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REPORTER'S RECORD
VOLUME 42 OF ? VOLUMES
CAUSE NO. 11DCR056513

THE STATE OF TEXAS) IN THE DISTRICT COURT
)
vs.) FORT BEND COUNTY, TEXAS
)
CORNELIUS MILAN HARPER) 434TH JUDICIAL DISTRICT

PRETRIAL MOTION & JURY TRIAL

On the 15th day of May, 2014, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable James H. Shoemake, Judge Presiding, held in Richmond, Fort Bend County, Texas.

Proceedings reported by computerized stenotype machine.

APPEARANCES

1
2
3 Mark Hanna
4 SBOT NO. 00787638
5 Fort Bend County District Attorney's Office
6 301 Jackson Street
7 Richmond, Texas 77469
8 Telephone: (281) 341-4460
9 Fax: (281) 341-4440
10 Attorney for State of Texas
11

12
13 Amanda Bolin
14 SBOT NO. 24045521
15 Fort Bend County Attorney's Office
16 301 Jackson Street
17 Richmond, Texas 77469
18 Telephone: (281) 341-4551
19 Attorney for State of Texas
20

21 Fred Felcman
22 SBOT NO. 06881500
23 Fort Bend County Attorney's Office
24 301 Jackson Street
25 Richmond, Texas 77469
Telephone: (281) 341-4551
Attorney for State of Texas

16 -AND-

17 Stephen Doggett
18 SBOT NO. 05945700
19 201 S. 11TH STREET
20 Richmond, Texas 77469
21 Telephone: 281.342.3321
22 Attorney for Defendant
23

24 Katherine Scardino
25 SBOT NO. 17718625
3730 Kirby, Ste 1120
Houston, Texas 77098
Telephone: 713.520.5223
Counsel for Defendant

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JURY TRIAL

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EXHIBITS OFFERED BY STATE

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1 (May 15, 2014)

2 P-R-O-C-E-E-D-I-N-G-S

3 THE COURT: Thank you, folks, please be
4 seated. All right. I apologize for the delay but I've
5 been in a meeting since 8:00 o'clock this morning so...
6 All right. You have another witness; is that correct?

7 MR. DOGGETT: Yes, sir. You ready?

8 THE COURT: I'm ready.

9 MR. DOGGETT: John Nixon.

10 THE COURT: All right. You may begin when
11 you're ready.

12 **JOHN NIXON,**

13 having been first duly sworn, testified as follows:

14 **DIRECT EXAMINATION**

15 Q (By Mr. Doggett) State your name for the
16 record, please, sir.

17 A. John Robin Nixon, N-I-X-O-N.

18 Q. And I notice you have a bit of an accent; where
19 are you originally from?

20 A. From the United Kingdom.

21 Q. All right. And where do you live now?

22 A. Bippus, Indiana. B-I-P-P-U-S.

23 Q. And what do you do for a living?

24 A. I'm a consultant in firearms, weapon systems
25 and explosives.

1 Q. All right. And do you have any academic
2 degrees?

3 A. I have a First Class Honor degree in mechanical
4 engineering and a Master's degree in Business
5 Administration.

6 Q. All right. You used the term First Class
7 Honor's degree, that's something, I don't think we
8 usually hear in the U.S. Did you get that degree in the
9 United Kingdom?

10 A. Yes, I did.

11 Q. What is the meaning of the term first class.

12 A. A Bachelor's degree. There are two degrees,
13 there's regular degrees and honor degrees, and a first
14 class honor's degree is at the top level that you can
15 get.

16 Q. All right. And have you -- how is having a
17 degree in mechanical engineering related to the issue of
18 what you do for a living?

19 A. Firearms, ballistics, explosives are all topics
20 that mechanical engineering lends itself to very well.
21 In mechanical engineering, you study physics moving
22 bodies, gases, fluid dynamics, thermodynamics, transfer
23 of heat. Those are all subjects that lend themselves
24 very well to the study of mechanisms and projectiles.

25 Q. All right. And you -- give -- I don't want to

1 spend much time on this, but give the Court an idea of
2 some of the things you've done in the field of
3 mechanical engineering as it relates to firearms.

4 A. I was employed by the U.K. Government from 1986
5 until 1999. I worked on weapon's systems, missile
6 systems, explosives, that included small arms. I've done
7 additional education and training at the Royal Military
8 College of Science and those courses covered ballistics,
9 guns, explosives, technology.

10 Q. All right.

11 A. When I worked for the U.K. Ministry of Defense,
12 I've done research, development design, Midlife
13 Improvement Programs and Foreign Weapon Evaluations.

14 Q. What --

15 A. Oh, sorry, I was just going to say and
16 forensics, too.

17 Q. Now, how long have you been in the states?

18 A. Since 2000.

19 Q. And have you done any work, specific work in
20 regards to the issue of firearms/toolmark analysis or
21 firearms identification?

22 A. Yes.

23 Q. What sort of work has that been?

24 A. That's been my own independent research and
25 then consulting on legal cases such as we have here

1 today.

2 Q. And do you consult for both prosecution and
3 Defense?

4 A. I would do -- I very rarely get hired by the
5 prosecution.

6 Q. Okay. But you're not adverse to doing that if
7 they ask you to review a case?

8 A. No, I'll work for anybody.

9 Q. All right. And have you actually testified on
10 this -- as an expert on the subject of firearms
11 identification?

12 A. Yes, I have.

13 Q. How many times?

14 A. I haven't kept a count but probably over ten in
15 several states and federal courts.

16 Q. Now you've been involved in quite a number of
17 additional cases involving the same subject but you
18 never testified, right?

19 A. That's correct, yes.

20 Q. And why is that?

21 A. Generally, if I come up with results which are
22 not favorable to the side that hired me, they don't have
23 me testify.

24 Q. All right. And that's happened a number of
25 times.

1 A. Yes, more times than what I've testified by a
2 long way.

3 Q. All right. Now you actually do
4 toolmark/firearms examinations, correct?

5 A. Yes, I have the microscopes and do that myself
6 in my own lab.

7 Q. You have your own equipment?

8 A. Yes.

9 Q. Do you have a side-by-side comparison
10 microscope?

11 A. Yes, I have several.

12 Q. Like the ones that we've heard talked about by
13 the witnesses already in this case?

14 A. Yes.

15 Q. Okay. And do you consider the practice of
16 firearms examinations for identification purposes to be
17 a science?

18 A. Yes, I do.

19 Q. Okay. And explain that, why do you say that?

20 A. I think it involves a lot of technical areas,
21 statistics, mechanical engineering, metallurgy,
22 protection engineering, industrial engineering, so it
23 certainly has the potential to be a very detailed
24 science.

25 Q. Okay. Do you believe that as it exist now, the

1 way that forensic firearms examiners do their work, is
2 that scientific?

3 A. It may be in some regards but I don't believe
4 it's any way near as scientific as it could be and a
5 very much more of a black art than science.

6 Q. What do you mean black art rather than science?

7 A. A good science is you should be able to get
8 five people do it and get the same results. And very
9 often with the toolmark analysis, it comes down to
10 subjective opinion, you don't always get a number of
11 people coming up with the same opinion.

12 Q. Okay. Now you on your -- you put together a
13 little slide show and you've -- we tried to cut it down
14 last night in the interest of time, but your first
15 slide -- does this pretty well sum up your position on
16 the practice of the firearms/toolmark analysis as it's
17 done forensically today?

18 A. Yes. My basic overall opinion is that it's a
19 good tool for investigation. But the way that it's
20 practiced at the moment or the current state of science,
21 it's not as mature as it could be, so I wouldn't feel
22 comfortable that people get convicted with.

23 Q. You're familiar with the 2008 Ballistics Energy
24 and the report put out by the National Academy of
25 Sciences?

1 A. I've read that but not recently.

2 Q. Okay. And you're also familiar with the
3 firearms/toolmarks section -- well the whole NAS, 2009
4 report which took a broad look at all of the forensic
5 sciences, correct?

6 A. Yes, I'm quite familiar with that.

7 Q. Okay. And in particular, the part that deals
8 with the firearms/toolmark examination?

9 A. Yes, there are six stages which are developed
10 for the firearms and toolmarks.

11 Q. Okay. And you agree with the conclusions
12 reached in that report?

13 A. Yes.

14 Q. All right. Now, I asked you to kind of hone in
15 on this so we can go through this quickly. Do you
16 believe that the forensic practice of firearms/toolmark
17 examination meets the Daubert criteria?

18 A. No. I was given the full criterion, which the
19 Daubert criterion, I considered the current state of the
20 science of toolmark analysis against those criterion
21 from a technical prospective and I concluded that it
22 doesn't meet all of those criteria.

23 Q. All right. And regarding the qualifications of
24 the examiner, what is your opinion, just in general
25 about firearms/toolmarks examiners as you've come to

1 know them in your expert consulting work?

2 A. It seems to be that the majority of them are
3 educated academically on something other than
4 engineering or statistics or metallurgy. I think that
5 it's a disadvantage, but as a practitioner, if you'll
6 follow the laboratory protocol, it doesn't make an awful
7 lot of difference; if you're formulating those
8 protocols, it would make a difference. But the way that
9 the protocols are written and the way it's practiced, it
10 gives very loose results and it's more open to the
11 interpretation of the individual examiner and their
12 subjective judgment.

13 Q. All right. Regarding the issue of some of
14 these claims of the underlying validity or the way they
15 do the examinations, what are the problems with that?

16 A. I based it on this specific case inasmuch that
17 I know, and based on Ms. Eudaley's testimony yesterday,
18 there were no unique breech face marks. The crime lab
19 were unable to state how many individual characteristics
20 constituted a match or how many there were, and they
21 were unable to state in absolute terms or even in
22 percentage terms how many parts of agreement you would
23 need to consider it to be a match.

24 Q. So you're commenting now on the testimony of
25 Ms. Eudaley and Mr. Colca about the way they did their

1 examination in this case?

2 A. Yes. The other thing was that the crime lab
3 admitted that it's a subjective discipline with no set
4 standards and that kind of agrees with what's in the
5 2009 NAS report.

6 Q. Okay. And here, you said again, no set
7 procedures; unarticulated standards, correct?

8 A. Yes, that was in the NAS report.

9 Q. And is that one of your major problems with the
10 lack of science when it comes to the way they do this
11 firearms examination?

12 A. Yes.

13 Q. Do you agree with Mr. Tobin and the NAS report
14 that the concept of uniqueness has not been
15 scientifically established?

16 A. Yes, I do.

17 Q. Okay. And do you agree with the NAS report and
18 Mr. Tobin that there's no -- there are no known rates of
19 error for how often the examiners get it wrong?

20 A. Yeah. I think there are various studies out
21 there that show rates of error, but the NAS report
22 concluded that there were no valid studies that showed
23 the rate of error.

24 Q. Do you agree with that?

25 A. Yes, they vary widely.

1 Q. Okay. Again, you've already commented on this,
2 they can't specify a -- since there's no standards, they
3 can't specific the number of points of similarity when
4 they're dealing with opinion, correct?

5 A. Yes, and this is from the NAS report. It's a
6 general comment about the procedures generally, not
7 necessarily the specific case though it does apply.

8 Q. All right. Again, do you agree with Mr. Tobin
9 and the NAS that much of the -- and Ms. Eudaley said it,
10 too that what they do basically is subjective?

11 A. Yes.

12 Q. Okay. And subjective, I assume is not
13 something that scientists like to rely on?

14 A. Yes. Subjectivity results in variability of
15 results and that's what you don't want. Ideally, in
16 science, you're going to get the same result, no matter
17 which individual does it or which lab does it.

18 Q. Okay. What is your concern about subclass
19 issues?

20 A. Subclass is a dangerous class of a toolmark.
21 There's no real way to tell if you have subclass or not
22 if the individual is subclass, unless you have two or
23 more components of firearms which you know were made
24 sequentially and you can identify that they all do have
25 the same mark and it was a subclass toolmark, you have

1 no way to determine that they're individual or subclass.

2 Q. So, as I recall the subclass versus individual,
3 individual might be unique to a particular firearm
4 because it is a rare pattern or the way it was made or
5 whatever. And then subclass, your -- I believe might be
6 something that's maybe in a number of firearms because
7 they were made right around the same time, by the same
8 tool, by the same manufacturer or something to that
9 nature; is that correct? Did I --

10 A. Yes, the basic principle is that just as you're
11 saying that the firearm is the tool when a bullet or a
12 cartridge case goes through it and that tool leaves
13 marks on the ammunition components which you can
14 identify.

15 Q. Right.

16 A. The tool that made those components or the tool
17 that made the tool in effect can also transfer its
18 characteristics to the gun components and it can do that
19 to a number of gun components so you can have quite a
20 large pool of components with similar markings on them
21 which are subclass in nature, because more than one gun
22 or more than one component will have them.

23 Q. You had talked just a minute about a particular
24 case study that you're familiar with, we'll get into
25 that in a minute. What about the issue of reliable

1 application of the theory in trying to determine whether
2 or not you have -- you can identify a particular
3 firearm, what is the problem there with the way they do
4 it?

5 A. Well I think basically -- what I'm saying is
6 that if you don't have a reliable repeatable process,
7 then you can't reliably it because by definition, it
8 isn't a reliable repeatable process.

9 Q. All right. This is just an example of showing
10 what a bullet could look like after it's been fired out
11 of a gun, correct?

12 A. Yes. This is an example of a bullet in very
13 good condition that was fired into a recovery system and
14 recovered. And you can see on there the lands and
15 grooves which would be class characteristics, and within
16 those lines and grooves, there are very fine lines which
17 would be the individual characteristics.

18 Q. Okay. And you say this was fired in a recovery
19 system. When they test-fire bullets in the lab,
20 normally how do they do that? What types of recovery
21 systems do they have?

22 A. You can fire them into water, you can fire them
23 into a recovery box which is filled with shredded gum.
24 (sic)

25 Q. Okay. And the -- why do they fire it into a

1 recovery box -- recovery system rather than just like
2 firing it into a dead pig or something like that, why
3 would you do that?

4 A. Generally, you want to decelerate the bullet in
5 a uniform manner so that you deform it as little as
6 possible and the water or the cotton waste is a good way
7 to do that.

8 Q. Now, the bullet often times, though, isn't it
9 true that the bullets they're comparing their test-fires
10 to are not in pristine condition?

11 A. Yes. Generally if you're in a street situation
12 or a case situation, the bullets have passed through
13 people or they hit furniture or cars, they can be fairly
14 well beat up.

15 Q. They usually look much worse than the
16 test-fired --

17 A. Yes. It would be very unusual to have a bullet
18 from an actual case which was as good as the one in this
19 picture.

20 Q. Okay. What is this an example of?

21 A. This is an example of a side-by-side comparison
22 of two bullets. The one on the right was recovered from
23 a victim's head, and the one on the left is a test-fire
24 from the suspect firearm. And the one on the right
25 basically shows you have deformity there, just going

1 into someone's head.

2 Q. All right. And this is a non-match.

3 A. Yes. You can see that the class
4 characteristics are different, the width of the lands
5 and groves were different.

6 Q. Okay. This is a sort of thing that a forensic
7 examiner would see if they're looking through their
8 comparison microscope, correct?

9 A. Yes. If the class characteristics were
10 different, you wouldn't take the analysis any further,
11 that would eliminate that gun.

12 Q. Can you be more specific about why the class
13 characteristics are not the same?

14 A. In this particular example?

15 Q. In this example.

16 A. Oh, it would have been a different gun that was
17 used.

18 Q. Okay. And this was -- are you saying this was
19 known different guns?

20 A. No. Really this shows you two things; the
21 example on the right is to show you that the lands and
22 grooves do get deformed somewhat when the actual bullet
23 goes into a victim or a piece of furniture, this
24 particular one was out of someone's head. So it isn't
25 as easy to determine exact measurements or exact

1 comparisons as it looks when you have pristine bullets.
2 But the difference between the land impression that
3 we're looking at there, it's a lot wider on the bullet
4 from the head than it is on the test-fired bullet.

5 Q. You can touch that screen and show us what
6 you're referring to, it should make a mark.

7 A. Yeah. What we're doing here, this is the upper
8 limits of the land impression and this is the lower
9 limit, and you can see on this bullet it's wider.

10 Q. Oh, I see, I see what you're talking about.

11 A. How do I erase those lines? On the bottom
12 right?

13 Q. I'm sorry, bottom left. What is this slide
14 show?

15 A. These are two bullets that I fired into a
16 recovery system, and I knew they were from different
17 guns so I know that they're not a match, and this is
18 what they looked like under the comparison microscope.

19 Q. Did you do this, did you test this firearm?

20 A. Yes.

21 Q. So you used two different guns. So you knew
22 they were not a match and then you took -- compared the
23 two bullets, you're just using this as an example to
24 show us what a non-match would look like?

25 A. Yes, these were two Smith and Wesson revolvers

1 of the same model but different guns.

2 Q. Okay. It looks pretty similar to me, tell me
3 why it's not a match.

4 A. What you're trying to do, you can see on the
5 left, the lines on here are striations; it's like
6 matching bar codes. This line down the middle is the
7 dividing line between the two bullets. And you'll see
8 there's a lot of striae here, which are horizontal lines
9 on here that, depending how you count, there's either
10 hundreds or thousands of them and how much detail they
11 go into.

12 And what they're trying to do is match
13 those up to the ones on the other side to see if there's
14 a good agreement between the two bullets.

15 Q. All right. Now, how do you determine? I
16 guess, if you put two bullets under a microscope, do you
17 have to rotate the bullets or try to make sure -- how do
18 you decide which part of the bullet to look at when
19 you're doing this examination?

20 A. You mount these bullets and you have a system
21 on the stages where you can put the bullets on and
22 this -- a little knob on each end, you can turn them and
23 rotate those bullets through 360 degrees. What you do
24 is look on one bullet and find an area that you think
25 looks quite distinctive and has good prominent markings

1 on it, and then you will take the other bullets and see
2 if you can match it up to those prominent markings.

3 Q. Okay. What's this an example of?

4 A. This is the same gun, only this is two bullets
5 fired out of the same gun, and this shows what a match
6 would be because I know they came from the same gun.

7 Q. This is something that you did?

8 A. Yes, it is.

9 Q. And you fired -- and you knew that you were
10 firing the bullets from the same gun in your recovery
11 system.

12 A. That's correct, yes.

13 Q. And you put them under the microscope and
14 photographed it to show us an example of the match,
15 correct?

16 A. That's correct.

17 Q. Okay. To a non-mechanical engineer and
18 somebody who's never tried to do forensic firearms
19 identification, to me that -- it doesn't look like a
20 match. Explain why it's a match.

21 A. What you find is even when you fire two bullets
22 through the same gun, there's a certain number of these
23 striations of the characteristics that don't match up.
24 But overall on this one, you can see that there's a
25 group up here and an end about here and there's another

1 group here. And if you look at the individual markings
2 within that and those sub-groups, you can see that they
3 match up even though there's a few that are a little
4 off, that's quite normal for two bullets from the same
5 gun.

6 Q. Okay. So what you're -- if I understood you
7 correctly, you're saying -- you knew these were fired by
8 the same gun because you did it.

9 A. Yes.

10 Q. And what you're saying is that even on -- when
11 you know it's the same gun, there's going to be some
12 striations that don't match up?

13 A. That's correct, yes.

14 Q. And some that do match up.

15 A. Yes, hopefully the majority that do match up,
16 there's always some that don't.

17 Q. There's no set protocol or standard as to how
18 many matches you have to have?

19 A. That's right, and every bullet has a different
20 number of striae and marks on it. This particular one
21 has a lot. This is just looking into -- this is
22 probably one percent of the circumference of the bullet,
23 and you can see there's an awful lot of marks from it.
24 So if you took the entire periphery of the bullet, it'd
25 be probably thousands of lines on there. Some bullets

1 have much larger ones and you have less, so conceivably
2 you could have a bullet from one gun that has two
3 hundred striation lines around the periphery, you could
4 have another one that has two thousand. No one has come
5 up with a definitive answer to say, well, you need
6 twenty percent, thirty percent, forty percent to match
7 before you can say this is definitively from the same
8 gun.

9 Q. One thing you don't do or it's not done in this
10 practice is they don't use the single dissimilarity rule
11 that Mr. Tobin referred to.

12 A. That's correct, yes.

13 Q. Like in a fingerprint, my understanding is if
14 you compare fingerprints, if there's a single
15 dissimilarity, they say no match, right?

16 A. I'm not a fingerprint examiner but I have heard
17 that.

18 Q. Okay. But that's not the practice in the
19 forensic firearms --

20 A. No. Very often, even when you know the two
21 bullets came from the same gun, there are a number of
22 dissimilarities. And it's down to subjective judgment,
23 at what point you think there are too many
24 dissimilarities, and you would say it isn't a match.
25 And at what point, there are so many, they just say,

1 well this must be from the same gun.

2 Q. But based on your experience and familiarity
3 with this field, does it vary from examiner to examiner
4 as to what their standard is?

5 A. Yes, it's subjective judgment, it varies from
6 lab to lab.

7 Q. All right. This -- what is this photo an
8 example of? This is just an example of something --

9 A. Yes. These are just examples to show generally
10 what you would expect to see. This is the rear end of a
11 45-ACP cartridge case that was fired in a gun. And the
12 point in the middle here is the firing pin impression.
13 So that part there was the firing pin impression. And
14 the larger round piece in the middle is the primer.

15 Q. All right. So this is just an example of what
16 the firing pin impression would look like on the back of
17 a shell casing?

18 A. Yes. It's an example of what a firing pin
19 impression could look like. There are other shapes that
20 you could have.

21 Q. Okay. What is this an example of?

22 A. This is the extractor mark. There's a claw in
23 there that grabs the cartridge case, so it kind of looks
24 like that, and it grabs the end of the rim of the case.
25 And when the gun fires, it pulls the empty case out and

1 then it hits the ejector and is ejected clean.

2 Q. So the ridge is back behind the rim and pulls
3 the bullet out of the barrel, right?

4 A. Yes, it pulls the empty cartridge case from the
5 barrel.

6 Q. The case, yeah, right.

7 A. And on a previous slide that we have, we were
8 looking right on the back of the cartridge; and this is
9 looking from the other -- the other angle looking into
10 the room.

11 Q. Okay. What is the next slide show?

12 A. This is an ejector mark. So when that case is
13 pulled out of the chamber and it comes back really
14 quickly, there's a steel pin that is sticking out of the
15 back of the gun, and the case comes very quickly, it
16 hits it and that flips it out and gets ejected from the
17 gun.

18 Q. So these last three slides you showed are
19 typical markings that you would expect to find on a
20 fired shell casing?

21 A. Yes.

22 Q. The firing pin impression, the ejector mark and
23 the -- what was the other one?

24 A. The extractor mark.

25 Q. The extractor mark. Okay. Now this is a case

1 study you wanted to talk about. What is a point of this
2 case study you wanted to talk about?

3 A. The point of the case study is that there are
4 two cartridge cases here -- actually they're more than
5 two but there's two groups. This was from the Puerto
6 Rico Crime Lab. And they claim that a certain gun fired
7 the cartridge cases that were recovered at the scene.
8 And I went and test-fired the gun and they were totally
9 different, major different; yet everyone in the Puerto
10 Rico Crime Lab said that they were a hundred percent
11 sure that these came from the same gun.

12 Q. So you differed from what the crime lab people
13 were saying.

14 A. That's correct, yes.

15 Q. Was the crime lab people all members of AFTE?

16 A. Yes, they were.

17 Q. Okay.

18 A. Oh, for the record, there was also another
19 independent consultant who was a member of AFTE and he
20 agreed with me.

21 Q. All right. What is this first slide show
22 regarding this case study?

23 A. The one on the left, which is Exhibit 7-E3 is
24 one of the cartridge cases that was recovered from the
25 scene.

1 Q. Okay. What is the one on the right?

2 A. The one on the right is one of the cartridge
3 cases that I test-fired in the suspect's gun.

4 Q. And did you -- you test-fired it in a gun that
5 was recovered that the law enforcement was trying to say
6 was the weapon involved in the case?

7 A. That's correct, yeah.

8 Q. And in your opinion, are these a match?

9 A. No, they're nowhere near it.

10 Q. Okay. Can you explain why they're not a match?

11 A. What we're looking at -- I based this on breech
12 face marks and firing pin impression marks -- and what
13 we're looking at is the primer in the middle. And if
14 you look at each example there, just looking at this
15 overall picture, if you look at it, they look quite
16 different to me, I would assume they do to everyone
17 else. There's a part in the middle, which I usually
18 refer to as a doughnut which is allowing the firing pin
19 impression, and on the one from the scene, you can see
20 it's a small distinct one and the one from the suspect's
21 gun, the doughnut shape takes up the entire primer.

22 Q. All right. Now what does the next slide show?

23 A. What I did was compared -- I think there were
24 something like eight to eleven cartridge cases found at
25 the scene and they were all very similar, so I compared

1 two examples from the scene to see how repeatable the
2 markings were on them.

3 Q. So these are the two casings that were found at
4 the scene. And what is your opinion regarding these two
5 casings?

6 A. They have a lot of similarities and I concluded
7 that they were fired in the same gun.

8 Q. Okay. And this is showing the whole back of
9 the shell casing. I think the next slide zooms into the
10 primer area, correct?

11 A. Yes. If you zoom in on that, you can see that
12 the doughnut shape which is a function of the breech
13 face of the gun, it's a breech face feature. So the
14 doughnut shape on each one, if you look at those, they
15 look the same, and there's a little kidney shaped defect
16 here, and it's also on the other in the same location.
17 And then the breech face marks, you can see some lines
18 running across on the rest of the primer and those are
19 the same on each one, too.

20 Q. Okay. And this next slide I believe zooms in
21 even closer?

22 A. Yes. This is looking at the firing pin
23 impression and we're looking right in the bottom of that
24 firing pin impression. So what we have here, you can
25 see there are a lot of similar marks, and again, this

1 isn't a printing press which reproduces precisely
2 overtime, you do get a little variation. But there's
3 enough here to say that there's a distinctive line up
4 here and you'll see it on here as well.

5 Q. Okay.

6 A. And then there's a mark down here, and there's
7 one there, too, and then you got these angular rings
8 which are running around and you have them on here, too.
9 So when do you that side-by-side comparison, it's
10 evident that there are a lot of features that are the
11 same.

12 Q. So it's your -- it would be your conclusion
13 based on the comparison of these two bullets found at
14 the scene that these show a lot of similarities in what
15 you would say were probably fired by the same gun or how
16 would you express that?

17 A. Yeah, I'd say there were a large number of
18 similarities and there was a very high probability they
19 were fired from the same gun.

20 Q. Okay. The next set of slides, what does this
21 show?

22 A. This is two that I had test-fired in the
23 suspect's gun.

24 Q. In that same -- in the suspect gun?

25 A. Yes. These were fired in the suspect gun so I

1 know they were fired in the same gun.

2 Q. Okay. And this is a zoom in?

3 A. Yes. So again, what we're looking at here, if
4 you look at the doughnut shape, it's taken up most of
5 the primer, not just a little part around the firing pin
6 impression. And it also has very distinctive shape,
7 it's got a jagged edge to that doughnut shape, and if
8 you compare the two side-by-side, you can see that those
9 jagged edges do -- do reproduce.

10 Q. And this is a zoom in that actually show the
11 firing pin mark?

12 A. Right. When you look at this firing pin
13 impression, this is looking into the bottom of the
14 firing pin impression. And if we go into this area
15 here, you'll see there is a -- there's a smooth area on
16 each one and that's a very distinctive shape and the
17 shape is the same on each one.

18 Q. All right. Now, what does this next slide
19 show?

20 A. This again, we're back to where we have them
21 side-by-side, so the ones on the scene is on the left,
22 and the one I test-fired in the suspect's pistol is on
23 the right.

24 Q. So, then this is zooming in again.

25 A. And that's the firing pin impression, right,

1 looking into the bottom and you can see that they're
2 different.

3 Q. Okay. Now, the -- well, let me ask you this.
4 During this case that you were working on, did you --
5 were you able to talk to the prosecution's experts?

6 A. No.

7 Q. Okay. So you don't know what criteria they
8 were using as far as the number of similarities when
9 they formed their conclusion that --

10 A. Just from the testimony yesterday which I
11 heard, which was they didn't count them or they didn't
12 know how many.

13 Q. So, this is an example of where you got two --
14 you got you and another guy agreeing that it's not a
15 match, and you got -- how many were on the other side?

16 A. There were a lot of people in the crime lab
17 down there. I don't know how many that testified, but
18 at least two of them agreed -- I think more than that
19 said they had --

20 Q. So you got two saying it's a match, you got two
21 saying it's not a match.

22 A. At least two, I think they indicated that more
23 people from the crime lab looked at it and they all
24 thought -- they were all a hundred percent sure that it
25 was a match.

1 Q. And your opinion it wasn't a match?

2 A. No, there's no way, this is one of the most
3 different things you could get.

4 Q. Okay. Now, we've already got the NAS report
5 into evidence but I just want to talk a little bit about
6 it. You're familiar with how the NAS report was -- the
7 2009 NAS report was put together, correct?

8 A. Yes.

9 Q. And the parts that you think in that report
10 that are pertinent, we didn't give the Court all these,
11 we just gave him the six pages or so that talks
12 specifically about firearm/toolmark examinations. But
13 you -- in your opinion, there are other parts of the
14 report that were pertinent, one was impartiality and the
15 other one was qualifications, the other was the way they
16 write their reports, correct?

17 A. Yes, that's correct. The report was divided up
18 into a number of technical areas, but in addition to the
19 technical aspects, they also discussed impartiality at
20 the crime lab, qualifications of the workers in the
21 crime labs and the way that the reports are written.

22 Q. The report -- you're the one who told me this.
23 This was commissioned -- the NAS report was commissioned
24 by the U.S. Congress.

25 A. Yes.

1 Q. And what does NIJ stand for?

2 A. That's the National Institute of Justice.

3 Q. All right. And it -- that report, the
4 formulation of it took a number of years to come up
5 with, correct?

6 A. Yes, it was a large committee and they spent
7 several years collecting data and then producing the
8 report.

9 Q. Okay. The participants were who?

10 A. It was a panel of leading scientists, lawyers
11 and judges. There were fifty-two scientists, twenty
12 support staff, and then they had seventy consultants
13 from academia, government and industry, and then there
14 were another twenty-seven reviewers.

15 Q. So they put considerable effort and work from a
16 broad base spectrum --

17 A. Yes, it was a big team and they put a lot of
18 effort into it.

19 Q. All right. And the basic conclusion -- I won't
20 use your words, that's your slide -- but, basically they
21 found problems in many, many forensic areas. The one
22 they said that was the least troubling was the DNA, but
23 the rest of them they said that -- for all the rests,
24 they said there's problems as far as the scientific
25 validity of these other forensic disciplines, correct?

1 A. Yes, that's correct.

2 Q. Okay. And you've already -- the report is
3 critical about qualifications of a lot of people in the
4 crime lab, but -- and you say that's true from what you
5 gathered in forensic firearms examiners across the
6 board, not all of them are like that but quite a number
7 of them.

8 A. Yes, there's a very wide range of academic
9 qualifications. Some people just left school and
10 started work and then drifted into this. Those people
11 who do have degrees, they range from psychology, English
12 literature, history, nursing, there's a really wide
13 array.

14 Q. Now in this case we have a young lady,
15 Ms. Eudaley who was educated at Texas A&M, and some
16 would say that would disqualify her automatically, but
17 some wouldn't. But -- I'm joking. But she has a degree
18 in, I think forestry or something like that or fishery,
19 whatever it was, but it was not a forensic firearms
20 focus education, correct?

21 A. That's correct.

22 Q. Now the other fellow, Mr. Colca had a degree, a
23 Forensic Science Degree. Is that -- when you've looked
24 into forensic science degrees, what you found as far as
25 whether that prepares you better for --

1 A. Well I haven't --

2 MR. HANNA: Your Honor, I'm going to
3 object, this is outside the area of his expertise. This
4 is argument for Defense counsel to make, not for him to
5 opine other people's credentials.

6 MR. DOGGETT: Well, can I ask him if he's
7 knowledgeable about? If he says he's not, I'll move on.

8 THE COURT: I'll sustain it until you lay
9 a foundation for him to be able to opine on it.

10 MR. DOGGETT: Right.

11 Q (By Mr. Doggett) Have you looked into the issue
12 of whether or not forensic science degrees provide
13 appropriate educations as far as engaging in firearms
14 examinations?

15 A. I've looked into it from a point of view of
16 reading other people's research on it, and the NAS
17 report commenting that they thought forensic science
18 degrees -- I think I put that phrase down here -- oh,
19 they said it contained only superficial science and
20 serious science courses were preferrable.

21 Q. So that's just your opinion, correct?

22 A. That may be my summary of what I read in the
23 NAS report or my interpretation.

24 Q. Okay. What about the issue of report writing?
25 And I'm going to relate this to this specific case. Did

1 the NAS report say there's a problem with the way
2 reports are written?

3 A. Yes. Generally crime lab reports, if you even
4 go back to your school days and you had to do science
5 reports, if you've done lab experiments, you would write
6 them up and you would always write what equipment you
7 used, what procedure you followed, what conclusions you
8 were drawing up. You'd discuss what the results meant,
9 list the results, discuss what they meant and then you
10 would come up with a conclusion at the end. The report
11 that you get from crime labs is basically just the
12 conclusions, they just say what they've looked at and
13 what they concluded, there's not much in the middle.

14 Q. Okay. Did you look --

15 A. The NAS report's critical of that approach.

16 Q. Did you look at the specific reports in this
17 case?

18 A. Yes.

19 Q. Did you feel like they were written in such a
20 way that you could -- that they were adequately written
21 as far as the scientific method is concerned?

22 A. Yeah. The general standard that NAS thought we
23 should be aiming for is that if another person turns up
24 and reads the report, they should be able to understand
25 it and repeat the work. And I didn't think that they

1 were done to a level that would enable me to do that.

2 Q. Okay. Now the NAS report specifically
3 addressed the firearms and toolmark -- the Court has and
4 we've already talked about, I don't want to dwell on
5 that right now. The criticisms in the NAS report were
6 again -- and I think we've already talked about all
7 this, again it's subjective judgment, correct?

8 A. Yes. The NAS report said that they were
9 subjective, qualitative judgments, which is basically
10 saying they're not quantitative so there's no -- nothing
11 that you could analyze statistically to come up with
12 some firm conclusions.

13 Q. They have no set standards which we've
14 already -- they've already admitted they don't have set
15 standards, right?

16 A. Yes, no set procedures and unarticulated
17 standards.

18 Q. Okay. And the other big problem was the NAS
19 report found that this idea that each firearm creates
20 unique toolmarks that would allow you to identify a
21 particular firearm has not been scientifically
22 demonstrated.

23 A. That's correct. The concept of uniqueness,
24 they concluded as not being scientifically established
25 or demonstrated.

1 Q. Now all this issue of uniqueness, the next
2 slide addressed -- is directly addressed to the issue of
3 uniqueness, where is this quote from?

4 A. This was a caption that was published under a
5 photograph that was in the AFTE Journal. And it was two
6 cartridge cases that were fired in a Smith and Wesson
7 pistol. And the office said, likely the firearm
8 examiner who encounters these marks in case work would
9 presume that all of the marks are individual in nature
10 and use them as a basis for a match. And if we go to
11 the next slide.

12 Q. All right. Let me show the photograph.

13 A. So these were the --

14 Q. Is this the photograph from the AFTE Journal
15 article that you're referring to?

16 A. Yes, it is.

17 Q. And the author says it's likely that an
18 examiner would declare this to be a match?

19 A. Yes.

20 Q. The same gun fired both of these -- what is
21 this, a casing?

22 A. In actuality, these two cases here were fired
23 from different guns.

24 Q. Right. But the author said he thought an
25 examiner would find this to be a match.

1 A. Yes, that's correct.

2 Q. What is this -- why is this important to you,
3 why is this photo so important to you?

4 A. Well the NAS report says that the concept of
5 uniqueness has not been demonstrated or proven. This
6 actually shows that the concept of uniqueness is being
7 disproven because we have two guns which are giving --

8 Q. This is two different guns that --

9 A. Give results which an examiner would say it was
10 a match.

11 Q. Okay. Additional criticisms that are in the
12 NAS report, there's no rate of error, no -- right?

13 A. No statistical foundation for the estimation of
14 error rates; so even though you might find some error
15 rates, what they're saying is that there are error rates
16 out there, they vary widely, and there's no statistical
17 foundation for those error rates. So you really can't
18 trust any of them.

19 Q. Okay. And again the -- we don't have any
20 rules, no set rules as to how many points of similarity
21 you have to have to give an opinion about whether or not
22 something has been identified or --

23 A. Yes. Nobody's saying you need five percent,
24 twenty percent, thirty percent or given a finite number,
25 it's just left to the subjective opinion of the

1 individual examiner.

2 Q. All right. Now, Ms. Eudaley said that there is
3 peer review by, I guess primarily by AFTE. What's your
4 opinion about the peer review that's conducted by AFTE?

5 A. It's internal. And in my experience, it hasn't
6 been particularly thorough. I haven't read every AFTE
7 article that's ever been published but, I did read one a
8 couple of years ago, and there was a table in there of
9 percentages, and it added up to over a hundred. And
10 then it said the article had been peer reviewed by a
11 number of AFTE members, but they obviously didn't catch
12 that.

13 Q. So what is the view of the -- you got the
14 forensic firearms/toolmarks examiners group which is
15 primarily the AFTE organization and then you have people
16 outside that group, active omission, scientists, people
17 like Mr. Tobin, people like you; what is the view of the
18 non-forensic scientific community regarding the
19 scientific validity of toolmark analysis?

20 A. Generally, people who would be considered
21 mainstream scientists agree with what is in the NAS
22 report. AFTE have been trying to challenge that, that
23 if you have a problem that AFTE isn't really a
24 scientific organization because they have no academic
25 requirement for membership so their membership

1 qualifications vary a lot. Also, almost all of their
2 members are either from law enforcement labs or
3 ex-employees of law enforcement labs, so they tend to
4 focus on things from a conviction point of view.

5 Q. Okay. So there is a significant -- tell me
6 whether I'm right or wrong. Based on the way I've read
7 the NAS report, 2009, there's a significant number of
8 scientists who think that the firearms/toolmark methods
9 are not scientifically reliable?

10 A. Yes. The NAS committee was made up of
11 supposedly the top scientists in the country, and they
12 all agreed that -- well, obviously they published their
13 conclusions in the report and that's what they think.

14 Q. What about -- I want to ask you just a couple
15 of specific things. You heard -- I believe -- you were
16 here for Ms. Eudaley's testimony, correct?

17 A. Yes.

18 Q. And she, I believe said something about how
19 this barrel had rusted; do you remember her testimony
20 about that?

21 A. Yes, I recall something about the barrel being
22 rusted.

23 Q. Now apparently when the gun was -- I believe,
24 according to Mr. Colca and according to the case report,
25 the barrel was rusted when it was first brought in.

1 A. That's correct, yes.

2 Q. Okay. But it didn't -- do you remember whether
3 or not it specified in the report how rusted the barrel
4 was or whether or not they took any photographs of the
5 corrosion in the barrel or anything like that?

6 A. I think I've seen notes somewhere that said
7 that it was cleaned and lubed.

8 Q. Okay. Now would cleaning the gun and lubing
9 the gun barrel like that, could that alter the test
10 results?

11 A. It could do, yes.

12 Q. Okay. And would that be your practice, if
13 you -- if a gun were brought to you for examination,
14 would you clean it and lubricate it before you examined
15 it and test-fired it?

16 A. No. Generally I'm very wary of spoliation of
17 evidence issues and -- unless I was given specific
18 instructions to do it, I wouldn't do it.

19 Q. And why would you feel like that might be a
20 spoliation issue?

21 A. It's something that attorneys always seem to be
22 concerned about. And if you change the nature of the
23 evidence, if you do anything to change it permanently
24 that can be seen as very negative. In civil cases, it
25 can be a reason for the other side to have the case

1 thrown out.

2 Q. Now, if you -- if you say in a report, I
3 cleaned it -- I mean, I used to have a gun cleaning kit.
4 I cleaned my guns and I had a wire brush that I could
5 take in there and really ream it out and try to get all
6 of the crud out of there and then you put a patch on
7 there with special oil and then you run that through
8 there to try to lubricate it and protect it. I guess
9 cleaning is a relative term. You could really clean it
10 and try to get a lot of the rust out or you could just
11 run it through one time or --

12 A. Yeah, there are lots of different products.
13 There are hundreds of gun cleaning products but they're
14 also rust removal products, and I know that some crime
15 labs use rust removal products to remove rust as well.

16 Q. We don't know what was done in this case --

17 A. No.

18 Q. -- because it's not written in the report other
19 than just he cleaned it --

20 A. It's not documented, no.

21 Q. -- correct? It's just written in the report,
22 he cleaned it. It doesn't say how he cleaned it or
23 what --

24 A. It doesn't say what kind of oil was put on it
25 or how it was cleaned, it just said it was cleaned and

1 lubed.

2 Q. Then later when Ms. Eudaley testified again,
3 she said it was rusted again, correct?

4 A. Yes.

5 Q. Okay. And again there's no photograph of the
6 inside of the barrel to show how much corrosion was
7 there or anything like that?

8 A. That's correct.

9 Q. Do you recollect whether or not she cleaned it
10 again? Whether her report indicates that she cleaned it
11 again?

12 A. Yeah, I don't recall now.

13 Q. All right.

14 A. I know when I first -- I think it said it was
15 disassembled and cleaned. So, I don't know how far it
16 was disassembled. You can field strip a gun or you can
17 detail strip it into every little component. So I don't
18 think it -- it didn't specify.

19 Q. They didn't say in the report how much of a
20 disassembly they did?

21 A. I don't recall that being mentioned, no.

22 Q. Now, what about the point on this issue that
23 Ms. Eudaley made that she said, well, if the barrel is
24 rusted like that, it's going to give a really unique
25 signature or marking to whatever's fired through that

1 barrel. What's your response to that?

2 A. I'm not too sure about that. I think that if
3 it's rust every time you fire it, it's going to change,
4 so the reproducibility issue -- well, it would quite
5 concern me.

6 Q. So it could -- if it's rusting, if it's
7 continuing to corrode, it would -- it could change the
8 striations every time you fired a bullet?

9 A. Yeah, because the rust tends to peel off, it's
10 just like if you have rust on your car or a shovel
11 outside and you get rust that peels off.

12 MR. DOGGETT: I pass the witness.

13 THE COURT: Cross.

14 MR. HANNA: May I proceed, Your Honor?

15 THE COURT: Yes, sir.

16 MR. HANNA: Thank you.

17 **CROSS-EXAMINATION**

18 Q (By Mr. Hanna) Mr. Nixon, how are you this
19 morning?

20 A. Good, thanks.

21 Q. I'm going to sort of try to go through your
22 testimony on your direct examination in the order in
23 which you were asked questions by Mr. Doggett and what
24 he started out was with your credentials, mechanical
25 engineering and a Masters in Business Administration.

1 A. Yes.

2 Q. And those are your two degrees.

3 A. Yes.

4 Q. Okay. And you've indicated that you consider
5 yourself a firearms examiner expert or a firearms
6 expert?

7 A. Yes.

8 Q. And is that expertise in the comparison of
9 firearms or cartridges, bullets and guns?

10 A. It's in the design function, examination of
11 markings that the firearms leave on components.

12 Q. Okay. How did you obtain -- what credentials
13 do you have to support your assertion that you're an
14 expert in that field?

15 A. My training and previous employment.

16 Q. Okay. Who did you get your training from?

17 A. The Royal Military College of Science.

18 Q. I'm sorry?

19 A. Royal Military College of Science.

20 Q. Okay. And what degree did you get from them?

21 A. Oh, I didn't. They were post graduate's
22 residential courses.

23 Q. Okay. And so what does your training entail?

24 A. It was education and training, classroom based
25 and some lab based.

1 Q. Did you physically examine, fired shell casings
2 and bullets in your training at the -- at that academy?

3 A. Yes.

4 Q. Okay. How much?

5 A. Uh, it wasn't a large part, just in the sense
6 that you were looking to see what marks were on them and
7 what kind of defect you might be looking for from a
8 point of view of over pressure cartridge cases or --

9 Q. -- okay.

10 A. -- or general kinds of things.

11 Q. So it wasn't anything in the -- it wasn't in
12 the forensic comparison, kind of thing like we're
13 talking about here today.

14 A. No.

15 Q. Okay. Well then, let's start to focus on that.
16 Okay? The stuff that would make you an expert in what
17 you're trying to testify about to today or what you are
18 testifying about today. What training have you received
19 in regards to the comparison of firearms evidence in a
20 forensic setting?

21 A. That would just be on-the-job training and
22 experience.

23 Q. Okay. Now, you mentioned you worked with -- or
24 been produced with some documents from Defense counsel
25 that you worked for Athena Research and Consulting?

1 A. Oh, yes.

2 Q. That's your own company?

3 A. Yes, it is.

4 Q. How many employees?

5 A. Just me.

6 Q. And where is it located?

7 A. Bippus, Indiana.

8 Q. It's your house, right?

9 A. It's a separate building on the same piece of
10 land as ours.

11 Q. And no other employees?

12 A. No.

13 Q. So you don't really have anybody that you work
14 with on a regular basis that reviews your work or will
15 go back over and look at what your findings are when
16 you're examining firearms evidence?

17 A. That would be correct, yes.

18 Q. It's just you?

19 A. Yes.

20 Q. Okay. And how long -- let's go back again
21 about your training. You didn't get any of that kind of
22 training at the academy. Where else might you have
23 gotten some training in the actual comparison of shell
24 casings and bullets?

25 A. Oh, that would be while I was working for the

1 British Government.

2 Q. Okay. In a forensic setting?

3 A. Yes.

4 Q. Well just a moment ago, you said it's just an
5 on-the-job experience?

6 A. I think I did mention there was some training
7 there, too.

8 Q. What kind of training?

9 A. Oh, it was just the same as you would get in a
10 crime lab, colleagues showing you what was what.

11 Q. So you sat down, and did you testify in courts
12 about your findings?

13 A. Yes.

14 Q. And it was the same kind of science -- and I
15 don't want to beat around the bush -- the same kind of
16 science we're talking about here from the -- in this
17 case, the same kind of evidence.

18 A. Oh, yes, fired ammunition exhibits.

19 Q. And you testified in court?

20 A. I don't recall specifically if I testified in
21 court or not but I certainly did some cases and issued
22 reports.

23 Q. Okay. And you issued reports regarding your
24 conclusions about your examinations of the fired bullets
25 and cartridges?

1 A. Yes.

2 Q. Was this for law enforcement purposes?

3 A. This was -- even though I worked for the
4 Government -- I could go back into smaller detail if you
5 wanted -- but in the mid 90's in the U.K., Defense
6 attorneys were complaining that the Government had
7 three -- three or four of them in labs that they could
8 use, and they didn't have access to any experts or any
9 independent experts. So even though I worked for the
10 Government, I was tasked to set up a facility to provide
11 independent forensic experts for the defense
12 communities.

13 Q. Okay. And so they saddled you with this
14 responsibility?

15 A. Yes.

16 Q. And they gave that to you -- you must have had
17 some kind of training and experience in order to qualify
18 you to do those -- to make those kind of decisions prior
19 to that date, right?

20 A. It was considered that your engineering
21 education and experience in the design and assessment of
22 weapons system was adequate.

23 Q. Well that seems like a -- some -- two
24 completely different kinds of fields of expertise,
25 weapons systems or firearms comparison. Are you trying

1 to tell me that when you got your mechanical engineering
2 degree that you compared or were taught how to compare
3 fired shell casings in bullets?

4 A. No.

5 Q. All right. You didn't, did you?

6 A. No.

7 Q. Okay. So you had to have started getting some
8 training somehow, right? In order to be in here to
9 testify about it. Or did you just one day say, hey, I'd
10 like to be an expert witness and I've got a mechanical
11 engineering degree so I'm going to look into bullets and
12 I'll go buy a microscope.

13 A. The way it came to that -- I mean I was working
14 for the Government. Now, in the Government
15 establishment that I worked at, we had a crime lab which
16 was for the prosecution. And I went along with that
17 crime lab and that's where I was taught how to compare
18 cartridge cases and bullets.

19 Q. Okay. And what theory did you -- what theory
20 did you learn when you began to make those comparisons?

21 A. What do you mean by theory?

22 Q. Did you subscribe to the AFTE theory or was
23 there some other theory that you used?

24 A. I'm not sure there was any specific theory
25 that -- anyone articulative.

1 Q. Okay. What year was that?

2 A. That would have been about '94, '95.

3 Q. How did you come to your conclusions? What
4 process did you use to come to your conclusions?

5 A. What you would do is you had suspect evidence
6 and suspect firearm, you fire at least two or usually
7 more rounds from the suspect firearm. You compare the
8 rounds that you've test-fired to one another to identify
9 what characteristics are repeating reliably. Once
10 you've established what they are, you then compare them
11 to the evidence from the crime scene and see if you can
12 find any similarities.

13 Q. And did you make conclusions after -- I mean,
14 were you able to make conclusions based on your
15 examination of those pieces of evidence?

16 A. Yes, I mean you can always come to some kind of
17 conclusion.

18 Q. It sounds very similar to what they're doing
19 here at Harris County -- or the Houston Lab, right?

20 A. Yes, it is, yeah.

21 Q. And so you actually did what you're saying they
22 shouldn't be doing back then?

23 A. I'm not saying anyone shouldn't be doing this.
24 The procedures that are followed are the procedures that
25 are probably all you can ever do, it's just some of the

1 conclusions that are drawn from that.

2 Q. Okay. Now you're saying that's all you could
3 ever do, meaning this is as good as it's going to get.

4 A. I can't think of anything else you could do
5 realistically.

6 Q. Okay. So when you're thinking along the lines
7 of the NAS report and how this field of expertise is
8 deficient, you're acknowledging that it may -- they may
9 say sufficient, but it's never going to get any better
10 because there's not anything to do because of the
11 subjectiveness of the whole --

12 A. Well, I think -- what I'm saying is that the
13 actual steps that you go through to do this, you're
14 always going to have to do those steps. It's just a
15 matter of identifying what percentage of the striae on
16 the bullets or the features on a cartridge case, you can
17 say it's a match or isn't a match.

18 Q. Okay. Now, after your experience with the
19 Government, and I guess it was in England?

20 A. Yes.

21 Q. Okay. What experience -- what jobs did you
22 have and where you regularly compared firearms evidence?

23 A. That would be here in the U.S.

24 Q. When you opened your own consulting firm?

25 A. Yes.

1 Q. Nothing in between?

2 A. Well there wasn't anyone -- they went from one
3 to the others.

4 Q. Okay. Now did you testify a little while ago
5 that the NAS report, and in your opinion that in order
6 for someone to be a valuable or credible firearms
7 examiner, they should have degrees in Metallurgy and
8 Statistics.

9 A. I think I said it's valuable to have -- I mean,
10 I wouldn't say one person should have all of those.
11 What I'm basically saying is that for the procedures --
12 or particularly the part where you come to draw your
13 conclusions, we need some input from Metallurgists and
14 Statistical people to try and come up with some better
15 criteria to form your conclusions from.

16 Q. Okay. Well I thought I heard that the question
17 to be from Defense counsel that you were attacking the
18 credentials of many. I think you -- you weren't
19 specific about the ones in this case, but just in the
20 industry alone, typically just have regular degrees like
21 fishery or biology.

22 A. Oh, no.

23 Q. But that they should have those two degrees in
24 order for them to have any value in court.

25 A. No. In fact, I've issued reports on cases

1 where I've said that the crime lab people, they're
2 adequate -- you know, adequate leader, intelligent
3 people, they can compare things. The only objection I
4 would have is if somebody was formulating procedures and
5 they didn't have the correct input from Metallurgists or
6 stats people.

7 Q. Okay. So they could certainly get that input
8 from treatises and articles written by people in those
9 fields focusing on that particular aspect of it.

10 A. Yeah, I think really what you need is to have
11 some written guidelines.

12 Q. Now the lab that you have, the Athena Research
13 consulting, is your lab accredited by anybody?

14 A. No.

15 Q. So you don't have to comply with anybody's
16 standards, ASCLAD, or any statewide standards that may
17 be imposed in Indiana?

18 A. No.

19 Q. I want to talk to you a little bit about this
20 slide show that you used during your testimony. Let me
21 go all the way back to the beginning. This first page,
22 you put this together last night, right?

23 A. Yes, I did the slide show last night.

24 Q. So you put Slide Number One together last night
25 after you heard the testimony here in the courtroom.

1 A. Yes.

2 Q. You've never testified consistent with what you
3 put in that slide before, have you?

4 A. I think I've written reports with this in here,
5 I may not have testified to.

6 Q. Okay. So the answer is no, you never testified
7 consistent with this slide before today?

8 A. Well, my answer is what it is. I'm pretty sure
9 if you read the reports that I've issued, they will have
10 the same.

11 Q. But you said firearms examination is akin to
12 polygraph?

13 A. In the respect that a polygraph is not
14 admissible in court but you can use it as an
15 investigative tool.

16 Q. Well you that know firearms testimony is
17 admissible in Court.

18 A. Well it is for now.

19 Q. Right. And that's why we're having this
20 hearing to determine whether or not -- it's admissible
21 normally, and then we're having this hearing because
22 Defense counsel wants to keep it out in this case.

23 A. That's correct.

24 Q. Okay. And you testified, you said I think ten
25 times in firearms?

1 A. I haven't counted it, it may be more than that.
2 I really -- it probably is more than ten but somewhere
3 between ten and twenty-five, I would say.

4 Q. Okay. You talk a lot about the NAS report, and
5 Defense counsel, in his questions relied heavily on that
6 report and I anticipate that you are also using that to
7 tell the Judge, look, all these scientists got together
8 and said what they said the report, therefore don't let
9 this evidence in. Does that pretty much sum up your
10 position?

11 A. I think the NAS report is supportive of what
12 other people have been saying for a long time.

13 Q. Okay. The NAS report came out in 2009; is that
14 correct?

15 A. That's correct, yes.

16 Q. Okay. And there is nowhere in that report that
17 it calls for the exclusion of this type of testimony in
18 a legal setting, in a legal hearing, am I correct?

19 A. Not that I've observed, no.

20 Q. All right. It's not, it doesn't. This was a
21 scientific journal written for scientists.

22 A. It was a report written for the community at
23 large, I wouldn't say it was specifically written for
24 scientists.

25 Q. But it even specifically states in there at

1 some place that this is -- this isn't designed to effect
2 the admissibility of evidence in Court, do you recall
3 that?

4 A. I don't. But I think someone else mentioned
5 that to me, I don't know how correct it is though.

6 Q. Okay. Well a lot of things the Defense counsel
7 asked you were just statements that somebody else would
8 have mentioned to you. You never had that qualification
9 before. Do you have that qualification now saying that
10 some of the things that people have mentioned to you may
11 not be accurate?

12 A. Well if you have it in front of you and you let
13 me read it, I'll confirm it for you.

14 Q. So this slide exhibit that you've used in front
15 of the Judge, some of it was produced yesterday and some
16 of it's older than that?

17 A. Yes, it's a mix.

18 Q. Should I say all the slides that have the
19 copy-write of 2014 on the bottom of them were the ones
20 that you created for your testimony here today?

21 A. No, that's not correct.

22 Q. Okay.

23 A. Some of the ones that have 2013 were created,
24 well recently in the last couple of weeks.

25 Q. No. What my -- I said, if you notice, each

1 copy -- slide has a copy-write number on the bottom, it
2 says 2014.

3 A. Yes, it does, that's because you've got to
4 change --

5 Q. My question, are all the ones that say 2014
6 were created for your testimony here today.

7 A. No, not necessarily.

8 Q. Okay. Okay.

9 A. Because I went through -- I was under the
10 impression if you change the first one, it would change
11 all the footers but it didn't, so I started going
12 through and the boards, I just left it.

13 Q. But some of the programs created last night was
14 for purposes of your testimony here today.

15 A. Yes, it was.

16 Q. Okay. I want to go to -- just a moment. Here
17 you discussed that this is an evaluation by you of a
18 non-match. When you say non-match, what did you mean?

19 A. I mean that the class characteristics are
20 different so they couldn't have come from the same gun.

21 Q. What is your error rate on that determination?

22 A. I don't know. I'm not --

23 Q. Then why are you comfortable telling the Judge
24 it's a non-match then?

25 A. What I'm saying that in my subjective judgment,

1 that would be a non-match.

2 Q. Okay. And I suspect you're here hoping that
3 the Judge would believe you and believe that you're
4 credible, correct?

5 A. I'm here to present my opinions and hopefully
6 to be helpful.

7 Q. Okay. But that's your subjective opinion that
8 that's a non-match?

9 A. That's correct.

10 Q. Are you confident in that opinion?

11 A. Yes.

12 Q. Why?

13 A. Because there's such a big difference in the
14 dimension.

15 Q. Okay. So, the percentage is higher in this
16 instance than it would be on some other evidence maybe?

17 A. Yes, and that's where the subjectivity comes
18 in. I just plucked a figure out there and said, well,
19 I'm eighty percent confident and someone else might even
20 say I'm only sixty percent confident.

21 Q. Okay. If someone were to hire you and ask you
22 to take a look at some evidence, would you be willing to
23 do that and come testify in Court that -- what your
24 findings are?

25 A. Yes, I do that.

1 Q. Okay. Let's look at -- that's another
2 non-match, right?

3 A. That's correct.

4 Q. And that's a different piece of evidence than
5 this one?

6 A. Yes. I know that was a non-match because I
7 fired them, so I know they were from different guns.

8 Q. Okay. But I think your testimony was, it's not
9 only that you know that they're fired from different
10 guns, you can also look at it and make a determination
11 that they were fired from different guns.

12 A. Yes, you can see that some marks match up and
13 some do not. The only reason I say I'm sure it's a
14 non-match is because I fired them so I know.

15 Q. Okay. But you have a high level of confidence
16 that that's a non-match?

17 A. Well I do because I know it is a non-match.

18 Q. Okay. So if you didn't know but you had the
19 same comparison and the same similarities, what would
20 your conclusion be?

21 A. I'd have to look at it in more detail under the
22 microscope to answer that question.

23 Q. Okay. So what's the value of this slide if
24 you're just -- so you're just saying it's a match
25 because you know it was fired from the same gun.

1 A. I'm saying it's a non-match because I know they
2 were fired from different guns.

3 Q. Different guns, right. So if that's the basis
4 for your statement that it's a non-match, why have this
5 slide and demonstrate the similarity -- the --

6 A. This is an example for other people to look at
7 and get a feel for what we're talking about.

8 Q. Okay. I guess this was the match, right?

9 A. Yes. I only say it's a match, because I know a
10 hundred percent it's a match because I fired them.

11 Q. But you -- but the same question then, what's
12 the point of this slide if you're -- your confidence
13 level is based solely on the fact that you know based on
14 seeing it happen that they were fired from the same
15 weapon?

16 A. The objective of showing this is to show that
17 even when you know it's a match because they came from
18 the same gun, if you look at that, there are some
19 individual characteristics that don't appear to match
20 up.

21 Q. Right. But there's also some that do?

22 A. Yes, that's correct.

23 Q. Because awhile ago, you showed the Judge on
24 this slide what other similarities were?

25 A. That's correct.

1 Q. Okay. And that is one one-hundredth of the
2 surface of the bullet, I believe you mentioned.

3 A. It's probably somewhere, one to two percent of
4 the entire periphery, not the surface, just the
5 periphery.

6 Q. Okay.

7 A. We're only looking at a little window. So the
8 bullet has a length and it has a periphery.

9 Q. Okay.

10 A. And what we're looking at is similar, about one
11 to two percent of the periphery. And as far as the
12 length goes, it will just be a very short piece of the
13 bullet, too. So the overall bullet bearing surface,
14 it's probably just a small fraction of one percent.

15 Q. Okay. And if you didn't know that these two
16 bullets were fired from the same weapon, would you draw
17 the conclusion that it was a match?

18 A. I would draw the conclusion that there were
19 some similarities and some dissimilarities.

20 Q. And that's the only conclusion you would make?

21 A. I would probably say that it was more likely
22 than not fired from the same gun.

23 Q. So you would use -- that's the language you
24 would use.

25 A. Yes.

1 Q. Okay. Now, why didn't you use the language
2 underneath that slide then that says, "Viewed to a
3 comparison microscope showing a match". Why wouldn't
4 you put, "viewed to comparison microscope showing it's
5 more likely than not fired from the same weapon?"

6 A. Well, because in this particular instance, I
7 know it was a match because they were fired through the
8 same weapon.

9 Q. Okay. So your --

10 A. So that's why I --

11 Q. -- conclusion on the bottom is based on the
12 firing of the weapon, not on your examination of this?

13 A. That's correct. I testified to that earlier,
14 so that's why I used that.

15 Q. I just don't understand why you would have that
16 in a slide then.

17 A. Oh, I specifically put that phrase in there
18 because I know it's a match; I know it came from the
19 same gun.

20 Q. Okay. And what do you mean by more likely than
21 not, what level of confidence is that?

22 A. Well again that's another subjective opinion.

23 Q. Right, it is. A lot of it has to do with
24 subjectivity, right?

25 A. Yes.

1 Q. But it sounds like based on somebody's training
2 and experience, some people's opinion could be more
3 valuable than others.

4 A. Yeah, I don't know about that.

5 Q. Really?

6 A. Really, it just comes down to -- all I'm
7 showing is that it's a subjective process. And the
8 objective, any further research that's conducted in the
9 field should be to reduce the level of subjectivity.

10 Q. Okay. But prior to today, in your prior
11 testimony in hearings and trials, it wasn't that it
12 shouldn't be admitted; it was similar to Tobin's
13 testimony in that, I just can't -- we just can't say
14 with any degree of absoluteness. And now you changed
15 it, now your testimony today is --

16 A. -- no, that's not correct. I submitted
17 affidavits, which is testimony, where I said it
18 shouldn't be admitted.

19 Q. But based on that particular examiner's work,
20 not on the science.

21 A. No, no, based on the science, the standard of
22 science, too. I go and testify in cases where the
23 attorneys don't want to challenge the admissibility just
24 because they need an alternative opinion.

25 Q. Let's go through your slides a little bit more.

1 You got that case study and this, I guess is the real
2 world thing, right?

3 A. Yes, it is.

4 Q. What country was that out of?

5 A. Puerto Rico.

6 Q. Puerto Rico. Here are the -- Exhibit 7-E3 is
7 the recovery evidence, and then the one on the right is
8 your test-fire.

9 A. That's correct.

10 Q. Okay. And based on looking at that you said
11 it's not a match?

12 A. Yes, I can tell, there are so many differences,
13 there could never be fired from the same --

14 Q. Some differences are obvious to the naked eye
15 and then some differences are -- have to be determined
16 microscopically, I take it.

17 A. That's correct.

18 Q. Okay. Now, you were able to look at this
19 evidence and make a conclusion, correct?

20 A. Yes.

21 Q. And your conclusion was that these two exhibits
22 were fired from the same gun?

23 A. I would say more likely than not they were,
24 yes.

25 Q. Okay. More likely than not. It doesn't say

1 that anywhere on your slide but that's what you're
2 saying today?

3 A. Yes.

4 Q. Okay. And same here, same here, and you're
5 just demonstrating that these are the kind of markings
6 that a firearm pin will make; the same gun, right?

7 A. Yes.

8 Q. And these are recovered shells in this actual
9 case study.

10 A. Yes, I had a very high degree of confidence
11 that these were from one gun.

12 Q. Okay. So that's your subjective belief?

13 A. Yes, it is.

14 Q. Did you expect that the people who hired you
15 were going to rely on your opinion?

16 A. I don't know what you mean by rely upon it.

17 Q. Well, they hired you to give them information
18 so they could make decisions, don't you agree?

19 A. Oh, yes.

20 Q. And did you expect that they would rely on your
21 opinion?

22 A. Yes.

23 Q. And then these are your two test-fires.

24 A. That's correct.

25 Q. And do these match?

1 A. Yeah, I know they came from the same gun so I
2 know that they do a match if you want to use the term.

3 Q. Otherwise, you would just say, well, it's not
4 that I want to use this term, that's what's on the
5 bottom of all your slides, right, match?

6 A. I know it's the same gun, I haven't got a match
7 on this one, it says same gun. I know it was the same
8 gun because I fired them.

9 Q. Okay. Could you compare these two and make a
10 conclusion on whether or not they came from the same
11 gun?

12 A. If someone just gave them to me and I haven't
13 test-fired them, they've got a lot of very distinctive
14 markings on there. And I would say it was -- again,
15 more likely than not but probably that they were from
16 the same gun.

17 Q. Okay. Now you said you don't really know but
18 more likely than not it is, right? You didn't give a
19 percentage on that.

20 A. No.

21 Q. Can you give me a percentage on probable?

22 A. No, I mean, it's anyone's guess. You could
23 pluck a figure out of the air but on something like
24 this, obviously I know they came from the same gun. But
25 if someone just gave them to me and said look at these,

1 and I'd say, there's a very high probability that they
2 came from the same gun.

3 Q. Okay. So now you're saying you're willing to
4 testify that there's a high probability, so it depends
5 on the evidence that's submitted, really? I mean --

6 A. Yes, it's a subjective decision.

7 Q. Some pieces of evidence you would classify as
8 more likely than not, some you would exclude and some
9 you would say high probability based on the markings
10 that are left on the evidence that you examined, that's
11 correct, right?

12 A. That's correct, yes.

13 Q. Okay. Again, test-fires that are from the same
14 gun, and these slides are there to demonstrate the
15 similarities that you'll find from test-fires from the
16 same gun?

17 A. That you could find, not all guns leave
18 reproducible marks.

19 Q. All right. And this is the gun to stray out
20 those other guys' subjective opinions that they were
21 fired from a particular gun that differed than your
22 subjective opinion that they were not?

23 A. Yes.

24 Q. Now when you made your conclusion in regards to
25 the bullet comparison that you said was on -- it's on

1 Page 17, let me get back to it for you. I'm sorry, not
2 Page 17. Here, this what's showing the match. You made
3 a conclusion that's a match and you're saying now that
4 you're -- that's because you know it was fired from the
5 same gun.

6 A. Yeah, I didn't make a conclusion. I knew they
7 were fired from the same gun so I put on there it's a
8 match.

9 Q. Can you demonstrate the similar areas again on
10 that photo that you did earlier?

11 A. In that general area, here it is.

12 Q. And you said earlier that if you were to review
13 this, not knowing that they were fired from the same
14 gun, but just based on your examination, you would say
15 that it's more likely than not that they were fired from
16 the same gun, correct?

17 A. No, I don't think I said that.

18 Q. No?

19 A. What I said was I need to look at it in its
20 entirety under a microscope.

21 Q. So there would be other areas that you would
22 have to look at?

23 A. Yes. I would rotate those with one another and
24 compare other areas just to double check.

25 Q. How many more would you look for?

1 A. I'd look around the total periphery and see if
2 there were any major differences or if there were more
3 similarities.

4 Q. But how many more?

5 A. The entire periphery.

6 Q. How many more similarities would you need to
7 find before you would say it's a match?

8 A. Well I would look around the entire periphery
9 and just see if the -- if you turn these around at
10 180 degrees and they're markedly different on the other
11 side, then that would cast a lot of doubt on any opinion
12 you would have.

13 Q. So you would not only -- you'd look at the
14 quality of the similar or dissimilar striations, right?

15 A. It would have to be the degree of difference or
16 the degree of similarity.

17 Q. Which is your subjective opinion, correct?

18 A. That's correct, yes.

19 Q. But what number would you have to find that are
20 similar before you would say it's a match?

21 A. Well again that's done to my subjective
22 judgment.

23 Q. Okay. So there is no number, right?

24 A. No.

25 Q. It all depends on the quality of the

1 similarities.

2 A. Yes. And what I'm essentially saying is we
3 need some very clever statisticians to come up with some
4 number that we need to find.

5 Q. So you're saying -- you're comfortable saying
6 it's a match or that it's more likely than not fired
7 from the same gun based on other things you find on it,
8 but that we still need to have somebody else come back
9 and set up some kind of stats.

10 A. Well I'm using the best technology on the best
11 procedure that we have at the moment, but there's
12 obviously room for a lot of improvement and hopefully
13 some day someone's going to do it.

14 Q. Okay. How would they do that?

15 A. That's going to take some good statisticians to
16 come up with some numbers and say, well this is how
17 many -- or this is the percent that you must find that
18 match; or you must look around the periphery and find it
19 in four places, I don't know what they would come up. I
20 am not a statistician so I couldn't tell you what the
21 probability is.

22 Q. What would your -- what opinion do you have in
23 regards to the effect or the subjective nature of those
24 one through four or whatever marks? How are they going
25 to remove this subjective aspect of firearms

1 examination?

2 A. I don't know.

3 Q. They're not, right?

4 A. I couldn't say they're not, they may come up
5 with a way to do it.

6 Q. As long as human beings are involved in it,
7 it's always going to be subjective, would you agree with
8 me?

9 A. Well, when they come up with a method of
10 removing human beings.

11 Q. Like key in a machine, if you could stick it in
12 there, and then it would tell us, yes, it's a match or
13 no, it's not?

14 A. Yeah, there are people working on that line of
15 it.

16 Q. Would you rely on a machine totally or would
17 you have a human double check it?

18 A. Again, I would leave that to someone else's
19 judgment, too. Somebody's going to have to come up with
20 some data to show that the machine is going to be
21 correct.

22 Q. Then, of course somebody would hire an expert
23 to attack their reliability of the machine probably,
24 right?

25 A. They probably would.

1 Q. Yeah. We'd just keep going on, wouldn't we?

2 A. It may be an expert in machines.

3 Q. Okay. Now, you mentioned -- you had a slide,
4 and I'm not going to go to it but I'll reference the
5 information that was on it regarding the reports, that
6 the NAS report indicated that the reports that I guess
7 were generated by crime labs were not sufficient and
8 that they need to be -- they need to include certain
9 things.

10 A. Yes.

11 Q. Okay. Was the NAS report taking into
12 consideration the reports your crime lab puts out when
13 they made that recommendation?

14 A. I think they only looked at crime -- I don't
15 have a crime lab but I think they only looked at
16 Government crime labs.

17 Q. Okay. Let's talk about this -- I'm going to go
18 to the slide on this one. After the case studies -- I
19 think it's after the case study, the AFTE report
20 regarding the Smith and Wesson comparison and it has the
21 photograph --

22 MR. HANNA: Is that on this slide, Judge?
23 There it is.

24 Q (By Mr. Hanna) Have you read the article about
25 where that photo came from?

1 A. I just read the caption that was in the
2 photograph.

3 Q. You didn't read the entire article?

4 A. No.

5 Q. So you don't know what the conclusions that it
6 has to be the author made -- did you look at the other
7 photos that were in the article?

8 A. No.

9 Q. Just this one?

10 A. Yes.

11 Q. Okay. And your testimony earlier was that an
12 examiner might look at that and say -- or you already
13 said -- you said the author in the article said, an
14 examiner might look at that and say that those are
15 individual characteristics when they're really subclass
16 characteristics, correct?

17 A. I'm not sure if that characterizes what he
18 said. If you go back to a slide, we can read it. So it
19 says, "Likely, a firearm examiner who encounters these
20 marks in case work would presume that all of the marks
21 are individual in nature and use them as a basis for a
22 match". And I happen to agree -- agree with the
23 statement.

24 Q. You happen to agree with the statement?

25 A. (No answer)

1 Q. But isn't it true that the author of that
2 article also said, but you need to look at other areas
3 of the breech face and look at other areas of the
4 cartridge and the firing pin area; and it was informing
5 the reader not to rely solely on those -- what could be
6 characterized as subclass.

7 A. Yeah, most people would just do the
8 identification based on the breech face marks.

9 Q. And how do you come to the conclusion that's
10 that what most people would do?

11 A. That's what I've learned from my experience and
12 learning the testimony of others, including Ms. Eudaley.

13 Q. Would you have done that?

14 A. I would have looked at the firing pin and the
15 breech face marks and probably concluded that it was
16 more likely than not it came from the same gun.

17 Q. Because you would have gone and looked at other
18 aspects of the shell casing, not just the -- that one
19 particular photo.

20 A. I think in the absence of any other marks, I
21 would have probably concluded that it was more likely
22 than not from the same gun and we don't know what other
23 marks there are.

24 Q. Was it in reality from the same gun?

25 A. No, they were from two different guns.

1 Q. Okay. So you -- again you didn't read the
2 entire article?

3 A. No.

4 Q. You just pulled this -- where did you get
5 this -- what made you decide to pull this information
6 out and put it in this slide show?

7 A. Someone sent it to me.

8 Q. Who?

9 A. I don't recall who it was, but it was sometime
10 though, several years ago.

11 Q. And you didn't think it would be prudent to go
12 and pull the entire article and sort of see -- put it in
13 context?

14 A. Well, I know I can see what I need to see in
15 the photograph, and it's supported by the text.

16 Q. Okay. What other slides did you just put
17 information in here that somebody sent to you?

18 A. None that I recall.

19 Q. Okay. We testified -- or you testified a
20 little while ago when Defense counsel asked you about
21 the examination of the firearm in this particular case,
22 Defense counsel used the term that it rusted.

23 A. Yes.

24 Q. That's not really what Ms. Eudaley said, was
25 it?

1 A. I don't recall exactly.

2 Q. She said corroded, do you remember that now?

3 A. Yes.

4 Q. Not rusted.

5 A. Can you define the difference? Most people use
6 the term interchangeably.

7 Q. So when the Defense attorney repeatedly said
8 rusted; you were thinking corroded?

9 A. Yes.

10 Q. Okay. Is there no difference between those
11 two?

12 A. Most people use the two terms interchangeably;
13 somebody who's an expert in corrosion may not.

14 Q. Okay. Do you use the same term? Do you use it
15 as meaning the exact same?

16 A. In general conversation, I do, yes.

17 Q. How about in conversation here in the
18 courtroom?

19 A. If somebody tells me that the steel is
20 corroded -- corrosion or steel is rust; so I'd use the
21 term interchangeably with steel.

22 Q. Okay. When Defense counsel said that she said
23 it was rusted, did you use the same term as -- did you
24 use corroded in your answers?

25 A. I don't recall. But in my mind it's the same

1 thing.

2 Q. Okay. So it's the same thing. And that would
3 not likely -- would or would not likely change the
4 markings made on a bullet going through a barrel?

5 A. Yes, it would.

6 Q. It would --

7 A. Most likely, yes.

8 Q. Most likely would.

9 MR. HANNA: May I have just a moment,
10 Judge?

11 THE COURT: Yes, sir, you may.

12 Q (By Mr. Hanna) I guess more along the lines of
13 the rust, if it had been decontaminated and cleaned and
14 prepared for test-firing, wouldn't you expect the rust
15 to be removed?

16 A. Yes. Again, it depends on the degree of
17 cleaning, but it wasn't really specified. It said it
18 was cleaned and lubed.

19 Q. It did talk about a ten percent bleach
20 solution, do you remember that?

21 A. Yes.

22 Q. And to use -- to remove the biohazard aspect of
23 it.

24 A. Yes.

25 Q. And I think you testified, you wouldn't do

1 that, you would just fire it in the condition it was in.

2 A. Yes, I would not alter it without getting
3 permission first.

4 Q. So if somebody said, yeah, you could do it,
5 then you would?

6 A. Well I would expect to get permission from the
7 Court.

8 Q. Okay. But would you -- would you seek that
9 permission, is that what you're saying? You just
10 wouldn't do it?

11 A. Yes, I would ask first.

12 Q. Okay. So it's not unusual for them to do that,
13 it's part of the standard operating procedure.

14 A. Well I've seen other cases where the guns have
15 had blood on it and they haven't clean it off.

16 Q. Okay. It's not unusual for them to do that,
17 it's within their standard operating procedure.

18 A. In this particular lab, it may be.

19 Q. Okay. And you also just testified that you
20 would ask that you be able to do that based -- depending
21 on probably on the amount of blood that was on that gun.

22 A. If it was at a level where it might interfere
23 with the operation of the gun, then I would ask that I
24 can remove it or at least some of it.

25 MR. HANNA: I'll pass the witness, Your

1 Honor.

2 THE COURT: All right.

3 MR. DOGGETT: This is mainly just for
4 housekeeping, Judge.

5 **REDIRECT EXAMINATION**

6 Q (By Mr. Doggett) Mr. Nixon, I'm handing you
7 what's been marked as Defendant's 8, is that a copy of
8 your CVA that you provided to me?

9 A. Yes, it is.

10 Q. All right. And Defendant's 9, is that a copy
11 of the slide show that we just -- a hard copy of the
12 slide show that you just used?

13 A. Yes, it is.

14 MR. DOGGETT: We move to admit Defendant's
15 8 and 9.

16 MR. HANNA: Are you removing the
17 confidentiality of it?

18 MR. DOGGETT: Your copy has the same
19 thing.

20 MR. HANNA: No objection, Your Honor.

21 THE COURT: Eight and nine are admitted.

22 MR. DOGGETT: I have no further questions,
23 I'm done with this witness.

24 THE COURT: All right. May I ask a couple
25 of questions? The NAS report, that was done by a

1 committee; is that correct?

2 THE WITNESS: Yes, it was.

3 THE COURT: Was -- did the NAS take any
4 official action to adopt that report as their own
5 findings?

6 THE WITNESS: I'm not exactly sure what
7 you mean by the question, but it was published by them
8 so I assume that that was them saying we officially
9 approve this and this is our views on this subject.

10 THE COURT: I'm asking you if you know
11 that they took any official action adopting as their own
12 the report itself and the conclusions that are in them?

13 THE WITNESS: No, I don't know, I don't
14 know if they did or they didn't.

15 THE COURT: All right. Very well.
16 Anybody else have a question to follow up on that?

17 MR. DOGGETT: No, Judge, I think -- I
18 believe, I may be wrong, but the copy we gave you of the
19 NAS report may have the answer to that question. I
20 didn't copy the entire report but I believe there's
21 something in the beginning of the report that addresses
22 that question you just asked. Since I don't have it in
23 front of me, I can't tell you where to look.

24 THE WITNESS: The NAS, they have a very
25 extensive website. So it may be on there, but I

1 couldn't say as I sit here.

2 THE COURT: Okay. Very well. Thank you
3 very much, sir. Can this witness be released?

4 MR. DOGGETT: Yes, he's excused.

5 THE COURT: All right. You are released
6 to go about your business.

7 MR. DOGGETT: This isn't part of the
8 Daubert hearing but we still have the remaining issue
9 about -- are you going to call any more witnesses?

10 MR. HANNA: Yes.

11 MR. DOGGETT: Okay. We can address it
12 later. But we still have the issue about trying to
13 arrange for Mr. Nixon to actually look at the evidence
14 in this case which we can take up later.

15 THE COURT: Okay. Well that's not part of
16 the Daubert --

17 MR. HANNA: Right.

18 THE COURT: -- so we'll address that
19 after.

20 MR. HANNA: Are you resting?

21 MR. DOGGETT: Yes.

22 MR. HANNA: Stephen just told me he
23 rested, Judge.

24 THE COURT: I heard.

25 MR. HANNA: Okay.

1 THE COURT: Do you have any rebuttal?

2 MR. HANNA: I do, I would like to call
3 Donna Eudaley, very briefly, Judge.

4 THE COURT: All right. This witness has
5 already been sworn. You may proceed when you're ready.

6 MR. HANNA: Thank you, Your Honor.

7 **DONNA EUDALEY,**

8 having been first duly sworn, testified as follows:

9 **DIRECT EXAMINATION**

10 Q. (BY MR. HANNA) Ms. Eudaley, how are you this
11 morning?

12 A. I'm good; how are you?

13 Q. I'm doing well. I just have some very brief
14 things that I want to cover with you that has arisen
15 since you last testified in this hearing.

16 A. Okay.

17 Q. Specifically, during -- you were present during
18 the testimony of the Defense experts in this case,
19 Mr. Tobin and Mr. Nixon.

20 A. Yes.

21 Q. Okay. Were you present during the presentation
22 of Mr. Tobin's, what's been referred to as a slide show?

23 A. Yes.

24 Q. Okay. And it's been marked as Defense Exhibit
25 Number Seven and has been admitted.

1 MR. HANNA: May I approach the witness,
2 Your Honor?

3 THE COURT: You may.

4 Q. (BY MR. HANNA) I'd like to show you -- well,
5 for point of reference, do you recall Mr. Tobin
6 discussing an experiment he conducted on his own
7 involving his wife's job at Cracker Barrel and a
8 comparison of bar codes?

9 A. Yes.

10 Q. And he used that comparison as an analogy for
11 the Court to sort of draw some conclusions about
12 firearms examination.

13 A. Yes.

14 Q. Okay. I've marked a page here on Defense
15 Exhibit Number Seven. And do you see the bar code
16 that's represented there that was shown to the Court at
17 the time of his testimony?

18 A. Yes.

19 Q. Okay. And based upon your experience as a
20 firearms examiners, do you believe that that analogy is
21 an accurate analogy and it would help a court or a jury
22 understand the -- your expertise in firearms
23 examination?

24 A. No.

25 Q. Explain to the Court why.

1 A. Bar codes are not a good analogy for a firearms
2 identification for several reasons; one of which is that
3 there's not an unlimited amount of possibilities for the
4 bar codes to be arranged in. Each bar code or set of
5 bar code patterns represent a character that the
6 software that's reading the bar code has to be
7 programmed to be able to read so the program has to know
8 which characters it's going to be reading ahead of time.
9 So it may be all numbers, it might be letters and
10 numbers, it might even be special characters but there's
11 a limited set. So, while it may be a very large number
12 of possibilities, it's not infinite as -- I think, even
13 the Defense experts would agree would be the infinite
14 number of possibilities for what markings would be left
15 on a firearm by the tool that's created. You never know
16 what sort of chips are going to be caught up in the
17 tool-marking, you're never going to know about the
18 structure of the metal -- one firearm to the next and
19 how that tool is going to interact with that firearm on
20 a day-to-day, firearm-to-firearm basis so it's limited
21 in that sense.

22 Also, bar codes absolutely have to have a
23 beginning and an end, the computer has to know when to
24 start reading and when to stop reading. So the
25 beginning and end is where Mr. Tobin was counting the

1 matching lines. You can't count the beginning and end,
2 counting matching lines because those are always going
3 to be the same within the Cracker Barrel's bar code
4 system, the Cracker Barrel bar code system has to know
5 when to start and stop. So you could only apply it to
6 stuff in the middle, and again, it's not going to be
7 infinite in its possibilities.

8 Mr. Tobin was counting the number of lines
9 that match up and he was making the analogy to a way of
10 that some firearms examiners use to communicate their
11 matching patterns that we're looking at in striations
12 matching -- it's called CMS, Consecutive Matching
13 Striae -- and so he was counting the number of lines
14 that match up. But that's not the way that consecutive
15 matching striae practitioners communicate their matches.
16 They don't just count the number of lines, they count
17 the number of groups of lines that match. So if I have
18 these two lines right here, that match --

19 Q. Donna, let me -- I'm going to put this on the
20 overhead so that the Judge can understand clearly what
21 you're saying.

22 A. Yes.

23 THE COURT: Okay.

24 Q. (BY MR. HANNA) And remember, you can touch the
25 screen and it will --

1 A. Yeah. So again we'll ignore the beginning and
2 the end because that's going to be the start and stop
3 codes. So -- and it doesn't really matter if we ignore
4 it or not. Inconsecutive matching striae, if I were
5 comparing striations on two different bullets here, I
6 would look and I would count one, two. And then I would
7 reach something that doesn't match up so that I could
8 start counting all over again, and I would look for
9 another matching; that's one. This doesn't match so I
10 wouldn't count that. One, two, three, that's it. Then
11 I would stop counting again. And I see one and that's
12 it. Those are -- that's the only agreement that I see
13 in here.

14 Mr. Tobin implied that there were eight
15 lines or however many --

16 Q. Eleven.

17 A. Eleven? Eleven matching. The minimum matching
18 for consecutive matching striae is two groups of three,
19 and we have one group of three or one group of six.
20 So -- and again, that's not standard by any means,
21 that's just a recommendation that they suggest you use
22 to make an identification. And even in his examples,
23 consecutive matching striae would not call a match
24 between these two bar codes. It doesn't -- even in the
25 fact that's unapplicable, it still doesn't cause a

1 match.

2 Q. There's been discussion, more of it yesterday
3 than today about subclass characteristics and a concern
4 that the AFTE theory and that firearms examiners don't
5 take them into consideration, I guess. Do you?

6 A. Yes, absolutely.

7 Q. Okay. You're aware of them?

8 A. Yes.

9 Q. How long have they been a concern in your
10 field?

11 A. 1949.

12 Q. Is when you first started seeing some articles
13 about the subclass characteristics that can be imparted
14 by tools?

15 A. Yes.

16 Q. Okay. And do you do anything in your
17 examinations of evidence to try to differentiate
18 subclass markings versus individual markings?

19 A. Yes.

20 Q. What is it that you do?

21 A. As firearms examiners, we're aware that there
22 are certain types of manufacturing processes as well as
23 certain types of markings that may be left on cartridge
24 cases or bullets that are more prone to subclass
25 carryover than others. And so when we see those types

1 of markings, for example, extractor markings or ejector
2 markings can be more prone to subclass carriers than
3 others. The groove impressions of bullets rather than
4 the land impressions of bullets can be prone to subclass
5 carryover, so I'm very weary when examining groove
6 impressions, I prefer not to do it unless I have the
7 firearm to examine to do that subclass, and then like I
8 said, other manufacturing techniques. So, when -- for
9 example, a firing pin is manufactured -- and I believe
10 we saw on Mr. Nixon's slides, we saw some -- he called
11 them rings in the firing pin. Rings in the firing pin,
12 in and of themselves are not unique, they are prone to
13 subclass carryover. And so, if you're going to use the
14 rings to make an identification, you must be looking for
15 little knicks and little breaks in the rings because
16 those indicate maybe some chatter as the tool was making
17 the firing pin, not just the rings themselves. The
18 spacing of the rings and the fact that the rings are
19 there is not unique.

20 We also look when evaluating parallel
21 lines on a breech face like this Smith and Wesson Cigna
22 study. I'm sure we'll show the picture in a minute.
23 The parallel lines that are on the breech face that
24 would leave an impressed parallel line on the cartridge
25 case are prone to subclass carryover. And so there are

1 things that I can do, I can try and compare one side of
2 the breech face to another side from -- test-firing from
3 two cartridge cases that I'm trying to match and see if
4 I can compare and maybe see very close similarities
5 between one -- the left side of the breech faces one
6 cartridge case and the right side of the breech faces
7 the other cartridge case. And that means that the tool
8 making the breech face probably didn't change when it
9 was making the right side of the breech face or the left
10 side of the breech face, which means that that tool may
11 have not changed when it made the next firearm. So I
12 know to avoid those marks, and I would look for
13 individual marks instead, I know those have the
14 potential for subclass. And so a trained examiner knows
15 to avoid type -- those types of things. There are other
16 types of subclass carryover, but we are certainly
17 trained to recognize it, trained to avoid it and trained
18 to look for the individual markings instead.

19 MR. HANNA: Your Honor, may I approach?

20 THE COURT: You may.

21 Q (By Mr. Hanna) Ms. Eudaley, I'm going to show
22 that article that you just mentioned, and it's -- I
23 believe it's the one you mentioned, subclass
24 characteristics in the Smith and Wesson.

25 A. Yes.

1 Q. Okay. And this is from the AFTE journal from
2 2007.

3 A. Yes.

4 Q. And this is the article for which you're
5 referring.

6 A. Yes.

7 Q. Okay. And does that article include the image
8 that Mr. Nixon had placed on his slide?

9 A. Yes.

10 Q. Will you find that in that article for me,
11 please? Is there any captions of that photo that's
12 consistent with what Mr. Nixon said was in there?

13 A. No. Below the photos, the only two captions
14 are saying what the photograph is of.

15 Q. Let me again --

16 MR. HANNA: Judge, if I may use the --

17 Q (By Mr. Hanna) And this has been offered as an
18 example of -- in Mr. Nixon and Mr. Tobin's testimony of
19 an example of what could be characterized as subclass
20 characteristics that might be misidentified by an
21 examiner as individual characteristics; is that right?

22 A. That's what they said, yes.

23 Q. Okay. Now, in the true -- in the actual
24 article, both photos are included.

25 A. Yes.

1 Q. Can you explain the significance of the second
2 photo?

3 A. The -- what the second photo's showing -- so
4 the top photo, just for reference again, is one
5 cartridge case from one test-fire to another cartridge
6 case from a different gun. And then the bottom photo --
7 it appears to me that they are different cartridge
8 cases. But these two are from the same firearm, two
9 different cartridge cases from the same firearm and
10 these two are two different cartridge cases from the
11 same firearm.

12 And so the top photo is showing a
13 potential for subclass carryover. You can see, right in
14 here, I can line up these marks pretty well. There's
15 some disagreement right in here, there's a little bit of
16 disagreement. But -- let me get rid of that -- what I
17 would do as a firearms examiner is realize that these
18 are impressed striated marks that have a high potential
19 for subclass carryover. And so what I would actually do
20 is take this side of the breech face and try and compare
21 it to this side of the breech face which isn't very well
22 represented in the picture. And if I can compare those
23 two and still see a high degree of similarity, or if
24 maybe this part might be missing, if I can't do a
25 comparison, then I would assume that there's the

1 potential for subclass and I would not use those
2 markings and trained examiners would not use these
3 markings for identification.

4 What the second picture is showing you is
5 the sheer which is what traditionally a firearms
6 examiner -- if there's sheer, we're going to use the
7 sheers to try to make an identification. Because the
8 sheer is caused when the metal from the firing -- from
9 the firearm flows back into the firearm pin orifice, and
10 then as the firearm is unlocking -- in a semi-automatic
11 firearm, the barrel slides sometimes would lock -- and
12 the barrel is unlocking, and dropping down and that
13 metal is actually getting sheered off.

14 And it's typically the interaction of
15 actually two different parts of the firearm together
16 causing the sheer, which there's just no potential for
17 subclass carryover and sheer. It's been shown study
18 after study after study that the sheer marks just --
19 there's no potential for subclass in sheer.

20 So, what this photograph is showing is
21 that while there may have been agreement in subclass on
22 the impressed parallel markings on the breech face,
23 there is not agreement of individuals in the sheer marks
24 which shows you that those are two different firearms,
25 which, of course, we already knew because they were from

1 two different guns. But an examiner could look at that
2 sheer and probably make an elimination; if not an
3 elimination, certainly they would say inconclusive.

4 Q. So there was much more of that article than
5 just the quote that was included in this slide.

6 A. Yes. The point of the article was making
7 people aware that, hey, we've noticed this type of
8 subclass carryover in this specific type of firearm and
9 this specific type of manufacturing technique.

10 Q. Both Mr. Nixon and Mr. Tobin provided some
11 testimony regarding repeatability and reproducibility.

12 A. Yes.

13 Q. They never provided any -- they just said you
14 can't do it in this area, but in reality, you can, can't
15 you?

16 A. I believe you can, yes.

17 Q. Okay. And what is repeatability?

18 A. I cannot remember what the difference is
19 between repeatability and reproducibility because to me
20 the words sound the same. I know one of them is -- I'm
21 saying that I can get the same results that I got on a
22 previous occasion doing, you know, testing two same
23 objects and getting the same result on a different day.
24 And then the other is someone else will get the same
25 results that I did, repeating my experiment.

1 Q. You're just saying you don't know which one is
2 which?

3 A. I could never remember which one is which.

4 Q. Inconsistent with what Mr. Tobin told the
5 Court.

6 A. Yes.

7 Q. So, you can look at a piece of evidence that
8 you have a second time and come to the same conclusion.

9 A. Right. In fact, sometimes if I'm struggling
10 with looking at -- if I've been looking under the
11 microscope all day and I'm just not sure what I'm
12 seeing, I think this is an identification but I'm not so
13 sure, I'm going to look at it again tomorrow. And I
14 come back the next day and I look at it again, or my
15 verifier maybe is having a hard time lighting my
16 evidence the same way I did. And so I take it back and
17 go, let me make sure that I'm going to see this again.
18 And as long as I can see that identification again on a
19 different day, I think I'm repeating my own experiment
20 where I'm finding the same result again.

21 Q. In reality that's the only way it could
22 possibly be applicable to this endeavor.

23 A. For now, as far as I know, yes. There's no
24 computer system that can do what we do.

25 Q. And then the reproducibility, let's assume with

1 the other examiner, you do that all day with a verifier.

2 A. Correct, we have verifications. Any
3 identification that we make, any elimination that we
4 make on an -- on an individual marking has been verified
5 and pretty much every conclusion in our lab is verified,
6 we just don't require it.

7 But -- so we already have two examiners
8 verifying the identification of a piece of fired
9 evidence. And I would welcome -- and I have -- I have
10 reproduced the results of other examiners; examiners who
11 are no longer available to testify, I will take that
12 evidence and -- it does happen in our laboratory, it's
13 just not part of our everyday normal practice to do it
14 just to do it, but we do it for courtroom purposes.

15 And I would welcome experts to look at the
16 evidence that I have looked at and reproduce my results
17 and come to the same conclusion, I think they would.

18 Q. And one last thing, Ms. Eudaley, what's your
19 degree in?

20 A. Wildlife and Fisheries of Sciences.

21 Q. Sciences.

22 A. Sciences.

23 Q. Did you also have some other science related
24 classes while you were at A&M?

25 A. Yes, it's a Bachelor of Science.

1 Q. Okay. What other types of courses do you have?

2 A. I took biology, chemistry, physics,
3 microbiology, genetics; I took science courses.

4 Q. Okay.

5 MR. HANNA: I'll pass the witness, Your
6 Honor.

7 THE COURT: All right. Cross.

8 **CROSS-EXAMINATION**

9 Q (By Mr. Doggett) I took a lot of science
10 classes in high school; I had a great biology teacher.
11 I took science courses at U of H and A&M and the
12 University of Texas; does that make me a scientist?

13 A. No, it just means -- it means that you had
14 science courses, you have a science background.

15 Q. Okay. These things you talked about where you
16 look for groups of markings, that's not in your lab
17 standard operating procedures.

18 A. It is, we do pattern matching and that is
19 looking for groups of markings.

20 Q. It's in the SOP's? I didn't see it when I
21 looked at the SOP's.

22 A. It's part of the training manual so that --
23 it's not necessarily in the SOP'S.

24 Q. Is this the manual used in your lab or was this
25 the one they use all over the country?

1 A. Well the one used in our lab is based on other
2 lab's training manuals, there's an AFTE training manual,
3 there's an ATF training manual.

4 Q. But what you said doesn't change your prior
5 testimony that there are no set criteria, there are no
6 standards in the field.

7 A. There are no set criteria, no.

8 Q. It's subjective?

9 A. It is subjective.

10 Q. Who are all these people in the courtroom that
11 have been here the last couple of days?

12 A. Well they're not here today -- only one of them
13 is here today. There are other people from my section
14 of the laboratory, from the firearm section and of
15 course, the lab director was here. They're here to
16 observe this hearing because no one in our section of
17 the laboratory has ever done an admissibility hearing
18 before so it was a good learning experience.

19 Q. No one in your firearm section has ever done an
20 admissibility hearing?

21 A. Not to my knowledge, no.

22 Q. So to your knowledge, this is the first time
23 this has been challenged?

24 A. No, it's not the first time it's been
25 challenged, it's the first time that anyone from our

1 section has had to participate in one.

2 Q. And how many people from your section were here
3 yesterday?

4 A. Four, five, I don't know.

5 Q. How many are here today?

6 A. One from our section and then there's one
7 member from our technical advisory group is here -- no,
8 not the technical advisory group, I'm sorry. It's the
9 board, she's a member of the board of the Houston
10 Forensic Science Center.

11 Q. Okay. Now, you don't agree -- you don't
12 disagree with Mr. Nixon's -- that statement that likely
13 a firearm examiner who encounters these marks and case
14 work would presume that all of the marks are individual
15 in nature and use them as the basis for a match. You
16 don't deny that that was contained in that AFTE article?

17 A. I don't know if that's the full statement, I'd
18 have to read it. I know that the point of -- that
19 statement was that without training, without proper
20 training to identify subclass an examiner might do that.

21 Q. Well it doesn't say without training. It says
22 likely a firearm examiner who encounters these marks in
23 case work would presume that all the marks are
24 individual in nature and use them as the basis for a
25 match.

1 A. Well that's one statement out of a paragraph in
2 the article, so I don't know what all the rest of the
3 article says.

4 Q. All right. The rest of the article is saying,
5 hey, it's not really a match because these were fired by
6 different guns. Even though it looks like a match, and
7 you got to really be careful and you got to look at
8 other things, that was the rest of the article.

9 A. The point of the article was pointing out the
10 subclass in those particular firearms and recognizing
11 the subclass.

12 Q. But the warning was that a firearms examiner
13 who didn't look at those other things might say this is
14 a match.

15 A. A firearms examiner without training to
16 recognize subclass carryover.

17 Q. Okay. Well how do you distinguish between
18 subclass and class?

19 A. You can't know for sure without having the two
20 firearms or more than two firearms that were
21 manufactured by that same tool. You --

22 Q. You can't know for certain unless you --

23 A. You can't know for certain. What you have to
24 do is recognize the potential for subclass carryover by
25 recognizing the types of markings. For example, the

1 impressed striated markings left on a cartridge case by
2 the firearm, in the example on the Smith and Wesson
3 Cigna, in that article.

4 Arches on breech face cannot be used, in
5 of themselves, just lining up where the arches are,
6 that's subclass in nature.

7 The rings in the firing pins cannot be
8 used, in and of themselves. Ejector marks and extractor
9 marks can be very -- can be very subclass, there can be
10 lots of subclass carryover and ejector and extractor
11 marks.

12 So an examiner, as part of their training
13 is trained to recognize the types of markings and the
14 type of manufacturing processes that are prone to
15 subclass carryover versus the ones that are not prone to
16 subclass carryover and trained to look at those
17 markings. And if you have any question about whether or
18 not it's subclass in nature, look for something else.
19 And if you can't determine, then you certainly do not
20 say it's an identification.

21 In some places in the west, they're
22 reporting now that it was maybe made by -- or these two
23 objects may have been fired in the same firearm or in
24 another firearm made by that same tool, that's not
25 something that our laboratory reports yet but some

1 places do.

2 Q. So you're saying a lot of things you look at
3 are subject to subclass carryover like -- what did you
4 say, which one, grooves or land, which one is subject to
5 subclass carryover?

6 A. The groove impressions that are left on a
7 bullet from the groove of the barrel.

8 Q. Tell me which one it was, groove or land.

9 A. It's the groove impression of a bullet --

10 Q. Right.

11 A. -- from the groove of a firearm.

12 Q. Is subject -- is prone to subclass carryover.

13 A. Can -- can be subject to subclass carryover.

14 Q. Can be?

15 A. Can be, it depends on the manufacturing
16 technique.

17 Q. It depends on the manufacturing?

18 A. On the manufacturing technique.

19 Q. All right. What's the manufacturing technique
20 in the Lorcin in this case?

21 A. I don't know.

22 Q. Okay.

23 A. But I didn't use a groove impression to make my
24 identification.

25 Q. All right. And what else is subject to

1 subclass carryover, the ring on the casing?

2 A. The rings in the firing pin.

3 Q. The rings in the firing pin?

4 A. Rings in the firing pin.

5 Q. No subject to subclass carryover.

6 A. There can be subject -- they can be subject to
7 subclass carryover.

8 Q. Isn't it true that the way the casings were
9 identified in this case was based on the firing pin
10 markings?

11 A. Yes, there were no rings in the firing pin. It
12 wasn't rings.

13 Q. It was based on the firing pin markings.

14 A. It was based on firing pin impressions.

15 Q. Which you just said is subject to subclass
16 carryovers.

17 A. I said rings on the firing pins can be subject
18 to subclass carryovers.

19 Q. I thought you also said the firing pin could be
20 subclass carryovers.

21 A. I said rings in the firing pin.

22 Q. What about the firing pin?

23 A. It depends on the manufacturing technique.

24 Q. All right. What about the Lorcins?

25 A. No.

1 Q. How do you know?

2 A. Well actually -- okay. Let me restate that. I
3 do not know the manufacturing technique used in the
4 Lorcin. I do not believe, because of the nature of the
5 markings on the firing pin, there were little pits and
6 little lumps on the firing pin, and so I don't think
7 that those are subclass in nature.

8 Q. But you don't know how they do it, you don't
9 know how they manufactured that.

10 A. That's true, I don't have to know every single
11 manufacturing technique. What we end up seeing are the
12 markings left on a breech face or on a firing pin or on
13 a bullet by many different types of firearms. And you
14 end up having an idea of the types of manufacturing
15 techniques again that are more prone than not to
16 subclass carryover.

17 Q. We've heard again, I want to make it clear.
18 You don't know what the Lorcin manufacturing process is.

19 A. I don't know how -- I think they're -- actually
20 Lorcin makes -- has their firing pins made by another
21 company, so I don't know how that other company makes
22 those firing pins.

23 Q. The second thing is firing pins, depending on
24 the make of the weapon are subject to subclass
25 carryovers.

1 A. They can be.

2 Q. And the last thing I want to ask you about you,
3 you said, you know, when you're struggling and you're
4 having a bad day or whatever, you're not really sure
5 what you've seen, you go back and look the next day.

6 A. Yes. Sometimes when I'm looking -- when I'm
7 looking in the microscope, my eyes are tired and I think
8 I see agreement, but, you know, am I really seeing this
9 or am I trying too hard to make an identification where
10 there is not one. So I put my work away and I go and I
11 do something else, I do a little bit of reading, the
12 AFTE journal or whatever. And I come back the next day
13 with fresh eyes, maybe on a different microscope, just
14 to change things up a little bit and make sure that the
15 agreement that I'm seeing is really there, that I'm
16 not -- I'm not making it up in my head.

17 Q. So your identification could be -- a variable
18 is how tired your eyes are, right?

19 A. And that's why I don't make identifications, if
20 my eyes are tired, if I've been sitting on the
21 microscope all day.

22 Q. Let me finish my question, how tired your eyes
23 are, one; right? Your identification can depend on how
24 tired your eyes are.

25 MR. HANNA: Asked and answered; two,

1 argumentative and three, outside the scope of this
2 hearing.

3 THE COURT: Well, I thought you said, let
4 me finish my question and then you really didn't finish
5 your question, you asked the same thing over again and
6 said, right.

7 MR. DOGGETT: She started -- I thought she
8 started talking before I finished the question. I don't
9 want to argue about this.

10 THE COURT: Okay. I mean, I didn't hear
11 anything different, that's what I was listening for was
12 something different. So, if you can answer the question
13 the way counsel asked it then --

14 A. If you can re-ask it, I don't remember.

15 Q (By Mr. Doggett) Your ability to make an
16 identification is effected by -- can be effected by the
17 tiredness of your eyes, right?

18 A. If I feel tired and if I've been looking in the
19 microscope all day, then I may not feel confident that I
20 am being as objective as I need to be. It's a
21 subjective criteria, again, my line for identification
22 is subjective, yes. But I am looking objectively at the
23 markings that are left by the firing pin or by the lands
24 and grooves of the barrel of the bullet. And I want to
25 make sure that I'm not just seeing lines where there

1 aren't any lines, that I'm being objective about things.
2 And so, if I think that I'm tired, if I think that I've
3 been looking at it too long, that I'm sick and tired of
4 working at it, I don't want to write down conclusions
5 that I'm not sure about, that I'm not confident about.
6 And so I will put my evidence away and I will come back
7 the next day and make sure that what I am seeing is what
8 I am seeing and write that conclusion down.

9 Q. Did you do that in this case?

10 A. I don't recall having to look at the evidence
11 for a very long period of time but I don't know, I don't
12 have a record of the time.

13 Q. All right. Can you -- can you think of a time
14 when you've ever gone back and taken a second or a third
15 look and you changed your initial opinion?

16 A. I have changed my initial opinion from
17 inconclusive to identification when I found a different
18 area to focus in on and find an agreement of marks.

19 Q. How many times have you done that?

20 A. I don't keep a record of that.

21 Q. All right. And then the other thing you
22 mentioned was the verifier might have trouble with
23 lighting the evidence. Lighting is critical in how
24 y'all look at these objects that you're looking at,
25 right?

1 A. That's where the art part -- wait, we say the
2 firearms examination is an art sometimes and that's the
3 art part of it. You know, some people might use a very
4 high lighting technique where the light is shining, you
5 know, directly down onto the bullet, whereas some other
6 people use like a much more side lighting technique.
7 And depending on the lighting technique, you're going to
8 see different markings or you might see the markings in
9 a different way, they appear different when you're
10 looking at them under the microscope. So depending on
11 how another examiner may like something, they may not
12 see what I have -- because as a primary examiner, I
13 would take a picture and show that to my verifier that
14 this is the area that I'm interested in, so, you know,
15 focus on this area. And if they're not seeing what I
16 saw as identification in the area that I photographed,
17 they might ask me, can you show me what you're looking
18 at because I'm not seeing this. And so I would adjust
19 the lighting, adjust the orientation of the bullet so
20 that they could then see the markings that I was looking
21 at.

22 MR. DOGGETT: I pass the witness.

23 MR. HANNA: Briefly, Judge. May I consult
24 with Defense counsel before?

25 THE COURT: You may.

1 MR. HANNA: No further questions, Your
2 Honor.

3 THE COURT: Okay. All right. Thank you
4 very much, ma'am, and you are excused from the stand.

5 MR. HANNA: State rests, Your Honor.

6 MR. DOGGETT: Defense rests.

7 THE COURT: All right. Closing.

8 MR. HANNA: Your Honor, it's the State's
9 burden so I'll reserve my argument at the conclusion.

10 **CLOSING ARGUMENT**

11 MR. DOGGETT: Judge, let me find my notes.

12 As I said at the beginning, and it's the
13 underpinning from the Daubert and Kelly hearing on the
14 issue of expert testimony.

15 The science has the ability to mislead
16 jurors. Because jurors -- as Mr. Tobin testified to and
17 has talked about in these opinions, juries tend to put
18 great weight on science and juries are not properly
19 equipped. And this is the underpinning of these
20 decisions -- this is not just some argument I'm making
21 up -- they're not properly equipped to evaluate the
22 scientific evidence. If we had a jury of firearms
23 examiners or mechanical engineers or metallurgists,
24 maybe they would be more equipped than scientists to
25 evaluate this testimony but that's not what we have on

1 our jury. So the danger is that the science can be
2 overweighted or can mislead a jury. That's the whole
3 premise of Daubert and Kelly that says, you must act as
4 a gatekeeper to make sure that only sufficiently
5 reliable science is admitted in evidence to a jury.

6 The burden of proof is on the State, and
7 interestingly enough, the burden, as stated in the
8 decision is that they must convince you -- before you
9 can admit this evidence -- they must convince you by
10 clear and convincing evidence, and that's that standard
11 that we talked about, about you being persuaded that you
12 have a firm belief of the truth of the matter asserted.
13 It is a tough burden.

14 There is no case that has come out. The
15 case -- I wrote down the cases cited by the State --
16 there is no case that has come out after the NAS
17 reports, the 2008 NAS Ballistic Imaging Report or the
18 2009 NAS report that has taken up the issue of the -- no
19 Texas case has taken up the issue of the admissibility
20 of firearms identification testimony as being admissible
21 or not, so I think this is a case of first impression.

22 The State's case is that the 1939, a
23 similar case that let this stuff in, there's a lot
24 that's changed in science since then. I mean that case
25 is pre-DNA, pre a lot of things, and there are a lot of

1 forensic science things that have come and gone since
2 that similar case came out. And certainly that court
3 didn't have the benefit of these critical reports that
4 are issued by the National Academy of Sciences, which
5 Mr. Nixon pointed it out how that came about, years of
6 work, a lot of experts, a lot of people from different
7 disciplines coming out and making these reports.

8 And on the issue of whether or not -- I
9 don't have the whole report so I can't cite you to the
10 line and page, it says the NAS adopted the report. But,
11 as Mr. Nixon told you that report was issued by the
12 National Academy of Sciences, it wasn't just a committee
13 report, they got the report and then they published it.

14 And in one of the exhibits you have, which
15 is one of Mr. Tobin's articles, the article entitled
16 Hypothesis Testing of the Critical Underlying Premise of
17 Discernable Uniqueness in Firearms, there is a quote, on
18 Page 133 in that article where they talk about this very
19 issue. It's in Footnote 29, and it is comments by the
20 Honorable Harry T. Edwards who is the chairman of the
21 group that produced the report. And he's addressing the
22 issue about how courts should -- how they should use the
23 NAS report. And he says, "I recently had an opportunity
24 to read several briefs filed by various U.S. Attorneys
25 Offices in which my name has been invoked in support of

1 the government's assertion that the committee's findings
2 should not be taken into account in judicial assessments
3 of the admissibility of certain forensic evidence, one
4 brief, for example, asserts. In fact, the Honorable
5 Edward T. Edwards, co-chair of the NRC Forensic Science
6 Report has stated on the public record that the report
7 is not intended to effect the admissibility of any
8 forensic evidence. This is a blatant misstatement of
9 the truth. I have never said that the committee's
10 report is not intended to effect the admissibility of
11 forensic evidence to the degree that I have commented on
12 the effect of the report, on admissibility
13 determinations, I have said something quite close to the
14 opposite of what these briefs assert". So this is the
15 chairman of the committee saying that judges should use
16 the NAS 2009 report in assessing the admissibility of
17 scientific evidence.

18 Now -- again, none of the cases cited by
19 the State are post NAS report cases, none of them cite
20 the NAS report, so that material is not available to
21 these judges when they rendered those decisions.

22 Mr. Hanna referenced the Nenno standard
23 yesterday for soft sciences, none of the opinions that
24 talk about the admission of this evidence used the Nenno
25 standard.

1 The Sexton case which is a Texas case
2 where the Court excluded the proposed firearms
3 identification evidence, because the examiner did not
4 actually have the weapon, did not use the Nenno
5 standard.

6 The Ramey case, which is an unpublished
7 opinion in which they do talk about the admissibility of
8 this type of evidence, also did not use the Nenno
9 standard; they used the Daubert standard.

10 And the Kumho Tire opinion, which came out
11 after Nenno and addressed kind of the same issue about,
12 well, what do you -- how do you apply Daubert to things
13 that are not clearly scientific? The Kumho Tire opinion
14 from the U.S. Supreme Court said you still have to
15 use -- satisfy the Daubert criteria although we are
16 going to give our trial judges a great deal of
17 discretion in deciding whether or not something is
18 sufficiently reliable to get in.

19 So, the point of all that is you should
20 consider the NAS reports. We've called two experts,
21 well qualified experts who said they agree with all
22 those conclusions in the NAS reports. But if you blot
23 it out of your mind of all these hours of testimony and
24 the slide shows that you've heard, you can still rely on
25 the NAS report and you can rely on the testimony of

1 Ms. Eudaley who said this is subjective. She told you
2 today, it's more of an art -- or sometimes we refer to
3 it as an art. There are no set criteria or standards
4 for making a match, there are no error rates. And those
5 are all critical criteria that are listed in Daubert and
6 Kelly that go to the scientifically reliability of
7 admitting this type of evidence. If you look at the
8 qualifications of the experts, the ones who do this
9 forensically, except for Mr. Nixon is the only one I
10 know, they're all law enforcement.

11 The methodology, can you test it? No, you
12 can't test it because they don't have any standards to
13 test it by. Is it subjective? Yes, it's clearly
14 subjective. But I thought it was very interesting when
15 Mr. Hanna was asking Mr. Nixon about his opinions. He
16 said, are they subjective? He said, yeah, they're -- he
17 agrees with Eudaley -- yeah, they're subjective, it's
18 what I think and what I looked at. And you could -- I
19 guess you could sit here and have two or three different
20 examiners and argue all day long about which one agrees
21 and which one doesn't agree based on their subjective
22 opinions.

23 Peer-review. There is -- the peer-review
24 that has occurred, there's internal peer-review, but the
25 external peer-review in the NAS report is negative.

1 They say they don't -- their techniques are not
2 supported by sound science.

3 The rate of area, there are no known rates
4 of error. Is it generally accepted in the scientific
5 community? It's accepted in the firearms examiners
6 forensic community but it is not accepted by other
7 scientists like Mr. Tobin, Mr. Nixon and the people, all
8 of the scientists involved in reviewing what was being
9 done that talked about whether they found it acceptable
10 in the NAS report. Does it have another criteria? Does
11 the technique have nonjudicial uses? Not that I'm aware
12 of. I think this is purely a forensic tool that is used
13 by law enforcement in criminal cases. I guess,
14 supposedly, it could come up in a civil case about who
15 shot who, and that might happen, but primarily it's used
16 in criminal prosecutions.

17 The clarity of the ability to explain it.
18 I don't know about you, Judge, but I got a little lost
19 in some of the explanations, not only from the State's
20 witness but my own witnesses and it's not easy to
21 understand some of this stuff. And part of the reason
22 it was very difficult to explain it is, again, because
23 there's no standards. It's very difficult to say, well,
24 here's exactly what we did, here's the standards we use
25 to determine whether or not there's a match. There

1 aren't any. So it's hard to follow -- Mr. Nixon said, I
2 couldn't follow from the reports that they wrote exactly
3 what they did or how they made their determinations
4 because it's not in the reports.

5 So all of those things considered together
6 weigh against the admissibility of this evidence and I'm
7 asking you to exclude it. But, as a fall-back position,
8 if you rule against me on this, I think it's critical
9 that you limit what the witness is allowed to say about
10 the certitude of whether or not this is a match or not.
11 I don't think, based on what we've heard the last couple
12 of days that they can support the opinion that, to a
13 practical certainty, this is the gun that fired the
14 bullets in question and this is the gun that fired the
15 shell casings. I think they could be allowed to say, we
16 can't exclude this weapon. I don't have a problem with
17 them testifying about what they think the similarities
18 and dissimilarities are. But I do not believe that
19 they -- under the state of the science, as we know it
20 and is criticized by the NAS report that the witness
21 should be allowed to put a degree of certitude on how
22 sure they are that they're right about their
23 conclusions. I don't think they should be allowed to
24 say, it's probably or more likely than not, or certainly
25 not be allowed to say that it is a practical certainty

1 that this is the same weapon.

2 THE COURT: Mr. Hanna.

3 **CLOSING ARGUMENT**

4 MR. HANNA: Thank you, Your Honor.

5 Of course, Judge, you know the State's
6 position, we think this is good evidence and that the
7 jury should hear it.

8 I want to go over sort of the Defense's
9 responses but there are some things I want to cover
10 outside of that. The Defense relies heavily on the NAS
11 report. And even our own experts said, yeah, we got
12 that NAS report and we took seriously and we made
13 changes as a result of that. Nowhere in that NAS report
14 does it say, this shouldn't be admissible. And what it
15 sort of supports that is that that report addressed
16 every identification science. It addressed friction
17 ridge analysis which is fingerprints, other pattern
18 impressions like shoe prints and tire marks, hair
19 evidence, fiber evidence, documents, documentation
20 examination, paint and coating evidence, evidence of
21 fired debris and explosives; odontology which is the
22 dental work, and it didn't say any of those should not
23 be permitted to be in front of a jury, and they're all
24 pattern comparison type sciences and they are all
25 subjective.

1 I don't know how the Defense experts
2 expect there to be a science in front of a jury that's
3 not subjective. Even the most well settled scientists,
4 quantum physics, you could have two guys in here saying
5 two different things, and because of their expert
6 experience and their expertise, they've drawn different
7 conclusions. And that's the nature of all testimony and
8 all scientific evidence is there's going to be some
9 subjectively. Granted, there is more in this than some
10 other practices, some other field but that doesn't
11 exclude its admissibility. They want to say that that
12 removes it from that highest tier of science that the
13 NAS is addressing and it may. But it doesn't exclude it
14 from its value to a jury and for them to listen to the
15 qualifications of an expert and determine the
16 credibility of that witness and assess the value they
17 want to place on the testimony that that particular
18 witness gives.

19 In the Otero case that I provided to the
20 Defense, and it cites in there -- and again, I'll
21 reiterate it, I think it's a good read for -- just the
22 process that a court should go through. That court
23 says, "It's not that court's role to determine if the
24 procedures utilized are sufficient to satisfy scientists
25 that the expert opinions are virtually infallible. If

1 that were the case, experience based expert testimony in
2 numerous technical areas would be barred. We would
3 never hear it because there's just not that degree of
4 certainty in most of the sciences and that doesn't
5 preclude its admissibility".

6 In regards to the Defense experts.
7 Mr. Tobin is not a firearms examiner, I think you should
8 question some of his credentials. He seemed to mix
9 words with his chief and de facto chief but he wanted to
10 imply that he was really a chief. His Masters degree in
11 special studies, I don't know really what value that
12 has. But what's important about his testimony, and if
13 you recall prior to our break, he used language similar
14 to this. I do not have issues or I don't take issues
15 with the practice and I find them to be very effective
16 at finding and comparing similarities in the pattern
17 matching practice. I am on the record as indicating I
18 find the practice of firearm toolmark is still in my
19 opinion one of the top three most effective probative
20 tools and has significant probative value. That's one
21 of the tests in Kelly and now in these analysis is, will
22 it help a jury make a decision on one of the material
23 issues? And this testimony in this regard certainly
24 will, Judge.

25 Now he modified his -- he changed his

1 opinion after the break, but it was basically, yeah, the
2 jury should hear about it but don't let them say without
3 absolute certainty is what it boils down to. So he sees
4 the value in the testimony, he sees the value in the
5 examination and the evidence, but he just thinks they
6 shouldn't say beyond an absolute certainty or to an
7 absolute certainty.

8 Well, if you recall Ms. Eudaley's
9 testimony, they don't. They don't say, to the exclusion
10 of all other firearms, they don't say with absolute
11 certainty, they use some lower standard. Now, there is
12 no criteria to determine what that standard is. Is it
13 more likely than not, is it probable, is it to a certain
14 degree of scientific certainty? Those are all for each
15 individual witness -- or each individual examiner to
16 say. Just as Mr. Nixon said, I think there's a high
17 probability in this situation, I think there's a
18 moderate probability in this situation, whatever they
19 choose based on their examination of the evidence.

20 In regards to Mr. Nixon, he does claim to
21 be a firearms examiner but he doesn't have -- he doesn't
22 own his own lab, he's not accredited, he doesn't have
23 any peer-review, he doesn't have anybody check his work,
24 he's on his own in a lab that is back behind his house.
25 I think the Court should take those kinds of things into

1 consideration in evaluating the credibility and the
2 weight that their testimony should have. They're not
3 doing this everyday. They attack the firearms examiners
4 as being all law enforcement. Well that supposes that
5 these people would violate their moral conscience and
6 say something that is accurate isn't accurate, just
7 because they are employed or paid by the State or by the
8 government and that's certainly not appropriate.
9 Everybody will make their decision based on the evidence
10 they see and make their conclusions. The same is to
11 assume that every Defense expert will automatically say
12 something favorable for the defendant just because we're
13 a defense expert. That's not accurate either, we
14 shouldn't make those generalizations.

15 Judge, the Defense counsel mentions the
16 cases that I've provided to the Court in regards to the
17 prior decisions and the admissibility of this evidence.
18 And yes, they do start from 1939 and I believe the last
19 one was in 2009.

20 This issue has been addressed by courts
21 throughout this nation and after the NAS report has been
22 generated. And they did not provide a single case, a
23 judicial precedent to demonstrate the exclusion of this
24 type of testimony. Every time that Mr. Tobin and
25 Mr. Nixon have testified in the past, the Court has

1 allowed the evidence to be in front of a jury, they have
2 not excluded the testimony from firearms examiners in
3 any case throughout the nation, Judge, not only not in
4 Texas. There is no judicial precedent to support the
5 exclusion of this evidence which is certainly something
6 the Court should consider.

7 But in addition to that based on the
8 testimony you've heard today that -- I disagree with
9 Doggett. The clarity in which our experts can testify
10 about what they do and what their findings are, that
11 this evidence should be before a jury. It is valuable
12 to them to make a conclusion. They did meet the seven
13 factors in regards to the Daubert, Kelly test.

14 It's a valid scientific theory. The
15 techniques are valid. And it was properly applied in
16 this situation.

17 The Defense counsel mentioned the rate of
18 error. There are attempts to determine the rate of
19 error. But again, that's not an exclusive bar to
20 admissibility. What's the rate of error in a
21 fingerprint; what's the rate of error in psychology;
22 what's the rate of error in hair analysis? There aren't
23 any determinable rates of error because you don't
24 know -- there's no additional way of analyzing evidence.
25 There's no referee; no ultimate say of whether or not

1 they were right or wrong, it's the consensus of the
2 organization.

3 They are peer-reviewed. They imply that
4 because AFTE is comprised mostly of people who are in
5 the business of doing firearms examiners, therefore,
6 they must be disingenuous, and they're just going to
7 push all their articles on and not have any true
8 scientific evaluation of those articles.

9 THE COURT: What's your response to
10 Mr. Doggett's contention that they shouldn't be allowed
11 to use the terms, virtual certainty or practical
12 certainty?

13 MR. HANNA: I'm opposed to that because we
14 don't know where those are found. I mean, each
15 person -- when I asked Mr. Nixon what his definition of
16 those terms were, he couldn't give me one.

17 So, a Defense counsel can argue what that
18 means to the jury after the -- after those words are
19 uttered in argument, but it doesn't change -- you can't
20 limit what somebody who's in that field, how they
21 classified themselves.

22 But as I've told you, they do not use the
23 absolute certainty; they do not use the exclusion of all
24 other firearms. And I think that the jurors will
25 understand what they mean when they use that kind of

1 language.

2 For those reasons though, Judge, we're
3 opposed to the motion and we ask that you deny it and
4 that this evidence be admitted for the jury's
5 consideration.

6 THE COURT: Okay. Well, I do feel like
7 the opinion of your witnesses are relevant. I do find
8 that the scientific, technical and other specialized
9 knowledge of the witness will assist the trier of fact
10 to understand the evidence or determine the fact issue.

11 I do find that -- by a preponderance of
12 the evidence, that the witness is qualified by
13 knowledge, skill, experience, training and education to
14 render testimony in the form of an opinion, or
15 otherwise, and I do find that the opinion is reliable.

16 I am troubled only that DNA evidence is so
17 associated with certainty, that to use the term virtual
18 certainty or practical certainty, I'm very fearful that
19 that could get confused.

20 I certainly have no problem with using a
21 high degree of confidence, that kind of language,
22 because I think that separates it from DNA and -- so
23 that's -- that's my ruling as to -- I'm going to order
24 that there not be the use of the two terms, virtual
25 certainty or practical certainty.

1 But I do -- I will allow the witness to
2 talk in terms of high degree of confidence, which I
3 think is really what I heard from the witness's mouth
4 when she was talking.

5 And the only reason I'm excluding those
6 two terms is because of confusion with DNA, which I
7 think could be -- could be a -- some kind of basis for a
8 claim of error. So, anything else?

9 MR. HANNA: No. Just for the record then
10 our witnesses will be permitted to testify about the
11 evidence that's been discussed in the Daubert hearing?

12 THE COURT: Yes, sir.

13 MR. HANNA: Okay. Are we starting back up
14 at 1:30?

15 MR. DOGGETT: Did you want to take up --
16 do you want to have the argument about the
17 admissibility of parts of the statement? That still
18 hasn't been resolved.

19 MR. HANNA: But did you get my -- did you
20 get my agreement that I sent to you?

21 MR. DOGGETT: Yes, but there were some we
22 didn't agree on.

23 MR. HANNA: Okay. I didn't bring that up
24 here with me; we don't intend to offer that.

25 (Discussion off the record while attorneys

1 have a discussion)

2 MR. DOGGETT: And just -- there was -- I
3 made -- this is my only copy -- but I made a copy of the
4 Price opinion, this is on the issue of instructions to
5 the jury about note taking.

6 And I'm not trying to usurp your role, but
7 I did look up about the issue of giving them
8 instructions -- and I looked at the handbook of Texas
9 Evidence -- and they say that you should admonish them
10 at the beginning of the trial, and they say that the
11 admonition should come in the form of instructions that
12 the Judge gave in the case of Price versus State, 887
13 S.W.2d 949 and 955. I made a copy of that for the Court
14 if you --

15 THE COURT: Sure, I'm willing to read it.

16 MR. DOGGETT: I think that's all we have.
17 You can give it to them orally.

18 THE COURT: Yeah.

19 MR. DOGGETT: I don't know whether you
20 need to include it in the written instructions later or
21 not, but they certainly need to be told orally before
22 they start taking notes -- here is my research.

23 THE COURT: Thank you, sir. Now we
24 have -- the press has asked to -- I'm sorry, go ahead.

25 MS. BOLIN: There's a couple of

1 housekeeping things, but I can wait until you finish.

2 THE COURT: Okay. -- has asked to record
3 some footage in here during opening statements and
4 I'm -- I'm prone to allow that absent some kind of --
5 absent y'all telling me some overriding reason why I
6 shouldn't.

7 I'm not talking about taking down the
8 whole trial, I'm talking about making a -- this is
9 something that's newsworthy.

10 MR. DOGGETT: From the Defense, as I
11 understand it, it will be for a limited amount of time
12 and it will be as unobtrusive as possible. And given
13 those understandings, we don't object to the press
14 coming in here and taking some pictures of the opening
15 statements.

16 THE COURT: State?

17 MS. BOLIN: Judge, I think we don't
18 particularly like it, but I don't think we have any
19 overriding or legal reasons for you not allowing it.

20 THE COURT: My thought was they could do
21 it over on that side where they wouldn't show the
22 juror's faces which I think is a prudent thing to do,
23 and I'm been assured that --

24 MR. FELCMAN: I don't think you ought to
25 do it. You don't have anything hidden or have a camera

1 in the corner; the jurors are going to see it.
2 Remember, the case you tried where they didn't have the
3 jurors -- remember how they went to such an extent to
4 try to hide the cameras? You don't have that here. I
5 don't think you ought to do it.

6 The jury's going to see it and we're going
7 to give them a trial. And we took an immense amount of
8 caution to keep them from even thinking about it and
9 then we're going to bring a camera in here. I don't
10 think you ought to do it.

11 THE COURT: Well, let me talk with
12 Mr. Quinn from Channel 13 and see how it could be
13 arranged, and then we'll address it when we come back
14 from lunch. Okay? All right. Thank y'all very much.

15 MS. BOLIN: Judge, there's two other
16 things that I don't know if you want to take them up
17 after lunch or you want to deal with them now.

18 THE COURT: And they are?

19 MS. BOLIN: One is regarding invoking the
20 Rule and to be permitted to remain in the courtroom.
21 The other is one of our very first witnesses and pieces
22 of the evidence that I believe will be the 911 call.
23 And I believe the Defense is going to oppose our request
24 to use the transcript for the jurors. And so I think
25 it's one that would be better taken up ahead of time to

1 sort it out so that we don't have to break up the
2 testimony to do that.

3 Are you prepared to do that now or after
4 lunch or one now and one later, whatever the Court would
5 like.

6 THE COURT: All right.

7 MS. SCARDINO: Are we talking about the
8 family? I mean, the first thing that we do?

9 MS. BOLIN: Yes.

10 MS. SCARDINO: Your Honor, I do object.
11 And I have -- we have advised the State that we would
12 prefer that when we invoke the Rule, we intend for all
13 the witnesses who may testify to be -- to remain
14 outside.

15 Now, I know that Ms. Bolin's argument is
16 that she would like to have Ms. Jackson, I believe, stay
17 in the courtroom during the rest of the trial after she
18 testifies; is that correct?

19 MS. BOLIN: Well, I can only clarify it to
20 the Judge what I'm asking. I'm asking two things,
21 really, the first one is that family members who may
22 testify in the punishment phase, should we reach it, and
23 only in the punishment phase, we're requesting that they
24 be permitted to remain in the courtroom for the
25 guilt/innocence phase and portion of the trial.

1 The second thing we're asking is that the
2 two family members that we do expect to testify during
3 guilt/innocence that they be permitted to remain in the
4 courtroom to watch the trial after they testify. And
5 it's not just something that I would like, it's
6 something that the Court is permitted to do according to
7 the rules because they are considered victims under the
8 code because they are close relatives of the victims in
9 this case.

10 THE COURT: All right. I understand the
11 second. Say the first again.

12 MS. BOLIN: The first is family members
13 who only testify during the punishment phase of trial,
14 therefore, we don't think their punishment testimony
15 would be affected materially by sitting in during the
16 guilt/innocence.

17 Generally, we've reached an agreement with
18 the Defense that their family members can sit in and
19 ours can; but the Defense has been unwilling to do that.

20 I think the Court has the discretion under
21 the code that if you believe those family members,
22 because they're only testifying potentially in
23 punishment that -- if their testimony won't be
24 materially affected by sitting in the guilt/innocence
25 portion, then the Court has the discretion to allow them

1 to sit in, and I think it's fairly typical in cases of
2 this nature so that's our request.

3 MR. DOGGETT: One problem I have is that I
4 don't even know what witnesses they're talking about.
5 There may be some witness in here -- the one she's
6 calling punishment witnesses have not been identified to
7 me. So we would at least like to know who they are,
8 because there may be somebody that we want to have
9 testify in the guilt/innocence.

10 And then the other problem we have about
11 the witnesses, Ms. Jackson and Ms. Daniels' testifying
12 and then staying in the courtroom, I think it's possible
13 that something could happen -- now, I don't know, but
14 something could happen where we might decide we want to
15 recall them based on something that comes out in the
16 trial, and then they would have been there sitting and
17 listening to all the testimony after they testified, and
18 that's kind of the whole purpose of the Rule is to
19 prevent that from happening.

20 MS. BOLIN: I can clarify it for the
21 Court, Judge, right now the one that I'm referring to
22 that I would consider to be punishment only witnesses,
23 would be Stella Daniels which is the mother of Yancey
24 Daniels; Christopher Jackson, the brother of Leah
25 Jackson and Tarhonda Daniels who is the sister of Yancey

1 Daniels, they are not on our guilt/innocence list.

2 MR. DOGGETT: And Tarhonda Daniels is one
3 that we want to testify in guilt/innocence.

4 MS. BOLIN: And I'll make sure, to my
5 request to do the same, that Pamela knows that after she
6 testifies in guilt/innocence that she should be
7 permitted to remain in the courtroom.

8 THE COURT: All right.

9 MS. SCARDINO: Your Honor, can we --
10 excuse me one second, may we look at the statutes
11 that -- and it's not just one, I mean we've got the
12 Texas Rules of Evidence 614 and Texas Criminal Procedure
13 36.03 that's invoking the Rule. But there's two
14 criteria from having victims remaining in the courtroom.
15 But is -- I can understand the mother -- but is -- are
16 all these other people victims of this crime? I mean, I
17 don't know how close in relationship you have to be to
18 be considered a victim. Just because they're a family
19 member, does that make them a victim?

20 MS. BOLIN: Judge, I can draw your
21 attention to it --

22 MS. SCARDINO: May I finish?

23 MS. BOLIN: It's answered in the code.

24 THE COURT: You may.

25 MS. SCARDINO: That's really not the

1 entire issue, the entire issue could be. We don't know,
2 we don't have a script for this trial. And there --
3 this is two crime scenes, two sets of witnesses. We've
4 got an unbelievable amount of information to go through
5 to get ready for this trial, I have no idea which
6 witness we may decide we want to call. We have
7 information of, for instance, Ms. Jackson, maybe we want
8 to ask her some questions about what she knew about her
9 daughter, what she knew about Yancey, questions that
10 perhaps she doesn't decide the State doesn't ask. Maybe
11 we know something they don't know, maybe we would like
12 to ask her something later.

13 This is a death case and I'm requesting
14 that these people, as in all other murder cases, comply
15 with the Defense or anybody invoking the Rule and they
16 stay outside. And not only that, that we might call
17 them, you have the possibility -- we have the
18 possibility that, you know, they go outside, they may
19 talk to other family members. I mean they're going to
20 be emotional, it's not easy sitting in the courtroom and
21 being a victim of a crime and having to listen to all
22 the evidence and look at photographs. And the jury is
23 sitting right there, the same jury that's going to
24 determine whether or not this man spends the rest of his
25 life in prison or dies. So I think the decision that

1 you make is really important to the Defense in this
2 case.

3 I don't want the family members, as the
4 Defense lawyer for Cornelius Harper, I don't think
5 Mr. Doggett and I, together, do not want the family
6 members allowed to sit inside this courtroom to cry, to
7 make facial expressions, to emote their feelings to the
8 jury. I just -- it's just not right, and I -- I mean it
9 would not -- it would promote bias, perhaps, they would
10 know because of their emotions who they were, the jury
11 would know is who I'm referring to. So there's just too
12 many problems and I'm just requesting that you not allow
13 anybody who is not a party and not going to testify at
14 that time in the courtroom to listen to the entire case,
15 and basically that's -- for some of those people, that's
16 pretty much what they would do.

17 MS. BOLIN: There's just three things I
18 want to touch on. One is the rules are the rules,
19 whether we're sitting in here on a shoplifting case or a
20 capital murder case. Of course, I understand this is
21 more serious but we don't change the rules in the Code
22 or the Rules of Evidence just because it's a capital
23 murder case.

24 That being said, CCP, Section 56.01
25 specifically says, close relatives of a deceased victim,

1 which is the phrase that is used in both the Rules of
2 Evidence as well as the Rule in the CCP, means a person
3 who is the spouse of the deceased victim at the time of
4 the victim's death or who is a parent or adult brother,
5 sister or child.

6 The family members that I have asked that
7 are specifically listed to the Court are either parents
8 of the deceased victims or siblings of the -- adult
9 siblings of the deceased victims. So we're asking for
10 the Court to use its discretion that is allowed within
11 the code to allow those family members to remain in the
12 courtroom.

13 I know this Court is not going to permit
14 anyone sitting in the audience to behave in a way where
15 they are acting out, making faces, being emotional or
16 crying. I know this Court, whether it's a murder case
17 or a family member that the bailiff and Your Honor is
18 not going to allow for that to happen. And so I know --
19 we have advised the family members of that, and if the
20 Court wants to admonish them in that regard, that's fine
21 as well. But that shouldn't be -- the potential for
22 that shouldn't be a reason to exclude them. And the
23 potential that they could speak to each other should
24 also not be a reason to exclude them, while that can be
25 something that applies to anyone who walks in this

1 courtroom. And again, I would expect this Court to
2 instruct anyone in this courtroom in that regard so they
3 can be properly admonished and instructed regarding this
4 Court's rules and the rules that are in the code. But I
5 still believe that it is within the Court's discretion,
6 and what we're requesting is to allow these family
7 members the opportunity to be in here for at least some
8 portion of this trial to hear the evidence regarding the
9 killing of their loved ones, subject to admonishments
10 and limitations the Court may put on that, but
11 particularly, witnesses who we do not anticipate may
12 testify until and if we reach the punishment phase of
13 this case.

14 MS. SCARDINO: Your Honor, I have one
15 statement to make in rebuttal to what Ms. Bolin had
16 said, and that is you can't undo something that's
17 already done. I fully agree with her in that you would
18 not allow any kind of unacceptable behavior in this
19 courtroom, but -- and then you would remove the person
20 from the courtroom or ask her or him to leave only after
21 all twelve, fourteen of those people have already seen
22 it. You can't take it back, it's -- you know, it's like
23 trying to tell a jury don't consider this even though
24 you've already heard it. I understand what you're --
25 what Ms. Bolin is saying and I do agree with her about

1 your demeanor and what you would require in your
2 courtroom. And you can make all the rules in the world
3 that would be applicable to a family member, a victim
4 staying in this courtroom, however, how do you control a
5 person's emotions? You know, making a gasp and go
6 running out of the courtroom all in front of the jury.
7 I mean, I don't know. I'm just trying to avoid a
8 situation that could be -- that could be bad, and I'm
9 asking you to not allow them to stay in the courtroom.
10 And I guess while we're on the record, we can invoke the
11 Rule.

12 THE COURT: Well we can invoke the Rule,
13 there's no question about that.

14 MS. SCARDINO: I understand that, Your
15 Honor, just --

16 THE COURT: But I -- I've tried murder
17 cases in the past where the family has been present. I
18 have admonished them. I have, in fact, told them that
19 if they're starting to lose control of their emotions, I
20 expect them to get up and leave and not stay to be
21 admonished any further by anybody and they've done that.
22 You know, it's like free access to the courtroom, I
23 don't know how you get around it. But they are people,
24 they're allowed to be in here if they're not a witness
25 so I'm going to allow them to be here, I will admonish

1 them before the jury comes in. And the bailiffs are
2 really good about keeping a sharp eye for that kind of
3 thing. All right.

4 MR. DOGGETT: And I'm assuming, just for
5 the record, you're not going to include Tarhonda since I
6 advised you that we want her during guilt/innocence.

7 MS. BOLIN: If you're saying then that you
8 would generally believe you're going to be calling her
9 as a witness in guilt/innocence, then I think -- unless
10 the Court minds it -- but, you know, she should be in
11 here prior to that, then I guess we have to agree to
12 wait.

13 THE COURT: Well if someone's going to be
14 called and it is a realistic assessment, then I think
15 they're required to stay outside until after they have
16 been called; and at the time that they leave the stand,
17 I usually ask, can this witness be released from the
18 Rule which is an opportunity for anybody to make
19 reference to what their fears are at that time.

20 MR. DOGGETT: And that would concern the
21 witness, Tarhonda Daniels who is Yancey Daniel's sister.
22 We do intend to call her in the guilt/innocence phase of
23 the trial, the guilty/not guilty phase of the trial.

24 THE COURT: Okay.

25 MS. BOLIN: Judge, so that we're clear,

1 we're talking about Pamela Jackson, Bill Daniels and
2 Tarhonda Daniels that will be permitted, after
3 testifying, and then other members like, Stella Daniels
4 and Christopher Jackson who are punishment only type
5 witnesses that they will be permitted from the beginning
6 to be in the courtroom.

7 THE COURT: Yes, I can't see any reason
8 not to, I will permit that. Okay. Anybody here who's
9 going to be a witness in this case? All right. Well
10 then, we'll re-invoke the Rule when we meet here at
11 1:30.

12 MS. SCARDINO: Thank you.

13 THE COURT: Thank y'all very much.

14 MR. HANNA: 1:30, Judge?

15 THE COURT: Yes, sir.

16 Oh, let me -- y'all come up for a second.
17 A juror has a vacation like, was it the 6th of
18 January or something -- June 6th. She's just highly
19 concerned that this could cause her not to be able to go
20 on her vacation. I have simply given her some kind of
21 assurance that that -- we picked extra jurors, I mean we
22 understand, but I want y'all to know this is coming, it
23 is one of the ladies who's on the jury. And I can find
24 out for you who it is, if you need that but I mean, she
25 told us at the beginning when her vacation was so we've

1 all known that.

2 MS. BOLIN: Do you know how long, like is
3 it just a weekend thing?

4 THE COURT: No, I don't think so, I think
5 it's a full week. So it's just not reality that we
6 would, you know, postpone the balance of the trial. You
7 know, we may be finished, I don't know. We may not even
8 have gotten off the launching pad very far, I don't know
9 that either. But I want you to be aware of that and I
10 don't know how to treat it other than we'll deal with it
11 when it comes up. I don't want to let her go now
12 because she's one of your prime jurors, one of your
13 first twelve.

14 (Discussion off the record)

15 THE COURT: Okay. I think we're done,
16 right?

17 MS. SCARDINO: Yeah.

18 THE COURT: And we're going to start with
19 opening statements when we come back in.

20 MR. HANNA: 1:30?

21 THE COURT: Yeah.

22 (Recess taken)

23 THE COURT: Thank you, folks, please be
24 seated.

25 Yes, sir?

1 MR. HANNA: Judge, just some brief
2 housekeeping rules. We have agreed to some of the --
3 admissibility of some of the exhibits the State intends
4 to use.

5 THE COURT: All right.

6 MR. HANNA: And I would like to announce
7 that in the record.

8 THE COURT: Let me get my paper ready
9 here. Okay. Go ahead.

10 MR. HANNA: We've agreed to State's
11 Exhibit's Number 1 through 58.

12 THE COURT: Okay.

13 MR. HANNA: And State's Exhibit Number's
14 170 through 178.

15 THE COURT: 170 through 178?

16 MR. HANNA: Yes, Your Honor.

17 THE COURT: Okay.

18 MR. HANNA: And that means that there will
19 be no objection and we won't be offering them. We'll
20 just admit -- we'll just express that they've already
21 been admitted when we discuss them with the jury -- with
22 the witnesses.

23 THE COURT: All right. Any others?

24 MR. HANNA: There's also been a
25 stipulation from Defense counsel that we will reiterate

1 in front of the jury, but that the subjects of the
2 autopsies are the victims that we have alleged in our
3 indictment, and therefore, to remove the need to show a
4 family member a victim's photo of an autopsy.

5 THE COURT: Okay. All right. Yes, ma'am?

6 MS. BOLIN: Judge, there's one other issue
7 that it may be easier to take up now before the jury
8 comes in that I mentioned before lunch regarding the 911
9 call and our desire to use a transcript for the jury to
10 aid them in hearing that versus break up testimony, I
11 didn't know if the Court could maybe take up that now.

12 THE COURT: Sure.

13 MS. BOLIN: There is a -- as the Court
14 knows, there's a 911 call on a tape in this case that
15 we -- of the people in this trial that we expect to
16 admit through our first witness, Pamela Jackson. We
17 have had prepared by a court reporter a transcript to
18 that 911 call, and our request is going to be not to
19 admit into evidence the transcript, but instead we have
20 copies available for each of the jurors for them to use
21 as an aid during the playing of that tape. You know,
22 actually hand them out to them, let them use it and then
23 the Court take them back and not be something that they
24 take to the jury room, instead just simply the tape,
25 perhaps even with an instruction from the Court that the

1 evidence is the tape and the jurors are supposed to
2 consider that as such and that the transcript is just
3 merely an aid for them to use. But I think the case law
4 that I have read is consistent with giving an
5 instruction like that and not allowing the transcript to
6 go back with them. I expect there to be opposition in
7 that regard which is why I wanted to bring it up now.

8 MS. SCARDINO: Yes, sir. Defense does
9 object to the transcript, Your Honor, and for the simple
10 reason, first of all, it's bolstering. The witness is
11 testifying, there is no reason for the jury to have to
12 rely on something other than the testimony they hear
13 from the witness stand. The tape is clear, succinct,
14 there is nothing about the tape that would create the
15 need for them to have a transcript, first of all. And
16 secondly, it's easier for them to believe they hear
17 something when they're reading it. So I would -- in
18 particular, with this particular transcript, when we had
19 that issue, if you recall, about the -- what was said
20 over the 911 call, whether or not they could hear Leiah
21 talking. And I would ask the Court not to allow the
22 jury having a transcript at the same time that they're
23 hearing a call because of the subsequent or the -- at
24 some point, the legal issue about whether, you know,
25 what she can or cannot say -- what the mother can and

1 cannot say. We do not agree that what she claims that
2 she heard, she actually heard.

3 MS. BOLIN: Judge, those issues have
4 actually been raised before in other trials; and for the
5 record, I'll cite some cases. First of all, in Federal
6 Court, in the 9th Circuit, United States versus Chen,
7 C-H-E-N, which is at 754, Federal Second 817. In that
8 case, the Court said that the trial court did not abuse
9 its discretion in allowing the jury to use written
10 transcripts produced by the government as an aid in
11 listening to tape recordings where the District Court
12 reviewed the tapes and the transcript. The District
13 Court allowed the Defense to highlight alleged
14 inaccuracies and to introduce alternate versions of the
15 transcript. And this is the case where the Court gave
16 an instruction basically to the jury saying, the tape is
17 the evidence, the transcript is not and didn't allow for
18 the transcript to go back to the jury.

19 There's also some Texas cases on that
20 issue, Judge. First of all, the Court of Criminal
21 Appeals in Garrett versus State in 1983. In that case
22 the Court found that the trial court did not err in
23 allowing the jury to read transcripts of a recording
24 while a tape was playing in the courtroom where the
25 transcript was not introduced into evidence but was made

1 available to jurors only during the playing of the tape
2 and where the transcript was not available to the jury
3 during deliberations, such as I'm suggesting here.

4 Then also in Munoz versus State from 1996,
5 in the Court of Appeals in Texarkana. Again here, the
6 Court said that the trial court does not err when it
7 allows jurors to use a transcript to follow along during
8 the time that a recording of a 911 emergency call is
9 played.

10 And finally in Mayhue, M-A-Y-H-U-E versus
11 State from 1998, Court of Appeals in Austin. The Court
12 here said that a transcript of an audio tape was
13 admissible in that case for the jury to be aided in
14 understanding a taped conversation, that it was not
15 improperly suggestive and where the jury was instructed
16 it was merely an aid, and then this goes on to talk
17 about how portions can say inaudible like our transcript
18 does in this case.

19 So based on both the federal case law,
20 Judge, and case law within the State of Texas, we
21 believe it would be within your discretion and certainly
22 wouldn't be any error on the part of this Court to allow
23 the jurors to follow along in the transcript, be
24 instructed that it's simply an aid and for it not to go
25 back to the deliberation room.

1 MS. SCARDINO: Your Honor, the Defense is
2 well aware that -- and I haven't read all of those cases
3 that Ms. Bolin cited, but I am well aware that Texas
4 has -- we have -- the courts have allowed that in other
5 cases. However, you have the discretion and your
6 discretion is based upon the facts of every individual
7 case. And in this particular case, since we have an
8 objection to a portion of it, since there is a dispute
9 as to whether or not one particular part of that
10 transcript was said, having the jury -- giving the jury
11 the leeway or the ability to look at a piece of paper
12 that says something on it, just common sense would tell
13 you that you think you hear it if you can read it on a
14 piece of paper. So I'm requesting that this Court not
15 allow the transcripts -- the transcript to be
16 disseminated to the jury to -- for them to read at the
17 same time that they hear the actual tape.

18 MS. BOLIN: Judge, I think --

19 THE COURT: When are you going to -- when
20 do you plan on doing this?

21 MS. BOLIN: With our first witness, which
22 is why I brought it up now. You know, in one of these
23 cases, that was a complaint by the Defense, was that
24 they believed there were portions that were inaccurate.
25 And the Court in that case said that the Defense has the

1 opportunity, through cross-examination and arguments, to
2 highlight potential inaccuracies, and they also have had
3 all along the option to come up with an alternative
4 version of a transcript; and they were told not to do
5 so.

6 THE COURT: Do you have an alternative
7 version of the transcript?

8 MR. DOGGETT: No.

9 MS. SCARDINO: No, of course not -- well,
10 we have -- they had several transcripts that were
11 submitted to us during the last couple of years, and
12 some of them had a portion not in there.

13 And the last one that we got, a couple
14 of -- maybe a month ago, three weeks ago, claimed that
15 now, whoever was the transcriber of this particular
16 version has missing language inserted in there, so --

17 MR. DOGGETT: We couldn't hear it.

18 MS. SCARDINO: We couldn't hear it. I
19 literally -- and I don't have any problem hearing, like
20 some people do sitting at my table. So I couldn't hear
21 it. Unless they have done something that is super
22 enhanced and somehow they got it, I don't know, I
23 haven't heard it. But, I don't --

24 MR. DOGGETT: We had it enhanced and we
25 couldn't hear it.

1 MS. SCARDINO: I do not -- I don't have
2 another version. And yes, Mr. Doggett is correct, we
3 did -- we had it enhanced twice and still could not hear
4 it. So now the State's claiming that they -- that it
5 can be heard. I don't know, I haven't heard that
6 portion, so.

7 THE COURT: Well, I'm inclined to let the
8 State have a transcript but I'm also inclined to let you
9 all offer your own transcript, that is if you think
10 there's inaudibles where they think there are audibles
11 that you could -- you can offer that and make that
12 available to the jury. That's just the two contentions
13 of the two sides so, everybody's kind of kept at a
14 threshold level on that.

15 MS. SCARDINO: Well, we don't -- if that's
16 your -- if you're going to let them have a transcript
17 then I would like to offer my transcript for the jury
18 that does not have any of the inaudibles on it or have
19 the Court listen to the recording in a normal -- maybe
20 office atmosphere so you cannot -- you know, in here,
21 and maybe you can determine whether or not you think you
22 can hear it.

23 MR. DOGGETT: It's a very small part of
24 the whole tape and it has to do with whether or not you
25 can hear Leiah's words as opposed to her mother's words,

1 a very small portion of the tape, and that's the part
2 we're objecting to so, just so I would make it clear
3 we're not talking about the whole -- the whole thing.

4 THE COURT: How long a portion is it?

5 MS. SCARDINO: Well I can --

6 MR. DOGGETT: Maybe thirty seconds.

7 MS. SCARDINO: -- I can show you.

8 MS. BOLIN: It's probably less than that,
9 Judge, I would imagine maybe ten or fifteen seconds. If
10 I may make a suggestion, Judge, if the Defense does want
11 to pursue the avenue of having their own opposing
12 transcript. Perhaps we move forward today, the State
13 introduces the call, plays it and provides the jurors
14 with our transcript. And then if the Defense gets a
15 different transcript in the meantime when it comes to
16 their case in chief, they can certainly play the exhibit
17 over again and provide to the jurors their version of
18 the transcript.

19 MS. SCARDINO: That's not even remotely
20 just for the Defense in this case, Your Honor. I am --

21 THE COURT: I think I'm inclined to let
22 you play the transcript first without the -- play the
23 recording first without the transcript. And then when
24 it comes time for them to go back into their -- into
25 deliberations, we'll deal with the -- with the two

1 differing versions of it.

2 MS. BOLIN: In terms of sending an actual
3 transcript back into the jury room, you mean or --

4 THE COURT: Right.

5 MS. BOLIN: So, at what point should I --
6 that makes me think I need to introduce a copy of our
7 transcript then, Judge, based on what you're saying,
8 which I think from the case law, it's pretty clear that
9 it should --

10 THE COURT: Well, or you can play it and
11 give it to them during argument or something like that
12 as an aid.

13 MS. BOLIN: Okay.

14 THE COURT: I want y'all both to be able
15 to give it to them at the same time, that's really what
16 I'm concerned about so that they understand these are
17 two opposing versions. I'm concerned that -- and I'm
18 not saying you all would do anything wrong, I'm just
19 saying you hear it one way and they hear it another way
20 and that's perfectly fine. The jury's going to hear it,
21 but I'd like for them to have both things in front of
22 them when they do, if you're going to give them
23 transcripts.

24 MS. BOLIN: And I can understand that,
25 Judge, I think my only objection to that at this point

1 would be it's our position we have to start our case
2 today, we have the burden, we have to prove our case.
3 And because the Defense, to this point chose not to get
4 a transcript, it's inhibiting our ability to put on our
5 case in which we have a burden. We came in here
6 prepared to do it. Because they chose not to, it
7 shouldn't then penalize us from putting forth our
8 evidence.

9 MS. SCARDINO: I'm sorry, I did not
10 understand what she said. We, the defense, chose not
11 to -- to what?

12 THE COURT: Do an alternative version.

13 MS. SCARDINO: Well, I mean I -- we don't
14 know what order their witnesses -- they have given us a
15 list of a hundred and twenty witnesses. We have asked
16 for them to tell us who they're going to bring in but
17 they refused, only -- they would tell us only if we
18 would give them our witness list which we didn't want to
19 do. So, they've given us a hundred and twenty
20 witnesses. I have no idea who's coming on day one, day
21 two or day three. So normally, you would not start with
22 the mother's -- the victim's mother and a tape for the
23 first thing in a murder case, I was not expecting that
24 to happen in --

25 MS. BOLIN: Really?

1 MS. SCARDINO: -- nine or ten or eleven.
2 Yeah, you know, usually it's police officers talking
3 about the crime scene and all that. But anyway it
4 doesn't matter. The point is I didn't know and how are
5 we to know that she was going to have Ms. Jackson in
6 here this morning.

7 MS. BOLIN: Either way --

8 MS. SCARDINO: -- or this afternoon.

9 MS. BOLIN: -- we were starting today,
10 it's our burden, we call witnesses, and either way, they
11 should have been prepared to handle any of them, first
12 thing. And I just don't think it's fair for us to be
13 inhibited from producing our evidence because they
14 haven't taken the time to prepare for it.

15 MS. SCARDINO: Well they don't --

16 THE COURT: Well y'all can either figure
17 out a way to get this done or I'll just prohibit both
18 transcripts.

19 MS. BOLIN: Could we not possibly consider
20 an option, Judge?

21 THE COURT: You have a tape so, I mean --

22 MS. BOLIN: Actually, Judge, and my --
23 that's why my request was to allow us to go forward as
24 we had planned, and then in their case in chief, if they
25 want to introduce opposing evidence then --

1 THE COURT: -- Well, I understand, but I
2 haven't heard that tape yet. So I have no way to know
3 whether it's an accurate transcript or not. I mean, if
4 I hear a voice -- my hearing is less than Olympian at
5 this point in my life. I'd like to say it was great, as
6 it was when I was young, but that's not so.

7 MS. BOLIN: The only thing I can think of
8 other than that, Judge, is to just -- for the Court to
9 allow us to use them during arguments, to provide them
10 to the jurors, perhaps and play the tape during our
11 arguments.

12 THE COURT: Defense?

13 MS. SCARDINO: That's -- I guess that's
14 okay. I don't know. I don't like that either. But
15 they -- you know, that's going to -- we can each put on
16 during arguments then -- I mean, we'll have whatever we
17 need to have during arguments to put on our stuff.

18 THE COURT: Right.

19 MS. SCARDINO: Okay.

20 THE COURT: All right. That's -- that's
21 agreed between the parties and I'll bless that.

22 MS. SCARDINO: There was a -- we had a
23 Limine on what we can and cannot do in opening
24 statement. And one of those Limines that we discussed
25 and agreed to had to do with this tape. So, if I --

1 just to refresh my memory and the State's memory is --
2 my understanding is they are not going to -- in the
3 opening statement make any reference to any words made
4 by Leiah, only that -- words that Ms. Jackson will say;
5 isn't that right?

6 MS. BOLIN: The agreement was that we
7 would not state, you can hear Leiah Jackson say such and
8 such on the 911 tape, but that we would be permitted to
9 say in opening statement, statements that were made by
10 Leiah to Ms. Jackson. That's what the agreement was.

11 MS. SCARDINO: I -- well, I guess maybe we
12 misunderstood. May I have one second, let me get my --

13 THE COURT: You may.

14 MS. SCARDINO: -- the Motion in Limine and
15 see what I wrote down. But I just understood it to mean
16 that they were not going to say to the jury that Leiah
17 said this.

18 THE COURT: I don't think that's what I
19 remember the stipulation being that y'all read. I
20 thought it was that you couldn't attribute -- you can't
21 say that you can hear Leiah say on the tape something.
22 That's what I remember.

23 MS. BOLIN: Judge, I found it. And there
24 are amended Motions for Limine Number 22, our notations
25 indicate that the ruling was that we cannot say you can

1 hear Leiah say.

2 MS. SCARDINO: Okay.

3 THE COURT: Right.

4 MS. SCARDINO: I agree with that, Your
5 Honor, that's -- then I obviously was wrong because
6 that -- my notes say that, too. And the wording of the
7 limine was that Leiah's voice on the 911 tape actually
8 states what they say it said, until such tape has been
9 reviewed and admitted into evidence.

10 THE COURT: Right. And that's her
11 voice on it --

12 MS. SCARDINO: And you granted that Motion
13 in Limine -- oh, no, it was by agreement so.

14 THE COURT: Right.

15 MS. SCARDINO: All right.

16 THE COURT: Okay. Do we have any
17 witnesses in the room? Okay. I hereby invoke the Rule,
18 and I instruct both counsel to tell their witnesses that
19 the Rule has been invoked and they're not to talk to
20 anyone about their testimony except the attorneys if
21 they choose to. They're not to listen to anyone talk
22 about testimony or talk about what happens in the
23 courtroom. Do we need to bring the witnesses in here?
24 Can you -- are you each comfortable that you have the --
25 you're dealing with somebody who will transmit that

1 message?

2 MS. SCARDINO: I don't believe I have any
3 witnesses here.

4 THE COURT: I'll be glad to bring them in
5 and let's swear them in.

6 MS. BOLIN: Judge, some of ours are here.
7 I'm assuming that the ruling that you made before lunch
8 in regards to our guilt/innocence witnesses, those are
9 who I need to ask to leave now. However, those that are
10 punishment witnesses can remain for opening or would you
11 like them to also leave?

12 THE COURT: Well I think they could hear
13 the first part of the trial --

14 MS. BOLIN: Yes, sir.

15 THE COURT: -- was what the ruling was.

16 MS. BOLIN: I'll ask our guilt/innocence
17 witnesses that are present then to leave the courtroom.

18 THE COURT: Okay. Well just have them
19 stand. Anybody who's going to testify in this case,
20 please stand and raise your right hand.

21 (Witnesses sworn.)

22 THE COURT: All right. Sir, as are all
23 the witnesses in this case, you are under the Rule, and
24 the Rule states that you are not to talk to anyone about
25 your testimony except the attorneys, you may talk with

1 them if you like, that's up to you. Do not talk to any
2 other juror about -- I mean a witness or anyone
3 connected with the case about your testimony nor allow
4 anyone to talk near you about what happens in this
5 courtroom. For instance, on a cell phone or something
6 when -- some people like to just really get loud on
7 their cell phone. If that happens, you tell my bailiffs
8 and they'll quiet them down or remove yourself from the
9 circumstances. Okay?

10 THE WITNESS: Yeah.

11 THE COURT: Thank you very much. You
12 haven't done anything wrong, if I had all the witnesses
13 in here, I would do this very thing but I am invoking
14 the Rule as to all of them.

15 THE WITNESS: I understand, Judge.

16 THE COURT: All right. Let's bring the
17 jury in.

18 *(At the Bench)*

19 THE COURT: Mr. Doggett.

20 MR. DOGGETT: Yes, sir.

21 THE COURT: Okay. I see what you got
22 marked in here. Have you looked at this note taking
23 thing?

24 MR. HANNA: No, Judge, we didn't discuss
25 it after he told us he presented it to the court.

1 THE COURT: Do you want to take a quick
2 look at it? Apparently it starts on this page and then
3 it's on the back side of that sheet or something --

4 MR. HANNA: Wait a minute. Are you trying
5 to tell them they can't take notes or that he needs
6 to --

7 MR. DOGGETT: No, I'm just saying that he
8 needs to instruct them about their note taking.

9 MR. HANNA: Didn't you already do that?

10 THE COURT: I did.

11 (Whereupon the jury enters the courtroom.)

12 THE COURT: All right, folks, please have
13 a seat.

14 Welcome, ladies and gentlemen to the
15 courtroom. I know you waited all morning, but we tended
16 to business this morning. So it's now time to start the
17 trial.

18 And I'm going to go over with you in just
19 a moment your -- as you'll recall, I gave you some
20 instructions on note taking.

21 Mr. Hanna, have you had a chance to look
22 at that?

23 MR. HANNA: I'm looking at it now, Judge,
24 as we speak.

25 THE COURT: Okay. I have been asked to

1 remind you of those of instructions because it has been
2 awhile since we last met.

3 MR. HANNA: Judge, I have no objection.
4 I'm not sure I read it all but --

5 THE COURT: What you read was acceptable?

6 MR. HANNA: Yes, Your Honor.

7 THE COURT: All right. Ladies and
8 gentlemen of the jury, because of the potential
9 usefulness of taking notes, you may take notes during
10 the presentation of the evidence in this case. However,
11 you may not take notes during the arguments of the
12 lawyers or when the jury charge is read to you.
13 Moreover, to insure a completely fair and impartial
14 trial, I will instruct you to observe the following
15 limitations.

16 One; note taking is permitted but not
17 required. Each of you may take notes, however no one is
18 required to take notes.

19 Two; take notes sparingly. Do not try to
20 summarize all the testimony. Notes are for the purpose
21 of refreshing your memory. They are particularly
22 helpful when dealing with measurements, time, distances
23 identities and relationships.

24 Three; be brief, overindulgence in note
25 taking may be distracting. You, the jurors must pass on

1 the credibility of witnesses, hence, you must observe
2 the demeanor and appearance of each person on the
3 witness stand to assist you in passing on his or her
4 credibility. Note taking must not distract you from
5 that task. If you wish to take a note, you need not
6 sacrifice the opportunity to make important
7 observations, you may make your note after having made
8 the observation itself. Keep in mind that when you
9 ultimately make a decision in a case, you will rely
10 principally upon your eyes, your ears and your mind, not
11 upon your fingers.

12 Four; do not take your notes away from
13 court. At the end of each day, please place your notes
14 in an envelope that will be provided to you. A court
15 officer will direct -- be directed to take the envelopes
16 and put them in a safe place and return them to you at
17 the beginning of the next session of the case unopened.
18 Your notes are for your own private use only. It is
19 improper for you to share your notes with any other
20 juror during any phase of the trial other than jury
21 deliberations. You may, however, discuss the contents
22 of your notes during -- well, this is different than
23 what I instructed you. This says you may discuss the
24 contents of your notes during the deliberations, and I
25 don't like that, so I'm not -- I'm not going to instruct

1 that you may discuss the contents. You are to read your
2 notes, refresh your memory and talk to the -- during
3 deliberations from your memory. Okay? If you'll recall
4 that was what we went over. Okay. I think that's as
5 far as we go for right now.

6 All right. Court calls Cause Number
7 11-DCR-056513, the State of Texas versus Cornelius Milan
8 Harper --

9 MR. HANNA: State's ready, Your Honor.

10 MR. DOGGETT: The Defense is ready.

11 THE COURT: All right. If you wish to --
12 well, you want to make your opening statements first.

13 MR. HANNA: I'd prefer to arraign the
14 defendant.

15 THE COURT: You want to present the
16 indictment first?

17 MR. HANNA: Yes, Your Honor.

18 THE COURT: You may do that. Let me make
19 sure I got it.

20 MR. HANNA: It is, it's on the front page.

21 THE COURT: Okay.

22 MR. HANNA: "In the name and by the
23 authority of the State of Texas, the duly organized
24 Grand Jury of Fort Bend County, Texas, presents in the
25 District Court of Fort Bend County, Texas, that in Fort

1 Bend County, Texas, Cornelius Milan Harper, hereafter
2 styled the defendant, heretofore on or about
3 September 26th of 2010.

4 Paragraph One; did then and there murder
5 more than one person during the same criminal
6 transaction, to wit: The said defendant did then and
7 there intentionally and knowingly cause the death of an
8 individual, namely, Leiah Jackson, by stabbing her; and
9 the said defendant did then and there intentionally and
10 knowingly cause the death of an individual, namely, the
11 unborn child of Leiah Jackson, also known as Baby
12 Daniels, by stabbing and killing the mother of said
13 unborn child.

14 Paragraph Two; did then and there murder
15 more than one person during the same criminal
16 transaction, to wit: The said defendant did then and
17 there intentionally and knowingly cause the death of an
18 individual, namely, Leiah Jackson, by stabbing her; and
19 the said defendant did then and there intentionally and
20 knowingly cause the death of an individual, namely the
21 unborn child of Leiah Jackson, also known as Baby
22 Daniels, by stabbing and killing the mother of the said
23 unborn child; and the said defendant did then and there
24 in Harris County, Texas, intentionally and knowingly
25 cause a death of an individual, namely, Yancey Daniels

1 by shooting him.

2 Paragraph Three; did then and there murder
3 more than one person during different criminal
4 transactions, but pursuant to the same scheme and course
5 of conduct, to wit: The said defendant, on or about the
6 26th day of September of 2010, in Fort Bend County,
7 Texas, did then and there intentionally and knowingly
8 cause the death of an individual, namely, Leiah Jackson,
9 by stabbing her; and the said defendant, on or about the
10 26th day of September of 2010, in Fort Bend County,
11 Texas, did then and there intentionally and knowingly
12 cause the death of an individual, namely, the unborn
13 child of Leiah Jackson, also known as Baby Daniels, by
14 stabbing and killing the mother of said unborn child;
15 and the said defendant, on or about the 26th day of
16 September, 2010, in Harris County, Texas, did then and
17 there intentionally and knowingly cause the death of an
18 individual, namely, Yancey Daniels, by shooting him;
19 against the peace and dignity of the State of Texas,
20 signed Karen Pearson, the Foreman of the Grand Jury."

21 THE COURT: Would the defendant like to
22 enter an plea at this time?

23 MS. SCARDINO: Yes, sir. Defendant pleads
24 not guilty, Your Honor.

25 THE COURT: All right. Thank you very

1 much. Y'all may be seated. State, you have the right
2 to open --

3 MS. BOLIN: Thank you, Judge.

4 THE COURT: -- with your opening
5 statement.

6 **OPENING STATEMENT**

7 MS. BOLIN: It's been said before that the
8 strength of any society is a measure in how we protect
9 our weakest and our most vulnerable of individuals. Can
10 you think of anyone more weak or more vulnerable than an
11 unborn child?

12 Yancey's cousin did this. Yancey's cousin
13 did this. He did what? He stabbed me. Those were some
14 of the last words exchanged between Pamela Jackson and
15 her twenty-eight year old daughter, Leiah Jackson.

16 MS. SCARDINO: Excuse me, Your Honor,
17 objection. That is a violation of our Motion in Limine.
18 May we approach, Your Honor?

19 THE COURT: Yes, you may. Come on up
20 here.

21 *(At the Bench)*

22 MS. BOLIN: Judge, I haven't said a word
23 about a 911 tape. I said words exchanged between Pamela
24 and Leiah which --

25 MR. FELCMAN: She knows that, and she made

1 an objection in front of you, and she knows that it was
2 only for the 911 tape, and she's knows that and she
3 makes an objection in front of the jury panel.

4 MS. SCARDINO: Excuse me, you're not --
5 will you just mind, and not be --

6 THE COURT: Y'all talk to me, not -- not
7 each other.

8 MS. SCARDINO: Yes, sir, thank you. Your
9 Honor, the point of -- what -- that was the only --
10 that's the only place that is -- that that is contained,
11 those words. I mean, what am I supposed --

12 THE COURT: She didn't say that you could
13 hear it on the tape.

14 MS. SCARDINO: So what is she going to
15 say -- what is she just saying, that it just came out of
16 the air? I mean, what --

17 THE COURT: I'm going to overrule the
18 objection.

19 (In the hearing of the jury.)

20 THE COURT: Objection overruled. You may
21 continue.

22 MS. BOLIN: Thank you, Judge.

23 Yancey's cousin did this. As I was
24 telling you, those are some of the last words exchanged
25 between Pamela Jackson and her daughter, Leiah Jackson,

1 twenty-eight years old, eight months pregnant, expecting
2 a baby boy with her boyfriend, Yancey Daniels. Those
3 words were exchanged as Leiah Jackson lay covered in
4 blood on Pamela's front porch dying.

5 Around 1:00 a.m., September the 26th of
6 2010, Pamela Jackson had just taken a shower. You see,
7 Pamela Jackson was lucky enough that she lived in a
8 home -- a building that was actually separated into two
9 homes, it was a duplex of sort. She lived in the front
10 and had her twenty-eight year old daughter, Leiah
11 Jackson, with her boyfriend, Yancey Daniels living in
12 the back part of that home.

13 And around 1:00 a.m. after taking a
14 shower, Pamela Jackson heard a loud bang on her front
15 door, so loud that she thought maybe even a car had hit
16 her home. She goes to see what that bang is, and when
17 she opens her door, she finds her daughter, Leiah
18 Jackson, covered in blood laying on her front porch.

19 Now knowing obviously that Leiah was eight
20 months pregnant, Pamela Jackson's first impression is
21 this is something related to her pregnancy, she's
22 miscarrying or something's going on there.

23 In a panic, she calls 911, ask for
24 assistance regarding a medical situation, a possible
25 pregnancy situation.

1 The Missouri City Fire Department is sent
2 to the scene. And what you'll hear is that while
3 waiting for a medic, Pamela spoke with her daughter, and
4 you'll hear that just moments before medics arrived,
5 Pamela had somewhat of a revelation. She realized that
6 what she was dealing with right in front of her was not
7 a pregnancy issue at all. Based on the words that Leiah
8 spoke to her, specifically, Yancey's not here, Yancy's
9 cousin did this. Pamela came to the realization that
10 something had happened, someone had injured Leiah, that
11 it was not a pregnancy situation. So where was Yancey
12 Daniels? Leiah's boyfriend.

13 Well what Pamela and likely, Leiah, did
14 not understand or realize at that point was that Yancey
15 was already dead. He had been shot six times by his
16 cousin, the defendant, Cornelius Harper, in this case,
17 twice in the face and four times in the back, in Houston
18 and had been left for dead. This was what happened on
19 September the 26th, so we have to go back to
20 September the 25th to really understand what happened.

21 On September the 25th, in that afternoon
22 and evening, the defendant, Cornelius Harper was trying
23 to get in touch with his cousin, Yancey. You see, the
24 two of them had tried to reached some sort of
25 arrangement or agreement where Mr. Harper could purchase

1 a car from Yancey Daniels, an old Mitsubishi that Yancey
2 had sitting around. Cornelius was trying to reach
3 Yancey so they could figure out those arrangements and
4 actually maybe make exchange of this vehicle, and he was
5 able to get into contact with Yancey who was with Leiah
6 at his Uncle Bill's home. You're going to hear from his
7 Uncle Bill, because Uncle Bill is Cornelius' uncle but
8 Bill is Yancey's father.

9 At Uncle Bill's home, Cornelius meets up
10 with Yancey and Leiah, the three of them leave in a
11 Tahoe that Yancey had recently purchased and go run a
12 couple of errands. We know for sure that they went to
13 some type of stereo or music shop about 6:00 p.m. that
14 evening, went to Rooster's Grill for some food around
15 6:15 p.m. that evening and then returned to Yancey and
16 Leiah's home, the back portion of where Pamela Daniels
17 lived, and there began to work on this Mitsubishi and
18 try to work out some arrangements with that car.

19 Later that evening, they determined that
20 they need another battery for this Mitsubishi. So
21 Yancey and Cornelius leave together in a Tahoe, return
22 to the home of Bill Daniels, Yancey's father, Cornelius'
23 uncle, where Cornelius goes in through the home and to a
24 white Camry that he had been driving and takes a battery
25 out of that Camry, comes back through Bill Daniels' home

1 and then leaves again around 10:00 p.m.

2 What we also know is that around 11:30
3 p.m., Cornelius Harper made a phone call to a young
4 woman named Marina. Now Marina, depending on who's
5 describing to you is either his girlfriend, his friends
6 with benefits, his mistress, give her whatever language
7 you would like, but Marina will tell you she had a phone
8 conversation around 11:30 p.m. with Cornelius, and that
9 during that phone call, he told her about the Mitsubishi
10 and how he was going to buy a car from a relative and
11 they discussed price. You'll hear that that phone call
12 was made from Yancey Daniels' phone, and that Marina
13 could hear another male voice and some other noises in
14 the background.

15 Now what exactly happened after 11:30,
16 we'll probably never know. But what may have happened
17 is some sort of disagreement or argument between
18 Cornelius Harper and Yancey Daniels. As Cornelius
19 Harper is in the passenger seat of that Tahoe, Yancey
20 Daniels is in the driver's seat of that Tahoe, Cornelius
21 Harper produces a handgun, a .380, and shoots Yancy
22 Daniels.

23 The location of where this occurs will be
24 important. You will hear that after being shot, Yancey
25 was able to escape from that Tahoe and run some distance

1 before he collapses and dies after having been shot
2 twice in the face, four times in the back. The location
3 of where his body was later found after everything that
4 happened with Leiah and her mother in Missouri City was
5 an apartment complex in Houston called the Green House
6 Patio Apartments. What's interesting about that is
7 you'll hear that that is where Marina lives, the young
8 woman who had the 11:30 p.m. phone call with the
9 defendant, Mr. Harper.

10 After that, the defendant takes the Tahoe,
11 leaves Yancey for dead, drives that Tahoe to Missouri
12 City, to Yancey and Leiah's home, goes into Yancy and
13 Leiah's home, and by now because it's nearly 1:00 a.m.,
14 maybe assumed that Leiah was asleep but was encountered
15 by her, confronted by Leiah inside that home. Perhaps
16 he tried to shoot her with the gun and it didn't work,
17 perhaps she ran, when she saw him with the gun, perhaps
18 both. But what we do know is that Leiah was brutally
19 attacked and stabbed nearly twenty times outside of her
20 home and left for dead.

21 The defendant, Mr. Harper then goes back
22 into the home of Yancey and Leiah. And what will be
23 clear from that crime scene is that he worked his way
24 into the home, into an area of that home that was
25 considered Yancey's office, he began searching for

1 something in the closet. Whether he found what he
2 wanted or was scared off because of sirens or other
3 noises, he flees through a back door of the home, jumps
4 a fence to a back street and leaves. What he wasn't
5 counting on is that Leiah was not dead yet, what he
6 wasn't counting on was the statement of Yancey's cousin
7 did this.

8 The evidence will show that Cornelius
9 Harper and Yancey Daniels are in fact cousins. Between
10 that and the statement Leiah made to her mother, that
11 may just be enough, but we will bring you more than
12 that, ladies and gentlemen.

13 You'll hear that after police learning of
14 these -- the things that Leiah had said, their
15 investigation led them to Cornelius Harper. And as a
16 result of that, they located in an apartment that he
17 shared with a young woman, he referred to as his
18 girlfriend or fiance or wife, not Marina, somebody else
19 by the name of Ana; that in their apartment, police
20 officers located some 380 shell casings, that they also
21 located some 380 shell casings in that white Camry that
22 he had retrieved the battery from, that there were shell
23 casings inside that Tahoe left at Leiah's scene and that
24 there were bullets removed from the body of Yancey
25 Daniels. And you will hear from an expert that in her

1 opinion, those shell casings as well as those bullets
2 removed from Yancey's body were all fired out of a 380
3 handgun that was located, covered in Leiah's blood
4 outside of Yancey and Leiah's home. After that, that
5 may be enough but we'll bring you more.

6 You'll hear that Cornelius Harper
7 instructed Ana, the young woman he lived with to tell
8 the police that he had gotten home that night around
9 10:20 to 10:25 and that she, in fact at first, did tell
10 police that. But you'll hear from Ana and you'll learn
11 that she had no idea what time he got home because she
12 was asleep, but that's what she was instructed to do by
13 Cornelius Harper.

14 You're going to hear from Marina regarding
15 that phone call, but you're also going to hear from her
16 roommate, Savanna, who spent time with Cornelius Harper
17 during the time period before these murders. They will
18 tell you that he frequently had a black handgun and
19 frequently carried a knife in a sheath on his waist. And
20 of course, you will hear more details about that phone
21 call from Yancey's phone at 11:30 and the fact that
22 Yancey's body was found at that very complex where
23 Marina and Yancey Daniels lived. That may be enough but
24 we'll bring you more, ladies and gentlemen.

25 You're going to hear from a young man

1 named Matthew Fields. Matthew Fields lived in a home
2 behind and down one from Leiah Jackson. You're going to
3 hear that night, shortly after 1:00 a.m., that he heard
4 some kind of screaming, perhaps yelling for help, that
5 he heard sirens, and so he stepped out his back door to
6 see if he could figure out where it was coming from. He
7 will describe to you that he heard a thud and that thud
8 sounded kind of like a sound you would hear after
9 somebody jumped over a fence and then landed. After
10 hearing that thud, he saw a very tall figure pass
11 between a fence and a garage right by his home. Now,
12 Mr. Fields will tell you he cannot see this person's
13 face and he can't identify anyone. But what he will
14 tell you is that this individual's shoulders rose four
15 to five inches above that fence, which I believe the
16 evidence will show is consistent with the very tall
17 height of the defendant of either six-seven or
18 six-eight. That's probably enough but we'll bring you
19 more, ladies and gentlemen.

20 You will hear from some inmates in the
21 Fort Bend County Jail, and you will hear that Cornelius
22 Harper has made statements to them admitting his guilt
23 in committing these capital murders.

24 In the end, there will be overwhelming
25 evidence. And one thing will be crystal clear to you,

1 Leiah's words will ring true, Yancy's cousin did this.
2 Thank you.

3 THE COURT: Defense.

4 MS. SCARDINO: Thank you.

5 **OPENING STATEMENT**

6 MS. SCARDINO: Good afternoon, ladies and
7 gentlemen, it's nice to see some faces that I remember
8 from a little while back.

9 This is called an opening statement. This
10 means that the prosecutor gets to stand up here and talk
11 to you and tell you what her case, what her position is
12 with regard to the facts of what we now get to hear, and
13 I get to stand up here and tell you what I think our
14 facts are going to show you or what the story is. And
15 then, remember, when I talked to -- the ones that I
16 talked to and I know Mr. Doggett talked to some of you,
17 too, in Voir Dire. You know, we told you that you get
18 to listen and to evaluate what you hear and that's
19 basically how we're starting off now. This is the --
20 these are the opening statements. So, thank you for
21 being here and sorry that you had to wait this morning.
22 I told somebody I wish we had a script for a trial and
23 that would make everything a lot easier but
24 unfortunately we don't have a script. So, let me tell
25 you a little bit about Cornelius Harper.

1 He came to Houston about a year prior to
2 September of 2010. He came down here in July, I think
3 it was actually a July 4th family reunion. He came
4 down, he met some family that he hadn't -- either he
5 didn't know or he hadn't seen in a long time, he met a
6 man named Billy Daniels who is -- as Ms. Bolin told you,
7 is Yancey's father and his uncle. And after, you know,
8 visiting and doing what you do at a family reunion,
9 Uncle Billy said, come stay with me, you can stay with
10 me and I will, you know, help you until you get a job
11 and all of that.

12 Cornelius started massage school. He took
13 out a government loan for the tuition and actually
14 finished massage school later on during that prior year.
15 But he came to know various people here in Houston, he
16 met Ana who is the woman that he eventually started
17 living with, they were girlfriend and boyfriend for
18 awhile. He knew her brother, Robert Pina, and living
19 with Uncle Billy, and then he was kind of seeing Ana and
20 he was going to massage school and everything was good.
21 He met Yancey and they kind of -- they hit it off and
22 they hung out a lot. And Tarhonda, I think -- I don't
23 know if you -- we haven't mentioned her name yet but
24 Tarhonda is the sister of Yancey. And she told the
25 police officer that -- in her statement to the officer,

1 during all of this massive investigation that they hung
2 out together a lot, that they were kind of close buddies
3 and it wasn't unusual for Yancey and Cornelius to be
4 hanging out together.

5 So let's start -- let me go a little bit
6 further, we jump forward to September the 25th. Now
7 this -- these murders occurred on September the 26th,
8 which we, you know, it was like around midnight, 12:00
9 to 1:00 or so, so we -- on the indictment it says the
10 26th, so let's talk about the 25th.

11 Cornelius and Ana are living together in
12 an apartment not too far away from where Uncle Billy
13 lived, and it's not uncommon for them to go over and
14 take their dirty clothes -- those of you who have raised
15 boys know that they don't ever have washing machines.
16 They take clothes over to somebody's house and wash and
17 dry their laundry and then come back and pick it up.
18 So, they got up that morning on the 25th, which I
19 believe was a Saturday, and he took Ana to work, she had
20 a job at Wal-Mart and he used his Uncle Billy's black
21 truck to do that. So he, you know, started off his day,
22 and he went over to Uncle Billy's to drop off -- to
23 start his first load of clothes and that usual thing
24 that he does.

25 During the course of the afternoon,

1 sometime mid-afternoon, he hooks up with Yancey and
2 Leiah -- not -- it started out at Uncle Billy's house,
3 because Yancey, remember, is the son of Uncle Billy's.
4 So, now we have Cornelius, Leiah -- pregnant Leiah and
5 Yancey and Yancey's new -- it wasn't new but he had
6 recently bought this Tahoe, which meant that his old car
7 he was selling, so that's how -- and I'll get to that in
8 a moment -- but it was a Mitsubishi that he had, and he
9 was talking -- he and Cornelius had been talking about
10 him driving that car, Cornelius buying it from him for a
11 sum of money.

12 So they got in the Tahoe, the three of
13 them, and they ran around like young people do on a
14 Saturday afternoon. They went to a place, some music
15 store and Yancey bought some CD's, and we know that
16 because you'll see a receipt from that -- from that
17 purchase of around -- that happened at about
18 6:00 o'clock. And then later after that, they stopped
19 at a place called Roosters and they buy a couple of
20 turkey sandwiches, and we know that they did that
21 because there was a receipt that indicates that they
22 stopped and they bought these sandwiches. So then they
23 decide to go back to Yancey's and Leiah's house. So all
24 three of them -- and they're just hanging out doing
25 their thing, all three of them go back over to Yancey

1 and Leiah's and they -- Yancey and Leiah eat their
2 sandwich, remains of it is in the sink. And then they
3 start talking about this Mitsubishi, as young men will
4 do and decided to go back over to Uncle Billy's to get a
5 battery out of a car that's in Uncle Billy's backyard.
6 The idea is, you know, while the car -- the Mitsubishi
7 isn't running so it probably needs a new battery. So
8 let's go over to Uncle Billy's and get this battery out
9 of that car and we're going to take it back over to
10 Yancey's house and put it in this Mitsubishi and the
11 car's going to run and I'm going to have a car to drive
12 and everything's going to be Jim Dandy, although it
13 didn't quite work out like that. So they -- Yancey and
14 Cornelius go back over to Uncle Billy's house, Uncle
15 Billy is there with his lady friend, Robbie and maybe a
16 couple of other people. And they're watching TV, doing
17 Saturday night stuff that grownups do, you know,
18 watching TV, the young people are out messing around.
19 So they go in the backyard and they get this -- or
20 Cornelius goes in the backyard and gets this battery out
21 of this other car and they go back through the house.
22 So, Uncle Billy and Robbie and their other friends, they
23 see him lug this battery through the house. And Uncle
24 Billy looks out the window and he sees his son's Tahoe
25 out there, although he says he doesn't really see who's

1 driving the Tahoe, he sees that it is his son's Tahoe
2 and he sees Cornelius getting in the passenger side of
3 the car with this -- lugging this battery, then they go
4 back over to Yancey and Leiah's house where the
5 Mitsubishi is. Okay?

6 Now, I had fun -- if any of y'all have had
7 boys, you can envision these two guys in the backyard or
8 in the front parking place or wherever, with their heads
9 stuck under the hood of the car tinkering, trying to get
10 this battery to fit inside this Mitsubishi. But it
11 isn't working, it's not the right size, they can't get
12 it in, whatever the reason, it's not working. So -- and
13 they -- we don't know how long they did that but, you
14 know, how long it takes to drive from say, Uncle Billy's
15 to Yancey's house was twenty, thirty minutes, then they
16 tinkered with that stuff, just doing boy stuff, you
17 know, boy stuff. That's what they did, they're cousins,
18 they hung out together and that's what they did that
19 Saturday. So they -- they're messing around with this
20 battery and finally conclude that it isn't going to fit.
21 So, then Leiah says she's tired and she's going to bed
22 or she's resting, whatever, and Yancey and Cornelius
23 leave and they, you know, we -- I don't -- we don't --
24 no one knows what they actually -- everything that they
25 did, but we do know that they drove by Uncle Billy's.

1 And Cornelius in his -- later in his statement that he
2 voluntarily gave to the police, he said, we -- you know,
3 we drove by Uncle Billy's, I was going to stop and get
4 out and go, you know, visit with everybody, he said, but
5 I changed my mind and didn't.

6 Now, Ms. Bolin told you that there was a
7 11:36 phone call from Cornelius to this woman, his
8 friends with benefits or lady friend, whatever, you call
9 her, her name is Marina Honeycutt and you will hear from
10 her. She will tell you that she got a phone call from
11 Cornelius at 11:36 that night from Yancey's cell phone.
12 And she will say to you that -- if she says what she
13 said to a police officer, that she heard a male -- a
14 voice in the background, didn't know who it was, and she
15 heard some animals, some chickens, it sounded to her
16 like and which was kind of odd. And the first time I
17 heard that, I didn't think too much about it, but then I
18 remembered that Cornelius said to the officer during his
19 statement that he had stopped -- or going to stop at
20 Uncle Billy's. And then there was another phone call
21 between Uncle Billy and a police officer, and they're --
22 there is a -- I'm hoping you all can hear it, but
23 there's a rooster crowing in the background. So, all of
24 those things together, kind of indicate that around
25 11:30, they are somewhere near Uncle Billy's house and

1 there is a rooster or chickens or something going on
2 in -- somewhere near where Uncle Billy lives.

3 Now, after the drive by Uncle Billy's,
4 Cornelius tells the officers that he asked Yancey to
5 take him home. And so Yancey drive -- they drive -- he
6 drives him back over to his house, Cornelius gets out of
7 the car, he goes in the house and Ana -- his girlfriend,
8 Anna is there. And Anna will tell the police officers
9 that Cornelius got home about 10:20, and she will later
10 say, he told me to say that. But what Cornelius tried
11 to explain to the officers in his statement was, she
12 won't remember or won't know, and I knew that they were
13 going to want to talk to me because I had been with him.
14 So, it wasn't -- you know, the time -- nobody is
15 taking -- keeping tract of the time, even Robbie and
16 Uncle Billy got kind of mixed up on the time when
17 Cornelius and Yancey came over to get the batteries. So
18 it was just a mix up and it really -- that really was
19 not any big deal.

20 But, after he dropped Cornelius off at his
21 house, Cornelius says, in his statement that he took a
22 shower, he went to bed and went to sleep. And I want to
23 say something about Marina real quick at this point.
24 You're going to hear from Marina Honeycutt, but Marina
25 said something that I thought was really interesting,

1 other than what she said about hearing the animals or
2 the chickens or something on the line and another male
3 voice. The officer asked Marina, had she ever seen
4 Cornelius angry. Because you have -- bear in mind, the
5 police officers believed they got their man, right? I
6 mean, they think that once they come across Cornelius
7 Harper, they're done, their job is over and they --
8 they've got a guilty person and pretty much didn't do
9 much else after that.

10 So when they -- they were asking Marina
11 these questions because they want -- they want an answer
12 from her that will indicate that he is the one who
13 committed these murders. So they ask Marina if she had
14 ever seen Cornelius angry, and she has gone to massage
15 school with Cornelius so she knew him and had known him
16 for about a year. And her response was, no, that she
17 had never seen him angry, and she went on to say that it
18 would take a lot to make him angry because he was
19 normally, a really calm person.

20 Okay. Now, you heard the description
21 Ms. Bolin gave you about the shooting of Yancey and the
22 stabbing of Leiah. There is nothing that I can say that
23 is going to take -- make it more pleasant, it's
24 horrible, this is a terrible, terrible case. When you
25 hear that 911 call, it is -- it will, for any parent,

1 just any human, it will make you hurt on the inside
2 because you feel Ms. Jackson's -- it's her daughter, you
3 know, that's laying there. So there's nothing that's
4 going to ease the fact of what happened to Yancey and
5 the fact of what happened to Leiah. You're going to see
6 photographs of both of them dead and you will see a
7 photograph of a -- the baby at eight and a half month's
8 term which is a child. And it's awful, no question
9 about it. And the 911 tape, listening to Ms. Jackson,
10 just hysterical and being horrified with the sight of
11 her daughter in front of her bleeding is just -- is just
12 awful.

13 I can't make that easier. I can only tell
14 you that my client, Yancey, has pled not guilty, that's
15 all I can tell you and you saw that.

16 So, going on. The scene of Yancey's death
17 as he -- I think -- I think Ms. Bolin indicated to you
18 that he was shot six times and he managed to leave a
19 blood trail going into this apartment complex and he
20 finally collapsed and died under a bush. He had
21 something in his hand, he had a skull cap in his hand.
22 And you'll hear from the DNA lady that there was his DNA
23 and an unknown, somebody else's possible DNA on that
24 skull cap, it wasn't Leiah's and it was not Cornelius
25 Harper, but he had that in his hand. I wasn't -- I

1 can't tell you how he got that skull cap in his hand, I
2 can't tell you where he got it, who he got it from, I
3 can only tell you that he had it balled up in his hand
4 when he died.

5 And then the odd thing is the person,
6 whoever did this killing takes the Tahoe and drives it
7 over to Leiah and Yancey's apartment and they parked the
8 car in a -- kind of an odd strange place but they parked
9 the car, and then somehow -- and I'm stumbling because I
10 can't tell you exactly what happened, I mean nobody was
11 there, nobody saw it. All I can tell you is that the
12 evidence shows that she was stabbed nineteen times and
13 stabbed -- well, any stabbing is brutal. And I went out
14 and I met with a medical examiner and their report will
15 show, and you will hear that from her that the deepest
16 wound was four inches. And she -- anyway. I'm -- I
17 wish I could -- I wish I could tell you everything, the
18 way I feel about this 911 tape but I can't. But I can
19 only tell you that, as any parent, it was awful.

20 So, basically what we now have, after the
21 death of these two people, is a -- we got two criminal
22 investigations going at the same time. You've got the
23 crime scene at the apartment complex with the shooting
24 of Yancey and then you have a crime scene about
25 ten miles away or so where you have the stabbing of

1 Leiah. So you've got shooting over here and stabbing
2 over here. And the thing that connects them is the
3 Tahoe, that's the connection between one scene or one
4 killing and the other.

5 And he went -- the killer went back inside
6 Leiah's home. When you see these photographs of --
7 you'll see all the massive amount of blood at Leiah's
8 scene. The -- when you see the photographs from the
9 inside of Leiah's house, you will see all sorts of
10 transfer -- the officers call them transfer smears or
11 blood transfer smears, stains everywhere. I mean, front
12 doorknob, back doorknob, the closet where he was -- the
13 person was looking for something, the wall, the door
14 facing and it was all over that house. Nothing else was
15 messed up, it was just the blood everywhere and every
16 room, on the light switches. So whoever did this
17 killing had to have been covered in blood, had to have
18 been. And that was good because there are -- there was
19 a lot of blood for all of these people, all of these
20 crime scene people to pick up and test. They took
21 swabs, they did everything that these police officers
22 are supposed to do. They took blood samples, they took
23 swabs, they took fingerprints, they sprayed for
24 fingerprints on doors, on walls, on things, in the
25 Tahoe. They even went over and got Ana to sign a

1 consent for them to search their apartment. And they --
2 they even tested the soap in the bathroom -- you know,
3 if you're washing up and you got blood on you, then
4 sometimes the blood will seep down through the bar of
5 soap; or they tested, you know, like the drains in the
6 bathtub or in the toilet, in the sink, and sometimes
7 blood can get caught in the -- I forgot what you call
8 that pipe under the sink that has a, like a U, and there
9 was nothing, no, Cornelius Harper did not have any blood
10 in his house, none.

11 So, Ms. Bolin asked you, you know, is this
12 enough, is this enough, only you can answer that
13 question. So they're all -- what I'm trying to impress
14 upon you is what you're going to hear about this
15 investigation. I mean, they did everything and they
16 collected -- it's pages and pages of pieces of evidence
17 from these two scenes. They did DNA testing, they did
18 the ballistics testing, they did fingerprints, they even
19 scraped under the fingernails at Leiah's and Yancey's
20 autopsy. They interviewed neighbors, they talked to
21 family, they talked to friends. And they finally got to
22 Cornelius, and he voluntarily, readily went with the
23 officer down to the police station and said, yes, of
24 course, I'll give you a -- I'll talk to you. And he
25 talked -- he stayed there down there with them for a

1 couple of hours, two and a half hours, I think, without
2 any Miranda warning or anything and answering their
3 questions. They left him there for a couple of hours
4 while they took what he -- what they learned from him in
5 this first couple of hours and went out and did some
6 investigation and came back in and then read him his
7 Miranda Warning and continued to question him for
8 another period of time. And all this time from the
9 moment that he got down to 1200 Travis Street, which is
10 the police station and talking to these officers, he
11 constantly said, I did not have anything to do with
12 this. I did not do it, and no, I don't know who did.
13 And he's a telling story about some other cousin who was
14 in a -- had a dope transaction, some kind of a drug deal
15 down in the valley, and he got his legs broken and all
16 of these things. Well, as it turned out, the police
17 officers went to find that cousin, and asked him and,
18 yes, low and behold that actually -- somewhat occurred,
19 as much as Cornelius knew about it. But he had
20 overheard some family members talking about it at one
21 point and knew a little bit about it, but not a lot.

22 But anyway, it was -- there was a
23 situation where one of the other cousins was involved in
24 a dope deal down in the valley and somehow as a result
25 of that he got his legs or feet or ankles broken. But

1 he was not, according to his -- what he's telling these
2 police officers, he was not in Houston on September the
3 26th of 2010. But the drug issue, I'm hoping to be able
4 to explain a little bit more about that to you later on
5 during this trial.

6 So, we still have -- we still have the
7 police officers still testing, still picking up
8 evidence, still talking to people that -- I mean, it
9 took a long time, they did what they were supposed to
10 do. But I think at this point, it was given to the
11 police officers that they had their guy. It was -- they
12 felt like -- I mean, just from the evidence, and maybe
13 you will feel the same way when you hear everything that
14 happened. But I think you can see during this trial
15 that they pretty much felt like that Cornelius Harper
16 was the only person who could possibly have done this
17 and there was no need to do anymore investigation. For
18 instance, they didn't follow up on any of -- they talked
19 to the cousin, but they didn't really do anything else
20 about whether or not there is -- was any drug issue
21 between Houston and the valley. When the police
22 officers -- and I don't mean to be skipping around but
23 there is so much information that it's hard to do an
24 opening statement and tell you everything. But when
25 they -- when they searched the apartment, remember, I

1 told you that Ana gave them consent to search and I told
2 you they got everything out of there. There was one
3 thing that police officers took back with them as
4 evidence were some shoes, and they looked at those shoes
5 and they thought they had blood on them. And they asked
6 Cornelius about that, and Cornelius said says, no,
7 that's animal blood. And as it turned out when they
8 took the DNA, it in fact was not human blood, it was
9 animal blood.

10 So ladies and gentlemen, at the end of the
11 day, what do you have that the State has -- is going to
12 present to you that's going to convince you beyond a
13 reasonable doubt that Yancey -- Cornelius Harper is the
14 killer of Yancey and Leiah, and as a result of Leiah's
15 death, this little unborn baby boy.

16 Here's what they're going to ask you to
17 believe. They're going to ask you to believe that
18 Cornelius and his friend, his pal, the son of the man
19 who held out his hand to him a year prior and helped him
20 while he was first here in Houston, a man who gave him a
21 place to live and food on the table and helped him with
22 transportation and whatever he needed. The State wants
23 you to think that the man who was with Yancey and Leiah
24 all day -- almost all day, during the day on September
25 the 25th. They tinkered -- I mean, two hours before

1 Yancey is dead, Cornelius and Yancey have their heads
2 under the hood of that Mitsubishi trying to figure out
3 how in the heck to put that battery in. They had
4 stopped by and picked up a couple of sandwiches and gone
5 home and sat at the table while Leiah and Yancey ate
6 their turkey sandwich. And that's the guy the State
7 wants you to believe, just -- I don't know, became the
8 devil himself or became somebody else, I don't know what
9 they want you to think about Cornelius Harper other than
10 that he was Yancey's friend, he was a pal, he was a
11 buddy, they ran around together. And he -- he wasn't as
12 close to Leiah, as he said in his statement, but he knew
13 who she was and he knew she was pregnant. And they kind
14 of were together that day, they sat out -- Leiah and
15 Cornelius sat out in the car while Yancey went inside
16 this music store and bought these C.D.'s, and the
17 records, I believe reflect that it was about thirty
18 minutes, they had to be talking about something.

19 So, that's what you -- in order to find
20 him guilty of capital murder, you're going to have to
21 think that at some, some weirdo moment, he just decides
22 that he's going to pull out a gun and shoot his friend
23 who he's been with all day, six times, and then not only
24 that, go over to Yancey's house and kill Leiah. I -- I
25 don't know. You will -- you will know at some point

1 whether the State has proven to you beyond a reasonable
2 doubt that that is exactly what happened.

3 But let me tell you something, ladies and
4 gentlemen, and I told some of you during this -- during
5 voir dire, you don't have to fill in the holes, and
6 there may be holes, but it's not your job to fill them
7 in, it's not my job to fill in the holes. It's the
8 State's job to prove every single thing that's necessary
9 for you to believe beyond a reasonable doubt that this
10 happened the way they say it happened.

11 Now, one more thing. So all this evidence
12 and all of these things, physical things that were
13 picked up from these two crimes scenes, it was all
14 tested, all of it -- well, not exactly all of it. Some
15 of it wasn't tested so I can't use the word all because
16 that's not true, but most of it, hundreds of items was
17 tested. I will tell you this, not one single drop of
18 blood is attributed to Cornelius, not one fingerprint,
19 not one hair, not one shoe print, not one item of
20 clothing, not one single thing point to Cornelius
21 Harper, nothing.

22 So, they have a man who the State says saw
23 a tall man behind a fence, he can't identify him. They
24 have a mother, hysterical who says that her daughter
25 said Yancey Daniels -- excuse me, Cornelius did this.

1 They -- and when I was writing out my notes, I thought
2 what do I say about that, how can I -- what do I say?
3 And I can only tell you that it is the Defense position
4 that that is not what she heard, she could not have
5 heard that. There's nothing else. You've got two major
6 massive crime scene investigations and not -- not one
7 single thing that in any of these reports point to
8 Cornelius Harper. And you will see the report -- all
9 the DNA that was tested -- that was trying to find DNA,
10 all the blood that was tested, all of everything and
11 it's massive, not one single thing points to Cornelius
12 Harper.

13 So, what does the State do at the end of
14 this case? They come up with one more thing, and
15 they've got these inmates from Fort Bend County Jail, a
16 couple of them who are going to come in here and tell
17 you that, no, we haven't made a deal with the State.
18 And no, we haven't been promised anything, and you know,
19 I'm just here, I'm just to tell the truth. I don't
20 really want anything, I don't have any motive for
21 testifying the way I am. Well I can tell you that is a
22 crock. Those people who are going to come in here and
23 testify are going to get something for it and there's no
24 other reason for them to testify the way they did --
25 they will. You determine yourself whether you believe

1 those people. But I can tell you that one of them was
2 in the Fort Bend County Jail on a charge of
3 aggravated -- I believe it was aggravated robbery with a
4 hundred thousand dollar bond, and you know where he is
5 today? He got out about a week after -- we found out
6 that the State had talked to him about a -- within about
7 a week or a few days, he's out of jail, and you know how
8 much his bond was? Two thousand dollars. So he's out
9 now, out in your neighborhood somewhere maybe stealing
10 your car or robbing your family.

11 One thing that Cornelius Harper said in
12 his statement to these police officers when they were
13 interviewing him the second time, one thing he kept
14 saying was other than I didn't do it, it's not me, I
15 didn't do it was, this is crazy, man. And then at the
16 end, when the officers are angry at him because he won't
17 confess. He won't say, I did it, so they get pee-ohed
18 at him. You know, and they're raising their voice and
19 he's trying to -- I think he wants to stand up or
20 something, and one of the comments -- one of the
21 officers says, this is my house, you sit down. And
22 they're mad because he wouldn't tell them he did it.
23 And the last thing that you see on Cornelius' statement
24 is what he says. He says, this is crazy, man. And I'll
25 tell you on his behalf, this is crazy. So you have to

1 figure it out, it's your job now. Thank you so much for
2 your time.

3 THE COURT: Thank you, Ms. Scardino.
4 State, call your first witness.

5 MS. BOLIN: Yes, Your Honor, the State
6 calls Pamela Jackson.

7 (Witness sworn)

8 THE COURT: All right. You may proceed
9 when you're ready.

10 MS. BOLIN: Thank you, Judge.

11 **PAMELA JACKSON,**

12 having been first duly sworn, testified as follows:

13 **DIRECT EXAMINATION**

14 Q (By Ms. Bolin) Good afternoon.

15 A. Good afternoon.

16 Q. Could you tell us your name, please.

17 A. Pamela Mosley Jackson.

18 Q. And Ms. Jackson, where do you live?

19 A. I live in Missouri City, Texas.

20 Q. And what's the address?

21 A. 3319 Palm Dessert Lane, Apartment A.

22 Q. Describe to me -- you said Apartment A,
23 describe to me what the set up is there.

24 A. That's a duplex, I live in the front which is A
25 and the other part is B.

1 Q. Does anybody currently live in B?

2 A. Yes, my son did prior to that and my daughter
3 did.

4 Q. Tell me about your family, your children.

5 A. I have three children, the oldest boy is
6 Christopher; the youngest -- the middle child is Khari
7 Jackson and my little girl was the youngest one, Leiah
8 Jackson.

9 Q. How old is Christopher and Khari now?

10 A. Khari is thirty-five, Chris is forty-one and
11 Leiah would have been thirty-one.

12 Q. This year she would have?

13 A. She was thirty-one this year, if she had
14 survived.

15 Q. Does Leiah have or did she have any step
16 siblings or half siblings?

17 A. Yes, she has three half sisters, Sharon
18 Jackson, Lazette Jackson and Carolyn Humphrey.

19 Q. Is Leiah's father still living?

20 A. No, her father died when he was six -- when she
21 was six years old.

22 Q. What was her father's name?

23 A. Owen Reginal Jackson.

24 Q. And so the half siblings that you mentioned,
25 those are --

1 A. By his first wife.

2 Q. Do you currently work?

3 A. Yes, I do, I'm on the faculty at Baylor College
4 of Medicine.

5 Q. And what do you do at Baylor College of
6 Medicine?

7 A. I am in the Department of Medicine, and I
8 direct a student -- a national student mentoring program
9 for the National Institute of General Medical Sciences
10 in Washington, it's a Federal grant from that
11 institution.

12 Q. What did Leiah's father do?

13 A. He was a rancher.

14 Q. Okay. Tell us a little bit about what Leiah
15 was doing in terms of work and her education back in
16 2010.

17 A. She had graduated from college in Atlanta,
18 Georgia and had come home and took a year off and
19 decided that she wanted to go to graduate school. So --
20 but she didn't want to teach, so she took a job because
21 she had worked with Fort Bend County, oh, four or five
22 years prior to finishing school in their after-school
23 program, you know, for Latchkey students and started in
24 her junior year. And she decided she didn't want to
25 teach when she came back because she wanted to go to

1 graduate school, so she took a job as a nurse's aid at
2 the E.A. Jones Elementary School. She would go to
3 school every Tuesday and Thursday nights, and she went
4 to Texas Southern because it was the only university in
5 the area that had a specific degree in institutional
6 counseling. And she -- she did that up until the time
7 she passed, she was in school, she was in graduate
8 school.

9 Q. The elementary school that she went to, where
10 is that?

11 A. E.A. Jones is in Missouri City, Texas, it was
12 about a ten-minute drive from the house.

13 Q. And was that a full-time job for her?

14 A. Yes, it was a full-time job and then she worked
15 during the summer.

16 Q. And did -- was she taking a full course load
17 for graduate school?

18 A. She was taking, like, six to nine hours a
19 semester for graduate school.

20 Q. What was the eventual job that she wanted to
21 have after completing graduate school?

22 A. She wanted to start a nonprofit foundation for
23 troubled girls and she wanted to give them a chance or
24 an opportunity to do well.

25 Q. At some point in 2010 or perhaps before that,

1 did you learn that Leiah was pregnant?

2 A. Yes, I did. She came home one day and said,
3 mom, I'm pregnant. And before I could open my mouth,
4 she -- she says, I got to go, I'll talk to you later.

5 Q. Were the two of you pretty close?

6 A. Yes, we were, she lived in B and I lived in A.

7 Q. In that same address you told us before in
8 Missouri City?

9 A. Yes.

10 Q. When she determined that she was pregnant, did
11 you know who the father of that child was?

12 A. She had told me. She had been dating this
13 young man for awhile, and so the assumption it was, but,
14 you know, until she actually tells you, you know, you
15 assume that that's who it was.

16 Q. And who was that young man?

17 A. His name was Yancey Daniels.

18 Q. And was he living with her in that back
19 apartment?

20 A. Yes. He had moved -- I believe his lease was
21 up in June and he moved to -- moved in the back with her
22 in June of 2010.

23 Q. And who owned this property on Palm Dessert?

24 A. I beg your pardon?

25 Q. Who owns the property?

1 A. I do, I've owned that property since 1974.
2 I've lived in Quail Valley in Missouri City since 1974.

3 Q. Okay. Did Leiah at some point want to find out
4 if she was having a boy or a girl?

5 A. Yes, she did. She had an ultrasound and they
6 told her that -- they was pretty sure it was a boy. And
7 then she had another one and they told her it was a boy,
8 and then she had what they call 3-D, it's a new form of
9 determining. So, about -- I guess about four weeks
10 before the tragedy, she and I and Yancey went and she
11 had the 3-D done.

12 Q. Do you recall what her specific due date was?

13 A. Yes. They told her she was to have a
14 C-section, so she picked November 1, so we celebrate
15 B.J.'s birthday --

16 Q. On November 1st?

17 A. Yes.

18 Q. Now you used the initials, B.J.

19 A. Yes, Baby Jackson, we called it Baby Jackson.

20 Q. Was that a name that Leiah had picked out or
21 just something you guys use now?

22 A. No, it's something -- she had never told us
23 what the first name was going to be, but we knew it was
24 Jackson Daniels, so we just called him B.J.

25 Q. Okay. During September, specifically

1 September 25th and 26th of 2010, observing Leiah, was it
2 obvious to you that she was pregnant?

3 A. Oh, yes, she was quite pregnant, she was right
4 at eight months pregnant.

5 Q. Had she had any type of complications with her
6 pregnancy?

7 A. Not that I know of other than normal swelling
8 of the feet, I guess. Most women pregnant -- I know I
9 did, you know, the feet and legs swell at a certain time
10 because of so much fluid.

11 Q. Was this to be your first grandchild?

12 A. Yes, this is my first grandchild.

13 MS. BOLIN: Your Honor, may I approach the
14 podium?

15 THE COURT: You may.

16 Q (By Ms. Bolin) I'm going to show you a few
17 things that have been admitted as exhibits, Ms. Jackson.
18 To your right, Ms. Jackson, there should be a screen,
19 and I don't know if it's on or not. Do you see that?

20 A. Yes.

21 Q. Okay. I'm showing you, for the record State's
22 Exhibit Number One. Who is this?

23 A. That's my daughter, Leiah. She was a debutant
24 for an organization I belonged to called Jack and Jill
25 of America and she was a debutant in 2001.

1 Q. So that's about the approximate time that this
2 photograph was taken?

3 A. Yes, it was taken at the Western Galleria,
4 that's where the presentation was.

5 Q. Let me show you what's also been marked and
6 admitted as State's Exhibit Number Two.

7 A. That's Yancey.

8 Q. Okay. So in State's Exhibit Number Two, that's
9 Yancey Daniels?

10 A. Yes, that's Yancey Daniels.

11 Q. Who is this in State's Exhibit Three?

12 A. That's Leiah and Yancey, we were down at the
13 ranch.

14 Q. What do you mean?

15 A. -- in Anahuac, Texas.

16 Q. And is that a family ranch?

17 A. Yes, um-hum. It belonged to her grandfather
18 and grandmother, and both of them passed, it went on to
19 their five children.

20 Q. At the time that this photograph was taken, was
21 Leiah pregnant?

22 A. Yes, she was, she was about four months
23 pregnant.

24 Q. Okay. I show you State's Exhibit Number Four.

25 A. That was the night that I met Yancey's mother.

1 She had fixed dinner and they had invited Yancey's
2 mother, Stella and myself over to dinner because I had
3 never met any of his family and Stella was the first
4 that I met.

5 Q. Okay. So I want you to start then from left to
6 right and tell me the names of the individuals in
7 State's Four.

8 A. Leiah is on the right, Yancey's in the middle
9 and Stella is on his left.

10 Q. And Stella is Yancey's mother?

11 A. Yes.

12 Q. And it's probably obvious from this photograph,
13 but just so it's clear for the record, was Leiah
14 pregnant at this time?

15 A. Yes, she was.

16 Q. If you'll take a look with me at State's
17 Exhibit Number 170. In this diagram, other than being
18 not completely to scale, does this accurately show the
19 layout of 3319 Palm Dessert?

20 A. Yes, it does.

21 Q. And when I say 3319 Palm Dessert, we're talking
22 about Missouri City?

23 A. Missouri City, yes.

24 Q. And that's in Fort Bend County?

25 A. Yes.

1 Q. In Texas.

2 A. Yes.

3 Q. Okay. This long area at the top of the
4 photograph leading up to the building, what is that?

5 A. That's the drive -- that's the walkway to my
6 front door.

7 Q. Okay. So that the front portion on this
8 drawing would be A and then the back would be B?

9 A. Yes, that's correct.

10 Q. Taking a look at State's Exhibit Number 14, do
11 you see the vehicles in this photograph?

12 A. Yes.

13 Q. I know it's not completely in focus but it
14 looks like there's like a red --

15 A. That's a red Charger that belonged to my
16 youngest son. The middle car is my car and the Honda
17 was Leiah's car.

18 Q. And the Honda would be the passenger car on the
19 other side of the SUV?

20 A. Yes, that's correct.

21 Q. I'm not sure if you can see it in this
22 photograph or not, but do you see another vehicle there
23 on the right?

24 A. Over in this area here?

25 Q. Let me see if I can zoom in to help, maybe I

1 can just --

2 A. Yes.

3 Q. Okay. Now on the far right, do you see that
4 vehicle?

5 A. Yes, I do.

6 Q. What is that, if you recognize it?

7 A. That was Yancey's car, he had just bought that
8 car a day or so before they were killed. It was, I
9 believe a Tahoe, a grayish color Tahoe.

10 Q. Is that how Yancey would typically park the
11 Tahoe there at the house?

12 A. No. Like I said, he had just gotten the car
13 the day or so before, and I only recall it being on the
14 street in front of the house.

15 Q. Was there another vehicle there on the property
16 as well that we can't see in this photograph?

17 A. Yes. Leiah had a -- besides the Honda -- the
18 Honda, she got in high school when she graduated from
19 college. She bought an SRX, a Cadillac SRX, just like
20 mine.

21 Q. Okay. So where was that?

22 A. It was in the garage. She only used it on the
23 weekends, she used the Honda to go back and forth to
24 work.

25 Q. Did Yancey have another vehicle there at the

1 property other than the Tahoe?

2 A. Yes, he had a little reddish, maroon-ish color
3 Mitsubishi.

4 Q. And where was that generally parked?

5 A. It was parked on the street in the duplex next
6 to mine.

7 Q. Okay. And that was owned by Yancey?

8 A. As far as I know, yes.

9 Q. Let me show you State's Exhibit Number 22. Do
10 you recognize this sidewalk?

11 A. Yes, I do.

12 Q. And where is that?

13 A. That's the front of my house.

14 Q. And the open door, is that into the A portion
15 of the home?

16 A. Yes.

17 Q. Is that the way that it looked back on
18 September 26 of 2010?

19 A. Yes.

20 Q. Okay. I want to talk in a little bit more
21 detail about what had been going on, on both the 25th
22 and the 26th. Okay?

23 A. Um-hum.

24 Q. During the day of the 25th, which I believe was
25 a Saturday, did you see Leiah at all?

1 A. Yes. She had come in, it must have been about
2 10:00 o'clock in the morning and she said she needed to
3 run some errands. And she came in and she said, momma,
4 can I use your car? And I said, Leiah, you have the
5 same car I have. She said, yeah, but yours is newer. I
6 said, okay. So she said, do you have any cash? And
7 jokingly, as we always, I said, Leiah, you got more
8 money than I got. And I said, look in my purse, there's
9 cash in my purse. And I said, where are you going? She
10 said, I'm going to pay bills and I'll be back shortly.
11 And so I said, okay. So she did. And the one thing
12 that I normally don't do is park my car -- back my car
13 in. But for some reason or another, that particular
14 day, she backed the car in when she came back from
15 running her errands.

16 Q. Do you remember about what time she came back
17 from running errands?

18 A. It must have been around 12:00.

19 Q. P.M.?

20 A. Yes, 12:00 noon.

21 Q. Okay.

22 A. Um-hum.

23 Q. Did you see her again after that?

24 A. No, not until she banged on my door.

25 Q. Okay. And we're going to talk about that in

1 just a minute. Did you see Yancey at all that day?

2 A. No -- I have to correct myself, I did. I was
3 sitting in the kitchen, I looked out and they were
4 driving out, it must have been about 2:00 or
5 3:00 o'clock in the afternoon and she waived.

6 Q. And who's they?

7 A. She and Yancey, they were in the Tahoe.

8 Q. Okay. Did you see them return in the Tahoe?

9 A. No, I did not see them return.

10 Q. Okay. Let's go then back to Yancey. Other
11 then seeing him while they were leaving in the Tahoe
12 that day, did you see him any other time?

13 A. No, I did not.

14 Q. Was that unusual?

15 A. No, it wasn't.

16 Q. You mentioned a moment ago meeting Stella at
17 one point. Tell me before all of this happened, who in
18 Yancey's family had you met?

19 A. I had not met any of his family until I met his
20 mother.

21 Q. Okay. Had you ever met his father, Bill?

22 A. No, I had not.

23 Q. Had you met any of his cousins?

24 A. No.

25 Q. Okay. Around -- I want to jump to that evening

1 then. Okay? Did you ever speak with Leiah over the
2 phone during the evening hours of that day?

3 A. Yes, she had called, it must have been around
4 6:00, 6:30, somewhere in there. She said, momma, did
5 you cook tonight? I said, no, honey, I didn't. And she
6 said, okay, well we're going to get turkey burgers. So
7 I said, all right. And --

8 Q. Let me stop you there, was that a pretty
9 typical conversation with the two of you?

10 A. No, because I knew that she was on a health --
11 ever since she became pregnant, she was on this
12 health -- only eating healthy foods, you know, no beef,
13 no pork, staying away from starches, that kind of thing
14 because Leiah was a tall girl, a big girl, she was
15 five-eight.

16 Q. So are you saying that if you had cooked, it
17 might not have been the most healthy --

18 A. No, it would not have been turkey burgers.

19 Q. Okay. And so did you have any further phone
20 conversations with her after that one regarding dinner?

21 A. I don't recall any other conversations. I had
22 talked to her earlier in the morning, and I told her, I
23 said, Leiah, why don't we go and get the chest to match
24 the crib that you had bought. And she said, oh, no,
25 I've got some errands and we can do it next week. I

1 said, okay.

2 Q. So she had already purchased a crib for the
3 baby?

4 A. Yes, she had already purchased a crib for the
5 baby -- well Yancey had.

6 Q. Okay. So Yancey purchased it?

7 A. Um-hum.

8 Q. Let's talk a little bit more about Yancey
9 before we get into the specifics of what happened. You
10 mentioned that they had been dating for sometime, do you
11 recall about how long they had been an item?

12 A. I guess about a year.

13 Q. And do you know what Yancey did for a living or
14 how he made money?

15 A. All I knew was that he was -- he worked on the
16 computers with music. I think they described it as
17 tallying up royalty. Whenever a song is played, the
18 person who either wrote, sang, my understanding, they
19 get a royalty from it. Now how much that is, I don't
20 know. But my understanding is that he kept a tally of
21 that. But it was -- it had to do with music, music and
22 the computer.

23 Q. And so he could make enough doing that to make
24 a living?

25 A. I don't know how much he made. I can assume;

1 he was doing very well.

2 Q. Okay. Just based on his behavior?

3 A. Based on his behavior and his ability to do
4 things.

5 Q. Okay. Was he good with computers?

6 A. As far as I know he was. He had come over one
7 time, I had bought a new computer and he helped put some
8 things on it that I wanted on it.

9 Q. Was Yancey the kind of person that would engage
10 in pretty frequent conversations with you?

11 A. No, he was very quiet, he was very much to
12 himself.

13 Q. Okay. Describe to me the relationship between
14 Yancey and Leiah in terms of, you know, did they get
15 along?

16 A. Basically, but just like every couple, young,
17 old, they had their ups and downs but they seemed to
18 manage to work, whatever it was. They would disagree
19 about -- uh, I would say it was an okay relationship.
20 And I think with the baby coming, it kind of made it
21 much better for them.

22 Q. Okay.

23 A. Um-hum.

24 Q. Did you, in the recent weeks before the murder,
25 observe some bickering or arguing between the two of

1 them?

2 A. Yes, I did. She had come over very late one
3 night and knocked on my front door and asked me to come
4 over to the house, that evidently they had had a real
5 heated argument and she wanted him out. And --

6 Q. Did you go over there and try to --

7 A. I went over there and I began to talk to him,
8 that she could not continue to go through an emotional
9 roller coaster and that he needed to -- and before I
10 could finish, she -- she said, mom, it's okay, it's all
11 right. And I said, are you sure. And she said, yes.
12 And I said, all right. So, I left Apartment B, but I
13 stood by the door, because if the argument continued, I
14 was going to go back in. But I stood there and I
15 listened to him say some ugly things and then boasted
16 about how much money he had.

17 Q. Okay. Now, do you know whether he actually had
18 a bunch of money?

19 A. No, I don't.

20 Q. Okay. But you heard that there was at least a
21 claim that he did?

22 A. Yes.

23 Q. Was it specific as to a location, like, are we
24 talking about money in a bank or like actual cash
25 somewhere in the home?

1 A. Cash in the house.

2 Q. Where specifically?

3 A. In his -- in his room where his computer was,
4 in the back bedroom where he had his little office set
5 up back there.

6 Q. Okay. Did you ever see that?

7 A. No, I did not.

8 Q. Are you aware of any iPhones that Yancey may
9 have owned or recently purchased?

10 A. Yes. I had gone over to the house and she was
11 sitting at her computer, and she had a small desk and
12 then he had a big glass desk and there were several
13 iPhones on the -- on the desk. And I said, Leiah, why
14 does Yancy have so many iPhones? Oh -- she said, oh, he
15 bought all those iPhones because he was going to sell
16 them on EBay. I said, oh, okay.

17 Q. So you physically saw these iPhones.

18 A. I saw the iPhones.

19 Q. Were they in the boxes still?

20 A. One I believe was sitting out and then there
21 was like maybe two or three boxes.

22 Q. And was this in a timeframe very close to the
23 murders?

24 A. Yes, it was, it was maybe two weeks, three
25 weeks.

1 Q. Okay. I want to go back now to discussing what
2 happened later on the 25th into the 26th. Okay?

3 A. Um-hum.

4 Q. Do you typically stay up kind of late?

5 A. I do, I'm a late person. I -- it started when
6 the children were young, and you clean up after
7 everybody goes to bed, so I just kept the pattern and I
8 was up. I do my cleaning late at night, 1:00,
9 2:00 o'clock in the morning, I'm still working.

10 Q. On September 25th into the 26th, around, let's
11 say midnight, 12:30, do you recall what you were doing?

12 A. Yeah, I was working in my bedroom, and I looked
13 up and it was about 12:30. And I said, oh, it's -- I
14 really need to go to bed. So, I got in the shower and I
15 took a shower. I wish I never took the shower but I
16 did.

17 Q. While you were in the shower, do you recall
18 hearing anything unusual?

19 A. No.

20 Q. Once you got out of the shower, did you hear
21 anything unusual?

22 A. I was out of the shower, I had gotten my
23 pajamas on and my hair was soaking wet, I was just
24 getting ready to blow dry it. And I heard this horrible
25 noise at the front door, and I ran -- it really sounded

1 more like a car had hit the front of the house. And I
2 ran to the front and I looked out the glass door and I
3 could see her laying on the ground. And I slung the
4 door open and I ran back to get the telephone to call
5 911 because all I could see was blood everywhere.

6 Q. Let me stop you because you said you saw her,
7 who did you mean when you said --

8 A. Leiah, I saw Leiah laying on the ground, she
9 was facing me, she was facing me laying on her side. So
10 I'm looking at her face, not her back, and blood was
11 from one end of her to the other, more so around -- on
12 the concrete, not on the front of her clothes, it was
13 all on -- from what I could tell from the back.

14 Q. Do you remember what she was wearing?

15 A. I know she had a pair of jeans on and she
16 didn't have any shoes on, a little tank top. And she
17 usually wore a little -- a little, like jacket, you
18 know -- you know how young people wear short -- those
19 short jackets. And I ran and I got the phone and called
20 911.

21 Q. And --

22 A. And then I came back outside and I got down on
23 the ground with her. And she put her -- she held me
24 like this after I was talking into the 911 call.

25 Q. And so are you still on the side of her, the

1 front side of her?

2 A. I'm still on the front side of her.

3 Q. Do you recall if you ever maneuvered around to
4 take a look at her back?

5 A. No. I never moved, she was holding onto me so
6 tight that I never moved.

7 Q. And what did you think was going on at that
8 time?

9 A. Well, really when I saw the blood, I assumed
10 she was having a miscarriage. I mean that's -- I had no
11 idea my child had been attacked. I'm thinking she --
12 she was having a miscarriage. And I kept screaming in
13 the cell phone to 911 that she was eight months pregnant
14 and she was having a miscarriage, she looked like she
15 was having a miscarriage.

16 Q. At some point while Leiah is laying there and
17 you're on the phone with 911, do you realize that
18 perhaps something else has happened?

19 A. It wasn't until later on that I realized and
20 found out that she had been stabbed. When the
21 paramedics took the -- they cut her top off, I could see
22 a terrible gash on her arm. Even then I'm still
23 thinking miscarriage, because I said, well, she must
24 have cut herself on the magnolia tree trying to get over
25 here. And then I heard them say she was stabbed.

1 Q. Let's back up just a little bit. Before any of
2 the medics got there, were you able to have some
3 conversation with Leiah?

4 A. Yes. She started to close her eyes. And I
5 said Leiah, keep your eyes open and talk to momma, just
6 keep talking to momma, the paramedics are on the way, so
7 just keep talking. And then she said to me, she said,
8 momma, Yancey's cousin did this and Yancey's not here.
9 I am still not focusing in on what she is saying, all
10 I'm seeing is this blood. And after a little bit, I
11 realized what she was saying when -- especially when the
12 paramedics came and they said she had been stabbed.

13 Q. Now, I would assume while this is going on, you
14 were in a very upset, excited type state, is that fair
15 to say?

16 A. If you saw your child laying on the ground with
17 all that blood, would you not be upset?

18 Q. Even being upset in that circumstance, are you
19 certain as to the words Leiah said to you?

20 A. Absolutely. She said, quote, Yancey's cousin
21 did this and Yancey is not here.

22 Q. If Leiah had said to you the name Cornelius,
23 Cornelius did this, would that have meant anything to
24 you that day?

25 A. No, the name Cornelius would not have meant

1 anything to me.

2 Q. Had you met any of Yancey's cousins at that
3 point?

4 A. No.

5 Q. At some point did paramedics arrive and begin
6 to treat Leiah?

7 A. Yes.

8 Q. During that time, was Leiah still in a
9 condition where she could speak some?

10 A. Yes. She said, *momma, I love you.* And I said,
11 *I love you, too, and your baby is going to be all right.*

12 Q. Did you see her able to communicate with the
13 medics?

14 A. No. I can't honestly say that I saw her
15 communicate with the medics, because by that time I was
16 standing up over her because they told me to move out of
17 the way.

18 Q. When you last saw Leiah there at that scene,
19 from what you could observe was she alive?

20 A. She was alive.

21 Q. Did police officers eventually come to your
22 home?

23 A. Yes, police officers were there. And there was
24 one standing by the door, because he escorted me from
25 where the paramedics was at my front door to a police

1 car.

2 Q. Did you explain to police officers what it was
3 that Leiah had said to you?

4 A. Yes, I did. I told them exactly and their
5 response was, they were concerned about Yancey now.

6 Q. Did you see Yancey anywhere around there at the
7 time?

8 A. No, I did not.

9 Q. Do you know how Leiah left that scene?

10 A. In an ambulance, and they told me that Life
11 Flight was on the way and they were taking her to meet
12 the Life Flight helicopter.

13 Q. Were you able to go along in that ambulance or
14 helicopter?

15 A. No, I was not. I had -- I had gotten my
16 daughter-in-law on the phone and had told her to get to
17 the hospital because I didn't want my baby at the
18 hospital by herself, and to get ahold of my son. He was
19 down at the ranch, and that they were still talking to
20 me about what had happened.

21 Q. Were you eventually able to get to the
22 hospital?

23 A. Yes, I was. My -- she's my friend, but I call
24 her my sister, Ada Kane. And she came and took me to --
25 to Memorial Hermann because that's where they told me

1 that she -- that Life Flight was taking her to Memorial
2 Hermann.

3 Q. Had you received any updates regarding Leiah's
4 condition up until that point?

5 A. I believe my daughter-in-law called and said
6 they were taking her to surgery. And I told them I
7 would be there as soon as I could get there.

8 Q. And when you arrived at the hospital, what did
9 you learn?

10 A. I didn't learn anything other than she was in
11 surgery. They took us to a room, and my
12 daughter-in-law, my son, my daughter-in-law's mother and
13 myself and Ada, we sat there for awhile, and then a
14 doctor and a nurse came.

15 Q. And what did they tell you?

16 A. They told my son we had lost both of them.

17 Q. Both of them meaning who? By both of them, who
18 do you mean?

19 A. My daughter and my -- my little boy, my
20 grandson.

21 Q. Is that something you were prepared for or
22 expecting based off of --

23 A. I knew possibly that I could lose my grandson
24 because I'm still in the mind state of -- of
25 miscarriage. But when they said both of them, I just

1 fell to my knees. I'm sorry.

2 Q. Is there anything that you can think of at all,
3 Ms. Jackson, anything, any reason, any person that would
4 have some reason to kill Leiah?

5 A. No. Leiah was a loving child, she loved
6 people. She could literally walk into a room and light
7 up the room. I mean, she had the most gorgeous smile
8 you ever saw.

9 MS. BOLIN: May I approach the witness,
10 Your Honor?

11 THE COURT: You may.

12 Q. (BY MS. BOLIN) Ms. Jackson, I'm going to show
13 you what's been premarked as State's Exhibit Number 192.
14 Have you listened to the contents of this exhibit?

15 A. Yes.

16 Q. And what is it?

17 A. It's the 911 call.

18 Q. And do you recognize your voice on this
19 recording?

20 A. Yes, I do.

21 Q. And do you hear the voice of the dispatcher on
22 this recording?

23 A. Yes, I can.

24 Q. And within this recording, does it accurately
25 reflect the way the conversation took place on September

1 the 26th of 2010?

2 A. I believe it does.

3 Q. Okay.

4 MS. BOLIN: Your Honor, at this point
5 State moves to admit State's Exhibit 192 after tendering
6 to counsel.

7 MR. DOGGETT: No objection. I said no
8 objection. I doubt if you heard me.

9 THE COURT: All right. That exhibit's
10 admitted.

11 MS. BOLIN: Judge, at this time, my
12 request is going to be to publish State's Exhibit 192.

13 THE COURT: You may.

14 MS. BOLIN: And Judge, we probably won't
15 play in its entirety, I think there's a portion at the
16 end, some dead time.

17 (Whereupon State's Exhibit Number 192 was
18 played for the jury.)

19 MS. BOLIN: Judge, I think with agreement
20 with the Defense that the rest of it doesn't have much
21 to it.

22 THE COURT: All right. Folks, we're going
23 to take a break for a few minutes, say about a ten or
24 fifteen-minute break, let y'all stretch your legs, we'll
25 come back in and resume testimony with this witness.

1 Please don't talk to anyone, even amongst yourselves
2 about what we have heard here today, and we'll resume in
3 about fifteen minutes.

4 (Recess taken)

5 THE COURT: Before the jury comes back,
6 this is to the family. This has been very difficult
7 testimony. I just -- I want to commend y'all on how
8 you've been able to hold it together.

9 If you feel like you're becoming overcome
10 with emotion, please just take a moment, go on outside
11 and stretch your legs a little bit and see if that
12 helps, I think that will be the better thing to do.
13 Okay? I don't want the jury to be affected by our
14 sadness that we experience in these kind of tragic
15 circumstances. So then come on back in when you've
16 refreshed yourself just a little bit. I appreciate it.
17 Okay. Let's have the jury.

18 MR. HANNA: Judge, just for purposes of
19 the record, the Defense has agreed to postpone their
20 cross-examination of Ms. Jackson until the completion of
21 our next witness, which will be --

22 THE COURT: Okay. So you're going to take
23 a witness out of line?

24 MR. HANNA: We are. And I'll re-explain
25 that in front of the jury so they have an understanding.

1 THE COURT: Okay. Very good.

2 MR. DOGGETT: We do agree to that.

3 THE COURT: We also probably ought to get
4 the stipulation in at some point in time.

5 MR. HANNA: Regarding the autopsy photos?

6 THE COURT: Yes, exactly.

7 MR. HANNA: Okay. Would you like to have
8 a written stipulation beyond what's on the record? I
9 do, but --

10 THE COURT: Why don't do you that? I
11 mean, it doesn't have to be done today anyway. So if
12 you could do it overnight, then I'll just read it to
13 them in the morning or you can read it to them.

14 (Jury enters the courtroom)

15 THE COURT: All right. Folks, please be
16 seated. Mr. Hanna.

17 MR. HANNA: And Your Honor, pursuant to an
18 agreement we've reached with the Defense team, we're
19 asking to take a witness out of order because of a
20 scheduling conflict. And it's our understanding that
21 Matthew Fields will be the next witness that both sides
22 will examine, and then Ms. Jackson will be available for
23 cross-examination by the Defense team after the
24 completion of this witness.

25 THE COURT: All right. Very well. So

1 we're going to take a witness out of line, folks. It
2 may seem a little odd but sometimes we do that to
3 accommodate needs that the witness might have for travel
4 or whatever. You may do so.

5 MR. HANNA: We call Matthew Fields, Your
6 Honor.

7 (Witness sworn)

8 **MATTHEW FIELDS,**

9 having been first duly sworn, testified as follows:

10 **DIRECT EXAMINATION**

11 Q (By Mr. Hanna) Mr. Matthews, would you please
12 introduce yourself to the jury.

13 A. Hi, my name is Matt.

14 Q. Okay. Can you state your full name for the
15 record.

16 A. Matthew Allen Fields.

17 Q. Mr. Fields, how old are you?

18 A. Twenty-nine.

19 Q. Okay. And where do you live?

20 A. I don't have a physical address right now, but
21 I've been working in Alaska. So that's where I've been
22 staying nowadays.

23 Q. Okay. What kind of work do you do in Alaska?

24 A. I fish commercially.

25 Q. Okay. And actually, we sort of pulled you out

1 of that area just to come down here and testify for us,
2 didn't we?

3 A. That's correct.

4 Q. And it's been an incredible inconvenience for
5 you, I'm sure.

6 A. I'm losing money.

7 Q. Okay. Well, that's one of the reasons we're --
8 we were taking you, sort of out of order so we can get
9 you back to Alaska as quickly as possible.

10 A. I appreciate it.

11 Q. Okay. I want to talk to you a little bit about
12 yourself though, a little bit. What's your educational
13 background?

14 A. High school.

15 Q. Okay. And what year did you graduate?

16 A. '03.

17 Q. Where did you go to school?

18 A. Elkins.

19 Q. Here in Fort Bend County?

20 A. Yep.

21 Q. Okay. And what kind of jobs have you held
22 since then?

23 A. Trade work, painting, landscaping, I was in the
24 National Guard for a few years, now I fish.

25 Q. Okay. Do you travel much?

1 A. I did last winter. I went to Central America,
2 lived in Montana, lived in Washington.

3 Q. Okay.

4 A. Road trips here and there.

5 Q. Okay. And now you are making a living -- or
6 trying to make a living up in Alaska.

7 A. Yes.

8 Q. Okay. I want to address your attention back to
9 September of 2010; and of course, you understand why
10 you're here today, right?

11 A. Yes.

12 Q. Okay. You've been subpoenaed as a witness
13 because of some things you observed back on that day, on
14 September 26. Do you remember that day?

15 A. Vaguely, I remember what happened.

16 Q. Okay. What were you doing in your life at that
17 time?

18 A. At the time I lived by myself, but I think I
19 was hanging around home because my dad had just died,
20 that's the reason I came back home. I wasn't working or
21 anything.

22 Q. Where did you live?

23 A. 3322 Lacosta Drive, Quail Valley.

24 Q. Okay. And that's in Missouri City, Texas,
25 right?

1 A. Yes.

2 Q. Is that where you grew up?

3 A. Yep.

4 Q. And that is -- that Lacosta Drive is just one
5 block away from Palm Dessert; is that correct?

6 A. I believe so.

7 Q. Okay. And who lived in that house with you at
8 that time?

9 A. My mother, and I think that was it at the time,
10 I'm not sure if my sister had moved in yet with her
11 family. I think it was just me and my mom at the time.

12 Q. Okay. And you were in between jobs, I guess,
13 right after your dad passed?

14 A. Correct.

15 Q. That night of September 26, you heard
16 something; is that correct?

17 A. Yes.

18 Q. Okay. Explain to the jury what it was that you
19 heard.

20 A. I heard a scream and some crying, so I went
21 outside and hung out for a few minutes, I'm not sure how
22 long.

23 Q. Okay. I have to do this question and answer
24 so --

25 A. Yeah, sure.

1 Q. -- I have to do a little bit at a time. When
2 you said you heard a scream, could you -- did you know
3 where it came from?

4 A. From behind my house.

5 Q. Okay. So --

6 A. A neighbor's house.

7 Q. -- directly from the house behind yours?

8 A. Yes.

9 Q. Was it a male or a female scream?

10 A. Female.

11 Q. And when you said you went outside, where
12 did -- what portion of your house did you go outside of?

13 A. I'm sorry?

14 Q. Did you go out the back, I guess?

15 A. Yes.

16 Q. The scream came from behind?

17 A. Correct.

18 Q. So you went outside, did you hear anything
19 additional?

20 A. Sobbing, talking, I'm not sure what was being
21 said.

22 Q. Okay. How long did that last?

23 A. Minutes, I'm not sure exactly how long, it's
24 been awhile.

25 Q. Okay. And it's understandable. And you

1 never -- you never wrote down, made a personal -- I
2 mean, a written statement down for yourself to refresh
3 your memory with or anything, did you?

4 A. No.

5 Q. Okay. Do you remember talking to the police
6 about this?

7 A. I do.

8 Q. Okay. Well, while you were in the back, you
9 said you heard sobbing and screaming, what happened
10 after those minutes of those sounds?

11 A. I heard a thud and I believe it was the sound
12 of somebody jumping the fence because I saw a figure
13 walking away from the sounds of the screaming.

14 Q. Okay. And where did you see this figure?

15 A. Behind my other neighbor's fence, so that would
16 make it behind the house that the screaming was coming
17 from as well, the house is next-door to mine.

18 Q. Okay. I'm going to use a map or a photo that's
19 going to show up on your screen, right to your right.

20 A. Okay.

21 Q. And let's talk about the orientation of these
22 houses. Okay?

23 A. Sure.

24 Q. I'm going to show you what's already been
25 admitted as State's Exhibit Number 74 -- 174. I'll give

1 you a moment to take a look at that. You've seen that
2 photo before, right?

3 A. Yes.

4 Q. And is your house reflected -- the house that
5 you were in on that day reflected in that photo?

6 A. Yes.

7 Q. If you touch your screen, it will leave a mark
8 on the photo, so if you can touch your screen and
9 indicate to the jury which house was yours.

10 A. That one.

11 Q. Did it show up? Okay. And there's sort of a
12 rectangle shaped swimming pool in the backyard?

13 A. That's correct.

14 Q. And that's the house you were in when you heard
15 this noise.

16 A. Correct.

17 Q. Okay. And from which direction did you hear
18 the noise come from?

19 A. This area.

20 Q. Did you touch the screen again? Okay. From
21 over there?

22 A. Yes.

23 Q. And that is -- this street that's on the top
24 side of that would be Palm Dessert?

25 A. I believe so.

1 Q. Okay. Now, you heard a thud as you described,
2 which direction did that thud come from?

3 A. Same area, right about here.

4 Q. Is that where the red mark is?

5 A. Um-hum.

6 Q. Okay. And you observed somebody walk away from
7 that thud, which direction did they travel?

8 A. This way.

9 Q. You can draw a line actually and it will be
10 represented on the screen.

11 A. Okay.

12 Q. And so, I guess in between -- while the picture
13 is not all that detailed, between where you were
14 standing over here by your garage and that red line that
15 you just wrote, there's a fence?

16 A. Yes.

17 Q. Okay. I'm going to show you some other
18 exhibits that have already been admitted. I'm going to
19 show you what's been marked as State's Exhibit Number
20 56.

21 THE COURT: Just touch the far left corner
22 of your screen and it will erase. Thank you.

23 MR. HANNA: Thank you.

24 Q (By Mr. Hanna) Now, what does that picture
25 reflect?

1 A. That's my old backyard.

2 Q. Okay. And is this in the general area where
3 you were standing at the time you heard the thud?

4 A. About eight feet away, I was a little closer to
5 the back door but it's really close.

6 Q. Okay. And did you see the individual standing
7 at the -- in the back of that photo near the fence line?

8 A. I do.

9 Q. Is that the area that you observed somebody
10 walk?

11 A. Yes.

12 Q. Okay. What was the lighting like out there
13 that night?

14 A. Very dark.

15 Q. There's no street lights in your backyard or
16 any -- lots of illumination or anything like that.

17 A. I think there's probably some illumination
18 coming from the neighbor's yard which made it really
19 hard to make out the person whatsoever, I can just tell
20 that it was a person.

21 Q. Okay. You couldn't tell any descriptions about
22 the person, could you?

23 A. Not at all.

24 Q. Okay. Now, I'm going to show you what's been
25 marked as State's Exhibit Number 57, and you've seen

1 this photo before, right?

2 A. Yes.

3 Q. And what does that photo depict?

4 A. That would be behind the fence that's next to
5 my backyard.

6 Q. Okay. And so that individual that was
7 portrayed in State's Exhibit Number 56 would have been
8 standing where this photo is taken from?

9 A. Yes.

10 Q. And can you demonstrate by touching the screen
11 where you would have been standing at the time you
12 observed this figure walk by the fence.

13 A. Right there.

14 Q. Okay. And now I'm going to show you what's
15 been marked as State's Exhibit Number 55, and ask you is
16 that just a closer up version of where the individual
17 was positioned when the photo of Number 56 was taken?

18 A. Yes.

19 Q. What do you remember about the figure that you
20 saw walk by that fence line?

21 A. Well the fact that I saw him means that they
22 were probably taller than the fence, I mean.

23 Q. Okay.

24 A. Their head was above the fence line.

25 Q. Okay. Now how far above the fence line?

1 A. I can't say exactly but maybe similar to that
2 photo.

3 Q. Okay. Do you mean the individual who was
4 walking that's depicted in the photo?

5 A. Yes.

6 Q. You would say similar to that height?

7 A. Perhaps, I mean, I wasn't trying to gauge
8 exactly, and all I could tell that it was a person. I
9 wasn't really kind of focusing on those types of things,
10 similar to that height.

11 Q. Okay. And I suspect you were anxious, at
12 least, you heard the screaming and then heard a thud.

13 A. Sure.

14 Q. Had you heard any sirens or any -- the presence
15 of law enforcement?

16 A. Yes.

17 Q. And when did you hear that?

18 A. After all that, I don't know how long it was.
19 It had been awhile -- it's been awhile but it was
20 minutes probably.

21 Q. Okay. And then law enforcement showed up. And
22 I guess then eventually -- you mentioned earlier that
23 you spoke to somebody from law enforcement?

24 A. Yes.

25 Q. Okay. Do you remember the conversations that

1 you had with law enforcement?

2 A. Yes, vaguely.

3 Q. Okay. And they -- do you remember who the
4 detectives' names were?

5 A. No.

6 Q. No. Do you remember them writing down what you
7 said?

8 A. They were writing things down.

9 Q. As they talked to you?

10 A. Yes.

11 Q. And you were cooperative with them, right?

12 A. Yes.

13 Q. And you met with them and talked to them and
14 answered their questions.

15 A. Yes.

16 Q. Do you remember telling them that the figure
17 that you had seen walk behind the fence was at least
18 four to five inches above the fence line, his shoulders
19 were at least four to five inches above the fence line.

20 A. That was discussed. He had suggested, was the
21 guy about this tall, holding his hand above the fence.
22 And I nodded my head, I agreed. I said, yeah, he was
23 about that tall so.

24 Q. Okay.

25 A. I wouldn't say that's not inaccurate.

1 Q. Okay. And you recall that all?

2 A. Yep.

3 Q. Okay. And so the figure that you saw, at least
4 that you saw go by was tall enough that you saw some
5 portion of him above the fence.

6 A. Yes.

7 Q. And do you recall how high the officer held his
8 hand when he asked you, was he about this tall?

9 A. No. I assumed that whatever he was writing
10 down was probably what he was measuring with his hands.

11 Q. Okay.

12 A. It was four to six inches above the shoulder
13 line, I believe is what he wrote in the statement, and
14 that is probably -- is probably about how tall the guy
15 was.

16 Q. Okay.

17 A. I can't say for sure.

18 Q. Right. Nobody measured him, but he obviously
19 caught your eye as he was walking by because he was
20 above the fence line.

21 A. Yes.

22 Q. And you've had no other involvement in this
23 case since that day, have you?

24 A. No, none.

25 MR. HANNA: I'll pass the witness, Your

1 Honor.

2 THE COURT: All right.

3 **CROSS-EXAMINATION**

4 Q (By Mr. Doggett) Mr. Fields, my name is Stephen
5 Doggett. I'm one of the lawyers that represents
6 Mr. Harper down here. I wanted to ask you a couple of
7 questions real quick. We'll be done with you pretty
8 quick and you can get back to where you want to go.

9 You said you're losing money. What kind
10 of fishing do you do in Alaska?

11 A. Salmon.

12 Q. Salmon. Did the D.A.'s Office pay for your
13 airfare to get down here and to get you back, are they
14 paying for that?

15 A. Yes.

16 Q. Okay. Any other expenses they're paying for
17 you; travel expenses or anything like that?

18 A. Yes.

19 Q. What are they paying for?

20 A. If I showed them receipts for food, they'll
21 reimburse me.

22 Q. Okay. You said -- this State's Exhibit 55,
23 were you there when this picture was taken?

24 A. I might have been inside the house. There was
25 a lot of activities around at that time.

1 Q. But you think it was taken the same day that
2 you talked to the police?

3 A. It's possible.

4 Q. Okay. And you said, do you think that the --
5 do you recall whether or not the person you saw that
6 night was about the same height as the person depicted
7 in State's Exhibit 55?

8 A. Something like that.

9 Q. Okay. And I'll show you again, State's
10 Exhibit 57, and that -- you already put your finger over
11 here, that's about where you were standing --

12 A. Correct.

13 Q. -- at your back door?

14 A. Yes.

15 Q. And this was -- the time of year was
16 September 2010, was this vegetation, this banana tree
17 and these -- whatever these other bushes are, were they
18 growing along inside your yard along the fence back at
19 that time?

20 A. I'm not sure how well those plants were doing
21 but I had a clear view of the figure that I saw, there
22 was nothing blocking it.

23 Q. Say that again. I couldn't hear you.

24 A. There was nothing blocking the figure that I
25 saw. I'm not sure how well those plants were doing but

1 I definitely had a clear line of sight from whoever was
2 walking back there.

3 Q. You said it was very dark and there might have
4 been some lighting in the other yard that made it very
5 difficult for you to make out whoever it was that you
6 saw?

7 A. Correct.

8 Q. And you -- I would assume if they walked -- if
9 they jumped that fence and walked the length of your
10 fence between your house and your neighbors -- well,
11 were they walking or running, let me ask you that.

12 A. Walking.

13 Q. Okay. But even walking, then I assume you only
14 saw them for a few seconds, right? Just walking from
15 one end of the yard to the other, right?

16 A. Correct.

17 Q. And then once they got to the end of your house
18 off to your right, they went out of your view.

19 A. Correct.

20 Q. Okay. You gave them no other description of
21 whoever it was you saw other than basically what you've
22 already told us, right?

23 A. Correct.

24 Q. You couldn't even tell what race the person
25 was, right?

1 A. No.

2 Q. Could you even tell if it was a man or a woman?

3 A. No.

4 Q. Okay.

5 MR. DOGGETT: I pass the witness.

6 MR. HANNA: No further questions, Your
7 Honor.

8 THE COURT: Can this witness be released?

9 MR. DOGGETT: Please.

10 MR. HANNA: We ask that he be released.

11 THE COURT: All right. Thank you very
12 much, sir. You can be on your way and thank you.

13 THE WITNESS: Thank you.

14 MR. HANNA: Thank you.

15 THE COURT: Do you want to resume now with
16 Ms. Jackson?

17 MR. HANNA: Yes, Your Honor.

18 THE COURT: All right. Ms. Bolin, you can
19 recommence when you're ready.

20 MS. BOLIN: Judge, I'm actually prepared
21 to pass this witness.

22 THE COURT: Very well. Mr. Doggett.

23 MR. DOGGETT: Yes, sir. May I proceed?

24 THE COURT: Yes, sir, you may.
25

CROSS-EXAMINATION

1
2 Q (By Mr. Doggett) Ms. Jackson, we met
3 previously. My name is Stephen Doggett, and we met
4 because you were brave enough to -- out there in the
5 hallway, to walk up to us and stick your hand out and
6 introduce yourself to me and Ms. Scardino. I admire you
7 for that.

8 A. Yes, sir.

9 Q. I'm -- this is not a question. I'm sorry --
10 I'm so sorry for your loss, believe me. But I have to
11 ask you some, what I think are going to be difficult
12 questions for you.

13 You've already testified that when you
14 were asked what Yancey did for a living, that the only
15 thing you knew about what he did for a living was that
16 he told you he was in some sort of music business where
17 he would use a computer to monitor when music was played
18 and somehow he tabulated that and he got paid for doing
19 that, right?

20 A. No, sir.

21 Q. Go ahead and tell me what he told you.

22 A. I said Leiah told me --

23 Q. I'm sorry, Leiah told you.

24 A. Not Yancey.

25 Q. Okay. And she told you what I just said, that

1 he was in some sort of business where he used a computer
2 to monitor how often music was played and then they
3 tabulated -- somebody else, I guess tabulated royalties
4 based on that. Did Yancey ever, personally, one-on-one
5 tell you what he did?

6 A. No.

7 Q. You also said awhile ago when you were talking
8 about Yancey that you were under the impression that he
9 did quite well, whatever it was he was doing.

10 A. Correct.

11 Q. How could you -- how did you form the
12 impression that he was doing well financially based
13 on -- how did you form that opinion?

14 A. By observation, he was always well dressed.
15 Leiah would have said to me if there was a need to help
16 support, but no, she never said that.

17 Q. Okay. So you're basing your conclusion that he
18 was doing well on the fact that he was well dressed?

19 A. Well dressed and based on what my daughter
20 said.

21 Q. Okay. And the car, the Tahoe that we talked
22 about already, did he obtain that car shortly before he
23 was killed?

24 A. A day or two before, yes.

25 Q. Did Leiah ever talk to you about how he paid

1 for that car?

2 A. She said that he put a down payment, I think it
3 was about six thousand dollars.

4 Q. Okay. Did he -- did Yancey -- you lived
5 next-door to them, right, in the adjoining duplex?

6 A. That's correct.

7 Q. And this -- did Yancey seem to go to work
8 everyday or did he seem to have a regular job or did he
9 seem to be working out of his home or what was your
10 impression about where he did his work from?

11 A. He did it in that little office, that bedroom
12 that was turned into an office was my impression, I did
13 not see him go on a regular basis to a job.

14 Q. Were you concerned because of his relationship
15 with your daughter about what he really did for a
16 living?

17 A. I trust my daughter. And if she told me that's
18 what he did, that's what I assumed he did.

19 Q. Okay. Well isn't it true that on the day that
20 your daughter and Yancey were killed, you were
21 interviewed by the police that evening to find out what
22 you knew about who might have wanted to hurt them; do
23 you remember that?

24 A. I had an interview with -- with the police. Is
25 there a specific question, sir?

1 Q. All right. You had an interview that -- late
2 that evening --

3 A. Yes.

4 Q. -- correct? And by that time you knew that
5 Leiah had passed and that Yancey was gone and the baby
6 was gone.

7 A. Yes.

8 Q. In that interview, is it true that the police
9 were asking you who might have wanted to harm Leiah and
10 Yancey?

11 A. They might have.

12 Q. Right. And is it true that in that interview
13 that you expressed the opinion that you weren't sure
14 whether or not Yancey might have been involved in drugs?

15 A. No, I don't recall that at all.

16 Q. Do you remember telling the police that you had
17 actually contacted a friend of yours who used to work
18 for the DEA and asked that he check Yancey out?

19 A. Correct.

20 Q. You did do that, correct?

21 A. Yes, I did.

22 Q. All right. And this was a retired DEA agent?

23 A. Correct.

24 Q. Okay. Is it also true that when you found out
25 the area of town where Yancey was killed that you told

1 the police that you thought that was a drug area.

2 A. Correct.

3 Q. Okay. And that you told them, when they were
4 trying to find out what might have happened that you
5 told them that you weren't sure -- you didn't know
6 whether Yancey was involved with drugs or not.

7 A. Correct.

8 Q. All right. And you still today, you don't know
9 the answers to those questions?

10 A. No, I do not.

11 Q. All right. Now, Leiah was -- she was not
12 dependent upon Yancey financially for money, was she?

13 A. No, she was not.

14 Q. In fact, you mentioned in your direct
15 examination that you -- your family, you had -- either
16 you or your children had inherited money from -- money
17 or land or something from their grandfather; is that
18 correct?

19 A. Correct.

20 Q. Is that ranch in Anahuac part of that estate?

21 A. Yes.

22 Q. Okay. And so because of the money that Leiah
23 had inherited, she didn't really need a man to support
24 her, right?

25 A. No. Leiah is the beneficiary of her

1 grandfather's estate at that particular time. She had
2 received funds from my father's wife who was my
3 stepmother.

4 Q. All right. So she inherited money from two
5 different estates?

6 A. Yes, that's correct.

7 Q. Okay. And one of the things the police -- the
8 police asked you about that, do you remember them
9 talking to you about that?

10 A. About what, sir?

11 Q. About the money that Leiah had, about that
12 possibly being a motive why someone would kill her; do
13 you remember that?

14 A. I don't recall them asking me about whether or
15 not Leiah's financial status would be the cause of
16 someone to murder her.

17 Q. Okay. Do you -- concerning that, is it correct
18 that Leiah didn't -- she was not a flashy person and
19 didn't go around bragging about that she had money or
20 anything like that, correct?

21 A. That is correct.

22 Q. She was very discrete about that --

23 A. The whole family is.

24 Q. Right, I understand. So it would be unlikely
25 that maybe anybody other than Yancey might know that she

1 had inherited any money.

2 A. Probably so, unless he told her.

3 Q. Right. I mean, you don't know whether she even
4 told Yancey what -- what she had inherited, do you?

5 A. In June of 2010 at the ranch, the oil company
6 had a big celebration and Yancy was a part of that, so
7 Yancey knew very well how well off Leiah was.

8 Q. All right. That would have been when -- for
9 sure that you knew that he knew that she was well off
10 financially.

11 A. Correct.

12 Q. Okay. Now, did Leiah ever complain to you
13 that, because she had money that people were bugging her
14 about maybe wanting to loan money to them or anything
15 like that? You know, kind of like somebody, you hear
16 about people winning the lottery and then people --
17 people come out of the woodwork and they want to --

18 A. No, sir.

19 Q. -- borrow money from them.

20 A. No, sir. In fact, Leiah was a miser, she was
21 worse than Ebenezer Scrooge.

22 Q. All right. Well, I used to be that way but my
23 wife broke me of that. Now, did you learn from Leiah or
24 Yancey very much about who was in his family?

25 A. No, I did not.

1 Q. Okay. I think you've already testified that
2 you met his mother, you and Leiah and his mother -- you
3 and Yancey and Leiah and his mother had a -- I guess, a
4 supper together?

5 A. Yes, that's correct.

6 Q. When was that?

7 A. Oh, I'd say about maybe a month or less before
8 she was murdered.

9 Q. And you never -- until after the killings had
10 occurred, you had never met Bill Daniels --

11 A. No --

12 Q. -- Yancey's father?

13 A. -- I have not.

14 Q. Okay. Bill Daniels and Yancey's mother were
15 divorced, correct, is that your understanding?

16 A. I knew they were not living together, I did not
17 know what their -- what the status was.

18 Q. Okay. That's fine. Now did you ever learn
19 from Yancey or Leiah the names of any of the rest of
20 Yancey's extended family?

21 A. Other than his sister, Tarhonda.

22 Q. Tarhonda?

23 A. Yeah.

24 Q. So you never learned the names of any of the
25 cousins.

1 A. No.

2 Q. Like Cornelius Harper.

3 A. No.

4 Q. Well, did you ever hear about a cousin named
5 Khari Green?

6 A. I don't recall the name, no. But I knew that
7 she had met -- she was aware of another cousin. I
8 couldn't tell you if she had actually met him.

9 Q. You don't -- you don't remember what the name
10 of that other cousin was?

11 A. No, sir.

12 Q. Did you ever hear about a cousin named Dominic
13 Green?

14 A. Possibly in a conversation with her.

15 Q. Okay. So you're not sure of the names but you
16 knew that there was at least -- how many cousins had you
17 heard about that Yancey had?

18 A. One.

19 Q. One? One. Okay. All right. You're not sure
20 what the name was --

21 A. I knew that he had been ill. He had -- I think
22 broke his leg and Yancey was trying to assist him, but
23 other than that I only knew of one cousin.

24 Q. And that was the one who had been ill and had
25 broken legs?

1 A. Yes.

2 Q. Did you get the impression from what you heard
3 that Yancey and this cousin with the broken legs were
4 close?

5 A. No, because there wasn't any lengthy
6 conversation about the cousin other than he had broken
7 his legs and was Yancey's cousin.

8 Q. All right. Did you ever hear anything other
9 than the fact about the guy that broke his legs, did you
10 hear anything about these other cousins, about what they
11 did for a living or what kind of people they were?

12 A. The one cousin that I had heard about?

13 Q. Yes, ma'am.

14 A. No, they did not discuss -- she did not discuss
15 with me what the cousin was, where he was other than he
16 had broken his legs and Yancey was assisting him.

17 Q. And of course, on the night that Leiah came to
18 your door, and you said you hear her -- you heard her
19 say, Yancey's cousin did this, she did not give a name,
20 correct?

21 A. No, she did not.

22 Q. And just based on her saying, Yancey's cousin
23 did this, you cannot say, based on your knowledge about
24 the family, you don't know which cousin she might have
25 been talking about?

1 A. That is correct.

2 Q. Okay. Now, you said that you were close to
3 Leiah.

4 A. Yes.

5 Q. And I want to -- I want you to tell us more
6 about that. How close were the two of you? I know you
7 lived next to each other, how often would you speak,
8 everyday?

9 A. Everyday.

10 Q. Okay. Did she confide in you about her
11 happenings with Yancey and her relationship with Yancey?

12 A. No, she was rather closed mouth in regards to
13 Yancey.

14 Q. Was that different than what -- the way she had
15 been with other boyfriends?

16 A. Yes, it was.

17 Q. Did that bother you that she didn't --

18 A. Yes, it did.

19 Q. It did bother you. Okay. Did she -- and
20 please don't get mad at me, I have a basis for asking
21 these questions. Did she ever confide in you that
22 Yancey was cheating on her?

23 A. No.

24 Q. Did she ever confide in you that Yancey had
25 given her herpes?

1 A. No.

2 Q. Did she -- other than the one fight that you
3 said you were -- she came over and told you she wanted
4 Yancey to leave, did you know of any other serious
5 fights that they had had between each other?

6 A. I knew that they had had arguments because she
7 would say that they had arguments.

8 Q. Did she ever go into any detail about what they
9 were fighting about?

10 A. Only once she went into details.

11 Q. And when was that?

12 A. When was it?

13 Q. Yes, ma'am.

14 A. Oh, I guess -- I think that was before she was
15 even pregnant, he wanted to invest in real estate and
16 she didn't want to.

17 Q. They had an argument about that?

18 A. Right.

19 Q. Okay. Did she go into any detail about the
20 nature of the argument?

21 A. She said some friend of his was in -- what do
22 you call it? Flip-flop -- flipping houses, you know,
23 buying foreclosures and -- and he wanted her to invest
24 and she wouldn't.

25 Q. He wanted her to invest some of her money in

1 that --

2 A. Right, um-hum.

3 Q. -- in that investment?

4 A. Yeah.

5 Q. Did she say that that argument got heated or
6 just that they had a disagreement about that?

7 A. It was just a disagreement that she was not
8 going to invest any money.

9 Q. Now the incident that you talked about where
10 she -- I think you said she came over about 4:00 o'clock
11 in the morning to your duplex, I guess.

12 A. Um-hum.

13 Q. And said they were having a fight.

14 A. They were having an argument, not a fight.

15 Q. Okay. An argument then. And she told you that
16 she wanted Yancey out of there.

17 A. Right.

18 Q. Okay. And you went with Leiah back over to her
19 duplex, correct?

20 A. That's correct.

21 Q. And when you got there, Yancey was there,
22 correct?

23 A. Yes.

24 Q. And you had a conversation with Yancey.

25 A. Yes.

1 Q. Was he -- did he appear to you to be angry?

2 A. No.

3 Q. Did you tell him that you didn't want him to
4 get smart with you?

5 A. Yes.

6 Q. Okay. And what happened after that?

7 A. I told him that she -- being pregnant that she
8 did not need to be on this constant emotional roller
9 coaster. And when I went to say, I think it is time for
10 you to leave, she stopped me.

11 Q. And that's when she said, it's okay, mom.

12 A. She said, it's okay, mom.

13 Q. And you exited their duplex -- I assume this
14 took place inside their duplex?

15 A. Yes, it did.

16 Q. Your duplex that they were staying in.

17 A. That's correct.

18 Q. Okay. And when she said, it's okay, you exited
19 the duplex. But being the good momma that you are, you
20 hung by the door to see what was going to happen next.

21 A. That is correct.

22 Q. And that's when you heard Yancey make some sort
23 of statement about I've got thirty thousand dollars in
24 cash in the closet or something to that effect.

25 A. He said, I have thirty thousand. He didn't say

1 cash, he says, I have thirty thousand in that back room.

2 Q. In the back room?

3 A. Yes.

4 Q. And that would be where his office would be?

5 A. That's correct.

6 Q. Okay. Now how long did you stay listening to
7 see what was going to happen?

8 A. Maybe a minute or two.

9 Q. And then you went back to your duplex.

10 A. And I went back, yes.

11 Q. And did you hear anymore from Leiah about the
12 outcome of that --

13 A. No.

14 Q. -- rile that they had had?

15 A. It wasn't a rile; it was a disagreement,
16 argument.

17 Q. Disagreement?

18 A. Yeah.

19 Q. All right. Did Leiah ever confide in you that
20 she had physically assaulted Yancey?

21 A. Not that I recall.

22 Q. Did Leiah ever confide in you that Yancey had
23 physically assaulted her?

24 A. No, I don't recall her ever telling me that.
25 He would have been gone.

1 Q. If you had known about it -- if you had found
2 out about it.

3 A. Yeah, he wouldn't have been living there.

4 Q. Did Leiah ever confide in you that she was
5 concerned about Yancey being out all hours of the night
6 running around --

7 A. She had an issue with that, yes. She had an
8 issue of him not -- not coming home.

9 Q. What was your impression of how often that was
10 occurring?

11 A. You know, that's very difficult to say. I can
12 only say that when she told me, and that was only maybe
13 twice. It could have happened even more but I only know
14 possibly of two different times.

15 Q. And as her mother, you were concerned about
16 that --

17 A. Yes.

18 Q. -- that behavior.

19 A. Yes.

20 Q. Did she say how late it was that he would stay
21 out at the time she talked to you about it?

22 A. Like, coming in at 4:00 or 5:00 o'clock in the
23 morning, calling and saying they were doing a music
24 session. That was basically -- it wasn't a twenty-four
25 hour missing in action.

1 Q. All right. Okay. How many times would you say
2 if -- based on what you know, how many times would you
3 say from the time they got really serious to the time
4 they died would it be that they almost broke up and
5 physically separated or he moved out?

6 A. Other than the two times, I couldn't tell you,
7 sir, how many times they had had an argument or decided
8 to split.

9 Q. Okay. Did you ever observe Yancey when you
10 thought he was intoxicated?

11 A. No.

12 Q. Did you ever observe him where you thought he
13 was under the influence of some sort of a drug?

14 A. No.

15 Q. When did you find out that Leiah was pregnant?

16 A. Oh, it must have been February.

17 Q. Okay. Did Leiah or Yancey ever tell you that
18 they thought you were too involved in the relationship
19 and they wanted you to butt out?

20 A. No, not that I recall.

21 Q. Okay. Did you ever learn from Leiah or Yancey
22 or see with your own eyes any sort of property damage in
23 their duplex where somebody got mad and might have torn
24 something up?

25 A. Yes.

1 Q. What was that?

2 A. The dog chewed the wall.

3 Q. I'm talking about where Leiah or Yancey might
4 have damaged something while they were angry.

5 A. No.

6 Q. Okay. When you learned that Yancey was coming
7 in at 4:00 o'clock in the morning, did you tell Leiah
8 that she thought -- you thought, as her mother that she
9 ought to get rid of this guy, Yancey?

10 A. No, I did not.

11 Q. Did you ever tell her that?

12 A. I possibly could have told her then if she was
13 that upset, you know.

14 Q. I mean, any parent would want --

15 A. Correct.

16 Q. -- always what's best for their daughter.

17 A. That is correct.

18 Q. Did you ever hear anything about a friend of
19 Yancey's named -- or an associate of Yancey's named D.J.
20 Goodgrief?

21 A. No.

22 Q. Did you ever hear about -- from Leiah or Yancey
23 about Yancey having -- Yancey having some problems with
24 members of his own family?

25 A. I think -- the only one that I think she ever

1 mentioned was he and his sister had had an argument;
2 what the argument was, I couldn't tell you.

3 Q. This was Tarhonda?

4 A. Yes.

5 Q. Okay. Who told you about that?

6 A. Leiah did.

7 Q. Did -- did Leiah ever tell you that -- other
8 than what you've already talked about -- do you recall
9 any other times when Leiah might have told you that she
10 was thinking of splitting from Yancey, other than the
11 time that she told you that she wanted him out that
12 night they were having an argument?

13 A. She could have, but sometimes that's small
14 talk.

15 Q. I understand. Would it be fair to say, because
16 Leiah was pretty tight-lipped about her relationship
17 with Yancey that there were probably a lot of things
18 that were going on between them that you -- or there
19 could have been a lot of things that were going on
20 between them that you didn't know about.

21 A. That's quite possible.

22 MR. DOGGETT: I'll pass the witness.

23 MS. BOLIN: Judge, I have no questions for
24 this witness.

25 THE COURT: All right. Can this witness

1 be allowed to stay in the courtroom if she's finished
2 her testimony?

3 MS. BOLIN: Yes, please, Your Honor.

4 MR. DOGGETT: We're not waiving our
5 previous statement, we stand by that and we understand
6 that's been overruled.

7 THE COURT: Okay. Ms. Jackson, you may
8 leave the stand and you may stay in the courtroom if you
9 wish to hear the rest of the trial.

10 THE WITNESS: Okay.

11 THE COURT: Do you want -- do you have
12 another quick witness or do you want to --

13 MR. HANNA: We have a short witness out in
14 the hallway.

15 THE COURT: Let's do it.

16 MR. HANNA: Okay.

17 MS. BOLIN: Albert Hodge.

18 **(Witness sworn.)**

19 THE COURT: All right. You may proceed
20 when you're ready.

21 MS. BOLIN: Thank you, Judge.

22 **ALBERT HODGE,**

23 having been first duly sworn, testified as follows:

24 **DIRECT EXAMINATION**

25 Q (By Ms. Bolin) Could you tell us your name,

1 please.

2 A. Albert Hodge.

3 Q. And where do you work?

4 A. Missouri City Fire and Rescue.

5 Q. And what is your title with Missouri City Fire
6 and Rescue?

7 A. Firefighter, EMT.

8 Q. How long have you worked there?

9 A. Since June of 2006.

10 Q. Tell us a little bit about the responsibilities
11 and duties you have with that job.

12 A. Mitigate any fire instances as well as
13 emergency accidents -- or emergency assistance requiring
14 medical need.

15 Q. And I believe you said EMT.

16 A. Yes, ma'am.

17 Q. And what does that stand for?

18 A. Emergency medical technician at the basic
19 level.

20 Q. And so there are various levels of that?

21 A. Yes, ma'am, there's a basic intermediate and
22 paramedic.

23 Q. And you're currently a basic?

24 A. Yes, ma'am.

25 Q. And did you serve in that same capacity in

1 September of 2010?

2 A. Yes, ma'am.

3 Q. Is there additional things that you are
4 permitted to do if you become an intermediate or a
5 paramedic?

6 A. Yes, ma'am. Intermediate's allow intervention
7 such as intubation as well as I.V. therapy and
8 paramedics can administer cardiac medications.

9 Q. So as a basic EMT, what types of things can you
10 do in a medical emergency?

11 A. We can do CPR, we can provide oxygen, treat
12 minor -- or treat bleeding airway circulation and stuff
13 like that.

14 Q. In your work with Missouri City Fire and
15 Rescue, how many people would generally be on a team
16 that would respond to a medical emergency?

17 A. Our -- we have three to four people, depending
18 on which apparatus you're on that day.

19 Q. And would that generally include a paramedic?

20 A. Yes, ma'am.

21 Q. And would the paramedic be the person sort of
22 in charge of the group of individuals?

23 A. Yes, ma'am, on medical calls.

24 Q. Okay. I want to draw your attention
25 specifically to September the 26th of 2010. Were you

1 working at that time for Missouri City Fire and Rescue?

2 A. Yes, ma'am.

3 Q. In the capacity of a basic EMT?

4 A. Yes, ma'am.

5 Q. What kind of hours and shift would you
6 generally work at that time?

7 A. At the time we were on a twenty-four hour,
8 forty-eight cycle, so we work twenty-four hours on shift
9 and then forty-eight hours off shift.

10 Q. So if you're working twenty-four hours on
11 shift, does that mean at times when your services are
12 not necessary that you sleep?

13 A. We are allowed downtime at -- in the evening
14 hours, so yes, we can sleep.

15 Q. And specifically around 1:00 a.m., unless
16 something else is going on, would you, at least be
17 attempting to sleep?

18 A. Yes, ma'am.

19 Q. Okay. How do you all get notified that there
20 is some type of emergency that you need to respond to?

21 A. We have an overhead radio system as well as
22 through our dispatch center.

23 Q. And would -- how about -- how long would it
24 take to, if you were asleep, get up, get situated and
25 get to an emergency?

1 A. For medical calls, around ninety seconds is
2 what we try to push for.

3 Q. Okay. September 26th, 2010, do you remember
4 which particular location you were working at?

5 A. I was working at Station One off of Cartwright
6 and Murphy.

7 Q. And is that located near the police department?

8 A. Yes, ma'am.

9 Q. And also located relatively near to Quail
10 Valley?

11 A. Yes, ma'am.

12 Q. Around 1:00 a.m., that day on the 26th, were
13 you notified about the emergency medical call?

14 A. Yes, ma'am.

15 Q. What kind of information did you have regarding
16 that medical call?

17 A. We had received a call for a pregnant woman
18 bleeding.

19 Q. Did you have any more information than that?

20 A. Not at the time.

21 Q. And who is we?

22 A. The crew and I, the lieutenant, the driver and
23 me and one other firefighter.

24 Q. Okay. And would you guys leave and go to this
25 emergency in a fire truck?

1 A. Yes, ma'am.

2 Q. And would that include whatever necessary
3 medical supplies and equipment you might need?

4 A. Yes, ma'am.

5 Q. If the call at that point had not been one for
6 a pregnant woman bleeding but instead as a stabbing,
7 would that have changed the way you guys respond to the
8 call?

9 A. We would have had police dispatched at the same
10 time that we would have arrived and staged and
11 secured -- and waited until police insured that the
12 scene was secure and we would have been called out to
13 the scene.

14 Q. And by -- what do you mean by staged?

15 A. We would usually stage at -- or stop at a
16 corner prior to the actual incident location, whether
17 it's a corner or several houses away.

18 Q. And what's the purpose of that?

19 A. To insure the scene is safe and that police
20 have any -- anybody that might be involved, isolate
21 that, if there's any danger for us.

22 Q. Okay. You guys don't carry a firearm on your
23 side like police officers, correct?

24 A. No, ma'am.

25 Q. But in this case, because the information you

1 had was that a pregnant woman was bleeding, you
2 proceeded directly to the scene?

3 A. Yes, ma'am.

4 Q. And what was your role on the fire truck, on
5 the way there, at least, did you have one?

6 A. Just sitting in the back -- I was sitting
7 behind the driver's side or behind the driver's seat.

8 Q. On the trip from the Fire Department to the
9 scene, did you guys receive any additional information
10 about the patient?

11 A. No, not that I recall.

12 Q. Describe to us what you observed when you
13 arrived at the scene.

14 A. I happened to look across my right-hand side
15 to -- across the other firefighter, and I saw the
16 patient was laying in the front doorway on her side and
17 the calling party was in the front entry as well.

18 Q. Was there any way you were able to light that
19 area in order to see better?

20 A. We had our twelve volt scene lights, they're
21 L.E.D.'s so they're very bright and they were -- the
22 driver activated them at the time prior to us arriving
23 at the house.

24 Q. So it would have lit up the area of that porch?

25 A. Yes, ma'am.

1 Q. Could you see any blood from that standpoint
2 before you even got out of the fire truck?

3 A. Yes, ma'am. I did notice that she had a white
4 tank top, undershirt style and it was very bright red
5 across the back.

6 Q. At that moment before you even approached her
7 to begin treating, what are your thoughts regarding the
8 reason for the call?

9 A. This was not a typical female pregnant bleeding
10 call because it's something other than what we were
11 initially being dispatched for.

12 Q. Was there anyone else present other than the
13 pregnant woman who was bleeding and the person who had
14 made the call?

15 A. Not that I saw.

16 Q. Okay. When you realized that this may not be a
17 pregnant woman bleeding type situation, does that change
18 your concerns regarding your safety?

19 A. As far as my lieutenant, it became his -- his
20 role was to insure that whatever we did that we
21 maintained awareness of our scene.

22 Q. Okay. So if he's acting more in security
23 fashion, what was your role specific to this patient?

24 A. I made patient contact, begin speaking with her
25 as well as the calling party, trying to calm down the

1 situation because there was a lot of screaming going on.

2 Q. What was your initial assessment of the patient
3 once you approached her in terms of what it appeared had
4 happened or what was wrong with her?

5 A. Uh, initially I saw the blood, I saw a couple
6 of cuts in the back of the shirt, saw some marks on her
7 arm, some cut marks on her arm. She was able to talk to
8 me, she was complaining of difficulty breathing and we
9 began assessing her by cutting the shirt off.

10 Q. And you mentioned you saw some cuts in the
11 shirt, did you believe you were dealing with a patient
12 with stab wounds?

13 A. After seeing the arm and pulling the shirt off,
14 we knew for sure it was stab wounds. Why the shirt was
15 cut or torn initially, I didn't really look to see what
16 caused that.

17 Q. Once you began this assessment, is there a
18 particular area of her body where the majority of the
19 stab wounds were located?

20 A. Primary on her back, and from what I could
21 tell, her left arm.

22 Q. Were you in a position where you could have
23 counted the number of stab wounds?

24 A. I didn't take the time to count, I just noticed
25 a lot of stab wounds.

1 Q. Okay. You mentioned that you were able to
2 communicate with her. As far as your responsibilities
3 are concerned at a scene like that, what is the purpose
4 of communicating with a patient?

5 A. If the patient is alert and able to talk to us,
6 we can usually get a lot more information regarding the
7 medical history, pertinent information of what happened,
8 and you know, if they have any allergies or anything
9 like that that we can deal with them directly.

10 Q. And was this patient able to communicate with
11 you?

12 A. Yes, ma'am.

13 Q. What does A.O. times three mean?

14 A. The alert and oriented times three, a person,
15 place and time, or person, place and event.

16 Q. And how is that relevant to assessing a
17 patient?

18 A. It gives us an awareness of their mental
19 status, if they're able to answer their name, if they're
20 able to answer where they're at and what time of day or
21 what happened.

22 Q. And was this particular patient that day, alert
23 and oriented times three?

24 A. Yes, ma'am.

25 Q. So she was able to tell you who she was, where

1 she was and what day it was.

2 A. She actually told us who she was, where she was
3 and the event -- what event was going on, was how we
4 asked her.

5 Q. Were you involved in taking her vital signs?

6 A. I don't recall if we ever actually assessed
7 vital signs.

8 Q. During the time that you encountered Leiah, at
9 least on that patio, was she alive and awake in
10 communicating the entire time?

11 A. Yes, ma'am.

12 Q. Was she at some point transported from that
13 patio somewhere else?

14 A. Yes, ma'am.

15 Q. And where was that?

16 A. Upon Fort Bend County EMS arrival, we
17 transferred patient care, assessed it with packaging the
18 patient, meaning we put her on a long spine board with a
19 C-collar protection, loaded her up in the ambulance and
20 transported her to the Life Flight Landing Zone.

21 Q. Would it have been necessary to have Fort Bend
22 County EMS there in order for those things to take
23 place?

24 A. That's our standard procedure, they do get
25 dispatched with every medical call that we go to.

1 Q. Okay. And so in order to have transport by
2 ambulance and Life Flight getting involved in all that,
3 Fort Bend EMS would have been involved?

4 A. Yes, ma'am.

5 Q. But you all got there before they did, right?

6 A. Yes, ma'am.

7 Q. At some point did you have a conversation or
8 ask a question of this patient, other than the questions
9 regarding her name and where she was?

10 A. Yes, ma'am. I asked her kind of what's going
11 on, you know, does she know who did this to her, and she
12 began shaking her head, nodding it affirmatively.

13 Q. Okay.

14 A. And then --

15 Q. Let me stop you there. You said the question
16 was did she know who had done this to her?

17 A. Yes, ma'am.

18 Q. And is that typically a question that you would
19 have asked in your capacity as an EMT?

20 A. Sometimes, if we feel like it may be pertinent
21 to -- if there's numerous people standing around or we
22 might be more conscious of who we would be looking for
23 as far as keeping our safety. Every now and then, it
24 happens to be a domestic issue.

25 Q. And so you said that the response to your

1 question, do you know who did this to you was that she
2 nodded affirmatively?

3 A. Yes, ma'am.

4 Q. Did she give you any other details at that
5 point?

6 A. She began saying something, which I didn't
7 understand, but the calling party, which I'm -- now know
8 is her mom, began saying it was her cousin and she
9 continued nodding her head.

10 Q. Okay. So the person you referred to as the
11 reporting party or the patient's mother said something
12 about it being her cousin?

13 A. Yes, ma'am.

14 Q. And you continued to see affirmative nodding
15 from the patient at that point?

16 A. Yes, ma'am.

17 Q. Whenever the patient was moved to the back
18 board into the ambulance, did you remain with her?

19 A. Yes, ma'am.

20 Q. And did you ride along in the back of that
21 ambulance?

22 A. Yes, ma'am.

23 Q. During that time, was she still awake, alive
24 and breathing?

25 A. Yes, ma'am. She was beginning to show signs of

1 respiratory distress -- or significant respiratory
2 distress, and then -- not necessarily loss of
3 consciousness, but just kind of trying to -- under
4 stress.

5 Q. Why was it necessary in this situation to have
6 her taken by Life Flight?

7 A. Due to the severity of trauma, the loss of
8 blood that we could see on scene and the rapid transport
9 to Level One Trauma Center.

10 Q. Was she still able to communicate some during
11 the ride in the ambulance to the landing zone?

12 A. Yes, ma'am.

13 Q. What occurred once you arrived at the landing
14 zone?

15 A. Fort Bend County EMS transferred care to the
16 Life Flight medical crew. Upon their arrival, they came
17 into the back of the ambulance and they performed what
18 they call a rapid sequence intubation.

19 Q. And what does that entail?

20 A. Basically, the flight medics administered
21 medication to -- to make the patient unconscious so that
22 we can do more intervention such as putting intubation,
23 intratracheal tube and basically take control of her
24 breathing for her.

25 Q. And so at that point, would that have ended her

1 ability to communicate out loud?

2 A. Yes, ma'am.

3 Q. All right. Back when you first arrived at the
4 scene and while you were encountering this patient,
5 could you tell whether or not she was pregnant?

6 A. Yes, ma'am.

7 Q. Okay. And almost with the demeanor there, I'm
8 assuming it was extremely obvious?

9 A. Yes, ma'am.

10 Q. Okay. And at that time had you had any
11 particular personal experience with things like that?

12 A. Yes, ma'am. My wife had just given birth in
13 August of 2010 so --

14 Q. So about a month before this?

15 A. Yes, ma'am.

16 Q. Did that make this a particularly memorable
17 call for you?

18 A. Yes, ma'am.

19 MS. BOLIN: I pass the witness, Your
20 Honor.

21 THE COURT: All right. Cross.

22 **CROSS-EXAMINATION**

23 Q (By Mr. Doggett) Mr. Hodge, I'm Stephen
24 Doggett. I'm one of the lawyers that represents
25 Cornelius Harper. Just a couple of questions.

1 You said that when you were asking the
2 bleeding woman what had happened and who had done this
3 to her -- or did she know who had done this to her, you
4 said she nodded, yes.

5 A. Correct.

6 Q. Okay. How many other people were around her
7 when that happened? Was it more than just you and her
8 mother or was there more people?

9 A. There would have been our -- the other
10 firefighters, Nathan Erdel (sp) that was with me.

11 Q. How many would that have been; do you have any
12 idea? How many other people?

13 A. The other firefighters as well as our driver,
14 so two other people.

15 Q. Two others?

16 A. Yes, sir.

17 Q. Okay. And they would have nearby when you were
18 having that -- trying to have that conversation?

19 A. Yes, sir.

20 Q. With Leiah about who -- did she know who did
21 this to her?

22 A. Yes, sir.

23 Q. Although she nodded her head yes, she never
24 gave you a name, did she?

25 A. She began saying a name, but I was listening to

1 my lieutenant and the other firefighter. I did not hear
2 a name. Particularly, she had a non-rebreather on, and
3 we were providing supplemental oxygen to assist her.

4 Q. She had a breather mask on?

5 A. Yes, sir.

6 Q. So you couldn't hear whatever it was she said?

7 A. I didn't recognize a name, no, sir.

8 Q. Okay. And you said that -- at the time you
9 were asking her who did it, that the lady that -- I
10 think you said that called in the --

11 A. -- the calling -- the reporting party, the
12 person on the phone.

13 Q. The reporting party. And you were trying to
14 talk to Leiah, and the reporting party said to Leiah,
15 right about that same time, that her cousin, and Leiah
16 nodded, yes.

17 A. Yes.

18 Q. She said her cousin?

19 A. She said it was her cousin, that was what I
20 recall.

21 Q. All right.

22 MR. DOGGETT: Pass the witness.

23 MS. BOLIN: Judge, I have nothing further
24 for this witness.

25 THE COURT: All right. Thank you very

1 much and you are excused.

2 THE WITNESS: Thank you.

3 THE COURT: I think we'll call it a day
4 today and we'll be back at it tomorrow morning at
5 9:00 o'clock.

6 Please do not read or view anything about
7 this, just -- you already know more than anybody that
8 could tell you about what happened in the courtroom
9 today.

10 So go home; get a good night's sleep and
11 we'll see you in the morning.

12 (Proceedings adjourned for evening)

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1 THE STATE OF TEXAS §

2 COUNTY OF FORT BEND §

3 I, Karen Woolsey, Official Court Reporter in and for
4 the 434th District Court of Fort Bend County, State of
5 Texas, do hereby certify that the above and foregoing
6 contains a true and correct transcription of all
7 portions of evidence and other proceedings requested in
8 writing by counsel for the parties to be included in
9 this volume of the Reporter's Record in the above-styled
10 and numbered cause, all of which occurred in open court
11 or in chambers and were reported by me.

12 I further certify that this Reporter's Record of the
13 proceedings truly and correctly reflects the exhibits,
14 if any, offered by the respective parties.

15 I further certify that the total cost for the
16 preparation of this Reporter's Record is \$ _____ and
17 will be paid by Fort Bend County.

18 /s/ Karen Woolsey

19 _____
20 Karen Woolsey, CSR
21 Texas CSR 1828
22 Official Court Reporter
23 434th District Court
24 Fort Bend County, Texas
25 301 Jackson
Richmond, Texas 77469
Telephone: 281.633.7654
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