
6 Q. Can you tell us who put the
7 fingerprints right up here? Did they tell you that they
8 had an experiment for the jury here?
9 They had a police officer bigger than
10 you are, squat down and go, and he too -- you know, they
11 said something about the windowsill not being disturbed,
12 the dust on it. You put that in and factored that in,
13 didn't you?
14 A. That combined with the lack of
15 transferring anything outside the house, mulch, grass,
16 moisture, blood going out the other way.
17 Q. Or mud?
18 A. Mud, exactly.
19 Q. Well, it was not muddy, why would you
20 expect to see mud?
21 A. Well, I think with the moisture and
22 the climate at the time is reasonable that some moisture
23 had been picked up and if that came in contact with dust
24 or dirt that may create mud.
25 Q. Well, it rained the next day. It
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1 rained the 7th. There was a thunderstorm the 7th, but
2 the 6th was hot and dry. Why would you expect to see
3 mud?
4 A. Again, moisture from the dew in the
5 evening and from -- you know, that is the moisture I had
6 in mind.
7 Q. Show me where he is going to step in
8 mud. Will you? Show me where the mud is here that you
9 think somebody -- you think he brought some mud with him?
10 A. Mud is your term, I'm not saying mud.
11 Q. No, you said -- there wasn't or you
12 didn't see any muddy footprints or you didn't see any
13 mulch disturbed?
14 A. That's correct.
15 Q. Well, show me where the mud is going
16 to come from.
17 A. Well, I'm considering dirt, it doesn't
18 have to be mud, or a puddle of mud, but there could be
19 some --

20 Q. Well, where is the dirt going to come
21 from, Special Agent?
22 A. Dirt on the outside of a home here in
23 Texas?
24 Q. This is all paved, isn't it?
25 A. Well, but still. See the yard there,
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1 the grassy area, in some areas there is no grass. That
2 is bare exposed dirt.
3 Q. You think this is bare exposed dirt?
4 A. That is mulch. It's my understanding
5 that is mulch.
6 Q. Why would you walk through the mulch
7 when you could walk on the sidewalk?
8 A. You could. You could walk on the
9 sidewalk.
10 Q. I mean why? Tell me. I mean I'm
11 interested in this. Why would you walk across the garden
12 part when you can walk on the sidewalk?
13 A. Well, from interviews of offenders
14 that I have talked to based on my knowledge of that
15 backyard area with the outside lighting and sensor, that
16 one possible reason or explanation is you want to avoid
17 setting off that light or that sensor. So you might want
18 to take as direct, close route to the side of the house,
19 as possible.
20 Q. You know, and that is a good point.
21 A. Yeah, because you actually become more
22 visible or exposed, I think, if you go down the walkway.
23 Q. Yes, sir. And we have a man who
24 performed some tests, but the State hasn't seen fit to
25 bring him yet.
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1 But one of the witnesses, one of the
2 police officers testified --
3
4 MR. TOBY L. SHOOK: Judge, we'll
5 object to the side-bar once again.
6 THE COURT: Sustain the objection. I
7 instruct the jury to disregard the comments made by the
8 attorney.
9
10 BY MR. DOUGLAS MULDER:
11 Q. Well, one of the police officers
12 testified that a Sergeant Nabors did some tests out there
13 and he said that you could walk from this window through

14 here to the gate and not set off that light.
15 A. I believe that is accurate. I saw
16 that same report.
17 Q. So the light doesn't have anything to
18 do with it, does it, unless you are just running around
19 the yard?
20 A. Well, it is something I considered.
21 But if you knew that about the light, you knew the
22 positioning of the light and that cone of sensitivity,
23 then you could reasonably assume that.
24 But if you are a stranger and you are
25 not aware of how that light is positioned, you are not
Sandra M. Halsey, CSR, Official Court Reporter
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1 going to know that that wouldn't come on. So you might
2 want to be a little more cautious and you might want to
3 hug the wall of that home a little more closely than
4 otherwise.
5 Q. Well, who said it was a stranger?
6 A. I'm just saying that is a possibility.
7 Q. Okay.
8 A. And if you believe that, if you
9 believe that it's a stranger, that's certainly something
10 you want --
11 Q. Or if you don't -- you know, not many
12 places have these sensor lights, do they?
13 A. I'm sorry?
14 Q. Not many, probably 99 percent of the
15 places don't have a sensor light that goes on like that.
16 Isn't that fair to say?
17 A. I have no information about that
18 neighborhood, how many people have that light.
19 Q. Any neighborhood?
20 A. It's fairly common in the area that I
21 live in.
22 Q. Well, it would have to be. You live
23 up there by Washington D.C.
24 A. I do.
25 Q. Everybody carries a gun up there,
Sandra M. Halsey, CSR, Official Court Reporter
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1 don't they? Or they need to, probably.
2 But at any rate, why would you expect
3 the mulch to be disturbed?
4 A. If somebody had gone through there it
5 would be reasonable to assume that the mulch had been
6 disturbed.
7 Q. All right. Now, did you say there was

8 nothing in the entrance or exit that was disturbed? Did
9 you say that?

10 A. You are talking about other than the
11 screen being cut?

12 Q. Yes, sir.

13 A. There was certainly a minimum of
14 disturbance if anything at all.

15 Q. Well, when you say a minimum, what are
16 you talking about?

17 A. Well, again, going back to the dust
18 and dirt on the sill, talking about a transfer, talking
19 about any blood evidence being brought back through there
20 on the exit of the offender.

21 Q. Did you know that when that police
22 officer went through that the only place that he touched
23 was the place that they found the unidentified prints?

24 A. I was aware of that.

25 Q. Do you think he just touched it in
Sandra M. Halsey, CSR, Official Court Reporter
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1 front of the jury, just to -- by design? Or do you think
2 it was just a natural place that somebody would touch as
3 they were going through that window?

4

5 MR. TOBY L. SHOOK: Judge, I'm going
6 to object to speculation.

7 THE COURT: Sustained.

8 MR. DOUGLAS MULDER: Well, he
9 speculated, Judge, for two hours.

10 THE COURT: If you know the answer,
11 answer it. If you don't, let's move on to the next
12 question.

13 THE WITNESS: I'm not sure I
14 understand that question.

15

16 BY MR. DOUGLAS MULDER:

17 Q. All right. We will just move on.

18

19 (Whereupon, the following

20 mentioned items were

21 marked for

22 identification only

23 after which time the

24 proceedings were

25 resumed on the record

Sandra M. Halsey, CSR, Official Court Reporter
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1 in open court, as
2 follows:)

3

4 BY MR. DOUGLAS MULDER:

5 Q. Let me show you what has been marked
6 for identification and record purposes as Defendant's
7 Exhibit 62 and 63.

8

9 MR. DOUGLAS MULDER: And I will offer
10 these into evidence.

11 MR. TOBY L. SHOOK: No objection.

12 THE COURT: Defendant's Exhibit 62 and
13 63 are admitted.

14

15 (Whereupon, the above

16 mentioned items were

17 received in evidence

18 as Defendant's Exhibit

19 Nos. 62 and 63,

20 for all purposes, after

21 which time, the

22 proceedings were

23 resumed on the record,

24 in open court,

25 as follows:)

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1

2 BY MR. DOUGLAS MULDER:

3 Q. You can see, it looks like a Dallas
4 Cowboy trash can kicked over there, doesn't it?

5 A. Certainly.

6 Q. And here it looks like another trash
7 can kicked over, doesn't it?

8 A. Yes, sir, a wastebasket.

9 Q. So that would be -- would that be some
10 evidence of somebody going through?

11 A. It could be, and I certainly

12 considered that. And again, what I think that really

13 addresses is you have those things laid down in a fairly
14 conspicuous way.

15 Certainly, there is nothing again

16 damaged. I mean, these are plastic kind of a tin metal

17 wastebasket. No damage, no dent in that wastebasket

18 whatsoever.

19 Again, the question arose, is this

20 something that was knocked over and disturbed as someone

21 was going through there, or as someone is trying to exit?

22 And if it is someone trying to exit, and they got in so

23 well, how come on the exit they knocked into these items?
24 I think what we also considered was whether somebody may
25 have pulled these things behind them to impede someone
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1 chasing them, or delay someone from actually catching up
2 with them. So we looked at those as well.

3 Q. You say we looked at that. That is
4 the guys back at the Behavioral Science Unit?

5 A. Myself and other unit members, that's
6 correct.

7 Q. What did you make of the fact that her
8 underwear was never found?

9 A. I'm sorry?

10 Q. I said, what did you make -- you and
11 the guys back at the unit, what did you make of the fact
12 that her underwear was never found?

13 A. I had no idea that her underwear had
14 been taken.

15 Q. I don't guess that makes any
16 difference though, does it?

17 A. It would, if there had been something
18 taken from the scene that I wasn't aware of, I would want
19 to know that. But again, as far as I know, there had
20 been nothing taken from the scene.

21 Q. All right. You, I guess, have some
22 acquaintanceship with blood spatter evidence, don't you?

23 A. Yes, sir, I do. That is fair to say.

24 Q. And a blood pattern interpretation?

25 A. Well, I am not an expert in that area,
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1 but certainly I have had that kind of information
2 presented to me before.

3 Q. Okay. Now, we're in agreement now
4 that whoever did this thing finished off the boys before
5 Darlie was attacked and her throat cut, stabbed here a
6 couple of times and stabbed in the chest. Are we in
7 agreement?

8 A. I believe that was my opinion, yes,
9 sir. It looks like they were assaulted first, yes, sir.

10 Q. By the way, did you know that her arms
11 had been beaten?

12 A. Well, I knew that there was some
13 bruising to her arms.

14 Q. Okay. What did you make of that?

15 A. Well, they are very interesting. I
16 looked at that when I received the case materials and I

17 asked quite a few questions.

18 Q. Okay.

19 A. I wanted to know whether that was
20 artifact or that was something sustained as a result of
21 the medical procedures or whether that was something
22 else.

23 Q. Okay. And, I assume you are getting
24 ready to tell us that was artifact or that was part of
25 the staging?

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1 A. Well, I'll tell you, it's a good
2 question, because initially I was informed that that may
3 have been the result of the medical procedures that were
4 performed at the hospital. And then later on I
5 understand that that was not the opinion of the medical
6 doctor.

7 When I first looked at them, again,
8 because of the nature and the symmetry, they looked --
9 they certainly didn't look like anything that was
10 coincidental to a struggle or being grabbed. It looked
11 like something had -- either they had been beaten on
12 something, or something had been beaten on to her.

13 Q. Pretty determined individual if they
14 are beating their arms up in the fashion that they are
15 bruised all the way from the wrist to the, virtually, the
16 shoulder, wouldn't you say?

17 A. I recall what was distinctive, it was
18 a very clear line of demarcation where from that line
19 below there was absolute no bruising and then from that
20 line above, there was significant bruising.

21 Q. The doctor says, blunt trauma. What
22 does that mean to you?

23 A. Blunt force? Again, something
24 striking the arm or the arm striking something, something
25 hard.

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1 Q. Okay. And I take it you factored that
2 in?

3 A. I certainly looked at that, yes, sir.

4 Q. Okay. And, you talked to Mr. Bevel,
5 didn't you?

6 A. I did.

7 Q. Okay. And he no doubt told you about
8 the blood that was on her T-shirt?

9 A. He did talk about that, that's
10 correct.

11 Q. Okay. And you found that interesting,
12 did you?
13 A. Certainly, I took that into
14 consideration.
15 Q. Okay. And what consideration did you
16 give that?
17 A. Well, that was not a major feature.
18 And again, as I testified on direct, that was really not
19 anything that I focused on.
20 Q. That didn't mean a whole heck of lot
21 to you?
22 A. Well, based on what I was trying to do
23 and the focus of what I was doing, again, it was
24 certainly not a major feature.
25
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1 MR. DOUGLAS MULDER: Judge, if you
2 will bear with me. I want to get down, like on my knees
3 here.
4

5 BY MR. DOUGLAS MULDER:

6 Q. But, Mr. Bevel had the opinion, that
7 Darlie got the blood on her, by stabbing the boys, and
8 working the knife in this fashion, and the knife came up
9 and spattered or cast off on her shoulder. Did he tell
10 you that?

11 A. He did not tell me that, no.

12 Q. Okay. And, he said that in these
13 areas where you see the multicolored kind of
14 lifesaver-looking deals, you see four of them on there?

15 A. You will have to show me what you are
16 referring to.

17 Q. The two here.

18 A. The yellow and orange?

19 Q. And a couple here?

20 A. Yes, sir.

21 Q. Okay. He said that those were
22 occasioned when the knife was stabbed into the boys and
23 came out and the blood spattered or was cast off on her
24 shoulder. Does that make sense to you?

25 A. Again, if that is Mr. Bevel's

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1 testimony, I can't really speak to that.

2 Q. Okay. Well, as an analyst, I guess my
3 question for you is: And he said that the blood here,
4 and there is going to be testimony, he said initially, it

5 was a mixture. And then he said, well --

6

7 MR. TOBY L. SHOOK: Well, Judge, I'll

8 object to him going into --

9 MR. DOUGLAS MULDER: Well, I'm going

10 to --

11 THE COURT: Sustain the objection.

12 MR. RICHARD C. MOSTY: Excuse me,

13 your Honor, Mr. Bevel testified to that yesterday.

14 MR. TOBY L. SHOOK: Well, Mr. Bevel

15 testified to a whole lot of stuff yesterday.

16 THE COURT: We understand that. Let's

17 don't compare testimony. Let's move on.

18 MR. TOBY L. SHOOK: We'll object to

19 him going into any comparison.

20 THE COURT: Sustained.

21

22 BY MR. DOUGLAS MULDER:

23 Q. All right. Let me ask you this, Mr.

24 Analyst. If, in fact, these represent --

25

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1 THE COURT: His name is Brantley and

2 please address him as such.

3 MR. DOUGLAS MULDER: Mr. Brantley,

4 Agent Brantley.

5 THE COURT: Thank you.

6 MR. DOUGLAS MULDER: Yes, sir.

7

8 BY MR. DOUGLAS MULDER:

9 Q. Mr. Brantley, if, in fact, these are

10 mixtures of Darlie's blood and Devon's blood here, and

11 Darlie's blood and Darin's blood here, the bloods mixed

12 together, and the knife is wet with their blood, right?

13 A. I'm not sure if that is a question, or

14 are you telling me that?

15 Q. It's a mixture.

16 A. Also the court reporter is blocking my

17 view, I can't see what you are referring to.

18 Q. Okay. Now, my question for you, I

19 guess, is, how do you factor that in, to get -- to get

20 this blood, her blood and the boys' blood, her blood and

21 Devon's blood up there on her shoulder, the blood is

22 mixed, that means the knife has to be wet with her blood

23 and Devon's blood.

24

25 MR. TOBY L. SHOOK: Judge, he's going

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1 into a conclusion, and there were two different areas of
2 testimony given on that, and the conclusion that he has
3 given. Two different explanations.

4 THE COURT: Sustained. Let's move on.

5 MR. DOUGLAS MULDER: Well, Judge, are
6 you telling me that I can't ask this analyst this
7 question? These are facts based on evidence.

8 THE COURT: Well, if you will just
9 make a succinct question and if he knows the answer, he
10 can answer it, please.

11 MR. DOUGLAS MULDER: All right.

12

13 BY MR. DOUGLAS MULDER:

14 Q. Well, the knife has to be wet with
15 both of their blood to be able to stab -- to be able to
16 stab, and get that blood on her, if that is how it got on
17 there.

18 It has to have both her blood, and the
19 youngster, Devon's blood, on it at that time. And for
20 that to happen, he must have already -- she has either
21 got to cut her throat first and injure herself first and
22 then stab the boys and do it, or she has got to stab the
23 boys and then cut her throat, and then go back and stab
24 the boys again to do this.

25

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1 MR. TOBY L. SHOOK: Judge, I'll object
2 again as to the misleading nature of the question,
3 because that is only one version of how those stains get
4 there, and he is misleading the witness with that
5 question.

6 MR. DOUGLAS MULDER: No, it's two
7 versions, take your pick.

8 THE COURT: Just a minute, gentlemen,
9 please.

10 If you know the answer, answer it. If
11 you don't know it, please state so.

12 THE WITNESS: Your Honor, I'm not sure
13 I know what the question is now.

14 THE COURT: Well, thank you. That is
15 probably a good answer.

16

17 BY MR. DOUGLAS MULDER:

18 Q. Just a thing or two. Were you aware,
19 Agent Brantley, that there were some suspicious people

20 looking into the Routier garage, the late evening of June
21 the 5th? Were you aware of that?
22 A. I am not aware of that, no, sir.
23 Q. Okay. That doesn't make any
24 difference, does it?
25 A. That would make a difference if I had
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1 that information, but I received no information that that
2 had taken place.
3 Q. What if they were in a black car?
4 Would that make it any more interesting for you?
5 A. Would I take that into consideration?
6 Q. Yes.
7 A. Is that your question? Certainly.
8 Q. Well, what -- are you going to give
9 that any value of any sort?
10 A. Well, any events leading up to these
11 homicides, certainly I would. Again, anything especially
12 in close proximity to that residence.
13 Q. Okay. What does that do for you?
14 What does that tell you?
15 A. Well, I would consider whether maybe
16 that is part of some surveillance that may have been
17 going on.
18 Q. Okay. Let me ask you this: How long
19 would it take, in your judgment, to do all this? To kill
20 both boys, self-inflict the wounds, stage the scene,
21 plant the sock, call 911, how long would all of this
22 take?
23 A. You are saying --
24 Q. I'm saying, how long would it take?
25 A. If the defendant did this, how long
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1 would it take if self-inflicted?
2 Q. Yeah.
3 A. Because I haven't said that.
4 Q. I know you haven't.
5 A. But again, I really have not assessed
6 it. The only thing I base my opinion on is when the call
7 came in, and when the police responded to it. I
8 certainly looked at the time of death from the medical
9 examiner's reports. So, again, I really have made no
10 assessment as -- from the beginning of the event to the
11 end of the event.
12 Q. Well, I'm asking you to do that now.
13 A. I don't know that I can do that, sir.

14 Q. Okay. All right. I mean, now, what
15 if you had the boys back at the Behavioral Science Unit,
16 do y'all sit down and kind of brainstorm, something like
17 that and come up with a factor?

18 A. I think depending on the condition of
19 the victims, and lividity, and rigor, and some other
20 postmortem changes in the body, I mean, you can tell, I
21 think we would probably be able to assess whether the
22 kids had been killed, and were discovered fairly soon
23 after the homicides, or whether they had been there a
24 while before they were discovered.

25 But again, as far as giving you an
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1 exact time, and again, a specific chronology, that is
2 something that we don't do.

3 Q. Well, you see, all that information is
4 available to you.

5

6 MR. TOBY L. SHOOK: Judge, I'll
7 object. He just answered his question.

8 THE COURT: Overruled. I'll let him
9 answer the question.

10

11 BY MR. DOUGLAS MULDER:

12 Q. The majority of it has all been
13 testified to here. I mean we all know.

14 A. Well, I -- but, again, I haven't been
15 here for the testimony.

16 Q. Well, I know it. But I'm asking you,
17 just based on everything that you have received, tell us
18 how long it would take, from start to finish, or from
19 start to the 911 call?

20 A. Well, I would look at a variety of
21 options.

22 Q. I know you would.

23 A. If they were killed and then the
24 perpetrator remained at the scene for some time before
25 any of the other events occurred, like, as you said, the
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1 self-inflicted wound.

2 They could have been killed or
3 assaulted, and it could have been sometime before the
4 other injuries were inflicted.

5 If it occurred coincidental to the
6 children being assaulted, then it would be a relatively
7 short period of time.

8 Q. How many minutes? Just give me your
9 best guess. I'm not going to hold you to it.

10 A. Again, I'm sure you probably will.

11 But again, I really am not comfortable with making that
12 kind of an assessment of chronology or time.

13 Q. Well, I noticed that you -- when you
14 were talking about the broken glass, you told the jury
15 that you said, "Hit the wine rack." Now, where on earth
16 did you get the idea that somebody hit the wine rack?

17 A. Well, I look at the condition of the
18 wine rack and the glass breaking and the statements of
19 hearing the glass breaking, again, somehow that glass
20 became dislodged.

21 And because it was described as being
22 coincidental to the offender escaping, unless the
23 offender went by and knocked it off or hit into that wine
24 rack, there is really no other way that that could have
25 occurred.

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1 Q. Well, now, wait a minute. There are a
2 bunch of different ways that could have occurred, aren't
3 there?

4 A. Well --

5 Q. Okay. Remember, you said you were --
6 I wrote it down -- and you said that you were alarmed or
7 curious that some of the other things on the wine rack
8 were not knocked off?

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

10 Q. You said that when he hit the wine
11 rack?

12 A. Well --

13 Q. I mean, why does somebody have to hit
14 the wine rack to break a glass?

15 A. Well, there would have had to have
16 been some sort of contact with the wine rack for that, I
17 believe, for that glass to become dislodged and for the
18 other items on that wine rack to be moved.

19 Q. Uh-huh. So are you suggesting that
20 somebody took the wine glass, and threw it down on the
21 floor?

22 A. No, I'm not. I didn't say that.

23 Q. And you don't have, we can agree, that
24 you don't have to hit the wine rack to knock a glass off,
25 do you?

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1 In fact, you could come by and just
2 hit it with your arm or shoulder?
3 A. Certainly. You could come by and pick
4 it up off and throw it down. That is a way for it to
5 come off.

6 Q. But if it were thrown down on the
7 floor, you wouldn't expect to find shards up here on the
8 shelf, would you?

9 A. If it were picked up and thrown on the
10 floor, clearing that wine rack completely, that is
11 reasonable to assume. But, of course, if you walked by
12 and just knocked it up and it fell off and hit before it
13 hit the floor, then --

14 Q. Then you would expect to find some
15 shards here?

16 A. That is reasonable.

17 Q. And maybe even in the little ice
18 bucket top as well, if it were broken up here as opposed
19 to being thrown down on the floor? Fair enough?

20 A. That is fair to say.

21 Q. She didn't say in her statement that
22 somebody hit the wine rack, did she?

23 A. Well, my recollection is she heard the
24 sound of breaking glass.

25 Q. Not the sound of somebody hitting the
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1 wine rack?

2 A. No, sir.

3

4 MR. DOUGLAS MULDER: I think that's
5 all. Thank you, Agent Brantley.

6 MR. TOBY L. SHOOK: Nothing further,
7 Judge.

8 THE COURT: You may step down, sir.

9 Thank you for coming.

10 MR. RICHARD C. MOSTY: Your Honor,
11 could we take care of a housekeeping matter?

12 THE COURT: We sure can. Just a
13 moment.

14 All right. Ladies and gentlemen of
15 the jury, we'll take a 10 minute recess now, please.

16

17 (Whereupon, a short

18 Recess was taken,

19 After which time,

20 The proceedings were

21 Resumed on the record,

22 in the presence of the defendant,

23 but outside the presence and
24 hearing of the jury,
25 as follows:)
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1
2 THE COURT: All right. Let the record
3 reflect that these proceedings are being held outside of
4 the presence of the jury.
5 All parties in the trial are present.
6 Mr. Mosty.

7
8 (Whereupon, the following
9 mentioned item was
10 marked for
11 identification only
12 after which time the
13 proceedings were
14 resumed on the record
15 in open court, as
16 follows:)

17
18 MR. RICHARD C. MOSTY: The district
19 attorney's office is in the process of copying all of Mr.
20 Brantley's file, except for the photographs, which we
21 will mark and introduce for record purposes as Exhibit
22 70.

23 THE COURT: Any objection to
24 Defendant's Exhibit 70 for record purposes?

25 MR. TOBY L. SHOOK: No, sir.
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1 THE COURT: Defendant's Exhibit 70
2 will be admitted for record purposes after it is
3 prepared.

4
5 (Whereupon, the above
6 mentioned item was
7 received in evidence
8 as Defendant's Exhibit No. 70,
9 for record purposes only,
10 after which time,
11 the proceedings were
12 resumed on the record,
13 as follows:)

14
15 MR. RICHARD C. MOSTY: In that regard,
16 your Honor, what we would have covered in particular with

17 Mr. Brantley, as part of an offer of proof, or a Bill of
18 Exception is that we would have gone through, and listed
19 in particular, all of those things that he had in his
20 file, the Dallas Morning News reports; Altoona,
21 Pennsylvania, news reports; numerous summaries that I
22 believe --

23 THE COURT: Just a moment. We have to
24 have that noise stop. All right. Now, go ahead.

25 BY MR. RICHARD MOSTY: Also numerous
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1 summaries --

2 THE COURT: The noise has stopped now.

3 If you would start again, Mr. Mosty, please.

4 MR. RICHARD C. MOSTY: This is simply
5 with respect -- Mr. Hagler will handle another matter in
6 a second -- but this is strictly in respect to the FBI
7 agent.

8 And the proof we would offer and, of
9 course, a lot of it will speak for itself in the record,
10 but that he had in his file, and amongst the things that
11 he had relied upon were news reports from Dallas, from
12 Altoona, Pennsylvania.
13 He had numerous summaries of
14 witnesses, who, I believe, were probably conducted by
15 Bosillo as summaries of testimony, many of whom have not
16 testified, some of whom in the nurses, regarding the
17 nurses, in my judgment, also provided exculpatory
18 material, that had never been provided to us, in terms of
19 witnesses that the State had interviewed, mainly in
20 September, if I recall, but the dates will speak for
21 themselves.

22 And there were a number of other
23 records that have not been introduced into the records.
24 And again, those will speak for themselves. But we would
25 have pointed out all of those things.

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1 And also, as a second part of this,
2 the Court denied us the opportunity to, on our behalf, to
3 present information to the FBI agent for him to consider,
4 thereby, making all of his testimony a one-sided version
5 of what the State had given him. Which denies us, of
6 course, our right to confront and cross examine the
7 witnesses.

8 And, as a third part, of course, the
9 Court has denied us the opportunity to put those
10 psychiatric records of the witness Jovell, into evidence,

11 and all of those would be part of, going back to, and
12 incorporating our original Daubert objection, as to this
13 witness testifying, and would remind the Court, on the
14 many occasions where the witness, for instance, turned to
15 the jury and said things like, "Why wasn't there enough
16 force?" or "I believe that this is a contradiction."
17 Those are the things that are
18 specifically prohibited by Daubert, and all of his
19 testimony amounted to, was putting someone under oath,
20 and delivering the State's final argument.
21 And for all of those reasons, we
22 reincorporate our Daubert objection, and we request the
23 Court to instruct the jury to disregard all of his
24 testimony.

25

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1 THE COURT: Thank you.

2 MR. RICHARD C. MOSTY: Is that request
3 denied?

4 THE COURT: That request will be
5 denied.

6 MR. RICHARD C. MOSTY: And we would
7 move for a mistrial.

8 THE COURT: Motion for mistrial
9 denied.

10 And of course, the Court will also
11 note that all -- as regards to Mr. Brantley, all
12 questions asked to Mr. Brantley were referred to exhibits
13 already in evidence, or placed in evidence during his
14 testimony.

15 MR. RICHARD C. MOSTY: I'm sorry. I
16 didn't understand that.

17 THE COURT: All questions asked to Mr.
18 Brantley when we were referring to various exhibits and
19 things referred were -- he was questioned on exhibits
20 already in evidence or from exhibits already in evidence,
21 or exhibits placed in evidence during his testimony.

22 MR. RICHARD C. MOSTY: And of course,
23 the Court will also note on the record that he said that
24 he relied on a number of documents that are not in the
25 record.

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1 THE COURT: His testimony will be
2 noted, and all of his testimony will be in the record.

3 All right.

4 Now we have covered Mr. Mosty. Mr.

5 Hagler.

6 MR. JOHN HAGLER: Thank you, your

7 Honor. I have just one brief objection.

8 THE COURT: Oh, okay. Go ahead.

9 MR. JOHN HAGLER: Your Honor, again,

10 we have already objected and of course certainly

11 understand the Court's ruling, however, after

12 reviewing -- after hearing this witness' testimony, it's

13 pretty apparent that there is only one conclusion that

14 can be drawn from his testimony, and that is the

15 conclusion, at least from his standpoint, that the

16 defendant committed the offense.

17 Now, regardless of what his testimony

18 was, where he said he never testified that the defendant

19 did it, and although admittedly maybe he never did make

20 that specific statement, it is pretty apparent, that the

21 sum total of all his testimony, is that the defendant did

22 commit the offense.

23 And again, this total, the sum total

24 of his testimony constitutes a violation of 704. I

25 should say it goes beyond the scope of 704 in the fact

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1 that such testimony reaches the issue of ultimate guilt

2 or innocence of the defendant, and therefore, we would

3 move for a mistrial based on the admission into evidence

4 of that testimony based on the Fifth, Sixth and

5 Fourteenth Amendments.

6 THE COURT: All right. Motion for

7 mistrial denied. Anything else? Are we ready to bring

8 the jury in?

9 MR. GREG DAVIS: Yes, sir.

10 THE COURT: Just a moment.

11 MR. DOUGLAS MULDER: Judge?

12 THE COURT: Yes, sir.

13 MR. DOUGLAS MULDER: I assume they're

14 going to rest just as soon as the jury comes in, and

15 we're going to make a motion for a directed verdict,

16 which, in line with everything else you have done, I'm

17 sure you will deny it.

18 THE COURT: Well, we will certainly

19 hear the motion, Mr. Mulder.

20 MR. DOUGLAS MULDER: Well, are we

21 going to run the jury out twice or can we do it now?

22 THE COURT: Yes, we can do it right

23 now. Is that satisfactory?

24 MR. GREG DAVIS: Yes, sir, that is

25 fine.

1 THE COURT: All right. Go ahead with
2 your motion, Mr. Mulder.
3 MR. DOUGLAS MULDER: Well, we are
4 going to wait until they rest.
5 MR. GREG DAVIS: While we're here,
6 outside the presence of the jury, the State will announce
7 at this time, that it rests its case in chief.
8 THE COURT: All right. You will do
9 that again in front of the jury?
10 MR. GREG DAVIS: Yes, sir, I will.
11 THE COURT: And you are ready to go
12 forward?
13 MR. DOUGLAS MULDER: Yes, sir.
14 THE COURT: You can have your motion
15 now.
16 MR. JOHN HAGLER: Okay, your Honor.
17 With leave of the Court, before they rest in front of the
18 jury, your Honor, we would urge that a review of the
19 evidence by this Court, which is, obviously it has the
20 power to do in determining whether or not the State has
21 satisfied their burden of proof.
22 And we would urge, your Honor, that in
23 reviewing all of the evidence, the testimony and exhibits
24 and documentation, that the State has failed to carry its
25 burden of proof under Jackson_versus_Virginia.

1 In fact, in light of the fact that a
2 rational trier of the fact could not have found that the
3 defendant committed all of the elements, or any of the
4 elements alleged in the indictment.
5 And, based on the State's failure to
6 carry the burden under Jackson_versus_Virginia, we would
7 urge this Court to instruct a verdict of not guilty.
8 THE COURT: All right. Motion for
9 instructed verdict of not guilty is denied.
10 And if you will bring the jury in,
11 please.
12
13 (Whereupon, the jury
14 Was returned to the
15 Courtroom, and the
16 Proceedings were
17 Resumed on the record,
18 In open court, in the

19 Presence and hearing
20 Of the defendant,
21 As follows:)
22
23 THE COURT: All right. Be seated,
24 please. Let the record reflect that all parties in the
25 trial are present, and the jury is seated.
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1 Mr. Davis.
2 MR. GREG DAVIS: Yes, sir. May it
3 please the Court, your Honor, and ladies and gentlemen of
4 the jury, at this time the State of Texas rests its case
5 in chief.
6 THE COURT: All right. Ladies and
7 gentlemen, that's all the testimony you are going to be
8 hearing from the State, that is their case in chief.
9 Mr. Mulder, are you ready to go
10 forward?
11 MR. DOUGLAS MULDER: Yes, sir.
12 THE COURT: All right, sir.
13 MR. DOUGLAS MULDER: We will call
14 Sherry Moses, Mr. Biggerstaff.
15 THE COURT: Sherry who?
16 MR. DOUGLAS MULDER: Sherry Moses.
17 THE COURT: Sherry Moses, all right.
18 Ms. Moses, come on up. If you will raise your right
19 hand, please, ma'am.
20
21 (Whereupon, the witness
22 Was duly sworn by the
23 Court, to speak the truth,
24 The whole truth and
25 Nothing but the truth,
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1 After which, the
2 Proceedings were
3 Resumed as follows:)
4
5 THE COURT: Do you solemnly swear or
6 affirm that the testimony you are about to give will be
7 the truth, the whole truth, and nothing but the truth, so
8 help you God?
9 THE WITNESS: I do.
10 THE COURT: Okay. If you will just
11 come on up and have a seat right here, please.
12 All right. Ma'am, you are now under

13 the Rule of Evidence. What that simply means is this:
14 When you are not testifying, you have to remain outside
15 the courtroom. Do not talk about your testimony with
16 anybody who has testified. In other words, don't compare
17 it. However, you may talk to the attorneys for either
18 side. If someone tries to talk to you about your
19 testimony, please tell the attorney, whichever side who
20 called you. All right?

21 THE WITNESS: Okay.

22 THE COURT: Now, speak out in a loud
23 voice. If you will state your name and spell your last
24 name for the court reporter, please, ma'am.

25 THE WITNESS: Okay. Sherry Moses,
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1 M-O-S-E-S, S-H-E-R-R-Y.

2 THE COURT: Can you all hear this
3 witness?

4 THE JURY: Yes, sir.

5 THE COURT: All right. Go ahead. Mr.
6 Glover.

7

8

9 Whereupon,

10

11 **SHERRY MOSES,**

12

13 Was called as a witness, for the defense, having been
14 first duly sworn by the Court to speak the truth, the
15 whole truth, and nothing but the truth, testified in open
16 court, as follows:

17

18

19 DIRECT EXAMINATION

20

21 BY MR. CURTIS GLOVER:

22 Q. Now, Sherry, tell the jury where you
23 are from?

24 A. I'm from Pennsylvania.

25 Q. Okay. What town?

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1 A. Roaring Spring.

2 Q. Okay. And you know Darlie Routier?

3 A. Yes.

4 Q. How is it you know Darlie?

5 A. She is my niece.

6 Q. I see. How is that relationship?

7 A. I don't know what you mean.
8 Q. You're the sister of her mother; is
9 that right?
10 A. Yes. Um-hum. (Witness nodding head
11 affirmatively.)
12 Q. What is her mother's name?
13 A. Darlie Kee.
14 Q. Okay. She is named for her mother; is
15 that right?
16 A. Yes.
17 Q. Okay. What age difference between you
18 and Darlie, if you know?
19 A. I'm 40 and Darlie is 44.
20 Q. I'm not talking about this Darlie.

21 A. Oh, Darlie, I call her Darlie Lynn.
22 Q. Okay. Why don't we call her Darlie
23 Lynn?
24 A. Okay. She is 27 and I am 40.
25 Q. Okay. And, you live in Pennsylvania.
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1 What do you do there in Pennsylvania?
2 A. I help with my husband's business. He
3 has a flooring installation business and I home school my
4 children.
5 Q. Okay. How many kiddos do you have?
6 A. I have two.
7 Q. Okay. Boys, girls?
8 A. I have a daughter, 13, and a son, 7.
9 Q. Okay. You say you home school your
10 children. That means you teach them at home; is that
11 right?
12 A. Yes, I do.
13 Q. All right. Okay. Is Darlie Lynn
14 originally from Pennsylvania?
15 A. Yes, she is.
16 Q. Okay. Born there?
17 A. Yes.
18 Q. Okay. In the same neighborhood where
19 you live, that part of the country?
20 A. Yes. Um-hum. (Witness nodding head
21 affirmatively.)
22 Q. Did you know her as a small child?
23 A. Yes.
24 Q. Okay.
25 A. Yes, I was there when she was born.
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1 Q. Okay. And, I assume that at some
2 point in time she moved to Texas; is that right?
3 A. Yes. Um-hum. (Witness nodding head
4 affirmatively.)
5 Q. When would that have been, if you
6 know?
7 A. I think she was around 13.
8 Q. Okay. And where did she move to?
9 A. Well --
10 Q. Was it Lubbock or --
11 A. I'm not sure. They moved a couple
12 different places. There was Lubbock and Beaumont, at
13 different times.
14 Q. Okay. Let's kind of come up to the
15 present time and I'll ask you if over the past year or so
16 you have had occasion to visit with Darlie both here as
17 well as in Pennsylvania?
18 A. Yes, I have.
19 Q. Okay. Tell us about any trip to
20 Pennsylvania that she's made recently or in the past year
21 or so.
22 A. Okay. Her and Devon and Damon came up
23 in March of '95.
24 Q. Had Drake been born at that time?
25 A. No. She was pregnant with him at the
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1 time, but she didn't know it yet until she got home.
2 Q. Okay. And, during that visit up
3 there, did y'all get together and socialize?
4 A. Yeah.
5 Q. Tell the jury about the two boys.
6 What do you think about them at that time?
7 A. They were just precious, happy, little
8 boys that were just a joy to be with.
9 Q. Okay.
10 A. They were just happy because they
11 loved and just ornery little boys.
12 Q. Okay. Tell the jury about Darlie's
13 relationship with those little boys when you saw them
14 there.
15 A. Oh, she's just always such a gentle
16 mother, always very patient with them and just so
17 soft-spoken with them, even, you know, when they were
18 ornery or something, she would be just so gentle with
19 them. She never spanked them, just tell them to behave.
20 Q. Did she approach those boys in a
21 responsible manner?
22 A. Oh, yes, yes.

23 Q. Tell the jury about her demeanor, her
24 behavior as she was there. Did you see anything unusual
25 about her as she was there visiting in your home? And I
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1 think, what did you say, in March of '95?

2 A. Yes.

3 Q. Okay. These little boys were killed
4 in June of '96. That would have been, what,
5 approximately a year before that?

6 A. Yes.

7 Q. Okay.

8 A. Um-hum. (Witness nodding head
9 affirmatively.)

10 Q. Okay. Did you find anything unusual
11 about her relationship with those little boys as they
12 visited there in your home?

13 A. No, nothing unusual, just that she was
14 a wonderful mother.

15 Q. Okay.

16 A. I just thought her patience was
17 incredible.

18 Q. Okay. Did you have occasion then to
19 visit with her again in November of '95?

20 A. Yes, my daughter and I came down for
21 Thanksgiving.

22 Q. Okay. You came to the Dallas area?

23 A. Um-hum. (Witness nodding head
24 affirmatively.) Yes.

25 Q. Okay. And, that would be your
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1 daughter, what is her name?

2 A. Shana.

3 Q. Shana?

4 A. Um-hum. (Witness nodding head
5 affirmatively.)

6 Q. Where did you stay at the time that
7 you came in November of '95?

8 A. Mostly, I stayed with Darlie Kee, my
9 sister. But we had time that we stayed at Darlie Lynn's
10 house, too.

11 Q. Okay. If you would, tell the jury
12 about Darlie Lynn's household and how things went there
13 in her household when you visited there with her?

14 A. Well, it was just a special, joyous
15 time, being together because we don't get to see each
16 other that often and, just --

17 Q. Did she make -- tell the jury what she
18 did with her house on holiday periods.

19 A. Oh, she always had her house
20 beautiful. She loves beautiful things and she decorated
21 it really nice and put a lot of effort into it.

22 Q. Did she, by virtue of the effort that
23 you saw her exude there in your presence, by virtue of
24 the way she decorated, did that look to you like a person
25 who was down and out or depressed?

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1 A. No, not at all.

2 Q. Did she express anything to you that
3 indicated to you that she was suffering from any kind of
4 blues?

5 A. No.

6 Q. Okay.

7 A. No, not at all.

8 Q. I believe you told the jury it was a
9 joyous time?

10 A. Yes, it was, very.

11 Q. Okay. Did you then have occasion to
12 come back when the little boys were killed?

13 A. Yes.

14 Q. Okay.

15 A. We came back.

16 Q. When did you hear about this?

17 A. We heard just a little bit after it
18 happened. Darlie Kee called us on the phone.

19 She called my sister, LuAnn, first.

20 It was about 3:30 Dallas time. And she was just
21 hysterical.

22 And then my sister LuAnn called me,
23 and we just couldn't believe that this had happened. And
24 then I got a call from Darlie Kee, and she was just so
25 hysterical, and just screaming and crying, and just

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1 asking us to pray, that she thought Darlie Lynn might die
2 too.

3 And we just -- it was just so
4 unbelievable, it just happened.

5 Q. Okay. Did y'all then pack up and come
6 to Dallas?

7 A. Yes, sir. We just waited until we
8 could make the arrangements. We were on the phone all
9 day between Darlie, and Darlie was trying to arrange for
10 us to get airplane tickets transferred that Darlie Lynn

11 had had.

12 They had had tickets to come up to

13 visit us. We were planning a 50th anniversary for my

14 parents. And they changed the tickets over to our family

15 so that we could come down.

16 Q. Okay. Explain that to us. You say

17 they were planning to come up to a family reunion there

18 in Pennsylvania?

19 A. Yes.

20 Q. When was that to have been?

21 A. It was scheduled for June 15th.

22 Q. Okay.

23 A. We had been planning since January of

24 '96.

25 Q. And the little boys were killed on the

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1 6th of June; is that right?

2 A. Yes.

3 Q. So just shortly after that, they were

4 due, all of them, to go to Pennsylvania?

5 A. Yes, they were due to come in on the

6 14th.

7 Q. And had their tickets all ready to go?

8 A. Yes. Um-hum. (Witness nodding head

9 affirmatively.)

10 Q. Okay. They had Drake by then, did

11 they not?

12 A. Yes.

13 Q. Do you recall when Drake was born?

14 A. Yes, October 18, 1995.

15 Q. Okay. He was born then right before

16 you came down for the Thanksgiving visit; is that right?

17 A. Yes, he was exactly a month old when

18 we got there.

19 Q. Okay. So you had a chance to visit

20 with the newborn with his mom?

21 A. Yes.

22 Q. How was that?

23 A. Just very special, like all babies,

24 and we just enjoyed him a great deal, all of us.

25 Q. Was he special to her?

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1 A. Very special.

2 Q. Okay.

3 A. All of her babies were special to her.

4 Q. Getting to the events around this

5 awful thing in June, when did you have your occasion,
6 first occasion to see Darlie when you came to Dallas?

7 A. Oh, we came to the hospital shortly
8 after we flew into Dallas. It was a little before
9 midnight on Friday that we got there and we went into her
10 hospital room.

11 Q. Okay. Who was with you?

12 A. I went in with my sister LuAnn and
13 Darin was in the room and Dana and her mother, Darlie.

14 Q. Okay. Did you notice her condition as
15 she was there in the hospital bed?

16 A. Yes, I did. I sat on the bed with
17 her.

18 Q. Okay. Describe what she was doing, if
19 anything.

20 A. She was sort of numb when we first got
21 there, but when we started talking about what happened,
22 she started crying and just in agony.

23 Q. Do you know a false cry from a real
24 cry?

25 A. Yes, I do.

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1 Q. What kind of a cry was this?

2 A. It was a very deep cry.

3 Q. Did she have pictures of the boys
4 there?

5 A. I can't recall if she had them right
6 there at that time.

7 Q. Okay. Did you have occasion to see
8 her injuries?

9 A. Yes, I did.

10 Q. Describe those to the jury.

11 A. Well, naturally, I looked at her neck
12 first, you know, but her arm was bandaged and the bandage
13 was loose and she kept adjusting it and pulling it up,
14 and I noticed bruising on her arm, that was just covering
15 her arm.

16 Q. Do you know a bruise when you see it?

17 A. Yes, I do.

18 Q. You have lived 40-some-odd years, you
19 know a bruise when you see one?

20 A. Yes.

21 Q. Was her arm bruised?

22 A. Yes, it was.

23 Q. Any doubt in your mind about that?

24 A. No doubt at all.

25 Q. Okay. I guess you had occasion then

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1 to go to the funeral and the viewing of these little
2 boys?

3 A. Yes, I did.

4 Q. Okay. I believe the viewing was on
5 the 8th of June; is that right?

6 A. Yes, yes.

7 Q. There were a lot of people there?

8 A. Yes, a lot.

9 Q. Okay. Would you describe what you saw
10 concerning Darlie at that time, Darlie Lynn?

11 A. At the viewing?

12 Q. Yes.

13 A. Well, she got there late. We had all
14 been there a couple of hours before her because she was
15 with the police at the time.

16 Q. She was -- did she ever indicate to
17 you that she was anything less than cooperative with the
18 police?

19 A. Not at all. I thought she was very
20 cooperative. She just gave all -- every information she
21 could give. She just wanted to catch the man that did
22 this.

23 Q. Did she tell you that?

24 A. Yes, she did.

25 Q. Okay. The police then kept her for
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1 two hours, even through the viewing?

2 A. Well, she was there for like six or
3 seven hours with the police that day. She was two hours
4 late to the viewing.

5 Q. Okay. And how many people were at the
6 viewing, if you know, approximately?

7 A. There were probably several hundred.

8 Q. Okay. If you would, would you tell
9 the jury whether or not you had occasion to see her arms
10 there at this awful event?

11 A. Yes, I did.

12 Q. Okay.

13 A. She was wearing a short sleeve dress
14 for the viewing, and it was very visible, and the
15 bruising was really getting dark there.

16 Q. Did you have occasion to be around her
17 when she was viewing these two children?

18 A. Well, they took her in privately with
19 the immediate family and closed the doors. And I was

20 standing outside of the doors and I could hear her. I
21 could hear her screaming when she saw her boys, and she
22 was damning the person who did this to her babies. And
23 it just tore our hearts out, we could feel her pain.

24 Q. Did you remain in the Dallas area for
25 a time after this, Sherry?

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1 A. Yes, I did. We stayed for a week.

2 Q. Okay. Did you have occasion to go to
3 a prayer service at the grave site?

4 A. Yes, we did. It was the afternoon
5 before we left Dallas that we had the prayer service and
6 the birthday celebration for Devon.

7 Q. Okay. Describe the prayer service.

8 A. It was just -- we had prepared to
9 go -- the children had made cards up and plaques and
10 stuff, and they had gotten balloons, and just wanted to
11 make the day special to honor Devon, because he was
12 looking forward to his birthday so much, and they had
13 already had so much prepared for it.

14 And their birthdays were so special to
15 them, and Darlie always made them special to them. And,
16 we just gathered around and we wished him happy birthday,
17 and sang happy birthday to him and we just held hands and
18 prayed.

19 Q. Okay. I believe there was a prayer
20 service actually before the birthday party; is that
21 right?

22 A. Yes. This was sort of a birthday
23 celebration for just the family that was leaving that
24 day, that was flying back to Pennsylvania. And it was a
25 little more private, and then she said she was going to

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1 have a celebration for the children, to -- she just
2 thought it would be nice to just make it -- something
3 joyous out of it, you know, that because they had already
4 been prepared for the party, that she just thought it
5 would be something nice to do for Devon's friends.

6 Q. What did you think about that?

7 A. I didn't think anything of it. I just
8 thought that it was just Darlie Lynn's touch. That is
9 the way she always did things. She always made
10 everything special and beautiful for those boys. And it
11 was just, to me, it was just a final tribute to Devon.

12 Q. Okay.

13

14 MR. CURTIS GLOVER: Pass the witness.

15

16

17 CROSS EXAMINATION

18

19 BY MR. GREG DAVIS:

20 Q. Ms. Moses, my name is Greg Davis. I

21 don't believe we have had the opportunity to speak

22 before, have we?

23 A. No.

24 Q. Ms. Moses, first of all --

25

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1 MR. GREG DAVIS: Can I have a copy of

2 her written statement, her notes that she has given you

3 please?

4 MR. DOUGLAS MULDER: We didn't take

5 any statement from her.

6

7

8 BY MR. GREG DAVIS:

9 Q. Okay. So, I take it, prior to your

10 testifying today, that you have talked with Mr. Glover

11 about your testimony?

12 A. Yes, I did.

13 Q. How about the other four attorneys

14 over here, have you spoken with them also?

15 A. Preston Douglass was there.

16 Q. Okay. How many times have you met

17 with them?

18 A. Just once, briefly.

19 Q. Okay. Now, you have been in Kerrville

20 since when?

21 A. I'm trying to think. My mind is kind

22 of -- we got down here on the 11th.

23 Q. You got down here on January 11th, and

24 since that date, where have you been staying?

25 A. I have been staying at Inn of the

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1 Hills.

2 Q. How many other of the Routier family

3 are staying at the Inn of the Hills?

4 A. My sister Darlie is there and her

5 daughters, Dana and Danielle, my sister LuAnn, and my

6 daughter Shana.

7 Q. All right. And certainly, you have

8 had an opportunity to talk to them on a regular basis
9 since the 11th, haven't you?

10 A. Yes.

11 Q. Okay. Matter of fact, there are still
12 members of the Routier family inside the courtroom today,
13 aren't there?

14 A. Yes.

15 Q. Okay. This second row back here to my
16 left, are those members of the Routier family also?

17 A. A few, not many.

18 Q. If I could, the young lady here, the
19 blonde, with the red sweater, you recognize her, don't
20 you?

21 A. Yes.

22 Q. Okay. The woman who has been taking
23 notes throughout the trial?

24 A. Yes.

25 Q. And, who is that?

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1 A. Darin Routier's aunt.

2 Q. What is her name?

3 A. Sandy.

4 Q. Okay. And, certainly, since the 11th,
5 you have seen Sandy here in Kerrville, haven't you?

6 A. Yes.

7 Q. And I guess she has told you she has
8 been taking notes every day of the testimony, correct?

9 A. Yes, I am aware of that, yeah.

10 Q. Okay. And, Ms. Moses, isn't it true
11 that you are very much aware of just about every bit of
12 testimony that has been given in this case up to this
13 date?

14 A. Well, I have known everything before
15 this, because I have kept in touch with my sister from
16 the time this happened.

17 Q. Okay. My question though, Ms. Moses,
18 was, not what you knew before the trial began, but since
19 the trial began.

20 You have talked with the family, you
21 all have discussed the testimony, and as a matter of

22 fact, you have talked with Sandy, and she has been in
23 this courtroom taking notes every day, so you know what's
24 been going on in here, don't you?

25 A. Pretty much, yeah.

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1 Q. Okay. Did any of these attorneys ever
2 tell you about the Rule of Evidence where witnesses are
3 not supposed to discuss what is going on in this
4 courtroom?

5 A. I have not talked to the attorneys
6 until just briefly last night.

7 Q. So, they didn't tell you that it would
8 be improper for you to be talking with people who have
9 been inside this courtroom, discussing testimony? They
10 didn't -- they never went over that with you?

11 A. Not really, no.

12 Q. Certainly, it's very advantageous for
13 you as a witness, isn't it, to know what's been going on
14 outside of your presence. That helps you, doesn't it?

15

16 MR. DOUGLAS MULDER: Judge, there
17 hasn't been anybody testifying what went on back in
18 Pennsylvania here that I am aware of.

19 MR. GREG DAVIS: Is that an objection?

20 THE COURT: Well, is that an

21 objection?

22 MR. DOUGLAS MULDER: Yes, sir.

23 THE COURT: Okay. Overruled. Go

24 ahead.

25

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1 BY MR. GREG DAVIS:

2 Q. So you know what we have been hearing
3 in here, and you know that there has been a lot of
4 testimony about bruises to the right arm of Darlie Lynn
5 Routier, don't you?

6 A. Yes, I do.

7 Q. And, ma'am, just your own -- when you
8 came down here last year in June, I'm sure that when you
9 saw those bruises, you made some comments to the nurses
10 or doctors or someone in that hospital about them caring
11 for those bruises, that were so evident to you, didn't
12 you?

13 A. No, I did not, because I was at the
14 hospital around midnight, and I was only there a few
15 minutes.

16 Q. So, that day, those bruises were not
17 important enough for you to go up there to the nurse's
18 desk and say, "Listen. Would you please come down here
19 and look at these bruises because they are large enough,
20 I'm concerned about them." You didn't do that that day,
21 did you?

22 A. No, it's not my place to.

23 Q. And yet, some seven months later, you
24 are able to recall in great detail what those bruises
25 looked like?

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1 A. Yes, I am because they were the worst
2 bruises I have ever seen.

3 Q. The worse you have ever seen and you
4 never even told a nurse or a doctor about them or
5 inquired about them, did you?

6 A. They were just beginning the night
7 that I saw her.

8 Q. Ma'am, could you please answer my
9 question. Did you inquire, talk with medical personnel
10 about the bruises, the worst you had ever seen in your
11 life, while you were at Baylor Hospital?

12 A. No, I did not, because they were not
13 the worst I had seen at the time.

14 Q. Okay. Now, Ms. Moses, when you talked
15 with the defendant in this case, she described what
16 happened to her, didn't she?

17 A. Yes, she did.

18 Q. Okay. And, what did she say happened
19 to her that evening?

20 A. Well, there's a lot she can't
21 remember. She was in a lot of shock at the time, and
22 there's still a lot she can't recall.

23 Q. Well, I'm just talking about the
24 things that she could recall.

25 A. Well, she just said that she had been
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1 sleeping downstairs with Devon and Damon, and that she
2 woke up with -- Damon had nudged her awake.

3 Q. Okay.

4 A. And she just saw this man leaving.

5 And then she started to follow him, and she realized that
6 the room she was in, the TV was on and there was a little
7 bit of light, but as she was getting further out into the
8 kitchen near the utility room, it was darker and she just
9 stopped and thought, he could still be out there, you
10 know, I better not go any further.

11 Q. Okay.

12 A. And she said about -- she wasn't even
13 aware that she was wounded until she had turned on the
14 lights and she saw her boys.

15 Q. Okay. So as I understand, what she
16 told you, and that is what you have to go on because you

17 weren't there that day, were you?

18 A. No, I was not.

19 Q. Okay. And, so, according to what the
20 defendant told you then, when she woke up, this man
21 started to walk away from her; is that right?

22 A. Yes, or was moving away, yes.

23 Q. Right. So she wasn't, according to
24 her story that she gave you anyway, this man did not
25 attack her after she woke up and saw him, did she?

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1 A. She just had like a sensation of a
2 struggle, but she had been in a deep sleep.

3 Q. Um-hum. (Attorney nodding head
4 affirmatively.)

5 A. And I don't think she is aware of what
6 all happened to her.

7 Q. Well, certainly she didn't see this
8 intruder or this other person attack her two children
9 after she saw the man, did she?

10 A. We don't know if she saw that because
11 there is so much she doesn't remember.

12 Q. I'm just going on the version that she
13 gave you. In the version that she gave you, she does not
14 have this intruder attacking her children after she sees
15 the man, does she?

16 A. No.

17 Q. And in the version that she gave you,
18 she doesn't have the attacker attacking her after she
19 sees the man either, does she?

20 A. No.

21 Q. And he just simply leaves, she starts
22 to follow, then she stops and realizes that she has been
23 injured, correct?

24 A. Yes.

25 Q. Now, she did tell you though that she
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1 could recognize this man, didn't she?

2 A. No, she didn't.

3 Q. She didn't tell you that?

4 A. No, she just had a vague description
5 of him, that she didn't see him very well.

6 Q. All right. You recognize this
7 gentleman right back here in the front row, Mr. Bosillo,
8 don't you?

9 A. Yes, I do.

10 Q. And do you recall that Mr. Bosillo

11 came to talk with you there in Pennsylvania, didn't he?

12 A. Yes.

13 Q. And you were kind enough -- was it on

14 July the 4th?

15 A. Yes.

16 Q. You were kind enough to sit down and

17 talk with him for a little bit, weren't you?

18 A. Um-hum. (Witness nodding head

19 affirmatively.)

20 Q. Okay. And, isn't it true that when

21 Mr. Bosillo was talking with you, Ms. Moses, that you

22 told him that Darlie Lynn, the defendant in this case,

23 had told you that she could identify the person that did

24 this to her, didn't you?

25 A. No, I did not say that.

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1 Q. Were you at the hospital each day that

2 the defendant was in Baylor?

3 A. No, I just got there midnight Friday

4 and she was released the next day.

5 Q. Okay. So, you would not have been

6 there the next day when Drake was brought in there to her

7 and she refused to hold him. You were not there for

8 that?

9 A. No, I was not.

10 Q. Okay. I know that -- I have in my

11 notes here that she came and visited you in March of '95?

12 A. Yes.

13 Q. Then you and your family came down

14 here in November of '95; is that right?

15 A. Yes, my daughter and I did.

16 Q. All right. When you came down here in

17 November, things looked real good, didn't they, inside

18 the house? You didn't see any problems or any troubles;

19 is that right?

20 A. No, none.

21 Q. Wouldn't you agree with me, Ms. Moses,

22 that a lot of times families are going to keep their

23 problems to themselves and they may not share that with

24 people outside the house?

25 A. Not particularly with our family.

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1 We're a very close family and we share our problems.

2 Q. Okay. When -- just how quickly after

3 she attempted suicide in May, did someone call you from

4 that house to tell you that she had attempted suicide?

5

6 MR. DOUGLAS MULDER: Judge, there was
7 not any suicide attempt.

8 THE COURT: Well, if she knows the
9 answer, I'll let her answer it.

10 MR. CURTIS GLOVER: He is assuming a
11 fact not in evidence, Judge, and we would object to it.

12 THE COURT: I'll sustain the
13 objection. Let's ask the next question.

14 MR. GREG DAVIS: All right. Well, I
15 will ask it this way.

16 THE COURT: Rephrase your question.
17

18 BY MR. GREG DAVIS:

19 Q. Ms. Moses, when Mr. Bosillo came and
20 talked to you on July the 4th of last year, you and Mr.
21 Bosillo described this incident that occurred in May,
22 didn't you? You know what I am talking about, don't you?

23 A. No.

24 Q. Well, you are aware of a journal,
25 aren't you?

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1 A. I was aware a journal after it came
2 out in the newspapers.

3 Q. You mean that -- and that came out,
4 what, sometime in June?

5 A. Probably. I don't know the date.

6 Q. Well, you weren't made aware of any
7 journal entries by Ms. Routier at the time -- at or near
8 the time that she made these journal entries?

9 A. No.

10 Q. Okay. So that, apparently, that was
11 something that she was keeping to herself?

12 A. No, I do recall a mention of it while
13 I was there in June, the week I stayed there with them.

14 Q. Um-hum. (Attorney nodding head
15 affirmatively.)

16 Well, did she tell you what the entry
17 was, the last entry in that journal?

18 A. No.

19 Q. She didn't share that with you?

20 A. Not specifically. It was just --
21 people were talking about a journal or something and --

22 Q. Well, what did she share with you
23 about that journal entry?

24 A. We didn't talk one on one about the
25 journal.

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1 Q. So I guess the answer to the question
2 would be, she didn't share the contents of the journal
3 with you; is that right?
4 A. No.
5 Q. So whatever the content is, either
6 good or bad, I mean, she didn't go into that with you,
7 did she?
8 A. No.
9 Q. You said something that I noted there
10 in your direct examination, "She loved beautiful things."
11 She did, didn't she?
12 A. Yes, she did.
13 Q. There was a lot of money put into that
14 house out there, wasn't there?
15 A. Yes, there was.
16 Q. A lot of beautiful things in there?
17 A. Yes.
18 Q. At the viewing, Ms. Moses, on June the
19 8th?
20 A. Yes.
21 Q. Were you close enough to hear, what
22 words, if any, that the defendant uttered to the two
23 deceased children in the casket?
24 A. No. At the time I went in, it was
25 when other people were coming in and she was talking to
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1 them.
2 Q. So if she said something softly to the
3 two deceased children, you weren't in a position to hear
4 that; is that right?
5 A. No.
6 Q. You told us about the birthday party
7 on June the 14th. And have you seen the videotape of
8 that?
9 A. Yes, I have.
10 Q. Tell us about the birthday party that
11 happened on June the 9th at Darlie Kee's house.
12 A. She didn't have a birthday party.
13 Q. There wasn't another party after the
14 funeral on June the 9th?
15 A. No.
16 Q. And, would it be fair to say, Ms.
17 Moses, that your exposure to the defendant and her
18 children was pretty limited. I mean, you live in
19 Pennsylvania so you got to see them when they came to

20 Pennsylvania, and then you got to see them when you came
21 down in November; is that right?

22 A. Yes.

23 Q. Would you agree with me that it's
24 possible that the defendant behaved differently with her
25 children when you weren't around her?

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1 A. No, I don't believe that.

2 Q. You don't think that is even possible?

3 A. No, I don't, because I know her very
4 well.

5 Q. So, just no possibility that when you
6 were up there in Pennsylvania, that this woman over here
7 might just possibly treat her children just a little bit
8 differently than you had seen her treat them?

9 A. No.

10 Q. As I recall your testimony was, she
11 was always very softspoken with the kids; is that right?

12 A. Yes.

13 Q. Certainly, you wouldn't expect her to
14 be yelling or cursing at her children, that would be very
15 much out of character with what you saw during your
16 visits with her; is that right?

17 A. Well, I never saw that, no.

18 Q. That would really surprise you,
19 wouldn't it?

20 A. Well, not really. We all have
21 children, and we all tend to do that once in a while.

22 Q. Well, I'm just trying to understand.

23 You say she is softspoken, she is always softspoken.

24 Do you think maybe now, upon
25 reflection, maybe that there is a possibility that maybe

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1 she does talk to them a little bit differently than you
2 saw her talking to them?

3 A. Not by very much at all.

4

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

7 MR. CURTIS GLOVER: Nothing further,
8 Judge.

9 THE COURT: You may step down, ma'am.

10 Remember, ma'am, you are under the Rule of Evidence. Do

11 not discuss or talk to anybody. Do not read her notes

12 everyday. Is that clear?

13 THE WITNESS: Okay.

14 THE COURT: Thank you.
15 Your next witness.
16 MR. S. PRESTON DOUGLASS, JR.: David
17 Rogers.
18 THE COURT: Raise your right hand,
19 please.
20
21 (Whereupon, the witness
22 Was duly sworn by the
23 Court, to speak the truth,
24 The whole truth and
25 Nothing but the truth,
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1 After which, the
2 Proceedings were
3 Resumed as follows:)
4
5 THE COURT: Do you solemnly swear or
6 affirm that the testimony you are about to give will be
7 the truth, the whole truth, and nothing but the truth, so
8 help you God?
9 THE WITNESS: Yes, I do.
10 THE COURT: Have a seat right here,
11 please. You are under the Rule of Evidence. What that
12 simply means is when you -- do not -- when you are not
13 testifying you have to remain outside the courtroom. Do
14 not talk about your testimony with anybody who has
15 testified. In other words, don't compare it. Is that
16 clear?
17 THE WITNESS: Yes, sir.
18 THE COURT: You may talk to the
19 attorneys for either side. If someone tries to talk to
20 you about your testimony, please tell the attorney for
21 the side who called you.
22 THE WITNESS: Okay.
23 THE COURT: Fair enough?
24 THE WITNESS: Sure.
25 THE COURT: All right. Speak loudly
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1 and spell your last name for the court reporter.
2 Go ahead, please.
3
4
5 Whereupon,
6
7 **DAVID ROGERS,**

8

9 was called as a witness, for the Defense, having been
10 first duly sworn by the Court to speak the truth, the
11 whole truth, and nothing but the truth, testified in open
12 court, as follows:

13

14

15 DIRECT EXAMINATION

16

17 BY MR. S. PRESTON DOUGLASS, JR.:

18 A. Mr. Rogers, would you tell the jury

19 what you do for a living?

20

21 THE COURT: State your name and spell

22 the last name for the court reporter.

23 THE WITNESS: I'm sorry. That's David

24 Rogers, R-O-G-E-R-S. I am the pastor of Shepherd's Heart

25 Fellowship Church in Mesquite, Texas.

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1

2 BY MR. S. PRESTON DOUGLASS, JR.:

3 Q. And how long have you been the pastor

4 there at that church in Mesquite?

5 A. Ten and a half years.

6 Q. Before that time, had you been a

7 pastor at another church?

8 A. Yes, I pastored three other churches

9 besides that.

10 Q. Where were they located?

11 A. One near Mount Vernon, Texas, and two

12 in the Tyler, Texas area.

13 Q. How many years total have you been in

14 the ministry?

15 A. In the pastorate about 12 years and in

16 the ministry, about 20.

17 Q. Okay. Are you married?

18 A. Yes, I am.

19 Q. Do you have children?

20 A. Yes, I have two.

21 Q. How many children do you have?

22 A. Two.

23 Q. What are the children's ages?

24 A. Fifteen and seven.

25 Q. Okay. How many years you been

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1 married?

2 A. Almost 22.

3 Q. All right. Now, I want to direct your

4 attention to June of 1996. I want to ask you if you were

5 requested to take part and officiate the burial service

6 for Damon and Devon?

7 A. Yes, I was.

8 Q. Now, prior to that time, had you known

9 Darlie Routier?

10 A. No, I had not.

11 Q. Had you met Darin Routier?

12 A. Yes, I had.

13 Q. Would you tell the members of the jury

14 how you had met Darin?

15 A. Darin's cousin is a good friend of

16 mine and also a member of our church. And I had met

17 Darin on two or three occasions at his cousin's home.

18 Q. So, I guess the obvious is that Darin

19 and Darlie were not members of your church; is that

20 right?

21 A. That's correct.

22 Q. You had not been to their home or

23 spent any time with them.

24 A. No, I had not.

25 Q. And you had not met the children prior

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1 to that time?

2 A. No, I had not.

3 Q. Okay. Now, when, to the best of your

4 recollection, were you approached, and I am talking about

5 a date, about officiating with the funeral? Or, let me

6 back up, was that the first time you were approached?

7 A. Well, approached --

8 Q. How did you find out about what

9 happened?

10 A. Darin's cousin called me about 4:00

11 o'clock in the morning, 4:00 A.M., the morning of the

12 murders, and told me of the murders and asked us to begin

13 to pray for the family.

14 We have a group of people at our

15 church that pray for all kinds of needs, and so we

16 contacted those people and we began to pray for the loss,

17 and the needs of the family.

18 Q. Okay. Obviously, at that time you

19 knew Darin but you had not met Darlie?

20 A. That's correct.

21 Q. Okay. And then, what was the next

22 contact you had with anybody about this matter?

23 A. Well, I went to the hospital that
24 morning. I guess I got to the hospital around 10:00
25 o'clock. I think it was, if I remember right.
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1 I visited with family members and
2 prayed with them and just offered to help in any way we
3 could.

4 Q. Okay. Did you talk to Darlie on that
5 visit?

6 A. No, I did not.

7 Q. Did you ever visit with Darlie Routier
8 while she was in the hospital?

9 A. No, I did not.

10 Q. All right. After you went to the
11 hospital, and you visited with the family --

12 A. Um-hum. (Witness nodding head
13 affirmatively.)

14 Q. -- I'm assuming you spoke with Darin?

15 A. Yes, I did, um-hum. (Witness nodding
16 head affirmatively.)

17 Q. And did Darin pray with you on that
18 day?

19 A. Yes, we did.

20 Q. Now, for purposes of the jury
21 understanding, was there a network of family support for
22 Darlie and Darin?

23 A. At the hospital?

24 Q. Yes.

25 A. Oh, yes, there was a tremendous amount
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1 of support.

2 Q. All right. And obviously, all of
3 these people are deeply affected by what happened?

4 A. Yes.

5 Q. And they were concerned for Darlie?

6 A. Yes.

7 Q. And they were concerned for Darin; is
8 that right?

9 A. Yes.

10 Q. Now, what, if you will, jump ahead a
11 little bit, the next role that you took in this story is
12 what day?

13 A. Well, the following -- I think it was
14 the following day which, I guess, would have been on
15 Friday, Darin's cousin called me and said Darin had asked
16 him to contact me and see if I would be willing to

17 preside at the funerals.

18 Q. Now, obviously, you agreed?

19 A. Yes.

20 Q. And what after that?

21 A. I visited the hospital again that day,

22 on Friday, again, met with family members, prayed with

23 them, offered to help in any way we could.

24 Q. Would you go by yourself or with your

25 wife or how did that work?

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1 A. At the hospital I went by myself,

2 um-hum. (Witness nodding head affirmatively.)

3 Q. And, when was the first time that you

4 met Darlie Routier?

5 A. When -- the day Darlie was released

6 from the hospital, which was on Saturday, the boys'

7 bodies were prepared at the funeral home there in

8 Rockwall, and we were waiting there for the police to

9 bring her from the hospital to the funeral homes -- to

10 the funeral home for the viewing of the bodies.

11 I was waiting in the back of the

12 funeral home in the private family room entrance with,

13 her -- Darin's cousin, and one of the funeral directors,

14 one of the funeral home employees.

15 The police officers brought them to

16 the back of the funeral home, and entered through the

17 private entrance back there, and they came into the

18 private family room, and that is the first time I met

19 Darlie.

20 Q. And who was Darlie with at the time

21 she arrived for the viewing?

22 A. She was with her husband Darin, and

23 the two police officers from Rowlett, they introduced

24 themselves to me as Detective Patterson and Frosch or

25 something like that.

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1 Q. And did you get the impression that

2 those detectives had been escorting her or shepherding

3 her around or something?

4 A. Well, I mean, they said they picked

5 her up at the hospital and brought her there for the

6 viewing. Although, there was a long delay because they

7 had taken her by the police station.

8 Evidently, there had been several

9 hours of questioning, so we were there for quite a long

10 time waiting.

11 Q. Do you have any idea that you could
12 tell the jury about when you arrived at the funeral home
13 on that day?

14 A. It seems like to me that it was
15 probably late afternoon, maybe five o'clock in the
16 afternoon, if I remember correctly.

17 Q. Now, is that when you arrived or when
18 Darlie arrived?

19 A. That is when I arrived, I think.

20 Q. Okay.

21 A. I think Darlie arrived a couple of
22 hours after I arrived.

23 Q. All right.

24 A. If I remember correctly. I could have
25 the times wrong, but I was there for a couple of hours
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1 before she was.

2 Q. That is the best you recollect?

3 A. Yes. Um-hum. (Witness nodding head
4 affirmatively.)

5 Q. All right. If you would, would you
6 walk the jury through what happened next?

7 A. Well, the police officers pulled into
8 the private entrance and she and Darin got out of the
9 back seat of the car and we held the door open for them
10 to come into the family room, and we stood there, Darin's
11 cousin on one side of them and me on the other side.
12 And we laid our hands on them and we
13 prayed for them, prayed God's mercy upon them and His
14 peace upon them and His healing, and just talked with
15 them for a minute before they went in to view the boys'
16 bodies, and what they would see when they went in,
17 because we had already gone in and looked at the boys'
18 bodies, and so we knew what they would see when they went
19 in.

20 Q. All right. Mr. Rogers, over a period
21 of your career, I believe you said some 20 years, do you
22 have any idea how many funerals or memorial services you
23 may have taken part in during that time?

24 A. Dozens and dozens. I couldn't tell
25 you, lots.

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1 Q. And, is it a regular part of your
2 duties and your vocation to take part in funerals and
3 officiate at funerals?

4 A. Sure. Um-hum. (Witness nodding head

5 affirmatively.)

6 Q. Do you have any idea how many you may
7 do in a month?

8 A. Well, it's hard to say because the
9 church that we're in now is a very small congregation so
10 I don't do as many now as I did several years ago when I
11 was in larger congregations. So, I couldn't really give
12 you a number.

13 Q. All right. Have you come into a
14 number of people who were in the same situation that
15 Darlie Routier was in in losing a loved one or even a
16 child?

17 A. Yes.

18 Q. And are you familiar and have you come
19 into contact with mothers who have lost children in
20 tragic circumstances?

21 A. Yes.

22 Q. Are you familiar and do you recall the
23 way that those mothers responded to that tragic event and
24 the type of grief and the display of emotion that they
25 felt?

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1 A. Yes.

2 Q. Now, I'm going to ask you a broad
3 question first. I'm going to ask you: Based upon your
4 observations of people you have seen, mothers in these
5 same situations, and based upon your observations of
6 Darlie Routier, do you have an opinion that you can tell
7 this jury, as to whether you feel like Darlie Routier was
8 grieving appropriately?

9 A. Yes, she was grieving appropriately.

10 Q. Now, tell jury what you saw in -- I
11 jumped ahead of myself a little bit. From the time of
12 the viewing to the funeral, and did you also go to the
13 prayer service?

14 A. Yes, I did.

15 Q. So you were actively involved with the
16 family and with Darlie for a few days from the period of
17 the viewing onward; is that right?

18 A. Yes, that's correct.

19 Q. Do you believe that you can tell the
20 jury that it was not limited to a viewing and a funeral,
21 but that you spent some time with Dalie?

22 A. Yes, we did.

23 Q. Now, that has been laid out, based
24 upon the time that you spent with Darlie, what did you
25 see, what did you observe?

1 A. Well, I observed a mother who was
2 grieving, and heartbroken, and anguishing over the loss
3 of her children.
4 Q. Did she have periods that she would
5 cry in your presence?
6 A. Oh, sure. Um-hum. (Witness nodding
7 head affirmatively.)
8 Q. Now, there has been representations
9 made that, oh, that maybe Darlie would just whine, or
10 maybe Darlie would just kind of tear up, but they weren't
11 real tears. Maybe that these were crocodile tears. That
12 maybe it was kind of an inappropriate display of grief.
13 Do you agree with that?
14 A. No, I don't agree with that at all.
15 She never whined in my presence. Her displays of grief
16 appeared to be genuine and real.
17 Q. Did you see times that she smiled?
18 A. Yes.
19 Q. Is that normal?
20 A. Sure.
21 Q. In fact, Mr. Rogers, wouldn't it be
22 abnormal for a person over a three or four day period
23 that you see them to be hysterical the whole time?
24 A. I don't see how anybody could be
25 hysterical for that length of time.
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1 Q. I don't know if this is the right word
2 to use, but sometimes your emotions just simply play out,
3 don't they?
4 A. Um-hum. (Witness nodding head
5 affirmatively.) They do.
6 Q. Sometimes you just get to the point
7 that you have to look for some stronger foothold; isn't
8 that right?
9
10 MS. SHERRI WALLACE: I'm going to
11 object to leading.
12 THE COURT: Rephrase your question.
13
14 BY MR. S. PRESTON DOUGLASS, JR.:
15 Q. In terms of a person smiling, do you
16 consider that appropriate or inappropriate, under those
17 circumstances?
18 A. Well, what happens in circumstances
19 like that is a person cries, a person grieves, a person

20 sometimes just sits and stares with almost no emotion,
21 sometimes someone mentions something sweet or a fond
22 remembrance of their loved one that they have lost and
23 they smile or they even laugh.
24 All of those things are appropriate
25 and common in grieving situations.
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1 Q. Is it correct that sometimes it's the
2 memories that get you through, isn't it?
3 A. It is sometimes the memories. And in
4 addition to that, faith gets you through.
5 Q. Now, did you go -- obviously, you
6 officiated at the funeral which is on the 10th?
7 A. It was on a Sunday. Um-hum. (Witness
8 nodding head affirmatively.)
9 Q. I may have my date wrong.
10 A. Sunday the -- I think it was the 9th,
11 but it was on Sunday.
12 Q. Right. The viewing was the 8th?
13 A. Right. On a Saturday, that's right.
14 Q. All right. And, after -- during the
15 funeral, did Darlie Routier appear to act appropriately
16 in your eyes?
17 A. Sure. She grieved and she cried and
18 acted just like dozens of other people I have seen who
19 have lost loved ones.
20 Q. And did you also take part and conduct
21 a prayer service at grave side a few days after that?
22 A. A few days after that, I didn't
23 actually conduct it, I was there at it. Okay. There was
24 another minister that Darlie's mom had asked to conduct
25 it.
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1 But, I was certainly there, and we
2 prayed, and we read Scripture, and then we talked
3 privately with the family and prayed with them and it was
4 a very meaningful and appropriate time.
5 Q. Now, did you know, of your own
6 knowledge, at that time that there was a prayer service
7 earlier in the afternoon, and that there was also what
8 has been called a birthday party that was planned later
9 that day?
10 A. I didn't know anything about that. I
11 mean, I heard at the prayer service --
12
13 MS. SHERRI WALLACE: I'll object. I'm

14 going to object to what he had heard as hearsay.

15 THE COURT: Overruled. I'll let him

16 testify. Go ahead.

17 THE WITNESS: I mean, it seems like I

18 heard some mention of that at the prayer service, but I

19 don't know anything about it, or didn't at the time.

20

21 BY MR. S. PRESTON DOUGLASS, JR.:

22 Q. Well, let me ask you, if after a

23 prayer service, the family gathered again, and placed

24 items of remembrance around the grave, some -- including

25 the balloons with the children's name on it.

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1 A. Um-hum. (Witness nodding head

2 affirmatively.)

3 Q. And had a birthday party for on the --

4 a child that was very soon dead, and was having his

5 birthday -- was scheduled, obviously, his birthday.

6 A. Right.

7 Q. They couldn't have the birthday,

8 obviously.

9 A. Right.

10 Q. Does it strike you as abnormal that

11 that type of event would take place?

12

13 MS. SHERRI WALLACE: Object to

14 leading.

15 THE COURT: Let's rephrase our

16 question.

17

18 BY MR. S. PRESTON DOUGLASS, JR.:

19 Q. Does that strike you as abnormal, yes

20 or no, whether that type of event as scheduled, from your

21 perspective?

22 A. No, it didn't strike me as abnormal.

23 Q. Now, I want to ask you if at any time

24 after coming in contact with Darlie Routier, if you

25 noticed any bruising on her arm?

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1 A. Well, when she arrived at the funeral

2 home on Saturday that -- when the police brought her from

3 the hospital to the funeral home, her arm, her right arm

4 was in a sling at that time, and, of course, not having

5 seen her before, the wounds were significant to see and I

6 believe it was Darin's cousin did help her adjust the

7 sling when we were in the family room, and there was

8 bruising on her arm.
9 Q. And that was on the right arm?
10 A. Um-hum. (Witness nodding head
11 affirmatively.)
12 Q. And, did that bruising seem
13 significant to you?
14 A. Well, it appeared significant to me.
15 Q. And that was on the 8th?
16 A. Yes, on Saturday when she came.
17 Q. After she was escorted in by police
18 officers?
19 A. Yes, that's correct.
20 Q. I'm going to ask you perhaps one more
21 question that was -- that is: Would you agree or
22 disagree with the statement that mothers who have lost
23 their children, as a rule, are inconsolable?
24 A. Mothers who have lost their children
25 as a rule are inconsolable.
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1 Q. Can they be consoled?
2 A. Well, certainly, they can be consoled.
3
4 MR. S. PRESTON DOUGLASS, JR: Pass the
5 witness, your Honor.
6 THE COURT: Ms. Wallace.

7

8

9 CROSS EXAMINATION

10

11 BY MS. SHERRI WALLACE:

12 Q. Mr. Rogers, how large is your
13 congregation?

14 A. We probably have about 80 to 100
15 people that come to our services often.

16 Q. Okay. And then you have another
17 full-time job; isn't that right?

18 A. Yes, I do.

19 Q. What is that in?

20 A. I sell computers and software and
21 things like that.

22 Q. Who do you work for?

23 A. I work for a company called Cheetah
24 International.

25 Q. How long have you been with them?

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1 A. About a year.
2 Q. And your wife is working now a little
3 bit for the defendant's husband, isn't she?
4 A. She has done some work since the trial
5 started, to try to help him keep his business open.
6 Q. And a little bit this fall as well;
7 isn't that correct?
8 A. Um-hum. (Witness nodding head
9 affirmatively.)
10 Q. Now, I think the defense attorney
11 brought out the fact that you had never even met the
12 defendant before the boys were murdered, had you?
13 A. No, I hadn't.
14 Q. Okay. So they weren't a member of
15 your church?
16 A. No.
17 Q. And, I assume that there wasn't a
18 pastor that they were familiar with because they had you
19 do the service; is that right?
20 A. That's correct.
21 Q. All right. And, Randy Regan is the
22 husband's cousin that you were speaking of that is a
23 member of your congregation?
24 A. Yes, that's correct. Um-hum.
25 (Witness nodding head affirmatively.)
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1 Q. How many times had you met the
2 defendant's husband before you did their funeral service
3 for their boys?
4 A. Well, are you talking about before the
5 murders themselves?
6 Q. Yeah. Well, thank you. Yes, before
7 the murders themselves.
8 A. Well, I believe it was three times, if
9 I remember correctly. It might have been just two, but
10 two or three times at Randy's house.
11 Q. All right. Would you say that y'all
12 were friends or were just acquaintances?
13 A. No, just acquaintances.
14 Q. Okay. Now, since the murders, you've
15 developed a very strong relationship with the defendant,
16 haven't you?
17 A. She needed pastoral ministry, that's
18 correct.
19 Q. So you developed a very strong
20 relationship with the defendant, haven't you?
21 A. That's correct.
22 Q. In fact, I think by my count, you

23 visited her when she was in jail in Dallas about 51
24 times; is that right? Sound about right?
25 A. Well, over the months, that's probably
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1 true.
2 Q. Okay. And then how many times did you
3 come down to Kerrville when we were in jury selection
4 back in the first -- or the latter part of October,
5 beginning of November?
6 A. One time.
7 Q. Okay. One time?
8 A. Um-hum. (Witness nodding head
9 affirmatively.)
10 Q. And have you been to Kerrville other
11 than for your testimony, arriving, what -- you arrived
12 last night; is that right?
13 A. Yes, that's correct. Yesterday
14 afternoon we arrived.
15 Q. Where you here earlier in the trial?
16 A. No, I have not been.
17 Q. And you -- I mean, you want the truth
18 out about this crime, don't you, Mr. Rogers?
19 A. Certainly, yes.
20 Q. Okay. You would want to cooperate in
21 any investigation; is that correct?
22 A. Sure. Um-hum. (Witness nodding head
23 affirmatively.)
24 Q. In fact, I mean, you cooperated with
25 the press in this case, haven't you?
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1 A. Well, I answered questions when asked
2 questions. Um-hum. (Witness nodding head
3 affirmatively.)
4 Q. And you and the defendant's mother
5 have met, had a specific meeting with an AP reporter;
6 isn't that correct?
7 A. Um-hum. (Witness nodding head
8 affirmatively.) That's correct.
9 Q. And, in fact, our office contacted you
10 and you spoke over the phone to Miss -- well, you first
11 spoke over the phone and then later you met you Ms.
12 Kinne, Anita Kinne?
13 A. In your office, yes, that's correct.
14 Q. And how that took place was
15 Investigator Kinne called you several times and left
16 messages, didn't she?

17 A. I don't know that she called several
18 times. I got a message and I returned her call.

19 Q. In fact, you didn't return her call,
20 she had to call you and when you finally answered the
21 phone, that's when y'all got to visit; isn't that right?

22 A. No, that is incorrect. I returned her
23 call several times.

24 Q. And, when you came to our office, fair
25 to say, you were reluctant to speak to Investigator
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1 Kinne, weren't you?

2 A. I was apprehensive.

3 Q. Okay. And you said that you were
4 concerned about talking with us because she should know
5 there is nothing you could tell her because a minister
6 counseling with people is privileged. Isn't that what
7 you told her?

8 A. That's correct.

9 Q. In fact, that is not true, is it, Mr.
10 Rogers? In a criminal case, there is no such thing as a
11 minister/parishioner privilege, is there?

12

13 MR. S. PRESTON DOUGLASS: I'll object
14 to that. It calls for a legal conclusion on his part, he
15 doesn't know that.

16 THE COURT: I'll sustain the
17 objection.

18 MR. JOHN HAGLER: Furthermore, your
19 Honor, Rule 505, there is a privilege.

20 THE COURT: I'll sustain the
21 objection.

22

23 BY MS. SHERRI WALLACE:

24 Q. Anyway, let's suffice it to say, Mr.
25 Rogers, obviously, you weren't at the crime scene when
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1 these events occurred?

2 A. That's correct.

3 Q. So all you know about what happened
4 about this crime is what the defendant has told you?

5 A. No, that is incorrect. There's been a
6 lot in the newspapers and on the television about it.

7 Q. Okay. So you gathered your
8 information from the press, and you've gathered your
9 information from the defendant, and I suppose you have
10 spoken with the defendant's husband as well?

11 A. Sure. Um-hum. (Witness nodding head
12 affirmatively.)

13 Q. Okay. And, in that conversation you
14 had with Investigator Kinne in our office, do you
15 remember her telling you that we wanted to be very
16 careful not to overlook anything or anyone?

17 A. Yes, I do.

18 Q. And you promised her if you had any
19 further information, you would give her a call, didn't
20 you?

21 A. Um-hum. (Witness nodding head
22 affirmatively.) I did.

23 Q. And you haven't called her, have you?

24 A. No, I haven't, because I haven't had
25 any further information.

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1 Q. Okay. I want to talk to you a little
2 bit about at the viewing.

3 A. Um-hum. (Witness nodding head
4 affirmatively.)

5 Q. I think you testified that the
6 defendant had been with the police for a number of hours;
7 is that right?

8 A. I know we were there waiting for a
9 couple of hours. Um-hum. (Witness nodding head
10 affirmatively.)

11 Q. And in fact, they had requested a
12 police escort that day who had taken them and run them
13 around town and done errands for them; isn't that
14 correct?

15 A. That I don't know.
16

17 MR. S. PRESTON DOUGLASS: Objection,
18 your Honor, only if he knows that can he answer it.

19 THE COURT: If you know the answer,
20 answer it. If you don't, just say you don't know.

21 THE WITNESS: I don't know. Honestly,
22 I don't know.

23

24 BY MS. SHERRI WALLACE:

25 Q. All right. No problem.

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1 When they did arrive there at the
2 funeral home, the first people to see the casket included
3 yourself, Randy Regan, the defendant, her husband, two
4 police detectives, and then there was a funeral director

5 there as well; is that correct?

6 A. Are you talking about the first time
7 that the defendant saw the casket? Is that what you are
8 asking about?

9 Q. I am.

10 A. Okay. The first time the defendant
11 saw the casket, they went -- Randy Regan and her husband
12 and she, the funeral director, and the two detectives
13 went into the viewing room, and I didn't go in
14 immediately with them. I went in about a minute or two
15 later.

16 Q. Okay. So you didn't go in
17 immediately? You didn't see what happened when she first
18 went in?

19 A. No, because we had gone out the little
20 door and into the other door and someone had said
21 something to me and I was --

22 Q. Drew your attention away?

23 A. -- stopped there for a minute or two,
24 yes.

25 Q. Okay. Now, when you did go in to the
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1 viewing area there with the casket --

2 A. Um-hum. (Witness nodding head
3 affirmatively.) Yes.

4 Q. -- about a minute or two later, you
5 saw the defendant at that time, correct?

6 A. Yes. And I could hear her in the
7 hallway before that even.

8 Q. She was --

9 A. Wailing.

10 Q. Wailing loudly, right?

11 A. Yes. Um-hum. (Witness nodding head
12 affirmatively.)

13 Q. And when you went, I suppose, you
14 didn't see a tear, did you?

15 A. Well, I mean, she was crying.

16 Q. You didn't see any water on her face
17 or any tears, did you, Mr. Rogers?

18 A. I saw -- sure, she was crying, there
19 were tears.

20 Q. Well, was Randy Regan in the same
21 room?

22 A. Right. Um-hum. (Witness nodding head
23 affirmatively.)

24 Q. So if he never saw a tear --

25

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1 MR. S. PRESTON DOUGLASS, JR: Excuse
2 me, your Honor. Randy Regan isn't here. It's hearsay
3 whatever he said or saw.
4 THE COURT: I'll sustain the
5 objection. Let's move on.
6
7 BY MS. SHERRI WALLACE:
8 Q. Well, it's your testimony that she
9 actually had tears at that time?
10 A. She had been crying when we were
11 standing there in the family room, yes, just about a
12 minute or two before.
13 Q. Did -- you were aware, that there were
14 two pocketknives put in the casket with the boys, weren't
15 you?
16 A. I think there were. It seems like I
17 remember that.
18 Q. Okay. And, do you remember the first
19 song played at the funeral?
20 A. Yes, ma'am, I do.
21 Q. And what was that?
22 A. I don't know the name of the song
23 but --
24 Q. Let me see if I can help you. Was it
25 Gangster's Paradise?
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1 A. I think that was the name of the song.
2 Q. Now, Mr. Rogers, were you at this
3 prayer service before the birthday party, Silly String
4 party?
5 A. Yes, I was.
6 Q. And what -- there were about 12 or 15
7 people there at that time?
8 A. Something like that, yeah.
9 Q. It was in the afternoon; is that
10 right?
11 A. Yes, it was in the afternoon.
12 Q. And they had also invited a newspaper
13 reporter to be present, had they not?
14 A. Well, there was --
15
16 MR. S. PRESTON DOUGLASS: Your Honor,
17 again, only if he knows what other people did can he
18 answer.
19 THE COURT: Just a minute, sir.

20 Wait -- when they object, just stop.
21 THE WITNESS: I'm sorry.
22 THE COURT: If you know the answer
23 from your own knowledge answer it. If you don't know it
24 from your own knowledge, say so.
25 THE WITNESS: I apologize.
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1 THE COURT: You don't have to
2 apologize.
3 Now then, we have what is called
4 hearsay down here. Don't say what other people have told
5 you. Okay?
6 And only answer questions from your
7 own knowledge. If you don't know of your own knowledge,
8 just say, "I don't know".
9 THE WITNESS: Yes, sir. Thank you.
10 THE COURT: In the meantime, does any
11 member of the jury desire a break?
12 THE COURT: All right. We have one.
13 That's enough. We'll take a 10 minute break.
14 Thank you.
15
16 (Whereupon, a short
17 recess was taken, after
18 which time, the
19 proceedings were
20 resumed in open court,
21 in the presence and
22 hearing of the
23 Defendant, being
24 represented by his
25 Attorney, but outside of
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1 the presence of the jury
2 as follows:)
3
4 THE COURT: All right, are both sides
5 ready to bring the jury in and continue?
6 MR. S. PRESTON DOUGLASS, JR.: Yes,
7 sir, the defense is ready.
8 MS. SHERRI WALLACE: Yes, sir, we are
9 ready to continue.
10 THE COURT: All right. Bring the jury
11 in, please.
12
13 (Whereupon, the jury

14 was returned to the
15 courtroom, and the
16 proceedings were
17 resumed on the record,
18 in open court, in the
19 presence and hearing
20 of the defendant,
21 as follows:)
22
23 THE COURT: All right. Let the record
24 reflect all parties in the trial are present and the jury
25 is seated. Ms. Wallace.
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1 MS. SHERRI WALLACE: Thank you, your
2 Honor.

3
4
5 CROSS EXAMINATION (Resumed)

6
7 BY MS. SHERRI WALLACE:
8 Q. Mr. Rogers, I think this is where I
9 was, I'm not sure.

10 At the prayer service the day of the
11 birthday party, it was like a week --
12 A. Yes.

13 Q. -- about a week after the killing.

14 A. The following Friday.

15 Q. Okay. Yeah. Just over a week. You
16 said you were there; is that right?

17 A. Yes, ma'am.

18 Q. And are you aware that there was a
19 newspaper reporter there as well?

20 A. Yes, I am aware of that.

21 Q. Okay. And after that service, did
22 you --

23
24 THE COURT: Sir, could you please
25 speak up a little bit louder so that the lady and
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1 gentleman right there in the corner can hear you.

2 THE WITNESS: Yes, sir.

3 THE COURT: Thank you.

4

5 BY MS. SHERRI WALLACE:

6 Q. It was a pretty emotional service,
7 wasn't it?

8 A. The prayer service?
9 Q. Yes.
10 A. Yes, ma'am, it was.
11 Q. And right after, the defendant and her
12 mom spent about an hour with this newspaper reporter;
13 isn't that correct?
14 A. Everybody was around talking, and they
15 talked to him, I don't know how long.
16 Q. Did you leave before they did?
17 A. I honestly don't know because I was
18 talking to different people.
19 Q. Okay. You didn't conduct that
20 service. I think that is what you said; is that right?
21 A. That's correct.
22 Q. Okay. What denomination are you, Mr.
23 Rogers?
24 A. We're Independent.
25 Q. Okay.
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1 A. And I guess Baptist and Independent
2 kind of, so --
3 Q. I'm Baptist. Don't let the Baptists
4 hearing you saying Independent. They don't take too
5 kindly to that.
6 A. Yes, well there's all kinds of
7 Baptists, so --
8 Q. What church were you pastoring before
9 that?
10 A. What church was I pastoring before
11 this one?
12 Q. Um-hum. (Attorney nodding head
13 affirmatively.)
14 A. I pastored a church called Tyland
15 Baptist Church in Tyler, T-Y-L-A-N-D, in Tyler.
16 Q. How big is that church?
17 A. That church, at that time, probably
18 had 250 or 300 members, something like that.
19 Q. How long were you there?
20 A. About two and a half years.
21 Q. Did you do that full time? Was that
22 church large enough to support that?
23 A. Part of the time I did, and part of
24 the time I didn't.
25 Q. Okay. What business did you have
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1 there in Tyler, other than your pastoring?
2 A. Well, at that time I was working
3 part-time for Sears.
4 Q. In these -- I don't know, in my count
5 I guess it's now 52 times you visited with the defendant
6 since she has been incarcerated?
7 A. Um-hum. (Witness nodding head
8 affirmatively.)
9 Q. Have you made any notes of those
10 visits?
11 A. No.
12 Q. Okay. Have you made any notes about
13 what you have observed or anything prior to testifying
14 today?
15 A. No.
16 Q. You didn't write down what you
17 remembered for the lawyers here?
18 A. No.
19 Q. You knew that the bruises were
20 important in this trial, didn't you?
21 A. I have heard on the news that they
22 talked about bruises. Um-hum. (Witness nodding head
23 affirmatively.)
24 Q. Have you been made privy to the notes
25 the family is taking here, or have you just heard about
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1 this?
2 A. I know that it's being done. I have
3 not seen any of them.
4 Q. They told you what's going on?
5 A. Um-hum. (Witness nodding head
6 affirmatively.) Sure.
7 Q. And I don't guess you knew that you
8 weren't supposed to talk to them about the testimony, did
9 you?
10
11 MR. RICHARD C. MOSTY: Your Honor, you
12 know, we been through this with the State's witnesses --
13 MR. GREG DAVIS: I'm going to object
14 here.
15 MR. RICHARD MOSTY: -- that until they
16 are placed under the rule.
17 MR. GREG DAVIS: If we could just have
18 an objection and no side-bars, please. If he has an
19 objection, please state it.
20 MR. RICHARD C. MOSTY: We have been
21 through this --
22 MR. GREG DAVIS: Again, if he will

23 please state his objection.
24 THE COURT: Gentlemen, please. All
25 right. Go ahead, Mr. Mosty.
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1 MR. RICHARD C. MOSTY: We have been
2 through this very subject over the Rule, and the Court
3 has already ruled, that until someone is placed under the
4 Rule that is not in play.

5 THE COURT: Yes, I understand that.
6 If that will be an objection, then the Court will sustain
7 it.

8 MR. RICHARD C. MOSTY: Thank you. And
9 may the district attorney please be instructed to quit
10 asking those questions?

11 THE COURT: Well, I think both sides
12 understand what the Rule is and the people that are not
13 under the Rule are not subject to it. So both sides will
14 just ask the questions, and let's move along.

15

16 BY MS. SHERRI WALLACE:

17 Q. Mr. Rogers, anyway, you know what has
18 been going on here in the courtroom, don't you?

19 A. To some degree, yes.

20 Q. Okay. In all of these times that you
21 have visited with the defendant, what has she told you
22 about the offense?

23 A. I can't tell you what she has told me
24 about the offense.

25

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1 MR. RICHARD C. MOSTY: May we approach
2 the bench?

3 THE COURT: You may. Come on around
4 here.

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 THE COURT: All right. Back on the
13 record now.

14

15 BY MS. SHERRI WALLACE:

16 Q. Mr. Rogers, you testified just before

17 the break, I think, that you felt like that the defendant
18 had grieved appropriately. Do you remember saying that?

19 A. Yes.

20 Q. And you felt that the birthday party

21 at the grave side with the Silly String was appropriate.

22 Do you remember that?

23 A. I remember that.

24 Q. Okay. Did you also feel like the

25 pocketknives in the casket for two boys that had been

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1 stabbed was appropriate?

2 A. It was not my decision, you know, that

3 is a family matter, and I have seen families put a lot --

4 Q. I'm sorry. I'm sorry, Mr. Rogers. Do

5 you think that is appropriate?

6 A. That is their decision.

7 Q. So, you don't think it's appropriate?

8 A. If it was appropriate for them, it was

9 appropriate for that moment.

10 Q. Do you think it's appropriate to you?

11 A. I'm not a pocketknife person, so I

12 wouldn't have done that, no.

13 Q. So you think it's inappropriate; is

14 that correct?

15 A. No, that is not what I said.

16 Q. You are not a pocketknife person?

17 A. Right.

18 Q. What about the Tarot cards in the

19 casket, do you think that is appropriate?

20 A. I don't know anything about Tarot

21 cards.

22 Q. You didn't know about those?

23 A. No.

24 Q. When is the first time the defense

25 attorneys talked to you about the bruises?

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1 A. The defense attorney last night asked

2 me if I had seen any bruises.

3 Q. Is that the first time that anyone has

4 asked you about the bruises?

5 A. Yeah, the defense attorneys.

6 Q. No. Anybody?

7 A. Nobody has asked me about bruises that

8 I'm aware of.

9 Q. So, you have not talked to anyone

10 about bruises?

11
12 MR. DOUGLAS MULDER: Judge, he has
13 made that fairly clear.
14 THE COURT: I'll sustain the
15 objection. Let's move on. Let's get the next question
16 in, please.
17
18 BY MS. SHERRI WALLACE:
19 Q. And you have testified that you knew
20 bruises were important in this trial; is that correct?
21 A. Yes.
22 Q. Okay.
23
24 MS. SHERRI WALLACE: I'll pass the
25 witness.
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1
2
3 REDIRECT EXAMINATION
4
5 BY MR. S. PRESTON DOUGLASS:
6 Q. Just one last question. With respect
7 to the song, Gangster's Paradise, you knew that that was
8 one of the children's favorite songs?
9
10 MS. SHERRI WALLACE: I'll object to
11 leading.
12
13 BY MR. S. PRESTON DOUGLASS:
14 Q. Did you know?
15
16 THE COURT: All right. Thank you. If
17 you know it from your own knowledge, just answer it. If
18 you don't, just say so.
19 THE WITNESS: I was told by their
20 father that it was.
21 MR. S. PRESTON DOUGLASS, JR: That's
22 all. Thank you very much.
23 THE COURT: Thank you.
24 MR. RICHARD C. MOSTY: Your Honor, I'm
25 going to have to object to Mr. Davis. I have been
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1 holding my -- but Mr. Davis has continued to make facial
2 expressions at different times.
3 I have been trying to hold that, but
4 it's inappropriate.

5 THE COURT: Kindly, both sides do not
6 make any kind of facial expressions. Thank you.
7 MR. DOUGLAS MULDER: Judge, sometimes
8 I just can't help it.
9 THE COURT: I know that you can't, Mr.
10 Mulder. I enjoy them when they are directed at me.
11 Thank you very much.
12 If you will step down, sir. Good
13 luck.
14 All right. Call the next witness,
15 please.
16 If you will raise your right hand,
17 please, ma'am.
18
19 (Whereupon, the witness
20 Was duly sworn by the
21 Court, to speak the truth,
22 The whole truth and
23 Nothing but the truth,
24 After which, the
25 Proceedings were
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1 Resumed as follows:)

2

3 THE COURT: Do you solemnly swear or
4 affirm that the testimony you are about to give will be
5 the truth, the whole truth, and nothing but the truth, so
6 help you God?

7 THE WITNESS: I do.

8 THE COURT: Just have a seat right
9 here, please.

10 Ma'am, you are now under the Rule of
11 Evidence, here's what that means. That means when you
12 are not testifying, you have to remain outside the
13 courtroom. You understand that?

14 THE WITNESS: Yes, sir.

15 THE COURT: Don't talk about your
16 testimony with anybody who has testified. In other
17 words, don't compare it. Do you understand that?

18 THE WITNESS: Yes, I do.

19 THE COURT: You may talk to the
20 attorneys for either side. If someone tries to talk to
21 you about your testimony, please tell the attorney for
22 the side who called you.

23 Now, will you please state your name
24 and spell your name for Mrs. Halsey, the court reporter?
25 Go ahead.

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1 THE WITNESS: My name is Dana Godfrey,
2 D-A-N-A, G-O-D-F-R-E-Y.
3 THE COURT: Can all the jurors hear
4 this witness? You have to speak loudly.
5 All right. Go ahead.
6
7 Whereupon,
8
9 **DANA GODFREY,**
10
11 was called as a witness, for the Defense, having been
12 first duly sworn by the Court, to speak the truth, the
13 whole truth, and nothing but the truth, was examined and
14 testified in open court, as follows:
15
16
17 DIRECT EXAMINATION
18
19 BY MR. CURTIS GLOVER:
20 Q. Dana, tell the jury what you do.
21 A. I'm a housewife and I also work with
22 my husband part-time now in electronics.
23 Q. Okay. And that is in, where?
24 A. In our home.
25 Q. Okay. Dallas or Rowlett or where?
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1 A. In Rowlett.
2 Q. In Rowlett. Tell the jury how you
3 know Darlie Routier.
4 A. I met Darlie the first day she moved
5 into her home on Bond Street, I brought her cookies over
6 to her house.
7 Q. Okay. How many years ago has that
8 been?
9 A. Say, approximately eight years.
10 Q. Okay.
11 A. Devon was just born.
12 Q. Okay. She had a baby then, Devon; is
13 that right?
14 A. Yes, she did.
15 Q. Okay. Did you all become pals?
16 A. Very close, very soon.
17 Q. Okay. What did you all do together?
18 A. Everything. We shopped, just walking
19 the babies, we have just been long time close friends

20 together, just camping, everything that friends do
21 together.

22 Q. What kind of person was Darlie Lynn?

23 A. She was a sweet, caring, loving person
24 from the first day I met her.

25 Q. Okay. She is a good friend of yours?

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1 A. Very good.

2 Q. Is she still a good friend of yours?

3 A. She is a good friend, yes.

4 Q. Okay. As the years have gone by, have
5 you all remained as close as you were back, say, eight
6 years ago?

7 A. No, we didn't.

8 Q. Okay. How did y'all drift apart, if
9 you did?

10 A. We drifted apart as soon as I started
11 coaching softball and getting in the PTA and going back
12 to college.

13 Q. Okay.

14 A. They moved and, like I said, I started
15 coaching and my life was coaching after that.

16 Q. But did you stay in touch?

17 A. Yes, quite frequently we did.

18 Q. Have you found, since you have
19 indicated to the jury you all drifted apart, that there
20 was any change in the Darlie that you had always known?

21 A. Never.

22 Q. What kind of person was she?

23 A. She was good. She was a good mother,
24 caring. Darlie was always there if you ever needed her
25 to talk to. She was just a sweet, good person. Always.

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1 Q. Okay. When, if you know, do you think
2 the last time you would have talked to her prior to these
3 little boys tragically dying?

4 A. I'm sorry. Can you repeat that?

5 Q. When would have been the last time, if
6 you know, that you spoke with her prior to this event, in
7 June of '96 when the little boys were killed?

8 A. I would say about two months prior to
9 that we had spoken. I went to visit her at her office.

10 I just happen to go up there to see how she was doing.

11 Q. Okay. And how was she doing?

12 A. She was doing great. The boys were
13 running around, she was feeding the baby.

14 Q. Had you seen the baby?
15 A. Yes, I had.
16 Q. I said, had you seen it prior to that
17 time?
18 A. Yes, I had.
19 Q. Okay. So you were familiar with
20 Drake?
21 A. Yes, I was.
22 Q. How was he doing?
23 A. He was doing just fine.
24 Q. Okay.
25 A. Just fine.
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1 Q. Everybody seem happy?
2 A. Everybody did. The boys were running
3 around, drives them crazy, and she was trying to calm
4 them down, and I was talking to Darin and her and just a
5 normal atmosphere.
6 Q. Okay. When did you get any hint about
7 what ultimately happened there in June?
8 A. I got a phone call early that morning
9 from a neighbor, Celia Morgan, and she called me, and
10 said that --
11
12 MR. GREG DAVIS: I'm going to object,
13 that is hearsay. I'll object to it.
14 THE COURT: Sustained.
15
16 BY MR. CURTIS GLOVER:
17 Q. You found out what happened, did you
18 not?
19 A. Yes, I did.
20 Q. What did you do?
21
22 THE COURT: Just a moment, Mr. Glover.
23 Ma'am, don't tell him what people told you. Wait until
24 you hear the lawyer's next question. Okay?
25 THE WITNESS: I'm sorry.
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1 THE COURT: That is quite all right.
2 Go ahead.
3
4 BY MR. CURTIS GLOVER:
5 Q. What did you do, Dana, as a result of
6 what you found out?
7 A. Well, I believe I dropped the phone

8 down and then ran upstairs hysterically, to my husband,
9 who was in the shower, and screamed that the boys were
10 dead, and that they were murdered, and he came out of the
11 shower, and of course, my children ran down the hallway
12 and heard me, unfortunately, and I got them out of the
13 room, and he tried to calm me down, and we got dressed
14 and we went right to the hospital.

15 Q. Okay. What did you see when you got
16 to the hospital?

17 A. Well, first we had to wait down for a
18 while until the police let us up, and when we got up
19 there, I'm sorry, we got upstairs and they wouldn't let
20 us in. We saw Darin and they said we had to wait a while
21 to see Darlie and I just wanted to see her.

22 Q. Okay. How was Darin?

23 A. Darin was -- I'd say he was still in
24 shock. He was so out of it and pacing and I just
25 remember him tapping his hands on the side of the bar,
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1 talking to me and my husband, and trying to tell us, you
2 know, what had happened. And we waited until they let us
3 go in and then I went in.

4 Q. What time was that?

5 A. I'd say it was anywhere between 9:00
6 and 9:30 that morning.

7 Q. Okay. And, when you got into the
8 room, what did you see?

9 A. I saw Darlie holding her boys'
10 pictures in her arms.

11 Q. How was that? Describe that for the
12 jury.

13 A. It was -- she was just crying and
14 holding their pictures in her arms and rocking back and
15 forth, just kind of out of it, just in shock and just
16 crying.

17 Q. Okay. You have known this woman for
18 eight years?

19 A. Um-hum. (Witness nodding head
20 affirmatively.)

21 Q. Y'all had a close relationship?

22 A. Yes, sir.

23 Q. Okay. You knew her emotionally?

24 A. Yes, I did.

25 Q. Okay. Describe her emotion.

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1 A. Her emotion was -- I would say she --
2 from the looks of her she was on heavy medication,
3 tearful, she couldn't speak very well, she was listless.
4 I fed her some ice and we talked a little bit. Well, I
5 finally pulled the pictures out of her hand. I told her
6 I said, "Darlie, just put the pictures down, babe. Just
7 get some rest."
8 And then she tried to tell me what
9 happened.

10
11 MR. GREG DAVIS: I'm going to object
12 to that as being hearsay, what was said.
13 THE COURT: Sustain the objection.
14 Let's rephrase our question.

15
16 BY MR. CURTIS GLOVER:
17 Q. Now, this would have been around 9:00
18 or 9:30 that you were in there?

19 A. Yes, sir.
20 Q. You made some statement when we talked
21 last night about the fact that she was not cleaned
22 properly. Explain that to the jury.
23 A. I remember I was just staring at her
24 hands also when I took the pictures out I saw the blood
25 between her fingers, dried blood, and then on her
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1 fingernails there was dried blood, and even on her arms,
2 on her arm, there was blood on her arm.
3 And it just looked like -- and then to
4 see her neck, it just looked like they just didn't clean
5 her up very well.

6 Q. Okay. Dana, did you have an occasion
7 to go to the viewing of the boys?

8 A. Yes, I did.

9 Q. Okay. Did you have occasion to see
10 Darlie then?

11 A. Yes, I did. She came in late.

12 Q. Where did you see her?

13 A. I don't remember.

14 Q. What kind of shape was she in?

15 A. Out of it, just not with it.

16 Q. Okay. Did that seem genuine to you or
17 did it seem like she was faking that?

18 A. There was no faking, none. I just saw
19 a mother that had been through a very, very, bad tragedy
20 and I didn't see any faking. I saw the real Darlie and
21 she was heartbroken.

22 Q. All right.

23

24 MR. CURTIS GLOVER: Pass the witness.

25 THE COURT: All right. Mr. Davis.

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1

2

3 CROSS EXAMINATION

4

5 BY MR. GREG DAVIS:

6 Q. Mrs. Godfrey, my name is Greg Davis.

7 I just have a few questions for you just so I'm clear.

8 Were you in the house there at 5801 Eagle Drive the
9 evening of June the 5th, 1996?

10 A. No, sir, I was not.

11 Q. Were you in that house during the
12 early morning hours of June the 6th of 1996?

13 A. No, I was not.

14 Q. When you saw that the defendant had
15 not been cleaned properly, which nurse did you go to to
16 report that?

17 A. There was a nurse -- I didn't report
18 that she wasn't cleaned properly. I reported to the
19 nurse to please give her some -- something that would
20 calm her down. And then the nurse did get up, and came
21 over and spoke to me, and said that she had been like
22 this for a while and --

23 Q. Okay. Well --

24 A. And proceeded to give her medication.

25 Q. Well, I'm sorry, my question was:

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1 Which nurse did you report that to?

2 A. The one that was in the room at the
3 time, sitting up on the side.

4 Q. You reported the fact that she had not
5 been cleaned properly to that nurse?

6 A. No, I did not report that she had not
7 been cleaned.

8 Q. Thank you. Thank you. When you saw
9 her two months prior to this incident, you said that she
10 appeared to be doing great; is that right?

11 A. Yes.

12 Q. Would you agree with me that if an
13 individual attempted to take her life, that she is not
14 doing --

15

16 MR. JOHN HAGLER: Excuse me, your

17 Honor, excuse me, there has been no showing -- that is
18 not in evidence, your Honor.

19 MR. GREG DAVIS: Barbara Jovell --

20 THE COURT: I'll let her answer it.

21 Ask that question, and if she knows the answer, I'll let
22 her answer it.

23

24 BY MR. GREG DAVIS:

25 Q. Let me ask you again. If the
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1 defendant, during that time period that you say she is
2 doing great, had started to take her life, but was
3 interrupted by her husband before she completed the act,
4 would you consider that to be doing great?

5 A. I don't believe she would do that.

6 Q. That wasn't my question. I know that
7 you may not believe that, but my question is: If that
8 occurred, would you consider the defendant to be doing
9 great during that time period, Mrs. Godfrey?

10 A. No, not with any person.

11

12 MR. GREG DAVIS: No further questions.

13 MR. CURTIS GLOVER: That's all we
14 have.

15 THE COURT: You may step down, ma'am.

16 Watch your step. Please do not discuss your testimony
17 with anybody who testifies. Thank you.

18 All right. Your next witness.

19 MR. S. PRESTON DOUGLASS: Cara Byford.

20 THE COURT: Will you raise your right
21 hand, please, ma'am.

22

23 (Whereupon, the witness
24 was duly sworn by the
25 Court, to speak the truth,
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1 the whole truth and
2 nothing but the truth,
3 after which, the
4 proceedings were
5 resumed as follows:)

6

7 THE COURT: Do you solemnly swear or
8 affirm that the testimony you are about to give will be
9 the truth, the whole truth, and nothing but the truth, so
10 help you God?

11 THE WITNESS: Yes, I do.
12 THE COURT: Have a seat right here
13 please. Ma'am, you're now under the Rule of Evidence.
14 When you are not testifying, you must remain outside the
15 courtroom. Don't talk about your testimony with anybody
16 who's testifying. In other words, don't compare it. Do
17 you understand that?
18 THE WITNESS: Yes, sir.
19 THE COURT: You may talk to the
20 attorneys for either side. If someone tries to talk to
21 you about your testimony tell the attorney for the side
22 who called you. Okay?
23 THE WITNESS: Um-hum. (Witness
24 nodding head affirmatively.)
25 THE COURT: Is that a yes?
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1 THE WITNESS: Yes.
2 THE COURT: All right. Good. All
3 right. Now, you have to speak loudly into this
4 microphone so the ladies and the gentlemen at the end can
5 hear you. Okay?
6 THE WITNESS: Okay.
7 THE COURT: Please state your name and
8 spell your last name for the court reporter.
9 THE WITNESS: My name is Cara Byford,
10 B-Y-F-O-R-D.
11 THE COURT: Okay. You are going to
12 have to speak up just a little bit, so the folks can hear
13 you. Speak right in here.
14 THE WITNESS: Cara Byford,
15 B-Y-F-O-R-D.
16 THE COURT: Okay. Go ahead.
17 BY MR. S. PRESTON DOUGLASS: Thank
18 you, your Honor.
19
20
21 Whereupon,
22
23 **CARA BYFORD,**
24
25 was called as a witness, for the Defense, having been
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1 first duly sworn by the Court to speak the truth, the
2 whole truth, and nothing but the truth, testified in open
3 court, as follows:
4

5

6 DIRECT EXAMINATION

7

8 BY MR. S. PRESTON DOUGLASS:

9 Q. Do you go by a nickname?

10 A. Yes.

11 Q. What is that?

12 A. Jeanie.

13 Q. Jean or Jeanie?

14 A. Jeanie.

15 Q. Okay. Where do you live?

16 A. In Plano.

17 Q. How long have you lived in Plano?

18 A. About four years.

19 Q. How old are you?

20 A. Twenty-seven.

21 Q. Are you married?

22 A. Yes.

23 Q. Do you have children?

24 A. Yes.

25 Q. How many children do you have?

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1 A. I have one.

2 Q. What is your child's name?

3 A. Kaylie.

4 Q. How old is your child?

5 A. Three.

6 Q. What do you do for a living?

7 A. I am an administrator.

8 Q. And what company do you work at?

9 A. Erickson.

10 Q. Okay. And, have you met Darlie

11 Routier?

12 A. Yes.

13 Q. And can you tell the ladies and

14 gentlemen of the jury how you met Darlie?

15 A. I met her through her mother, Darlie

16 Kee, when we were going to school together in '89.

17 Q. Okay. Now Darlie Kee works for the

18 same employer that you do; is that right?

19 A. Yes.

20 Q. All right. And how was it that if

21 you -- you met the mother, how did you come to meet the

22 daughter?

23 A. Just studying together at her home.

24 Q. At whose home?

25 A. Darlie Kee's.
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1 Q. And, then, during visits Darlie
2 Routier would come by?
3 A. Yes.
4 Q. And did you get to know Darlie? Did
5 you come to know her?
6 A. Yes.
7 Q. Now, I'm talking about Darlie Routier?
8 A. Yes.
9 Q. Can you describe -- well, first: What
10 year would that be when you first met Darlie Routier?
11 A. In 1989.
12 Q. And since 1989, have you had occasion
13 to see Darlie Routier frequently during that time?
14 A. Yes.
15 Q. Have you socialized with Darlie?
16 A. Yes.
17 Q. Have you been on a trip with Darlie?
18 A. Yes.
19 Q. Do you believe that you can
20 characterize yourself as a good friend?
21 A. Yeah.
22 Q. All right. If you would, please
23 describe for the jury your impression of Darlie Routier.
24 How would you describe her to the jury?
25 A. Kind-hearted. One of the nicest
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1 people I have met. She would do pretty much anything for
2 you.
3 Q. Is she a generous person?
4 A. Yes.
5 Q. Was she generous to you?
6 A. As a friend.
7 Q. Was she a happy person?
8 A. Yes.
9 Q. Did she seem to be upbeat the majority
10 of the time you were around her?
11 A. Yes.
12 Q. Now, I want to ask you a little bit
13 about grief. And, for background, you have had a child
14 that died?
15 A. Yes.
16 Q. How old was your child when -- was it
17 a boy?
18 A. It was a boy, yes.

19 Q. How old was your boy when he died?
20 A. He was four months old.
21 Q. And, he aspirated; is that right?
22 A. Yes.
23 Q. And, Darlie, of course, knew that?
24 A. Yes.
25 Q. And, after her boys were killed, did
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1 she seek you out for help?
2 A. Yes.
3 Q. Why did she seek you out for help?
4 A. She thought I would understand. That
5 I could give her support because I had lost my child.
6 Q. I have not been in that situation,
7 thankfully. But I want to ask you a question: Does the
8 process of grieving, when you have lost a child as you
9 have, do you think there is any way that a person can
10 have the right to say how someone ought to grieve when
11 they have lost a child?
12 A. No.
13 Q. Do you think anybody has a right to
14 judge that?
15 A. No.
16 Q. I want to ask you if you can describe,
17 for the jury -- or let me start back. Do you believe
18 that you saw Darlie Routier exhibit any inappropriate
19 actions or behavior after her children were killed?
20 A. No.
21 Q. Can you describe what you saw when you
22 observed Darlie?
23 A. She was very hurt, painful. She
24 missed her boys.
25 Q. Did she show outwardly signs of
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1 emotion?
2 A. Yes.
3 Q. What kind?
4 A. She cried.
5 Q. Now, were these fake tears?
6 A. No.
7 Q. Did she have some time that she was
8 just quiet?
9 A. Yes.
10 Q. Did you see her at times where she
11 would hold pictures of the boys in her arms?
12 A. Yes.

13 Q. And did she look at that picture?
14 A. Yes.
15 Q. And did you see times when she would
16 smile?
17 A. Yes.
18 Q. Now, did that seem inappropriate to
19 you?
20 A. No.
21 Q. Did you visit with her at the
22 hospital?
23 A. Yes.
24 Q. Do you recall what day it was you
25 visited her?
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1 A. I visited her on the 6th and on the
2 7th.
3 Q. At any -- on either the 6th or the
4 7th, while she was still in the hospital, did you have an
5 opportunity to look at her right arm?
6 A. Yes.
7 Q. Did you see any bruising on her right
8 arm?
9 A. Yes.
10 Q. Now, is there any question in your
11 mind about that?
12 A. No.
13 Q. Did the bruising seem to be a slight
14 bruise or a significant bruise?
15 A. Significant.
16 Q. How did it affect you?
17 A. I got real upset and had to walk out
18 of the room.
19 Q. Because of the bruise?
20 A. Yes.
21 Q. Now, I got a suspicion that you are
22 going to be asked if you ever ran to a nurse.
23
24 MR. GREG DAVIS: I'm going to object
25 to that as being leading here.
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1 THE COURT: Sustained. I'll sustain
2 the objection.
3
4 BY MR. S. PRESTON DOUGLASS:
5 Q. Did you ever feel the need -- let me
6 ask you this: Did you think those bruises were obvious?

7 A. Yes, sir.

8 Q. Did you ever feel like you had the
9 need to go tell a nurse that she was bruised, when she is
10 in a hospital?

11 A. No.

12 Q. Now, after Darlie was discharged from
13 the hospital, did you have an occasion to go to what has
14 been called -- well, did you go to the funeral?

15 A. Yes.

16 Q. Did you go to the viewing?

17 A. Yes.

18 Q. And throughout that time, did Darlie
19 Routier appear to exhibit what you thought was
20 appropriate displays of grief?

21 A. Yes.

22 Q. Did she talk to you about it?

23 A. Yes.

24 Q. Did she express to you dismay?

25 A. Yes.

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1 Q. Did she express to you that she felt
2 helpless?

3 A. Yes.

4 Q. How did that go?

5 A. I think she didn't know what to do. I
6 know she felt alone, although she wasn't going through
7 this alone. It's -- I think that is the way anybody
8 would feel.

9 Q. And, over a period of time, have you
10 continued to talk to her on the phone and try to help
11 her?

12 A. Yes.

13 Q. And, throughout all of this, have you
14 observed a great deal of support for Darlie through her
15 family?

16 A. Yes.

17 Q. Did you go to the -- what has been
18 called the prayer service at the grave site?

19 A. On Devon's birthday, yes.

20 Q. Did you -- were you aware that certain
21 items were being placed grave side as mementos or
22 memorializing, or placed at the grave for the children?

23 A. Yes.

24 Q. Did you do that?

25 A. Yes.

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1

2 MR. S. PRESTON DOUGLASS: May I
3 approach the witness, your Honor?

4 THE COURT: You may.

5

6 (Whereupon, the following

7 mentioned item was

8 marked for

9 identification only

10 after which time the

11 proceedings were

12 resumed on the record

13 in open court, as

14 follows:)

15

16 BY MR. S. PRESTON DOUGLASS:

17 Q. Ms. Byford, I want to hand you what I

18 have marked as Defendant's Exhibit No. 71, and ask you if

19 you can identify that exhibit?

20 A. Yes, the poem I gave to Darlie.

21 Q. You gave that to Darlie?

22 A. Yes.

23 Q. Okay. Now, I have folded the paper,

24 is the poem that's on the underside, was that given to

25 Darlie also?

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1 A. Yes.

2 Q. So both of them were?

3 A. Yes.

4 Q. And does that correctly reflect the

5 poem that you gave Darlie before the memorial service?

6 A. Yes.

7

8 MR. S. PRESTON DOUGLASS: I'll offer

9 Defendant's Exhibit No. 71.

10 MR. GREG DAVIS: Object to it as it's

11 irrelevant as to what this witness gave to the defendant.

12 It's hearsay also.

13 THE COURT: Well --

14 MR. GREG DAVIS: What relevance is a

15 poem given by this witness to the defendant?

16 MR. DOUGLAS MULDER: Judge, it's every

17 bit as relevant as the knife.

18 THE COURT: Gentlemen, please. Just a

19 minute. If you have an objection, Mr. Douglass is

20 handling this part of the examination for the defense.

21 All the other attorneys will kindly

22 remain silent over there. Let me have this, let me see

23 that.

24 MR. RICHARD C. MOSTY: Your Honor, may

25 I respond? Can we confer with Mr. Douglass? Is that

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1 okay with the Court?

2 THE COURT: I don't think that is

3 necessary. Thank you.

4 MR. RICHARD C. MOSTY: We can't?

5 THE COURT: Objection overruled. I'll

6 admit it. Go ahead.

7

8 (Whereupon, the above

9 Mentioned item was

10 Received in evidence

11 As Defendant's Exhibit

12 No. 71, for all purposes,

13 After which time, the

14 Proceedings were

15 Resumed on the record,

16 In open court,

17 As follows:)

18

19 BY MR. S. PRESTON DOUGLASS:

20 Q. Why did you give this poem to Darlie

21 Routier?

22 A. It was given to me after my son died,

23 even though it's sad, I found it comforting.

24 Q. Did you give it to Darlie to help

25 comfort her?

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1 A. Yes.

2 Q. Would you read that poem for us,

3 please?

4 A. Yes. "Oh, Lord I cried, my heart will

5 break. Nothing can ever stop the ache. Oh, Lord our

6 loved one is gone. 'Gone,' God said, 'No, your loved one

7 is not gone, because as long as you have memories in your

8 heart, they live on. My child, don't you know I care. I

9 won't give you more than you can bear. Life and death

10 are my choice. Trust my wisdom and rejoice. Wipe away

11 the tear from your eye, for there is no longer a need to

12 cry. My son died so your loved one could have eternal

13 life. Now they are with me in paradise. I am the King,

14 for each life I have a plan. I hold your future in the

15 palm my hand. I am the Good Shepherd and I know my own.

16 You are never forsaken or left alone. I know you loved

17 them but I loved them more. I held their hand and gently
18 led them through the door. They are more alive now than
19 they were before. They are happier now than they have
20 ever been in this perfect world without hurt or sin.'
21 Asleep? No. We walk together today, and they watched
22 you as you knelt to pray. They smiled and said, 'They
23 miss me,' you know. Do they understand why I had to go?
24 I love them and I know they love me. Tell them I'm
25 happy. Tell them I'm free. Loved one, it is wonderful
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1 here, don't weep for me. We will soon be together again
2 for eternity."

3 Q. Now, along with bracelets and cards
4 and things, there were poems like what you just read to
5 the jury and placed at the grave side?

6 A. Yes.

7 Q. Thank you.

8

9 MR. S. PRESTON DOUGLASS: Pass the
10 witness.

11

12

13 CROSS EXAMINATION

14

15 BY MR. GREG DAVIS:

16 Q. Ms. Byford, how long have you been

17 good friends with the defendant's mother, Darlie Kee?

18 A. Since '89.

19 Q. You all were both coworkers and then

20 obviously good enough friends that you went over and

21 visited at her house several times?

22 A. Yes.

23 Q. Okay. And you've talked with her

24 since you have been down here in Kerrville, I take it?

25 A. Yes.

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1 Q. You have described the defendant as
2 being kind-hearted, upbeat. Would you agree with me that
3 even kind-hearted people can have problems that may seem
4 overwhelming in their life?

5 A. Yes.

6 Q. Would you agree with me also that even

7 kind-hearted people may reach a point in their life where

8 they just cannot seem to cope with those problems?

9 A. No.

10 Q. You don't believe that is possible?

11 A. Well, not in this case.

12 Q. The bruises that you saw on the
13 defendant's right arm?

14 A. Yes.

15 Q. Okay. Describe those bruises for me.

16 A. Very dark purple, covered a large part
17 of her arm.

18 Q. Okay. So very, dark purple. And if
19 you can let me --

20

21 MR. GREG DAVIS: Judge, if I may
22 approach the witness, your Honor?

23 THE COURT: You may.

24

25

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1 BY MR. GREG DAVIS:

2 Q. Ms. Byford, if you will just indicate
3 on my arm where you saw the bruising to the defendant
4 that you saw at the hospital. Was it outside, inside,
5 up, down, what part of the arm was the bruising?

6 A. Right through here.

7 Q. Okay. You are indicating on the --

8 A. To the inside.

9 Q. The inside. Okay. How long?

10 A. Well --

11 Q. What's the length?

12 A. About to here.

13 Q. Okay. You have indicated above my
14 elbow. Okay. How far down did it extend?

15 A. About right to here.

16 Q. Right above the wrist all the way up
17 to the elbow, right?

18 A. Yes, from what I remember.

19 Q. Okay.

20

21 MR. S. PRESTON DOUGLASS: Your Honor,
22 that is a misstatement. He said above the elbow.

23 MR. GREG DAVIS: That is where she
24 indicated.

25 THE COURT: Well, let the record
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1 reflect that she indicated approximately one inch above
2 the left elbow to about one inch above -- or excuse me --
3 right elbow, to the right wrist.

4

5 BY MR. GREG DAVIS:

6 Q. And, when was it that you first saw
7 this bruise on her right arm, Ms. Byford?

8 A. The 7th.

9 Q. What time on the 7th?

10 A. I don't know what time. I went to the
11 hospital. I believe it was -- I know it was after she
12 was transferred into the private room.

13 Q. Okay. Well, okay. Morning, noon,
14 afternoon, evening?

15 A. I believe it was in the afternoon.

16 Q. About what time in the afternoon?

17 A. Maybe, 2:00 or 3:00.

18 Q. Okay. How long did you stay at the
19 hospital at that time?

20 A. Not very long, about an hour.

21 Q. What was the appearance of her left
22 arm?

23 A. I don't remember.

24 Q. You don't remember?

25 A. No.

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1 Q. What about her right hand?

2 A. I don't remember the right hand.

3 Q. How about the left hand?

4 A. No.

5 Q. And, Mr. Douglass has been kind enough
6 to indicate that I'm not going to ask you about going and
7 asking the nurses about any of this. But surely when you
8 saw the bruising you asked the defendant how she got that
9 bad bruise on her right arm, didn't you?

10 A. No.

11 Q. You didn't?

12 A. I just assumed.

13 Q. Assumed what?

14 A. That she got it from the stab or from
15 a struggle. I didn't want to ask her details.

16 Q. And she didn't volunteer as to how she
17 got that bruise?

18 A. No.

19 Q. Well, when you went up to talk with
20 her when she was in the hospital, didn't she tell you
21 what had happened to her there in the house?

22 A. Yes.

23 Q. Okay. What did she say to you?

24 A. She said --

25 Q. What version did she give you?

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1 A. She just told me that someone had come
2 into the house and killed her boys and attacked her.
3 Q. Okay. And you just gave that in the
4 order that that man killed her boys and then attacked
5 her. Is that the way she told you?

6 A. Yes.

7 Q. No more detail than that?

8 A. No.

9 Q. All right. Let me move forward just a
10 bit here. Since the defendant has been out of the
11 hospital, you have continued to talk with her; is that
12 right?

13 A. Yes.

14 Q. Counsel with her about what's
15 happened; is that right?

16 A. Yes.

17 Q. And, surely in those conversations she
18 has gone over this incident in greater detail with you,
19 hasn't she?

20 A. No.

21 Q. So in all of the conversations --
22 about how many conversations have you had with her since
23 she was discharged from the hospital?

24 A. Well, maybe 15.

25 Q. So, in none of those 15 conversations
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1 that you have had with her, has she ever told you what
2 happened to her in that house?

3 A. No, other people have.

4 Q. Well, right now I'm just talking about
5 the defendant, and the conversations you have had with
6 her. She has never told you, since the hospital any
7 other details about what happened to her; is that right?

8 A. No.

9

10 MR. GREG DAVIS: No further questions.

11 MR. S. PRESTON DOUGLASS: I don't have
12 any other questions, your Honor.

13 THE COURT: You may step down, ma'am.

14 Ladies and gentlemen of the jury, in
15 view of the hour and the length of time that a witness
16 would take, we will adjourn until 9:00 o'clock tomorrow
17 morning.

18 Same instructions as always. Do no
19 investigation on your own. You will decide this case on

20 the testimony you hear and the evidence you receive in
21 this courtroom.

22 This probably will be in the newspaper
23 or on TV or on the radio, please ignore it. Do not talk
24 about the case among yourselves yet, because it's not
25 over yet. When the case is over, you may talk or not
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1 talk, as you see fit.
2 Please wear your juror badges at all
3 times around the courthouse. We'll see everybody here
4 tomorrow morning at 9:00 o'clock.
5 Thank you.
6 All right. If the viewing audience
7 will remain seated until the jury clears the courthouse.
8 Thank you.
9 All right.

10
11 (Whereupon, the jury
12 Was excused from the
13 Courtroom, and the
14 Proceedings were held
15 In the presence of the
16 Defendant, with his
17 Attorney, but outside
18 The presence of jury
19 As follows:)

20
21 THE COURT: Let the record reflect
22 these proceedings are being held outside of the presence
23 of the jury, and all parties of the trial are present.
24 Mr. Mosty?
25 MR. RICHARD C. MOSTY: The exhibit is
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1 No. 70, which was identified earlier for the record
2 purposes as FBI Agent Brantley notes that he identified
3 from his file.
4 THE COURT: For the record purposes.
5 MR. RICHARD C. MOSTY: It includes all
6 of the notes he had except for the photographs which we
7 have not copied.
8 THE COURT: Any objection to the
9 records?
10 MR. TOBY L. SHOOK: No objection.
11 THE COURT: All right. Defendant's
12 Exhibit 70 is admitted into the record.
13

14 (Whereupon, the above
15 Mentioned items were
16 Received in evidence
17 As Defendant's Exhibit
18 No. 70, for all purposes,
19 After which time, the
20 Proceedings were
21 Resumed on the record,
22 In open court,
23 As follows:)
24
25 THE COURT: All right. Can I see the
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1 young lady up here and that gentlemen on the record? All
2 right.
3 Come on up here. Okay. We're already
4 on the record now. Your name, ma'am, is?
5 THE WITNESS: Peggy Rogers.
6 THE COURT: And your name?
7 THE WITNESS: Sandy Aitken,
8 A-I-T-K-E-N.
9 THE COURT: All right, ma'am. And
10 your name?
11 THE WITNESS: Pamela King, K-I-N-G.
12 THE COURT: Your name?
13 THE WITNESS: Ted King, K-I-N-G.
14 THE COURT: And your name?
15 THE WITNESS: LuAnn Brown.
16 THE COURT: Are any of you planning on
17 being a witness?
18 THE WITNESSES: No.
19 THE COURT: All right.
20 Ladies, please do not communicate with
21 those who will testify, anyone who is going to testify.
22 Is that clear?
23 THE WITNESSES: Yes, sir.
24 THE COURT: Okay. Thank you.
25 That's all. See everybody in the morning at 9:00 A.M.